
(2015) 10 AHC CK 0117
In the Allahabad High Court
Case No : Writ-C No. 59335 of 2015

C/M Bilhaur Inter College and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 6, 7

Citation : (2015) 11 ADJ 564 : (2015) 4 UPLBEC 3094

Hon'ble Judges : Manoj Kumar Gupta, J.

Bench : Single Bench

Advocate : Amit Saxena, for the Appellant; Alok Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

Manoj Kumar Gupta, J.—The petitioners have filed the instant writ petition questioning the validity of an order dated 3.10.2015 passed by District Inspector of Schools, Kanpur Nagar, the second respondent refusing to attest the signatures of petitioner No. 2 as Manager of the Committee of Management of Bilhaur Inter College, Bilhaur, Kanpur Nagar. The elections of the Committee of Management dated 11.12.2011 have been discarded and Principal, Rajkiya Inter College, Khersa Bidhnu, Kanpur Nagar has been appointed as Election Officer and Associate District Inspector of Schools, Kanpur Nagar as observer for holding and conducting the elections of the Committee of Management.

2. It is claimed by the petitioners that last elections of the Committee of Management of the institution were held on 26.12.2006 and which was approved by the Regional Level Committee on 4.6.2007. In the said elections, the petitioner No. 2 was elected as Manager and his signatures were attested on 14.6.2007. The terms of the Committee of Management under the Scheme of Administration being five years was to expire on 25.12.2011. Consequently, fresh elections were held on 11.12.2011, in which petitioner No. 2 was re-elected as Manager. The election papers alongwith specimen signatures of petitioner No. 2

were submitted by the President of the Committee of Management before the second respondent alongwith covering letter dated 2.2.2012. However, no orders were passed by the District Inspector of Schools and the request for attestation of signatures remained pending. On the other hand, the second respondent on 6.3.2012 made a recommendation to the Joint Director of Education for appointment of an authorised controller in the institution in order to ensure passing of an order of promotion in relation to one Sri Sushil Kumar Tripathi, a lecturer in Sociology, as the Management was refusing to grant promotion to him on various grounds. On 2.4.2012, the Joint Director of Education appointed Associate District Inspector of Schools as authorised controller in exercise of power under Section 6 of the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. Aggrieved by the said order, the petitioners preferred an appeal before Director of Education under Section 7 of the Salaries Act. It was allowed by order dated 11.6.2012 and the order of appointment of authorised controller was set aside.

3. The case of the petitioners is that as consequence thereof, the authorised controller restored the charge of the Management to the petitioners. It is asserted in paragraphs 15 and 16 of the writ petition that petitioner No. 2 again started operating accounts of the institution and the salary bill submitted under his signatures were duly passed by the authorities. It has further been asserted that even grant-in-aid was duly released every month on the basis of documents submitted by the second petitioner.

4. The second petitioner claims that he is a software professional and has taken various steps to modernize the institution. He claims to have provided infrastructure relating to study of Computer Science in the institution and took keen interest in development of knowledge and skill in the students in that field. It is claimed that petitioner No. 2 also introduced biometric system of attendance for the teaching and non-teaching staff of the institution. Bilhaur, where the institution is located, is situated at a distance of 50 kilometers from Kanpur City. Most of the teachers and other employees live in Kanpur City and according to the petitioners, they got into habit of reaching late in the institution. Because of introduction of the biometric system of attendance, the teachers got annoyed and they ganged up against the petitioners and started making false complaints before the authorities. It is claimed that the employees through their local Union exerted pressure on the authorities to supersede the Management. It is alleged that the second respondent, acting under influence of the teachers lobby, passed an order on 6.8.2015 directing for single operation of the accounts. The reasoning given in the order was that so far signatures of petitioner No. 2 on basis of alleged elections dated 11.12.2011 having not been attested, the accounts will be operated single handedly until the matter in that regard is resolved.

