

(2010) 12 AHC CK 0185
In the Allahabad High Court
Case No : Special Appeal No. 564 of 2010

C/M Samajwadi Inter College Gabhiran and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 12 AHC CK 0185

Hon'ble Judges : Rajesh Chandra, J; R.K. Agrawal, J

Bench : Division Bench

Judgement

R.K. Agrawal, J.—Present special appeal has been filed against the judgment and order dated 2nd April, 2010 passed by the learned single Judge, whereby the writ petition preferred by the Committee of Management, Samajwadi Inter College, Gabhiran, Jaunpur through its Manager Sri Ram Prasad Singh and another challenging the order dated 25th /28th March, 2009 passed by the District Inspector of Schools as also the order dated 9th February, 2009 passed by the Prabandh Sanchalak was allowed and the aforementioned two orders were set aside by the learned single Judge. The writ Petitioners have also filed cross objections seeking certain modifications in the impugned judgment and order passed by the learned single Judge. Their prayer is to set aside the direction given by the learned single Judge to the District Inspector of Schools, Jaunpur to pass a fresh order. Further a mandamus be issued commanding the Joint Director of Education, Varanasi Region, Varanasi to appoint Prabandh Sanchalak to take over the Committee of Management of the Institution namely, Samajwadi Inter College, Babhiram, District Jaunpur and to proceed to hold election of the Committee of Management on the basis of list of members finalized vide order dated 15.10.2008 within a time bound period.

2. As both the contesting parties have challenged the order passed by the learned single Judge on the question which has been decided against them, the entire matter has to be decided denovo in these proceedings.

3. Briefly stated the facts giving rise to the present appeal are as follows:

Samajwadi Inter College, situated at Gabhiran in the district of Jaunpur (hereinafter referred to as the Institution) is a recognised Institution and is governed by the provisions of the U.P. Intermediate Education Act, 1921 and other allied Statutes. It is managed by a Committee of Management constituted under the approved Scheme of Administration. In the Scheme of Administration the term of the Committee of Management of the Institution has been stipulated as three years and if the election is held within one month and in case for any reason the newly elected Committee of Management does not take over the charge, the term of the existing Committee of Management ceases to exist and a Prabandh Sanchalak nominated by the Joint Director of Education of the region shall take over the charge of the Committee of Management of the Institution. According to the writ Petitioners undisputed election was held on 22nd October, 2004, which was duly recognised by the District Inspector of Schools. Fresh election has been held on 21st October, 2007 in which Sri Bhagwati Prasad Singh was elected as the President and Sri Ram Prasad Singh was elected as the Manager. The papers were sent to the District Inspector of Schools on 23rd April, 2008 which in turn was forwarded to the Regional Level Committee for decision. This was necessitated because one Sri Vijendra Singh who has been arrayed as Respondent No. 5 in the writ petition claimed that the election was held on 9th January, 2008 in which he was elected as Manager. The Regional Level Committee approved the election of the Committee of Management with Sri Vijendra Singh as the Manager and the election of the Petitioner's Committee of Management was discarded. This decision of the Regional Level Committee was challenged by the Petitioners in Writ Petition No. 10739 of 2008 which was allowed vide judgment and order dated 8th April, 2008 and it was held that none of the elections were held in accordance with law. A direction was, therefore, given to the Joint Director of Education to appoint a Prabandh Sanchalak for holding fresh election within six weeks.

Pursuant to the aforesaid judgment and order of this Court dated 23rd April, 2008, the Joint Director of Education appointed the Finance and Accounts Officer in the office of the District Inspector of Schools as the Prabandh Sanchalak and he was directed to hold the election of the Committee of Management of the Institution. The Prabandh Sanchalak issued a notice dated 25th July, 2008 to the parties demanding the list of members of the General Body so that the electoral college could be finalised for the purposes of holding the election of the Committee of Management of the Institution. Vide order dated 15th October, 2008 the Prabandh Sanchalak finalised the electoral college of 32 members.

