
(2010) 12 AHC CK 0182
In the Allahabad High Court
Case No : Special Appeal No. 1782 of 2010

C/M, Arya Kanya Pathshala Inter College	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Societies Registration Act, 1860 — Section 25
Uttar Pradesh Intermediate Education Act, 1921 — Section 16(A)(7)

Citation : (2011) 2 ADJ 65 : (2011) 2 UPLBEC 1668

Hon'ble Judges : Shyam Shankar Tiwari, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri G.K. Singh and Sri Bheem Singh, learned Counsels for the Appellant, Sri Vinod Sinha, learned Counsel appearing for Respondent No. 4 and learned Standing Counsel.

2. By consent of the learned Counsel for the parties, the appeal has been heard and is being disposed of finally.

3. This appeal under Chapter-VIII, Rule 5 of the Rules of the Court has been filed against the judgment and order dated 19th October, 2010 passed by the Hon'ble Single Judge dismissing the writ petition of Respondent No. 4. While dismissing the writ petition Hon'ble Single Judge has issued certain directions which are impugned in this appeal.

4. Brief facts of the case, necessary to be noted for deciding the appeal, are; Arya Kanya Pathshala Association Khurja, District Bulandshahr is a registered society under the Societies Registration Act, 1860. The said society runs an institution, namely, Arya Kanya Pathshala Inter College, Khurja, which has been recognized under the U.P. Intermediate Education Act, 1921 and is receiving aid from the State Government. The institution is run by an approved scheme of

administration. The earlier election of the Committee of Management was held on 18th February, 2005. Thereafter the election took place on 24th January, 2010. The District Inspector of Schools vide his order dated 27th January, 2010 attested the signatures of Dr. Dheeraj Singh as Manager of the Committee of Management. The Respondent No. 4 claiming to be a life member of the society filed the writ petition praying for quashing the order dated 27th January, 2010. A writ of mandamus was also claimed directing the Regional Level Committee and the District Inspector of Schools to decide the representations dated 10th May, 2010 and 2nd September, 2010. The writ petition was heard by the Hon''ble Single Judge on 19th October, 2010. An objection was raised by the counsel for the Respondent (Appellant herein) that the writ petition is not maintainable having been filed by the writ Petitioner claiming to be member of the general body. Hon''ble Single Judge dismissed the writ petition as not maintainable. However, while dismissing the writ petition, Hon''ble Single Judge made following observations :

The Regional Level Committee may consider the grievance of the Petitioner according to law, if possible, within a period of three months from the date of production of certified copy of the order. As informed by the Respondent, Deputy Director, who is one of the member of the Regional Level Committee, is in relation of the Petitioner. If that is so, then another Regional Level Committee minus that particular Deputy Director may decide the issue.

5. The Appellant by this appeal has prayed for setting aside the order of Hon''ble Single Judge insofar as observation has been made by Hon''ble Single Judge that Regional Level Committee may consider the grievance of Respondent No. 4 according to law, if possible, within a period of three months from the date of production of a certified copy of the order.

6. Sri G.K. Singh, learned Counsel for the Appellant, challenging the part of the order, as indicated above, submits that when the Hon''ble Single Judge accepted the preliminary objection of Respondent-Appellant that the writ petition having been filed by a member of the general body was not maintainable, there was no occasion for issuing any direction for deciding the grievance of Respondent No. 4. Sri Singh has further contended that an individual member of the general body had no right to raise a dispute before the Regional Level Committee since no rival election has been claimed by the writ Petitioner. It is further submitted that, in fact, Respondent No. 4, who had filed the writ petition, is not even a member of the general body of the society which issue has already been decided by order dated 30th November, 2009 passed by the Prescribed Authority u/s 25 of the Societies Registration Act, 1860. It is submitted that against the order of the District Inspector of Schools attesting the signatures of the Appellant, there is no forum provided for raising any dispute before the Regional Level Committee.

7. Sri Vinod Sinha, learned Counsel appearing for Respondent No. 4, submits that the order of the District Inspector of Schools attesting the signature of the Appellant was passed without any notice or information to other members. He

submits that Dr. Dheeraj Singh could not have been elected as Manager, wife of his cousin being working as teacher in the institution and on earlier occasion his election was not recognized on the said ground. It is submitted that election of the Committee of Management is not in accordance with the scheme of administration. It is further submitted that against the order of District Inspector of Schools recognizing the election, the writ Petitioner had remedy before the District Inspector of Schools praying for recall of the order and before the Regional Level Committee before whom the objection was raised against the order dated 27th January, 2010.

8. We have considered the submissions of learned Counsel for the parties and have perused the record.

9. The first submission, which has been pressed by learned Counsel for the Appellant, that the Hon''ble Single Judge after having taken the view that the writ petition is not maintainable at the instance of Respondent No. 4 (writ Petitioner), there was no occasion for issuing any direction, needs to be considered first.