5. The petitioners feeling aggrieved by the said order, approached this Court by way of a writ petition². This Court by an order dated 26.8.2015 disposed of the

writ petition holding that in the facts and circumstances of the case, the order dated 6.8.2015 does not appear to be justified. It has been observed that last elections having been held on 11.12.2011 and there being no dispute with regard to the said elections, the mere fact that the District Inspector of Schools had so far not passed order for attestation of signatures on the application submitted by the petitioners dated 2.2.2012, does not justify passing of an order of single operation of the accounts. The relevant finding and the directions in the aforesaid order of this Court are reproduced below for the convenience of reference:--

"I have considered the submission of learned counsel for the petitioner and learned Standing Counsel. No one has raised any dispute with regard to the election of Committee of Management said to have been held on 11.12.2011. Even the DIOS does not dispute that this election was not held on the date stated above. All the DIOS says that the petitioner has not been able to produce any material that his signatures were ever attested. Sri P.N. Saxena submits that it is admitted to him that signature of the petitioner has not been attested inspite of request being sent to the DIOS by him by letter dated 2.2.2012 which has been duly received in the office of the DIOS and it is in fact inaction on the part of the DIOS for which the petitioner is being penalized which cannot be permitted. The order impugned itself recites in the end that the order of single operation would continue till the dispute with regard to the attestation of signature of the petitioner as Manager of the Committee of Management constituted pursuant to the election dated 11.12.2011 is decided. In my view, there is no dispute with regard to the election of the petitioner. It is admitted by the petitioner that his signature has not been attested but this non-attestation is only on account of inaction on the part of the DIOS as pursuant to the letter dated 2.2.12 papers have already been sent and, therefore, the DIOS has to pass an order to attest the signature.

Considering the aforesaid facts and circumstances of the case, in my view, the order dated 6.8.2015 does not do justice to petitioner and, therefore, a direction is issued to the DIOS to pass an appropriate order with regard to the attestation of the signature of the petitioner within a period of fifteen days from the date of filing of a certified copy of this order before it. For a period of fifteen days, the order impugned shall be kept in abeyance.

The writ petition is accordingly disposed of."

(emphasis supplied)

6. It is evident from the order of this Court that until the matter was decided by the Writ Court, there was no dispute regarding the elections held on 11.12.2011. The only ground on which order for single operation was passed was that in pursuance of the said elections, the signatures of petitioner No. 2 had not been attested by then. The Court did not find the same to be sufficient for directing single operation of the accounts, particularly in view of the fact that the application for attestation of signatures moved on 2.2.2012 had remained

pending without any order having been passed thereupon. Consequently, the Court directed the District Inspector of Schools to pass appropriate orders with regard to the attestation of the signatures of the petitioner No. 2.

7. Pursuant to the directions given by this Court, the second respondent by an order dated 8.9.2015 revoked the order of single operation of the accounts dated 6.8.2015 and sought various details from the petitioners in regard to the elections dated 11.12.2011. In response to the said notice, the petitioners claim to have submitted the relevant documents before the second respondent. The second respondent, thereafter, instead of attesting the signatures of petitioner No. 2, proceeded to go into the validity of the elections dated 11.12.2011 and after discarding the same, directed for holding of fresh elections through his own agency. The petitioners have now approached this Court assailing its validity.

8. A caveat was filed on behalf of one Girendra Singh, who claims to be a member of General Body of the institution. He has also filed an application seeking impleadment alongwith that of Kuwar Singh Chauhan and Dharam Pal Singh, both member of the General Body. In the impleadment application, it is alleged, inter alia that the elections dated 11.12.2011 have been fabricated by the petitioners; that no agenda was ever issued, nor any observer was appointed by the educational authorities; the office bearers of the Committee are closely related to each other, which is not permissible under law.

9. The applicants were heard as interveners, instead of being formally impleaded in the petition as party respondents. Sri Ashok Khare, learned senior counsel appearing on their behalf, made a statement that the applicants do not wish to file any counter affidavit or any reply to supplementary affidavit filed on behalf of the petitioners in the Court at the time of hearing of the writ petition. Learned standing counsel has also made similar statement. In view of it, this Court proceeded to hear the matter finally.

10. Sri P.N. Saxena, learned senior counsel appearing on behalf of the petitioners submitted that the impugned order, which adjudicates upon the validity of the elections held on 11.12.2011, is beyond the jurisdiction of the second respondent. According to him, such a dispute can only be determined by the Regional Level Committee constituted under Government Order dated 19.12.2000. It is further submitted that there was no rival claim by any group and thus, the second respondent was not justified in going into the validity of the elections dated 11.12.2011, while considering the claim for attestation of signatures. It is submitted that even otherwise, the reasoning given in the order is wholly illegal, fallacious and contrary to the record. It is urged that the decision making process was faulty, as certain affidavits filed on behalf of the applicants, which were relied upon, were not made available to the petitioners.

