
(2010) 07 AHC CK 0349
In the Allahabad High Court

C/M, Adarsh Kisan Inter College and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 07 AHC CK 0349

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The Committee of Management of Adarsh Kisan Inter College, Haseymau, District Kanpur Dehat and Jagdish Singh claiming himself to be its Manager have filed this petition for quashing the decision taken by the Regional Level Committee on 25th January, 2010 by which the elections held on 2nd January, 2009 in which the petitioner No. 2-Jagdish Singh was elected as the Manager have not been approved and a direction has been issued to the Authorised Controller for holding fresh election of the Committee of Management.

2. It is stated that Adarsh Kisan Higher Secondary School Samiti, Haseymaun Pokhrayan, Kanpur (hereinafter referred to as the "Society") which is registered under the provisions of the Societies Registration Act, 1860 is running the Adarsh Kisan Inter College, Haseymaun, Kanpur Dehat (hereinafter referred to as the "Institution"). The Institution which has its own Scheme of Administration is governed by the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "Act"). The Joint Director of Education passed an order on 30th July, 2008 appointing an Authorised Controller in the Institution for holding fresh elections of the Committee of Management of the Institution within three months. Writ Petition No. 51275 of 2008 was filed for setting aside the aforesaid order but the petition was dismissed on 29th September, 2008 with a direction that the Authorised Controller shall hold the elections of the Committee of Management of the Institution after finalising the voters list. Pursuant to the aforesaid directions

issued by the Court, the Authorised Controller convened a meeting of the General Body for 27th December, 2008 by issuing the agenda notice dated 11th December, 2008 to the 21 members of the General Body but since meeting could not take place on 27th December, 2008, it was adjourned to 2nd January, 2009 after issuing the agenda notice dated 24th December, 2008 to all the 21 patron/life members of the General Body. In the meeting held on 2nd January, 2009 the elections for the 12 members of the Committee of Management of the Institution took place and thereafter these 12 members of the Committee of Management proceeded to hold elections for the five office bearers, namely, President, Vice-President, Manager, Deputy Manager and Treasurer. Subsequently, papers were forwarded by the Authorised Controller to the District Inspector of Schools by the letter dated 7th January, 2009. The District Inspector of Schools by the order dated 7th January, 2009 granted recognition to the Committee of Management of the Institution and the signatures of petitioner No. 2-Jagdish Singh were also attested as the Manager.

4. A complaint was, however, made to the Deputy Registrar, Firms, Societies and Chits, Kanpur Region, Kanpur (hereinafter referred to as the "Deputy Registrar") by the patron of the Society regarding the financial irregularities in the Society and the enrollment of Dr. Ashok Kumar Sachan and Sone Lal Yadav as life members of the Society being contrary to the provision of Rule 4 of the Bye-Laws of the Society. The Deputy Registrar passed an order dated 19th January, 2009 and on the basis of the aforesaid order, Virendra Pal Singh filed an application before the Joint Director of Education who issued direction on 28th February, 2009 to the District Inspector of Schools to re-examine the matter.

5. The District Inspector of Schools then issued a notice dated 4th May, 2009 requiring the petitioners to submit a reply on the points mentioned in the notice including the illegal enrollment of Dr. Ashok Kumar Sachan and Sone Lal Yadav as life members of the General Body of the Society. The petitioners submitted a reply and thereafter the District Inspector of Schools passed an order on 29th June, 2009 that the Committee of Management of the Institution elected on 2nd January, 2009 was not legally constituted and issued a direction for holding fresh elections.

6. This order dated 29th June, 2009 passed by the District Inspector of Schools was challenged by the petitioners in Writ Petition No. 34386 of 2009 in which an interim order was passed on 14th July, 2009. Virendra Pal Singh filed Special Appeal No. 1006 of 2009 against the interim order dated 14th July, 2009 and the Special Appeal and the Writ Petition were decided by the judgment and order dated 11th August, 2009 with the following directions:

With the consent of the parties we pass the following order:

1. Order dated 29.06.2009 passed by the District Inspector of Schools, Kanpur Dehat (Annexure No. 10 to the writ petition) is quashed.
2. Respondent No. 5 is given liberty to raise his grievances before the Regional

Committee headed by Joint Director of Education, Allahabad. The Regional Committee aforesaid shall consider the plea of respondent No. 5 and the writ petitioners and pass an appropriate order in accordance with law.