4. Sri Vijendra Singh, who has been arrayed as Respondent No. 5 in the writ petition, however, submitted a representation to the Joint Director of Education against the preparation of the aforesaid electoral college and for change of the Prabandh Sanchalak. The representation was forwarded by the Joint Director of Education to the Prabandh Sanchalak who issued fresh notices dated 10th

November, 2008 to the parties. The writ Petitioners filed a detailed objection that the Prabandh Sanchalak had no jurisdiction to review or recall the decision taken by him on 15th October, 2008 and a prayer was also made that the election of the Committee of Management of the Institution may be held on the basis of the list finalised by the Prabandh Sanchalak on 15th October, 2008.

5. In the meantime the writ Petitioners challenged the proceeding initiated by the Prabandh Sanchalak vide notice dated 10th November, 2008 by means of Writ Petition No. 6270 of 2009 which was dismissed by this Court vide judgment and order dated 4th February, 2009 with certain observation. The Prabandh Sanchalak was directed to finalise the list of members within a time bound period and to hold election thereafter. Pursuant to the observations made by this Court in its judgment and order dated 4th February, 2009 the Prabandh Sanchalak vide order dated 9th February, 2009 approved the list of 27 members submitted by Sri Vijendra Singh and fixed 28th February, 2009 for holding the election of the Committee of Management of the Institution. The order dated 9th February, 2009 was challenged by the writ Petitioners by filing Writ Petition No. 11193 of 2009 which was disposed of vide judgment and order dated 26th February, 2009 with certain observations giving opportunity to the writ Petitioners to raise objections before the District Inspector of Schools at the time when the said authority proceeds to consider the question of grant of approval to the election and District Inspector of Schools was directed to give thoughtful consideration to the objections so raised with regard to validity of the electoral college and to act strictly in accordance with law.

6. The election of the Committee of Management of the Institution was held on 28th February, 2009 in which Sri Vijendra Singh was elected as the Manager. The writ Petitioners filed objections before the District Inspector of Schools, inter alia, that the Prabandh Sanchalak could not have reviewed the order dated 15th October, 2008. The objections were rejected by the District Inspector of Schools vide order dated 25th/28th March, 2009 and he approved the election of the Committee of Management of the Institution held on 28th February, 2009. The two orders referred to hereinbefore were challenged by the writ Petitioners before this Court by means of a writ petition which has been allowed and the two orders have been set aside on the ground that in the order dated 9th February, 2009 the Prabandh Sanchalak has not mentioned that what was the mistake in the earlier order dated 15th October, 2008 in which he had found that 10 new members had been validly enrolled under the Scheme of Administration. It was further held that the Prabandh Sanchalak was swayed away by the fact that the erstwhile members of the Committee of Management of the Institution have filed the affidavits confirming that no such meeting had taken place losing sight that Sri Satya Prakash Singh was an interested person since he is none other than the father of Sri Vijendra Singh, who is one of the contesting parties and even without considering the other documents on record. The Court also came to the conclusion that under the Societies Registration Act, 1860 the Assistant Registrar is required to register the list of office bears of the Committee of Management

only and not the list of members. Moreover, the Prabandh Sanchalak has not observed in the impugned order as to whether these alleged 29 members of the General Body are the same or not and the Prabandh Sanchalak should not have equated them with the list of 29 members as the list of General body.

7. We have heard Sri R.N. Singh, learned Senior Advocate assisted by Sri K. Sahi learned Counsel appearing for the Appellant and Sri P.N. Saxena, learned Senior Advocate assisted by Sri Ashok Singh learned Counsel appearing for the contesting Respondents and the learned standing counsel for the State Respondents and have perused the impugned judgment and order dated 2nd April, 2010 passed by the learned single Judge giving rise to the present appeal, the ground taken in the memo. of appeal and other documents filed along with it. We have also perused the grounds taken in the cross appeal/objections filed by the writ Petitioners seeking modification in the order dated 2nd April, 2010 passed by the learned Single Judge.