11. On the other hand, Sri Ashok Khare, learned senior counsel appearing on the behalf of the applicants submitted that in accordance with the Government Order dated 20.10.2008, the District Inspector of Schools, while considering the

request for attestation of signatures, is competent to go into the validity of the elections. In his submission, only where the Inspector faces a legal difficulty that the matter is to be referred to the Regional Level Committee and not in all cases. It is urged that the alleged elections were a result of manipulation by the petitioners and the Inspector rightly refused to recognise the same. He further submitted that the petitioners have not filed the approved copy of the Scheme of Administration and thus, the Inspector was justified in rejecting the request for attestation of signatures. Learned standing counsel appearing on behalf of the State respondents supported the contentions made by Sri Ashok Khare.

12. I have considered the submissions made by learned counsel for the parties and perused the record.

13. The institution is admittedly a recognised institution under the provisions of the U.P. Intermediate Education Act, 1921. It is receiving grant-in-aid from the State Government and the provisions of the Salaries Act are applicable to it. Under the provisions of the Act, the Rules and the Scheme of Administration, the Committee of Management discharges various important functions. It is vested with the power to run the institution, to make appointment of teachers and take various important decisions in relation to day-to-day running of the institution. The educational authorities have to deal with the Management of the institution administratively, inter alia, for purposes of disbursement of grant-in-aid and for disbursement of salary to its teaching and non-teaching staff by operation of accounts in conjunction with the Inspector. It thus becomes necessary for the authorities to recognise the validly elected Committee and its Manager to enable it to identify the person or the body responsible for running of the institution and the operation of the Salary Account.

14. Government Order dated 19.12.2000 provides for various disputes specified therein to be decided by a Regional Level Committee. The Joint Director of Education is the Chairman of the Regional Level Committee; Regional Deputy Director of Education and concerned District Inspector of Schools are its members. It inter alia provides for following kinds of disputes being considered by the Regional Level Committee: (a) matters relating to attestation of signatures of Managers (b) matters relating to appointment of authorised controller under the provisions of the Salaries Act (c) all kinds of Management disputes. The aforesaid Committee, after examining the matter, is required to make its recommendations to the appropriate authority for taking consequential action. By a subsequent Government Order dated 20.10.2008, certain modifications were made, in so far as the matter relating to attestation of signatures of the Manager is concerned. The preamble to the Government Order dated 20.10.2008 states that often the matter relating to attestation of signatures remain pending before the Regional Level Committee, thus defeating the very object of holding timely elections. Further, it is observed that the authority constituting the Regional Level Committee participates in the decision making process at the initial stage and thus, when the same authority hears the

appeal, it results in violation of principles of natural justice. Consequently, the District Inspector of Schools was required to take decision within two weeks in relation to attestation of signatures and in case he faces any legal difficulty, he would within the same time, refer the matter to the Regional Level Committee, who shall decide the matter within one month.

15. The Government Order dated 20.10.2008, while it permits the District Inspector of Schools to take decision regarding attestation of signatures of the Manager within two weeks, also stipulates that in cases of legal difficulty, the District Inspector of Schools is required to refer the matter to the Regional Level Committee. Evidently, the power conferred on the District Inspector of Schools does not embrace within itself all kinds of management disputes. The phrase "legal difficulty" has not been defined. If the Government Orders dated 19.12.2000 and 20.10.2008 are read together, it can safely be held that the intention of the Government Order dated 20.10.2008 was to confer power in the District Inspector of Schools to deal with such cases relating to attestation of signatures where there is no real dispute regarding the election or the claim of managership. In such cases, instead of the matter being sent to the Regional Level Committee, which the experience showed, was resulting in delay, the District Inspector of Schools was conferred with the power to deal with such cases. It is implicit in such power that where the claim is totally sham, or based on some apparent fraud, the Inspector can decide the matter himself, as in such cases, it can easily be held that in fact no elections have taken place. However, in cases where there are rival claims or the issue involves appreciation of evidence or long line of reasoning for determining whether the claim for attestation should be accepted or not, the District Inspector of Schools is bound to refer the dispute to the Regional Level Committee. In other words, if there is a bonafide dispute as regards the person elected as Manager, the matter has to be referred to the Regional Level Committee. The dividing line between the exercise of power by the District Inspector of Schools and cases in which reference is to be made to the Regional Level Committee, being not clearly defined, is often breached. For determining whether the dispute was within the jurisdiction of the District Inspector of Schools or should have been referred to the Regional Level Committee, the facts of each case have to be examined. No hard and fast guidelines can be laid down except for broad parameters mentioned above.

16. In the aforesaid background, this Court now proceeds to determine whether the impugned order is justified in the facts of the instant case or is an usurpation of power of the Regional Level Committee.

