

(2010) 01 AHC CK 0155
In the Allahabad High Court

C/M Imamul Madaris Inter College and Another	APPELLANT
Vs	
Joint Director of Education and Others	RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0155

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dilip Gupta, J.—The Committee of Management of Imamul Madaris Inter College, Amroha and Raza Kamal claiming himself to be the Manager of the Committee of Management have filed this petition for setting aside the order dated 21st July, 2006 passed by the Regional Committee granting recognition to the election of the Committee of Management of the Institution held on 7th May, 2006 in which Faizan Ali was elected as the Manager. The petitioners have also sought the quashing of the consequential order dated 22nd July, 2006 passed by the District Inspector of Schools setting aside the earlier order dated 6th June, 2006 and attesting the signatures of Faizan Ali as Manager.

2. Imamul Madaris Inter College, Amroha, District J.P. Nagar (hereinafter referred to as the ""Institution") is an Intermediate College recognized under the provisions of the U.P. Intermediate Education Act, 1921. It is minority Institution which is run by the Imamul Madaris Society, Amroha (hereinafter referred to as the ""Society"). It has its own Scheme of Administration.

3. The elections of the Committee of Management of the Institution were required to be held on the basis of the judgment rendered by the Court on 14th July, 2004 in Writ Petition No. 29720 of 1997 connected with three other writ petitions namely Writ Petition No. 51584 of 1999, Writ Petition No. 45855 of 2002 and 31014 of 1997 in which the following direction was given:

Now the question as to what directions should be given in the facts and

circumstances of the case. Term of the Committee of Management has already come to an end and fresh elections are to be held. No directives can be issued for appointment of Authorised Controller for the purpose of holding fresh election as institution in question is Minority Institution. Further duly recognised committee is entitled to function, till its successors are elected. In this view of the matter, the Committee of Management, which was in control of the affairs of the institution prior to passing of the order dated 22.10.1999 shall proceed ahead to hold the election as per provisions contained in the Scheme of Administration under the supervision of the District Inspector of Schools, and conclude the election proceedings within three months from the date of receipt of a certified copy of this judgment, and thereafter entire papers be transmitted to the Regional Committee constituted under the Government Order dated 19.12.2000. In case any one has any grievance in respect to the aforementioned election, then liberty is given to him to make objection before the District Inspector of Schools, who will also transmit the same to the Regional Committee and the Regional Committee will proceed to take appropriate decision in the matter and in case it is found that the elections have been validly held then recognition would be accorded to it.

4. It would thus be seen that the Committee of Management which was in control of the affairs of the Institution prior to the passing of the order dated 22nd October, 1999 by the Joint Director of Education was directed to hold the elections of the Committee of Management of the Institution under the supervision of the District Inspector of Schools and conclude the proceedings within three months in accordance with the Scheme of Administration.

5. It is the case of the petitioners that pursuant to the aforesaid directions issued by the Court on 14th July 2004, the Committee of Management held the elections on 29th August, 2004 in which the petitioner-Committee of Management with Raza Kamal was elected as the Manager and papers were sent to the District Inspector of Schools for granting recognition but as no order was passed, the petitioners made a representation to the Joint Director of Education for granting recognition but ultimately the Regional Committee did not approve the election.

6. According to the respondents, the elections of the Committee of Management were held on 7th May, 2006 in which they were elected with Faizan Ali as the Manager and the election was recognised by the Regional Committee on 21st July, 2006.

7. The records indicate that the Joint Director of Education sought explanation from the District Inspector of Schools as to why the papers submitted by the petitioner-Committee of Management pursuant to the elections held on 29th August, 2004 had not been sent to the Regional Committee, but on the basis of the report submitted by the District Inspector of Schools on 25th March, 2006, the Joint Director of Education directed the District Inspector of Schools by the order dated 20th April, 2006 to hold fresh elections as per the directions issued

by this Court on 14th July, 2004. The District Inspector of Schools then proceeded to hold the elections on 7th May, 2006 and the Joint Director of Education sent a communication dated 9th May, 2006 to the District Inspector of Schools that the Regional Committee had granted approval to the elections held on 7th May, 2006 with Faizan Ali as the Manager and necessary steps for attesting the signatures may be taken. The District Inspector of Schools thereafter attested the signatures of Faizan Ali as Manager of the Committee of Management by the order dated 10th May, 2006.