3. The District Inspector of Schools, Kanpur Dehat shall transmit the record to the Regional Director of Education, Allahabad forthwith. The decision aforesaid be taken within three months from the date of receipt/communication of this order. The writ petition is allowed with the aforesaid observations.

7. Pursuant to the aforesaid directions issued in Special Appeal, the Regional Level Committee by its decision dated 25th January, 2010 has not approved the election of the Committee of Management held on 2nd January, 2009 and has issued certain directions including the direction to the Authorised Controller to hold the elections of the Committee of Management of the Institution after excluding the names of Dr. Ashok Kumar Sachan and Sone Lal Yadav from the list of members of the General Body.

8. It is this decision dated 25th January, 2010 of the Regional Level Committee that has been impugned in the present petition.

9. The Regional Level Committee, on the basis of the written submission filed by the parties, comments submitted by the Authorised Controller and the documents made available by the District Inspector of Schools found:

a) The reason for not taking the three patron members in the Committee of Management of the Institution that their close relatives are in service in the Institution is not a good ground in view of the provisions of Clause 4 contained in Chapter III of the Act. In such circumstances, the election of the Committee of Management of the Society held on 2nd January, 2009 is contrary to the provision of Rule 8-A of the Bye-Laws of the Society.

b) The objection of Jagdish Singh Sachan that Virendra Pal Singh cannot be a member of the Committee of Management of the Institution even if he is a patron member since his real brother Keshav Kumar Sachan is the Principal of the Institution is not correct.

c) The objection of Jagdish Singh Sachan that Virendra Pal Singh cannot be a member of the Committee of Management of the Institution since he is a teacher is not correct.

d) The contention of Jagdish Singh Sachan that since the election was held on the basis of the list supplied by the Deputy Registrar, no objection can be raised regarding the said list is not correct since list of members of the General Body was not supplied by the Deputy Registrar and the list submitted by Jagdish Singh Sachan was an unregistered list which has no legal sanctity.

e) The enrollment of Dr. Surendra Singh Sachan as patron member is contrary to the provisions of Rule 4(A) of the Bye-Laws of the Society.

f) The enrollment of Dr. Ashok Kumar Sachan and Sone Lal Yadav as Life

Members of the General Body is not in accordance with the procedure prescribed and the Deputy Registrar in his order dated 19th January, 2009 has also not found them to be valid members in the list for the year 2008-09.

10. On the basis of the aforesaid observations, the Regional Level Committee took the following decisions:

1) The election of the Committee of Management of the Institution held on 2nd January, 2009 cannot be approved since it is contrary to the provisions of the Scheme of Administration/Bye-Laws and Dr. Ashok Kumar Sachan and Sone Lal Yadav had also participated in it. Fresh elections of the Committee of Management of the Institution should, therefore, be held by the including six Patron Members and the Life Members within a period of one month after excluding the names of Dr. Ashok Kumar Sachan and Sone Lal Yadav.

2) Since Dr. Ashok Kumar Sachan and Sone Lal Yadav have wrongly been enrolled as life members of the General Body, their subscription amount should be refunded by the newly constituted Committee of Management of the Institution.

3) Any patron/life member cannot be deprived from becoming an office bearer/member of the Committee of Management of the Institution merely because his close relatives are working as teaching/non-teaching staff in the Institution.

11. It is the contention of Sri Ashok Khare, learned Senior Counsel for the petitioners that the elections of the Committee of Management of the Institution were held on the basis of the list supplied by the Assistant Registrar and any subsequent decision taken by the Deputy Registrar holding that two persons namely Dr. Ashok Kumar Sachan and Sone Lal Yadav were not validly elected as the life members of the General Body cannot have any effect on the elections already held. He further submitted that Dr. Ashok Kumar Sachan had not even participated in the elections and that Sone Lal Yadav has not been elected and in any case there is no finding that the result of the election has been materially effected on account of participation of these two members. In support of this contention, he has placed reliance upon the decision of this Court in Qamar Rashid Khan Vs. Committee of Management, Azamgarh Muslim Education Society, Azamgarh and others, It is also his contention that Clause 8(a) of the Bye-Laws of the Society cannot be relied upon as it stands superseded by the Scheme of Administration of the Institution and in support of this contention he has placed reliance upon the decision of this Court in Committee of Management of Hindu Inter College, Kosi Kalan and Ors. v. Regional Deputy Director of Education, Agra Region, Agra and Ors. 1988 UPLBEC 732. It is also the contention of the learned Senior Counsel for the petitioners that the election held on 2nd January, 2009 is saved by the defacto doctrine and in support of this contention he has relied upon the decision of this Court in Committee of Management, Gangadin Ram Kumar Inter College, Jaunpur v. Deputy Director of Education, Vth Region, Varanasi and Ors. (2006) 3 UPLBEC 2862.