10. The question as to whether writ petition filed by an individual member of the society challenging the election of the Committee of Management had come for consideration in several cases before this Court. Learned Counsel for the Appellant has placed reliance on two judgments of this Court, the first judgment is of an Hon''ble Single Judge of this Court in Writ Petition No. 62190 of 2010 (Kanwar Singh v. State of U.P. and Ors.) decided on 11th October, 2010 and the second judgment is a Division Bench judgment of this Court in Special Appeal No. 1380 of 2008 (Rajveer Singh v. State of U.P. and Ors.) decided on 7th September, 2010.

11. The Hon''ble Single Judge in Kunwar Singh's case (supra) has relied on the Division Bench judgment of this Court in Rajveer Singh's case (supra) for holding that if an individual member of the general body is not directly effected, his remedy is to challenge the election after raising objection before the education authorities. Hon''ble Single Judge dismissed the writ petition of Kunwar Singh in the aforesaid case. The Division Bench judgment in Rajveer Singh's case (supra) had occasion to consider the above issue. The Division Bench made following observations while dismissing the appeal in Rajveer Singh's case (supra) :

Be that as it may, learned Judge has rightly held that a life member does not have a right to challenge the elections unless his rights or interest are adversely affected by the elections.

In Ratan Kumar Solanki v. State of UP and Ors. 2010 (1) ADJ 262 (DB) 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 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 UP 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.

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 recognized 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.

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), under Section-16A(7) of the UP 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.

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.

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.

The Special Appeal is dismissed.

12. The Division Bench in Rajveer Singh's case (supra) had placed reliance on another Division Bench judgment of this Court in the case of Ratan Kumar Solanki v. State of U.P. reported in 2010(1) Additional District Judge 262 (Division Bench). The Division Bench in Ratan Kumar Solanki's case had elaborately considered the issue in question and after considering laid down that the question as to whether an individual member has locus to challenge the election depends on facts of each case and an individual member may have locus to challenge the election if he is person aggrieved. There is no such proposition that an individual member cannot, in no circumstance, challenge the election of the Committee of Management. The Division Bench in Ratan Kumar Solanki's case (supra), laid down following in paragraphs 23, 24, 25 and 26 of the judgment:

23. In Satya Narain Tripathi (supra) the question whether a member of the general body can challenge the election by filing a writ petition was considered by the Hon'ble Single Judge (Hon'ble Janardan Sahai, J.) and his Lordship held that participation either by contesting election or exercising right to franchise is not a fundamental right, but merely a common right originating from the statute or the rules and bye-laws of an association etc. A breach of such statutory rights or right under the rules and regulations can be redressed by the available remedy which the statute or bye-laws provide or by a civil suit where such remedy is not otherwise barred. Where the elections are held under statutory provision, the remedy of challenging the election, if provided under the statute, has to be availed as an alternative remedy which would ordinarily bar the maintainability of a writ petition. The infringement of a right under the bye-laws of the society would not make the writ petition maintainable under Article 226 but in such a case the incumbent would have to avail remedy either by filing a civil suit or u/s 25 of the Societies Registration Act. His Lordship also observed if there is a breach of a right of a person affecting his right to form an association, which is a fundamental right under Article 19(1)(c) of the Constitution, in that case or where there is breach of the statute, the writ petition may be maintainable subject to the Court exercising its discretion if an alternative remedy is available. The proposition, therefore, that an individual member cannot challenge an election in any circumstance is not correct. When a writ petition can be maintainable at the instance of an individual member of the

general body of the society or the office bearer of the society or by the body itself is a different issue but when an election itself can be challenged is another aspect. Similarly whether a writ petition would be maintainable at the instance of an individual or the collective body and in what circumstances stands on different footings.

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 District Inspector of Schools 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.

25. Now coming to the present dispute, we find that here the election was held in accordance with scheme of administration which has been prepared in accordance with 1921 Act and the Regulations framed thereunder and is duly approved by the educational authorities. The Petitioner was a contestant in the election. Complaining some irregularities, he made a complaint before District Inspector of Schools who after getting a report from the Authorized Controller and prima facie getting satisfied directed for re-counting of the votes and accepted the request of the Petitioner to this extent. But thereafter no re-counting took place. The elections were recognized by the education authorities without such recounting. In these circumstances, it cannot be said that the Petitioner is not an aggrieved person or has no locus standi. Whether the writ petition was filed for infringement of a legal or statutory right or a right under bye-laws having force of law is not an issue raised by the Respondents in the earlier petition as well as the present one but their basic objection is that the Petitioner cannot be said to be an aggrieved person and thus has no locus standi. From the record of the earlier writ petition filed by the Petitioner, we find that the Respondents at no point of time raised this issue since the locus standi of the Petitioner Appellant was writ large. It is a different aspect as to why and in what circumstances, the writ petition was dismissed as having rendered infructuous by observing that term of the Committee of Management has expired. It is the consequential order passed by the DIOS after dismissal of the first writ petition of the Petitioner-Appellant that he has to file the second writ petition which is

concerned with the correctness of the order of DIOS, and in the above facts and circumstances, we find it difficult to subscribe the view as canvassed by the Respondents that the Petitioner has no locus standi to maintain the writ petition and, therefore, reject the same. We hold that the Petitioner is a person aggrieved and has locus standi in the matter.

