

(2010) 12 AHC CK 0161

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 60164 of 2010 (with CMWP Nos. 31259 of 2007 and 40560 of 2008)

C/M, Sarvodaya Post Graduate College

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 09-12-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1)(c)

Citation : (2010) 12 AHC CK 0161

Hon'ble Judges : A.P.Sahi, J

Final Decision : Disposed Of

Judgement

A.P. Sahi,J.

1. These three writ petitions have been filed by Neel Mani Rai claiming himself to be the Manager of the Committee of Management of Sarvodaya Post Graduate College, Ghosi, District Mau, assailing the orders passed by the State Government in exercise of the powers conferred under Section 58 of the U.P. State Universities Act, 1973, superseding the Committee of Management by appointing an Authorized Controller to manage the affairs of the institution.

2. Sri M.D. Singh "Shekhar" learned Senior Counsel has been heard for the petitioner and learned Standing Counsel for the respondent nos. 1 to 4. Sri R.K. Ojha has filed an impleadment application on behalf of the Janardan Pandey who is reported to be dead. He has however been heard in the connected matters and has addressed the Court on behalf of Sri Har Govind Prasad one of the surviving members of the general body and the petitioner in Writ Petition No. 40592 of 2007 which has also been disposed of today by a separate judgment.

3. At the very outset, Sri M.D. Singh "Shekhar" and Sri R.K. Ojha have contended that there are only two surviving members of the general body namely Sri Har Govind Prasad and Sri Ram Bilas Pandey. Apart from them none of the members survive today that formed the original society before the

appointment of Authorized Controller. The petitioner Neel Mani Rai admittedly is one of those 39 members who claim to have been enrolled by the Authorized Controller of the Institution namely the Sub Divisional Magistrate who is also an Ex Officio member under the byelaws.

4. The first impugned order dated 29th June, 2007 under challenge is in Writ Petition No. 31259 of 2007 whereby the State Government appointed an Authorized Controller in exercise of powers under Section 58 of the U.P. State Universities Act, 1973 for a period of one year. The tenure of the said Authorized Controller was extended and the second writ petition assails the order dated 15th July, 2008 whereby the State Government has extended the appointment of the Authorized Controller for a further period of one year and which position continue even till today with the passing of the order impugned in the third writ petition. The continuance of the Controller is upto 28.6.2011.

5. It is undisputed that there is no validly elected committee of management recognized by the University under the provisions of Section 2(13) of the U.P. Universities Act. The status of the parent society is that only two members of the general body survive and the membership of 39 members including the petitioner Neel Mani Rai is disputed. It is in the aforesaid background that the submissions have been advanced.

6. Sri M.D. Singh "Shekhar" learned Senior Counsel for the petitioners in all the three writ petitions submits that the enrolment of 39 members cannot be invalidated merely because they were enrolled by the Authorized Controller. He submits that while functioning as such, the enrolment of the petitioner by the Sub Divisional Magistrate and other members was made in the year 1998 whereafter the elections of the Committee of Management were held and were also recognized by the University. He therefore, submits that the enrolment does not suffer from any infirmity.

7. An alternative argument has been submitted that in the event this Court comes to the conclusion that the Authorized Controller had no authority to enrol any members of the general body then in that event the Sub Divisional Magistrate being a prominent Ex Officio Member should be commanded to constitute the general body with the help of the surviving members of the general body and then hold the elections to constitute the committee of management. This he submits is necessary to save the society from disintegrating which had been set up for a laudable object of imparting higher education, and in the event the society is allowed to be dissolved, then the very existence of the Institution managed by the Society would be in jeopardy and would become subject matter of unnecessary litigation. He submits that in order to avoid any complications on that count such a direction be issued so that the general body is constituted and fresh elections are held to manage the Institution.

8. Sri R.K. Ojha submits that he does not have any objection to the second alternative argument raised by Sri M.D. Singh "Shekhar" for enrolling members

to constitute the general body but so far as the first argument is concerned, he contends that the Authorized Controller has no authority to enrol any members of the general body and, therefore, the entire claim of the petitioners on the said premise deserves to be rejected. He relies on the latest decision of this Court by a Division Bench while answering a reference in the case of Yashoda Raj Kumari Kunjil v. State of U.P. & others, reported in 2010 (9) ADJ 361. He also relies on the other decisions referred to therein namely, S.K. Mishra v. D.I.O.S. Orai, reported in 1996 U.P. L.B.E.C. (2) Pg. 896, Ranbir Singh v. D.I.O.S., Jalon at Orai, reported in 2000 ALR (38) Pg. 431, the decision in the case of Jt. Registrar of Cooperative Societies, Kerala v. T.A. Kuttappan, reported in 2000 SCC (6) 127, the decision in the case of Brij Mohan Lal Gupta v. State of U.P. & others, (Writ Petition No. 78866 of 2005) decided on 16.11.2007 and other unreported decisions.

9. Sri M.D. Singh "Shekhar" has relied on the decision in the case of Committee of Management v. Regional Deputy Director of Education, Writ Petition No. 3277 of 1997 decided on 14.12.2000 to contend that the Authorized Controller was justified in proceeding to enrol the members in order to save the society from a dissolution. He submits that more than seven members are required to form a society and the numbers having dwindled with only two members alive, there is a likelihood that the authorities may proceed to dissolve the society in the event the 39 members are held to be invalidly enrolled. His contention therefore is that the impugned order be set aside and a direction be issued to the Authorized Controller to get the elections held.