8. Sri R.N. Singh, learned senior counsel for the Appellant submitted that in Writ Petition No. 10739 of 2008 filed by the Committee of Management through its Manager Sri Ram Prasad Singh and others the order dated 6th February, 2008 passed by the Regional Level Committee, Varanasi Region Varanasi and communication dated 12th February, 2008 wherein the recommendation of the Committee of Management of Sri Vijendra Singh has been accorded approval was challenged. According to him, this Court vide judgment and order dated 8th April, 2008 while holding that the election of the Committee of Management by the Petitioner or Respondent therein have not been held in accordance with law directed the Joint Director of Education to appoint Prabandh Sanchalak for holding fresh election in accordance with law within six weeks and further directed that in case any party is aggrieved by the election result, they may move the Civil Court would operate as res judicata. Therefore, the writ petition giving rise to the present appeal was not maintainable and the learned single Judge had erred in law in entertaining the writ petition and remanding the matter to the District Inspector of Schools for passing a fresh order. In support of his plea he has relied upon the decision of the Hon'ble Supreme Court, namely, Y.B. Patil and Others Vs. Y.L. Patil, Relying upon the decision of the Hon'ble Supreme Court in the case of State of U.P. and another Vs. Labh Chand, he submitted that this Court while passing the interim order on 22.5.2009 in the writ petition had held that the Petitioners cannot file the writ petition in view of the order dated 08.04.2008 passed in Civil Misc. Writ Petition No. 10739 of 2008 wherein it had been observed that in case any party is aggrieved by the election result they move the civil court, would also operate as res judicata while finally deciding the writ petition. He further submitted that the writ petition was also otherwise not maintainable on account of the fact that an individual member cannot challenge the election of the Committee of Management or approval given by the District Inspector of Schools when there was no claim set up by any rival Committee of Management alleged to have been elected in any election. He relied upon a Division Bench decision of this Court in Special Appeal No. 1375 of 2010 (Bhajan

Singh v. State of U.P. and Ors.) decided on 6th September, 2010. He further submitted that the learned single Judge has erred in law in interfering with the findings recorded by the District Inspector of Schools regarding validity of the electoral college which in writ jurisdiction could not have been done in support of which he has relied upon a decision of the Hon'ble Supreme Court in Zora Singh, He, therefore, submitted that the order of the learned single Judge is liable to be set aside and that of the District Inspector of Schools should be restored.

9. Sri P.N. Saxena, learned senior counsel appearing for the contesting Respondents, on the other hand, submitted that in the present petition the Petitioners have challenged the constitution of the electoral college and the elections held on the basis of invalid and illegal electoral college was liable to be declared invalid and there was no prohibition in approaching this Court for claiming such relief. According to him the order dated 8th April, 2008 passed by this Court in Writ Petition No. 10739 of 2008 wherein an observation has been made that in case any party is aggrieved by the election result they can move the Civil Court, would not operate as res judicata as the observation was made without adjudication of the issues regarding maintainability of the writ petition as none of the parties had raised that issue or objection before the Court in that proceedings. According to him the Prabandh Sanchalak having determined the list of members of the electoral college on 15.10.2008 had no power to review the same in the absence of any statutory provision enabling him to do so and, therefore, the order dated 9th February, 2009 passed by him cannot be sustained in the eyes of law. He has relied upon a Division Bench decision of this Court in the case of Syed Madadgar Husain Rizvi v. State of U.P. and Ors. (2007) 9 ADJ 581. He submitted that the order passed by the learned single Judge is liable to be modified to the extent that the Joint Director of Education should be commanded to direct the Prabandh Sanchalak to proceed with the election of the Committee of Management on the basis of the list of members finalised vide order dated 15.10.2008 within a specified period and an authorised controller be appointed during the intervening period.