8. This order of the Regional Committee was challenged by the petitioners in Writ Petition No. 28530 of 2006. The said order passed by the Regional Committee was set aside by the judgment and order dated 22nd May, 2006 and the Regional Committee was directed to pass a fresh order after giving opportunity to both the sides.

9. The Joint Director of Education then issued the notice dated 4th July, 2006 to Faizan Ali and petitioner No. 2-Raza Kamal informing them that hearing will take place on 7th July, 2006. The petitioners submitted a detailed representation dated 11th July, 2006. The Regional Committee by the order dated 21st July, 2006 declared the elections held by the petitioner-Committee of Management on 29th August, 2004 as invalid and granted approval to the elections held by the respondent-Committee of Management on 7th May, 2006 in which Faizan Ali was elected as the Manager. On the basis of the order passed by the Regional Committee, the District Inspector of Schools attested the signatures of Faizan Ali on 22nd July, 2006.

10. These two orders have been impugned in the present petition.

11. The Regional Committee in the impugned order dated 21st July, 2006 has observed:

(i) The directions issued by this Court on 14th July, 2004 required the Committee of Management which was in control of the affairs of the Institution prior to the passing of the order by the Joint Director of Education on 22nd October, 1999 to hold the elections within three months and even in the order dated 23rd July, 2004 passed by the District Inspector of Schools by which the signatures of Raza Kamal were attested after the order was passed by this Court, it was mentioned that Raza Kamal should hold the elections within three months but Raza Kamal did not hold the elections within the stipulated three months.

(ii) The report submitted by the District Inspector of Schools to the Joint Director of Education mentions that by concealing facts Raza Kamal functioned as the Manager whereas infact Faizan Ali who was the Secretary should have functioned as the Manager.

(iii) When Raza Kamal came to know that fresh elections were being held by the District Inspector of Schools on 7th May, 2006, he informed that the elections should not be held as he had earlier been elected as the Manager in the elections

held on 29th August, 2004. On receipt of this complaint, information was sought from the District Inspector of Schools who informed that elections had not been held on 29th August, 2004 and nor any papers of the said elections were available in his office.

(iv) One set has alleged that the elections had been held on 29th August, 2004 in which Raza Kamal was elected as the Manager, while the other set has alleged that the elections were held on 7th May, 2009 in which Faizan Ali was elected as the Manager. The Regional Committee concluded that though the elections held on 29th August, 2004 were held by the Committee of Management in control of the affairs of the Institution prior to the passing of the order by the Joint Director of Education on 22nd October, 1999, but they were not held under the supervision of the District Inspector of Schools. The Regional Committee further found that there was no transparency in the elections as the election programme had not been published in the newspapers and even the report of the Presiding Officer had not been brought on record and no documents had been filed to show that the Principal of the College had participated in the elections. It, therefore, concluded that it was not possible to recognise the elections held on 29th August, 2004 merely because the Committee of Management had conducted the elections.

(v) The Regional Committee then proceeded to find out whether the elections held on 7th May, 2006 had been held in accordance with the directions issued by the Court. It found that though the said elections had not been held by the Committee of Management in control of the affairs of the Institution prior to 22nd October, 1999, but the elections had been held under the supervision of the District Inspector of Schools after publication of the election programme in the newspapers and the Principal of the College had also participated in the elections. The Regional Committee further observed that there was no option left with the District Inspector of Schools but to hold the elections as the Committee of Management did not hold the elections within the stipulated time.

(vi) The Regional Committee noticed that both Raza Kamal and Faizan Ali had disputed the list of members who had participated in the elections. It found that the election which was held on 29th August, 2004 had not been held on the basis of the list approved by the District Inspector of Schools but was held on the basis of the list approved by the Assistant Registrar, Firms, Societies and Chits (hereinafter referred to as the "Assistant Registrar") under the Societies Registration Act, 1860 (hereinafter referred to as the "Act"). The Regional Committee observed that the elections of the Committee of Management of the Institution were required to be conducted in accordance with the list approved by the District Inspector of Schools and not that approved by the Assistant Registrar under the Act under which list the elections of the Society are held.