17. In the impugned order, the first ground taken by the District Inspector of Schools for holding that the elections dated 11.12.2011 are forged is that the alleged elections were ratified after about one year on 6.1.2013. It has been observed that one Man Mohan, a member, who was present in the meeting dated 13.11.2011 and 11.12.2011, had signed the proceedings and had also put the date underneath his signatures. However, the documents submitted by the

petitioners, reveals that the date has been scored out, which creates a doubt regarding the validity of the proceedings. Further, three members have given their affidavits alleging that the proceedings were prepared by petitioner No. 2 sitting in his house and their signatures were obtained on the same by fraud.

18. It is not disputed that the petitioners on basis of elections dated 11.12.2011, applied for attestation of signatures on 2.2.2012. Indisputably, not a single member had challenged the election proceedings dated 11.12.2011 for last three and a half years. It was only after the writ petition was allowed by this Court and the matter was remitted to the second respondent to pass appropriate orders for attestation of signatures of the second petitioner that the applicants submitted their affidavits before the second respondent challenging the validity of the elections. In paragraph 28 of the writ petition, it has been specifically asserted that copy of these affidavits were never made available to the petitioners, nor they were confronted with the same when the matter was heard by the second respondent. After passing of the impugned order, the petitioners claim to have made an application for being supplied copy of these affidavits, but it is asserted that the same has not been made available to them so far. It is further asserted by the petitioners that these three members have regularly participated in the meetings of the Committee of Management held on 29.3.2012, 26.10.2013, 1.6.2014, 12.7.2014, 20.7.2014, 15.8.2014 and 13.6.2015 and also signed the proceedings. Copy of these proceedings have been brought on record alongwith supplementary affidavit. These assertions have not been rebutted by the applicants. Their counsel Sri Ashok Khare made a categorical statement before the Court at the time of hearing that the applicants do not wish to file any further affidavit. It is further noticeable that the applicants do not claim that their signatures on the election proceedings dated 11.12.2011 are forged one. They rather accept their signatures on the election proceedings but claim that their signatures were obtained by the second petitioner by playing fraud.

19. In case, during the hearing of the matter relating to attestation of signatures, three members had filed certain affidavits asserting that the election proceedings dated 11.12.2011 were fake or not held properly, it was incumbent upon the second respondent to have made available such material to the petitioners. Respondent No. 2 could not have relied upon the same without the petitioners" being confronted with adverse material brought on record by the applicants. Thus, there has been a manifest illegality in the decision making process and consequently, the finding in the impugned order recorded by the second respondent based on the affidavits filed by the applicants, cannot be sustained.

20. It is noticeable that the elections are dated 11.12.2011 and as noticed above, there was no rival claim. The petitioners were asked to file the election proceedings, which they did in pursuance to the notice dated 8.9.2015. In case, the District Inspector of Schools had some doubt in his mind as to the circumstances in which the election proceedings dated 11.12.2011 were ratified

after one year or the circumstances in which the date underneath the signatures of one of the member Man Mohan had been scored out, he should have put the petitioners to notice about the same. Before this Court, the petitioners have their own explanation in this regard. They claim that the elections are ratified by the General body in the annual meeting held once in a year. It is for the said reason that after holding the next annual meeting, the endorsement of approval was made on 6.1.2013. It is further claimed that the cutting of the date under the signatures of one of the members cannot be attributed to them, nor does it invalidate the election proceedings. Even the second respondent has not expressed any final opinion in this regard, but has only raised a suspicion. In the opinion of the Court, these were matter which could have been gone into only after due notice to the petitioners. Consequently, and for the reasons given above, the finding in the impugned order that the election proceedings are fake or fictitious, cannot be sustained.

21. The second reasoning given in the impugned order is that some of the members of the Committee of Management are related to each other. Sri Ashok Khare and learned standing counsel could not point out to any provision which places restriction on two members of the Committee being related to each other.

22. The next reasoning given is that vide item No. 2 in the agenda dated 13.11.2011, new members were inducted. It has been observed that under Clause (5) of the Scheme of Administration, new members can be inducted only after payment of subscription fee. However, from the agenda, it is not clear whether any subscription fee had been paid or not and as such, it is not clear whether the new members were properly enrolled or not. In the opinion of the Court, the aforesaid reasoning is wholly fallacious. The agenda need not mention that the members, who have sought their enrollment, have already paid their subscription fee. In case there was any doubt in the mind of the second respondent in that regard, he could have called upon the petitioners to give clarification in regard thereto.