10. We have given our thoughtful consideration to the various plea raised by the learned Counsel for the parties. We find that it is not in dispute that the election of the Committee of Management held on 21st October, 2007 in which Sri Ram Prasad Singh was alleged to have been elected as Manager and the election held on 9th January, 2008 in which Sri Vijendra Singh claimed to have been elected as the Manager has not been recognised till date. In fact, vide order dated 8th April, 2008 this Court has held that the two elections referred to above, have been held without any authority of law and the Joint Director of Education was directed to appoint a Prabandh Sanchalak for holding fresh election in accordance with law. It is further not in dispute that the Prabandh Sanchalak was appointed on 23rd April, 2008. He issued notice on 25th July, 2008 for preparation of the list of members of the General Body for finalising electoral college. The electoral college consisting of 32 members was finalised vide order dated 15th October, 2008. Sri Vijendra Singh made a representation before the Joint Director of Education

complaining the manner in which the electoral college has been finalised by the Prabandh Sanchalak and also sought change of Prabandh Sanchalak. The representation was forwarded by the Joint Director of Education to the Prabandh Sanchalak. In the representation made by Sri Vijendra Singh, a copy of which was filed as Annexure 6 to the writ petition giving rise to the present appeal and forms part of the memorandum of appeal, we find that apart from the fact that certain allegations were made against the Prabandh Sanchalak a grievance was also made that the documents submitted by Sri Ram Prasad Singh was not made available to him and without affording any opportunity of hearing the list supplied by Sri Ram Prasad Singh has been accepted by the Prabandh Sanchalak. A request was made that the Prabandh Sanchalak be directed to provide a copy of documents filed by Sri Ram Prasad Singh and after affording an opportunity of hearing the electoral college be finalised. On this representation which was forwarded by the Joint Director of Education to the Prabandh Sanchalak, he vide order dated 10.11.2008 directed the concerned authorities to file their documents. The proceeding initiated pursuant to the notice dated 10.11.2008 was challenged before this Court by means of Writ Petition No. 6270 of 2009 which was dismissed vide judgment and order dated 4th February, 2009 with the following observations:

Therefore, the answer to the question before this Court as to whether issuance of notice to the parties for hearing in order to rectify the mistake amounts to review of his own order by the authorities concerned or not is in the negative. To my mind, the list of 32 members of the electoral college was correct or not could have been represented by the parties before the higher authority who has marked it to the authorized controller to look into the grievance of Respondent No. 5. The order dated 15.10.2008 finalizing the list of members is not a judicial order, Therefore notice for hearing the "correction" of list is not review of the said order. The Prabandh Sanchalak is duty bound to hold election of the committee of management on the basis of the correct list of members of the electoral college. The order impugned in the present writ petition before this Court being mere a notice by which the authorized controller has called for certain documents so that he may correct any mistake in the list which might have inadvertently crept in the impugned order of constitution of electoral college comprising of 32 members. The Court is not inclined to interfere in the matter in exercise of its discretionary jurisdiction under Article 226 of the Constitution.

11. This Court has specifically held that notice for hearing of correction of list is not review of the said order. Thereafter when the electoral college was finalised by the Prabandh Sanchalak wherein he had approved 27 members as per list given by Sri Vijendra Singh, the Petitioners once again approached this Court and this Court disposed of the writ petition by observing that as the election process has commenced the Petitioners can raise their objections before the District Inspector of Schools. The District Inspector of Schools has rejected the objection and approved the Committee of Management with Sri Vijendra Singh as the Manager. It may be mentioned here that Sri Ram Prasad Singh has neither been

elected as Manager nor any election has been set up by him. The writ petition preferred by Sri Ram Prasad Singh giving rise to the present appeal is questioning the order dated 23.3.2009 passed by the District Inspector of Schools, Jaunpur rejecting the Petitioner's objections regarding the validity of electoral college as also the order dated 9th February, 2009 passed by the Prabandh Sanchalak finalizing the list of members of the electoral college. The learned Single Judge has set aside both the orders referred to above and remanded the matter to the District Inspector of Schools for passing a fresh order.