(vii) The Regional Committee did not consider it appropriate to examine the affidavits as validity of the elections was required to be judged on the basis of the procedure adopted in the elections and not on the basis of the affidavits.

(viii) The Regional Committee also examined whether the removal of Faizan Ali from the Committee of Management and the membership was valid. This issue was decided in favour of Faizan Ali as the Regional Committee found that it was because of the management dispute that such action was taken.

12. It needs to be noticed that a substitution application was filed by the petitioners on 22nd August, 2006 with a prayer that the name of respondent No3- Faizan Ali may be deleted and in his place Ajaz Haider may be substituted as Faizan Ali had died on 23/24th July, 2006 before the filing of the writ petition but by inadvertence, he had been made respondent in the writ petition. The substitution application was allowed by the Court.

13. Sri P.S. Baghel, learned Senior Counsel appearing for the petitioners submitted that the order dated 21st July, 2006 passed by the Regional Committee deserves to be set aside as the findings recorded in the impugned order for not granting recognition to the petitioner-Committee of Management elected on 29th August, 2004 are perverse. It is his submission that the Committee of Management with Raza Kamal as the Manager was required to hold the elections pursuant to the directions issued by this Court on 14th July, 2004 and the District Inspector of Schools in his order dated 23rd July, 2004 also recognised this fact and attested the signatures of Raza Kamal as the Manager and even though the Regional Committee in the order dated 21st July, 2006 accepted this position, yet it discarded the elections holding that transparency had not been maintained in the elections. This finding, according to Sri Baghel, is against the Scheme of Administration as there is no requirement in the said Scheme for causing public notice in the newspapers and nor is the Principal of the Institution required to participate in the elections of the Committee of Management of the Institution. According to him, all the members entitled to participate in the elections had been duly informed of the election schedule and the elections of the Committee of Management of the Institution were held on the basis of the list approved by the Assistant Registrar under the Act and the elections were not required to be held on the basis of the list approved by the District Inspector of Schools. He further submitted that the District Inspector of Schools was asked to supervise the elections but he did not do so and in view of the fact that the elections were required to be held within the stipulated period of three months pursuant to the directions of the Court, the Committee of Management was left with no option but to hold the elections. He, therefore, submitted that the Regional Committee committed an illegality in not recognising the elections held on 29th August, 2004.

14. In respect of the elections held by the District Inspector of Schools on 7th May, 2006 in which Faizan Ali was elected as the Manager, Sri P.S. Baghel, learned Senior Counsel submitted that admittedly the said elections were not held by the Committee of Management which was in control of the affairs of the Institution prior to the passing of the order dated 22nd October, 1999 but were held by the District Inspector of Schools and, therefore, could not have been

granted recognition. He further submitted that in any case, the elections were required to be held within three months and there was no occasion to hold the elections on 7th May, 2006 after a period of almost one year and 10 months and that too not from the list of members approved by the Assistant Registrar.

15. Sri W.H. Khan, learned Senior Counsel appearing for Ajaz Haider, who has been substituted in place of Faizan Ali and who according to him is performing the functions of the Manager of the Committee of Management, submitted that the order of the Regional Committee does not suffer from any infirmity. It is his submission that under the judgment and order dated 14th July, 2004, the office bearers of the outgoing Committee of Management had to hold the elections within three months but the attestation of signatures of Raza Kamal as the Manager had been obtained from the District Inspector of Schools on 23rd July, 2004 by concealment of material facts and subsequently the District Inspector of Schools in his report dated 25th March, 2006 also pointed out that Raza Kamal could not have been inducted as the Manager. According to him Raza Kamal could not have been inducted as a Manager in terms of Clauses 7 and 8 of the Scheme of Administration of the Institution on the death of Haider Raza on 17th July, 2002. He further submitted that agenda for the elections of the Committee of Management on 29th August, 2004 had not been circulated and it is only when the Joint Director of Education directed the District Inspector of Schools to get the elections held that Raza Kamal gave an application on 26th April, 2006 that he had already held the elections on 29th August, 2004. He, therefore, submitted that the election which was held on 7th May, 2006 by the District Inspector of Schools in which Faizan Ali was elected as the Manager has rightly been granted recognition by the Regional Committee.