12. Sri R.K. Ojha, learned Counsel for respondent No. 5 submitted that there is no infirmity in the impugned order and no interference is called for under Article 226 of the Constitution. He further submitted that though this Court in its judgment and order dated 29th September, 2008 passed in Writ Petition No. 51275 of 2008 had specifically directed the Authorised Controller to hold the elections of the Committee of Management of the Institution after finalising the voters list, but the elections were held without finalising the voters list and in any case the list submitted by Jagdish Singh Sachan claiming it to be the list supplied by Assistant Registrar cannot be accepted since it was unregistered list and the Regional Level Committee committed no illegality in not placing reliance upon the said list. He further submitted Dr. Ashok Sachan and Sone Lal Yadav were not validly elected as the members of the General Body and, therefore, could not have participated in the elections of the Committee of Management.

13. I have carefully considered the submissions advanced by the learned Counsel for the parties.

14. There is nothing on the record to indicate that the Authorised Controller had finalised the list of members of the General body entitled to participate in the elections of the Committee of Management though this Court, as noticed hereinabove, had clearly directed in its judgment and order dated 29th September, 2008 passed in Writ Petition No. 51275 of 2008 that the Authorised Controller shall hold the elections of the Committee of Management of the Institution after finalising the voters list. The Regional Level Committee has proceeded to examine the validity of the list of members on the basis of which the elections had been held and has found serious flaws in it. Though various submissions have been advanced by learned Counsel for the parties regarding the validity or otherwise of the list of members of the General Body on the basis of which the elections had been held, but it will not be necessary to examine this matter since it was for the Authorised Controller to have finalised the list before holding the elections of the Committee of Management as was directed by this Court in its judgment and order dated 29th September, 2008.

15. The submission of learned Senior Counsel for the petitioners that it was not necessary for the Authorised Controller to finalise the list of members of the General Body since Jagdish Singh Sachan had submitted the list of members of the General Body obtained from the office of the Deputy Registrar cannot be accepted since the list bears the mark "unregistered" and in any case the Authorised Controller was required to finalise the list of members of the General Body. Thus, for this reason alone, the election of the Committee of Management of the Institution held on 2nd January, 2009 cannot be approved and the Regional Level Committee committed no infirmity in disapproving the said election. The decision rendered in Qamar Rashid Khan (*supra*) will not come to the aid of the petitioners since there was a specific direction in the present case to the Authorised Controller to finalise the list of members of the General Body before holding the elections of the Committee of Management. For the same

reason, the decision in the case of Committee of Management, Gangadin Ram Kumar Inter College (supra) will not come to the aid of the petitioners.

16. The contention advanced by learned Senior Counsel for the petitioners regarding the decision taken by the Regional Level Committee in respect of the three patron members or Virendra Pal Singh also need not to be examined in this case since fresh elections of the Committee of Management of the Institution are now required to be held after the list is finalised by the Authorised Controller. The Regional Level Committee or the District Inspector of Schools, as the case may be, will be at liberty to examine this issue, if so raised, without being influenced by any of the observations made by the Regional Level Committee in its decision taken on 25th January, 2010.

17. It is, therefore, not possible for this Court to interfere with the decision taken by the Regional Level Committee for holding of fresh elections of the Committee of Management of the Institution. The decision is, however, modified to the extent that the list of members of the General Body shall be first finalised by the Authorised Controller in accordance with the directions issued by this Court on 29th September, 2008 in Writ Petition No. 51275 of 2008 and thereafter the elections of the Committee of Management of the Institution will be held. The District Inspector of Schools or the Regional Level Committee shall take a decision independently without being influenced by any of the observations made in the decision taken by the Regional Level Committee on 25th January, 2010.

18. The writ petition is, accordingly, dismissed subject to the observations made above.