12. We shall first take up the plea raised by the learned Counsel for the Appellant that the writ petition itself was not maintainable in view of the earlier direction of this Court that after the elections are held aggrieved party may move to the civil court. We have perused the judgment and order dated 8th April, 2008 passed by this Court in Civil Misc. Writ Petition No. 10739 of 2008 and find that the aforesaid direction/observation was made without there being any issue/objection having been raised by the Respondent therein. We may mention here that after the aforesaid direction given by this Court, the writ Petitioners had approached this Court twice by means of Civil Misc. Writ Petition No. 6270 of 2009 and Civil Misc. Writ Petition No. 11193 of 2009 wherein the issue regarding determining the electoral college had been challenged. The Appellant had not raised this objection regarding maintainability of the writ petition in those proceedings. In the case of Labh Chand (*supra*) relied upon by the Appellant the Hon'ble Supreme Court has held that the second writ petition after dismissal in limine of first one on the same matter before the same High Court is not maintainable on the solitary rule of practice and procedure. However, the above principle would not be applicable to the facts of the present case as we find that in the writ petition giving rise to the present appeal, the writ Petitioners have challenged the order dated 9th February, 2009 passed by the Prabandh Sanchalak of the Institution wherein the list of electoral college has been finalised and the order dated 25th March, 2009 passed by the District Inspector of Schools, Jaunpur rejecting the objections filed by the writ Petitioners as also approving the elections of the Committee of Management. The writ petition was, therefore, primarily preferred against the order dated 9th February, 2009 passed by the Prabandh Sanchalak determining the list of members of electoral college and the order of the District Inspector of Schools rejecting the objections. In our considered opinion, it cannot be said that the writ petition was not maintainable in view of the order dated 8th April, 2008 passed by this Court.

13. The plea of *res judicata* advanced by the learned Counsel for the Appellant would also not be attracted in the present case as in the interim order dated 22nd May, 2009 passed by the learned single Judge in the writ petition, no finding has been recorded that it is not open to the writ Petitioners to file the present writ petition. The learned single Judge while passing the interim order had noted the arguments advanced by the learned Counsel for the Respondent therein and had concluded that the matter requires consideration. Therefore, no

finding has been recorded by the learned Single Judge at any stage of the proceedings in the writ petition that it is not open to the writ Petitioners to file the present writ petition.

14. In the case of Y.B. Patil (supra) the Hon''ble Supreme Court has held that res judicata can apply at a subsequent stage of the proceedings in respect of the orders already rendered final in those very proceedings. However, the principle of res judicata will apply in case where the matter arises directly or specifically and is in issue in the proceedings between the parties. As already mentioned herein before, the learned single Judge while passing the interim order dated 22nd May, 2009 had not recorded any finding that the writ petition was not maintainable or it was not open to the Petitioner to file writ petition. We are of the considered opinion that the principle of res judicata as enunciated by the Hon''ble Supreme Court in the case of Y.B. Patil (supra) cannot be pressed into service and is of no help to the Appellant. It may be out of place to mention here that the principle of res judicata cannot be pressed into service in respect of the order dated 8th April, 2008 passed by this Court in Civil Misc. Writ Petition No. 10739 of 2008 as the learned single Judge while passing the order in the aforesaid writ petition has made an observation that after the elections are held aggrieved party may move the civil court without there being any issue/objection having been made by the Respondents therein. To us it appears that the principle of sub silentio laid down by the Hon''ble Supreme Court in the case of State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, would apply in the present case and, therefore, the writ Petitioner cannot be non-suited on this ground. The plea that an individual member cannot be allowed to file objection challenging the election of the Committee of Management, relying on the Division Bench decision of this Court in the case of Bhajan Singh (supra) is also of no help in the present case as in that decision this Court has held that the election can be challenged by the members of the General Body separately after raising objections before the educational authorities, and thereafter filing writ petitions on variety of grounds.