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

17. The dispute is about the validity of the elections held on the basis of the directions issued by the Court in the earlier petitions on 14th July, 2004. It would, therefore, be appropriate to briefly refer to the earlier litigations which will also show why 22nd October, 1999 was chosen as the cut off date in the said judgment.

18. In the last undisputed elections of the Committee of Management of the Institution held on 19th May, 1996, Shahenshan Ali was elected as the President and Haider Raza was elected as the Manager. There is a dispute amongst the parties as to whether the term of the Committee of Management of the Institution was increased from three years to five years. It is the case of the petitioner-Committee of Management that the General Body of the Institution on 18th April, 1999 resolved to extend the term of the Committee of Management from 3 years to 5 years and the said resolution was approved by the Joint Director of Education by the order dated 15th May, 1999 but by the order dated 22nd October, 1999, the Joint Director of Education recalled the said order dated 15th May, 1999. Subsequently, the District Inspector of Schools by the order

dated 26th October, 1999 granted approval to the elections of the Committee of Management of the Institution in which Alamdar Husain was elected as the Manager. These orders dated 22nd October, 1999 and 26th October, 1999 were challenged by the Committee of Management of the Institution through Haider Raza as the Manager in Writ Petition No. 51584 of 1999.

19. Elections of the Committee of Management of the Institution were then held on 18th June, 2001 in which Shahenshah Ali was elected as the President and Haider Raza was elected as the Manager. The said elections were approved by the Joint Director of Education on 8th October, 2002. Writ Petition No. 45855 of 2002 was filed by the Committee of Management with Alamdar Husain as Manager to challenge the said elections.

20. Haider Raza, however, died on 17th July, 2002 and the Committee of Management on 19th July, 2002, in order to fill the casual vacancy, resolved to appoint Raza Kamal as the Manager for the remaining tenure.

21. The aforesaid two writ petitions namely Writ Petition No. 51584 of 1999 and Writ Petition No. 45855 of 2002 with two other writ petitions being Writ Petition No. 29720 of 1997 and Writ Petition No. 31014 of 1997 were decided by a common judgment and order dated 14th July, 2004.

22. Writ Petition No. 29720 of 1997 and Writ Petition No. 31014 of 1997 were dismissed as having become infructuous.

23. Writ Petition No. 51584 of 1999 was allowed and the orders dated 22nd October, 1999 and 26th October, 1999 were set aside. The relevant observations are as follows:

...As per provisions contained in the Scheme of Administration, earlier Committee would continue till its successor were elected. The Committee of Management which was in power was headed by Haider Raza and even if the amendments were disapproved, the same never authorised the Respondents to recognise Alamdar Hussain by any means. There is full fledged procedure provided in the Scheme of Administration as to in what manner elections are to be held. It is outgoing Committee of Management, which is entitled to convene the meeting and hold election. Here, in the present case it is still mystery as to in what way and manner elections of Alamdar Hussain was held. The order passed by the District Inspector of Schools approving the election of Alamdar Hussain is totally misutilisation of the power...

24. It would, thus, be seen that 22nd October, 1999 was the date on which the Joint Director of Education recalled his earlier order dated 5th May, 1999 extending the term of the Committee of Management from three years to five years.

25. Having stated the aforesaid facts, the controversy involved in the present petition needs to be examined now.

26. The Regional Committee in its order dated 21st July, 2006 has considered two elections namely the elections of the petitioner-Committee of Management said to have been held on 29th August, 2004 and the elections of the respondent-Committee of Management said to have been held on 7th May, 2006.