23. The next ground is that in the Scheme of Administration there is no procedure prescribed for holding the elections. It has been observed that for making amendments in the Scheme, prior approval of the Director is required. It has been further observed that requirements of Government Order dated 2.9.2008 have not been followed, nor the original copy of the Scheme of Administration had been filed and thus, the elections held on 11.12.2011 appears to be doubtful.

24. The petitioners have specifically stated in the writ petition that pursuant to the notice dated 8.9.2015, they have filed the certified copy of the Scheme of Administration before the second respondent. It is pointed out that the certified copy of the Scheme of Administration was provided to the Management by the authorities alongwith covering letter of Up Shiksha Nideshak, Tiritiya Mandal, Allahabad consequent to the Scheme being approved by him on 14.3.1962. It is submitted that at the relevant time in the year 1962 facility of xerox copy was

not available and, therefore, true attested copy was supplied. It is for the said reason that it does not bear the actual signatures of the authority approving the Scheme, as the signatures were made on the original Scheme, which is in the custody of the department. The petitioners have also brought on record alongwith their supplementary affidavit a certified photostat copy of the Scheme of Administration. It duly bears the signatures of the authority namely, Up Shiksha Nideshak, Tiritiya Mandal, Allahabad evidencing that the Scheme was duly approved by him. In such circumstances, the doubt harboured by the second respondent in regard to the authenticity of the Scheme of Administration is without any basis. Moreover, the approved Scheme of Administration of every recognised institution, is always in possession of the educational authorities. In case of any doubt, the Inspector could have examined the official record.

25. It had not been the case of the petitioners that the Scheme which they had filed was amended subsequently and thus, the observation made in the impugned order that without approval of the Director, no amendment can be made, has no nexus with the controversy involved.

26. The Government Order dated 2.9.2008 by the Principal Secretary, U.P. Government is addressed to the Director of Education, Madhyamik, Allahabad. It gives directions to the educational authorities to ensure removal of authorised controllers running different institutions since a long time and for holding of fresh elections. It further gives directions to the educational authorities that in cases where the Scheme of Administration prescribes for appointment of authorised controller, the aforesaid provision in the Scheme should be got deleted, as there are already ample provisions under the Act and the Salaries Act, which could be resorted to in case such an eventuality arises. In the impugned order, except for observing that the provisions of Government Order dated 2.9.2008 has not been followed, there is no reference to any specific provision thereof, which was violated. In case, the Inspector was of the opinion that adequate provisions for holding of proper elections are not present in the Scheme of Administration, which stands approved by the educational authorities, he ought to have issued directions and given opportunity to the Management to bring the Scheme in consonance with the requirements of law. However, for the said reason, the District Inspector of Schools was not justified in discarding the elections. Thus, the ultimate conclusion arrived at by the District Inspector of Schools regarding the elections dated 11.12.2011 being illegal is manifestly erroneous in law. Most of the grounds are such which could have been subject matter of consideration before the Regional Level Committee. The second respondent was not justified in entering findings upon them. There appears to be some substance in the plea raised by the petitioners that the Inspector has passed the impugned order under the influence of the employees' union, to some how or the other oust the management, whose term is until December 2016. In normal course, the Court would have referred the matter to the Regional Level Committee but for the fact that one of the issues before the second respondent was also whether the elections were fake and fabricated one. Since this Court has come to the

conclusion that the finding recorded in this regard is in breach of principles of natural justice, as adverse material was not supplied to the petitioners, consequently, this Court, instead of the matter being sent to the Regional Level Committee, remits the matter back to the District Inspector of Schools for a fresh decision after making available the copy of the affidavits of the applicants filed before the second respondent to the petitioners and after eliciting their response thereto.

27. In view of the foregoing discussion, the impugned order dated 3.10.2015 passed by the District Inspector of Schools, Kanpur Nagar is quashed. The District Inspector of Schools shall take fresh decision as regards the attestation of signatures of petitioner No. 2 after supplying copy of the affidavits of the applicants to the petitioners within two weeks from the date a certified copy of this order is produced before him. It is clarified that while taking decision in the matter, the second respondent shall have due regard to the exposition of law made herein above and in case he comes to the conclusion that the elections are not fake, but at the same time he harbours any legal difficulty in attesting the signatures of the second petitioner, he shall refer the matter to the Regional Level Committee.

28. With the aforesaid observations and directions, writ petition stands allowed to the extent indicated above. No order as to costs.

1Salaries Act

2Writ-C No. 47746 of 2015

3the Act