15. The question now which arises for consideration is as to whether while passing the order dated 9th February, 2009 the Prabandh Sanchalak has exercised power to review its order dated 15.10.2008 or not. It may be mentioned here that in the representation made by Sri Vijendra Singh a specific plea has been raised that the Prabandh Sanchalak has not given copies of the documents filed by Sri Ram Prasad Singh nor any opportunity of hearing had been given so to as rebut the same. It is well settled that every court or authority has inherent power to recall an ex parte order and to rectify the mistake which is apparent on the record and has crept in the order. The mistake may be of law, of fact or of the procedure applied in passing the order. Viewed in this back ground we are of the considered opinion that the case in hand falls under the third category and the Prabandh Sanchalak had not exercised the power of review while passing the order dated 9th February, 2009, more so when the Joint Director of Education, who is a higher authority has referred the representation made by Sri Vijendra Singh to the Prabandh Sanchalak to look

into the matter. Exercise of such power cannot be termed as power of review. In the case of Syed Madadgar Husain Rizvi (supra) this Court had held that the quasi judicial authority cannot review its order unless it is so expressly conferred by the Statute itself but we are of the view that in case where the order has been passed ex parte every court or authority including the quasi judicial authority has power to recall its order and would not amount to exercising the power of review.

16. The propositions laid down by the Hon"ble Supreme Court in the case of Zora Singh (supra) that the Court in exercise of jurisdiction under Article 226 of the Constitution of India should not interfere in the findings of fact recorded by the tribunal, quasi judicial body or any authority, is well accepted. So far as contention that this Court cannot interfere with the findings of fact recorded by the District Inspector of Schools vide order dated 25th March, 2009 by which he has approved the election of the Committee of Management and the order dated 9.2.2009 passed by the Prabandh Sanchalak by which he has finalised the list of 27 members of the General Body entitled to participate in the election of the Committee of Management. We may mention here that normally this Court while exercising the powers under Article 226 of the Constitution of India does not interfere in the findings of fact recorded by the Tribunal or the Quasi Judicial Authority but when the said finding is based on wrong assumption and presumption of law or suffers from other defects this Court after setting aside the order can direct the concerned authority to pass a fresh order in accordance with law.

17. However we find that the order dated 9th February,2009 passed by the Prabandh Sanchalak accepting the list of members filed by Sri Vijendra Singh on the basis that the election of January, 2008 had been held on the basis of this list which had been filed before the Assistant Registrar losing sight of the fact that this election has not been recognised till date and cannot be sustained. Further the order passed by the Prabandh Sanchalak determining the electoral college contains various illegality and proceeds on misconception of both facts and law and cannot be sustained. The District Inspector of Schools has also committed the same illegality. The matter should have been remanded to Prabandh Sanchalak for determining the electoral college and reholding election of the Committee of Management thereafter.

18. In view of the foregoing discussions, both the special appeal and the cross appeal/objection are disposed of . The order of the learned single Judge is modified to the extent that the Prabandh Sanchalak is directed to decide the objections filed by the Appellant as also Sri Ram Prasad Singh regarding finalization of the electoral college afresh in accordance with law after affording an opportunity of hearing to all the parties concerned and thereafter proceed to hold the election within a month. The Prabandh Sanchalak shall finalize the electoral college within three weeks from the date a certified copy of this order is filed before the said authority. As the entire exercise of finalising the list of members of the electoral college including holding of election has been directed

to be taken afresh the interim order passed on 23.4.2010 shall stand vacated and the position which was existing prior to the order dated 25th/28th March, 2009 passed by the District Inspector of Schools shall stand restored.

19. On the facts and in the circumstances of the case the parties are left to bear their own costs.