27. It would be appropriate to first take up the second part of the order of the Regional Committee by which recognition was granted to the Committee of Management elected on 7th May, 2006 in which Faizan Ali was elected as the Manager. The Regional Committee has noticed that the Committee of Management which was in control of the affair of the Institution prior to the passing of the order by the Joint Director of Education on 22nd October, 1999 had not held the said elections. The elections were necessarily required to be conducted by the said Committee of Management in terms of the judgment and order dated 14th July, 2004 passed by this Court, yet the Regional Level Committee has granted recognition to the Committee of Management elected on 7th May, 2006 as according to it, the said Committee of Management did not hold the elections within the stipulated three months as had been directed by the Court in its judgment and order dated 14th July, 2004. If the Committee of Management was not proceeding to hold the elections within three months, then the District Inspector of Schools should have immediately directed the Committee of Management to take steps for holding the elections but nothing has been brought on the record which may indicate that such directions were issued by the District Inspector of Schools. In any case, even if the elections were not held by the Committee of Management after the expiry of three months period from 14th July, 2004, then appropriate orders could have been obtained from the Court by the District Inspector of Schools but that was not done and it is after a long period of about one year and 10 months that the District Inspector of Schools himself proceeded to hold the elections. It is, therefore, not possible to approve of such action of the District Inspector of Schools and the recognition granted by the Regional Committee to the elections held on 7th May, 2006, which elections were not held in accordance with the directions issued by this Court on 14th July, 2004, cannot be sustained.

28. The order passed by the Regional Committee discarding the elections held by the petitioner-Committee of Management on 29th August, 2004 now needs to be examined. The Regional Committee has observed in the order that though the elections were held by the Committee of Management which was required to hold the elections as per the directions of this Court, but transparency was not maintained as there was no newspaper publication and that the District Inspector of Schools had not supervised the elections. It also observed that the Principal had also not participated in the elections and the elections were not held from the list of members approved by the District Inspector of Schools.

29. It is the submission of Sri P.S. Baghel, learned Senior Counsel for the petitioners that under the Scheme of Administration of the College, there is no provision for publication of the election programme in the newspapers and nor is

there any provision that the Principal of the Institution should participate in the elections. It is also his contention that the elections were held on 29th August, 2004 without the supervision of the District Inspector of Schools as despite information have been given to him he did not send any information and time for holding the elections was running out. It is also his submission that the elections of the Committee of Management of the Institution are to be held on the basis of the list approved by the Assistant Registrar under the Act and not on the basis of the list approved by the District Inspector of Schools. It is, therefore, his submission that the Regional Committee discarded the elections on arbitrary grounds even though there was no infirmity in the holding of the elections.

30. The Regional Committee has not examined the Scheme of Administration of the Institution before examining the requirement of publication of the election programme in the newspapers and the participation of the Principal of the Institution in the elections. There is also no discussion as to why the list of members approved by the District Inspector of Schools was required to be taken into consideration and not the list of members approved by the Assistant Registrar. However, as the elections were required to be held under the supervision of the District Inspector of Schools and this part of the directions of the Court has not been complied with, it will not be necessary to examine these issues or give any direction to the Regional Committee to consider the grant of recognition to the elections held on 29th August, 2004. The contention of learned Senior Counsel for the petitioners that the elections were held without the supervision of the District Inspector of Schools as he did not respond despite information having been sent cannot be accepted because in such circumstances an appropriate order could have been obtained from the Court but the Committee of Management could not have proceeded to hold the election on its own.

31. The submission of Sri W.H. Khan, learned Senior Counsel appearing for Ajaz Haider that Raza Kamal could not have been elected as the Manager in terms of Clause 8 of the Scheme of Administration of the Institution cannot also be accepted in view of the decision of date rendered by this Court in Writ Petition No. 58445 of 2005.

32. In such circumstances, the order dated 21st July, 2006 passed by the Regional Committee and the consequential order passed by the District Inspector of Schools on 22nd July, 2006 are set aside. Fresh elections of the Committee of Management of the Institution shall now be held strictly in accordance with the directions issued by the Court in the judgment and order dated 14th July, 2004. The time indicated in the judgment dated 14th July, 2004 shall, however, start to run from the date of this judgment.

33. The writ petition succeeds and is allowed to the extent indicated above.