26. We again clarify that our observations are only confined for the purpose of the present case to the preliminary objection raised on behalf of the Respondents that the Petitioner-Appellant has no locus standi i.e. he is not the person aggrieved. In respect to the wider issue as to when a writ petition can be entertained challenging the validity of an election is a different aspect of the matter and in this respect neither any objection has been raised by the Respondents nor the arguments have been advanced, therefore, we are leaving this issue to be considered in some other case at appropriate time.

13. From the proposition as laid down in the above Division Bench judgments, it is clear that the question as to whether an individual member has locus to challenge the election of the Committee of Management depends on facts of each case. In the present case, the objection was raised on behalf of the present Appellant, who was Respondent to the writ petition, that the writ petition at the instance of Respondent No. 4, who is alleged to be member of general body, is not maintainable. The Hon''ble Single Judge has accepted the said objection and, in fact, has held that writ petition is not maintainable. There is no appeal by the writ Petitioner challenging the said view taken by the Hon''ble Single Judge. Thus it is not necessary for us to proceed to examine as to whether in the present case writ petition could have been entertained at the instance of Respondent No. 4 who alleged himself to be member of the general body. It is suffice to say that Hon''ble Single Judge having taken the view that the writ petition was not maintainable at the instance of Respondent No. 4, the matter should have been closed there and there was no occasion for issuing any direction at the instance of a person on whose instance the writ petition was held to be not maintainable.

14. Learned Counsel for the parties have also addressed on the question as to whether the representations submitted by Respondent No. 4 (writ Petitioner) before the District Inspector of Schools dated 10th May, 2010 as well as before the Regional Level Committee dated 2nd September, 2010 were maintainable or not. The submission of the Appellant is that the said representation before the Regional Level Committee was not maintainable since the Regional Level Committee is not an appellate forum against the order of District Inspector of Schools attesting the signature on 27th January, 2010. Sri Singh further submits that the dispute before the Regional Level Committee can be raised only when it falls within the ambit of dispute u/s 16A(7) of the U.P. Intermediate Education Act, 1921. Sri Singh further submits that District Inspector of Schools is now fully empowered to attest the signatures on the basis of the election of the Committee of Management as per the Government order dated 20th October, 2008 and the Government order dated 20th October, 2008 does not contemplate any appeal

against the order of District Inspector of Schools.

15. On the other hand Sri Vinod Sinha appearing for Respondent No. 4, submits that by the Government order dated 20th October, 2008 the state of affairs as were existing prior to the said Government order regarding recognition of the election of Committee of Management has not been changed. He submits that under the Government order dated 19th December, 2000 the power to attest the signature of the Manager was conferred on the Regional Level Committee, which power has not been withdrawn by the Government order dated 20th October, 2008. He further submits that the fact that the District Inspector of Schools has now been authorized to attest the signature within two weeks after election of the Committee of Management, cannot be read to mean that the power of the Regional Level Committee has been taken away for deciding a dispute which was earlier contemplated to be considered by the Regional Level Committee.

16. Copies of the Government orders dated 19th December, 2000 and 20th October, 2008 have been brought on the record along with the supplementary affidavit as Annexure SA-1 and SA-2. We, however, notice that the issues as to whether the Regional Level Committee or the District Inspector of Schools was competent to consider the representations, which have been filed by Respondent No. 4, has not been gone into by the Hon''ble Single Judge. The Hon''ble Single Judge has taken the view that writ petition was not maintainable at the instance of Respondent No. 4, who claimed to be member of the general body. The Hon''ble Single Judge has also not expressed any opinion regarding maintainability of the aforesaid representations and has not entered into merits of the case.

17. In view of the above facts, we do not think it appropriate to enter into the merits of the submission and to adjudicate as to whether representations submitted by Respondent No. 4 before the Regional Level Committee and the District Inspector of Schools are maintainable or not. We deem it fit and appropriate to leave the aforesaid issue as it is, since it is not the appropriate stage to enter into such issue and adjudicate it in the present appeal.

18. This appeal deserves to be allowed on the ground that Hon''ble Single Judge having taken the view that writ petition was not maintainable at the instance of the Respondent No. 4, who alleged himself to be member of the general body, it was not necessary for the Hon''ble Single Judge to issue following directions :

The Regional Level Committee may consider the grievance of the Petitioner according to law, if possible, within a period of three months from the date of production of certified copy of the order. As informed by the Respondent, Deputy Director, who is one of the member of the Regional Level Committee, is in relation of the Petitioner. If that is so, then another Regional Level Committee minus that particular Deputy Director may decide the issue.

19. In view of the above, the last paragraph of the judgment and order dated 19th October, 2010 of the Hon''ble Single Judge, as quoted above, deserves to be

and is hereby set-aside.

20. The appeal is allowed to the extent indicated above. Parties shall bear their own costs.