10. Learned Standing Counsel on the other hand contends that the peculiar situation of this case is that there is no effective general body nor is there any validly elected committee and in such a situation the appointment of the Authorized Controller was the only option. It is, therefore, submitted that the orders do not deserve any interference.

11. The issue therefore is as to the status of the society and the manner of enrolment of the members of general body and then the procedure to be adopted for constituting the committee of management in order to remove the Authorized Controller. The admitted position is that no interim orders were passed in these petitions and as such the Authorized Controller still continues to manage the Institution.

12. The byelaws provide that the Sub Divisional Magistrate, Ghosi, District Azamgarh now District Mau shall be an Ex Officio Member of the Committee of Management. The general body of the Association/Society shall be in accordance with Clause 1 of the byelaws which is as follows:

?Clause 1. The following will form the General Body of the Association of Sarvodai Degreee College, Ghosi, Azamgarh.

(a) Patrons (1) Persons paying Rs. 1,000/ or more as donation.

(2) Those who have dedicated their lives for the achievements of the objects of the Association.

(b) Trustees (1) Persons paying Rs. 500/ or more as donation.

(2) Those who have made contribution of Rs. 1,000/ or more in addition to the Association.

(c) Members (1) Persons paying Rs. 3,100/ or above in a lumpsum.

(2) Persons devoting time and energy occasions required for the welfare of the Association.?

13. The membership of the managing committee shall be as per Clause (4) of the byelaws and the office bearers and members shall be elected for a period of five years. There is no provision indicating the manner of enrolment of a member. The membership clause of the general body only provides for the eligibility and the fees required for being enrolled as a member. The President of the Committee of Management has to preside over every meeting and conduct the same. The managing committee is enjoined with the duty of managing the affairs of the society to frame rules for the welfare of the Association. There is a residuary power in the committee to generally administer the affairs of the Association. The Secretary has been enjoined with the duty of executing the work of the society and to receive all money on behalf of the Association. The Secretary also has the power to delegate such powers as conferred on him to any other office bearer in writing. The Treasurer has to receive the money through the Secretary, and the disbursement of the funds has to be under the directions of the Secretary.

14. The Byelaws are absolutely silent as to which authority will enrol the members. In the absence of any such provision the only presumption is that the enrolment of the members has to be approved in a meeting of the society as it clearly involves the right to freedom of Association.

15. This issue arose in a large number of cases where a committee of management had been superseded and the Authorized Controller had been appointed under the statutory provisions of the relevant enactment as to whether such enrolments would be valid or not. The issue was answered against the Authorized Controller by a Division Bench judgment in the case of Ranveer Singh v. DIOS (supra) and has also engaged the attention of this Court in the decision in the case of Yashoda Raj Kumari Kunjil (supra).

16. The Division Bench in the case of Ranbir Singh (supra) has held as follows:

?Para 10: In the instant case, the Committee of Management is not available, instead there is a District Inspector of Schools who has been appointed, in effect, as an Authorised Controller by an order of the High Court. He had been caused with an obligation to conduct an election. The question is whether the District Inspector of Schools could, during the course of his management of the

institution as an Authorised Controller, induct life members. The learned Judge, who gave the judgment on the writ petition, was of the view that the basic structure of the institution, whether the general body or the Committee of Management, could not be changed by such induction of life members. The learned Judge was of the opinion that this should best be left to the normalcy of the institution, when there is a general body and a Committee of Management. It is for this reason and for good measure, the Court has observed that an Authorised Controller can never be treated as a substitute to a Committee of Management or a general body of a society or an institution. (Shiv Pratap Singh v. Deputy Director of Education and others.)

Para 11. Permitting induction of new members by an Authorised Controller or, for that matter, the District Inspector of Schools in a similar situation would be putting such an authority into a power and position which even the law did not spell out. Induction of new members is best left to be filtered and inducted by the general body and the Committee of Management as the scheme of administration may provide. But for an Authorised Controller, as a corporation sole, to take the responsibility of changing the fabric of the committee of members of a society or a trust may be too sweeping of a power which is not compatible with the provisions of the Act, aforesaid. The appointment of an Authorised Controller is in itself a temporary phase. The law suffers the appointment of an Authorised Controller and provides for it, but does not encourage it. What is encouraged by the law is the return to normalcy by an election and the management being handed over to a Committee of Management.

Para 12. In the circumstances, this Court is of the opinion that the learned Judge was not in error when he quashed the induction of 31 new members, to participate in an election, and consequently gave a direction to the District Inspector of Schools to hold a fresh election.

Para 13. The judgment is affirmed.?

17. The matter relating to the appointment of a Principal by the Authorized Controller was raised in the case of Yashoda Raj Kumari Kunjil (supra) where also the powers of an Authorized Controller were discussed and it was held that the Authorized Controller can discharge all other functions except to enroll members and it was held in Paragraph 20 thereof as follows:

?Para 20: The area of dispute which has been canvassed is that in case it is held that a Prabandh Sanchalak or an Administrator has all powers of the managing committee, it also means that he has power to enroll members. This is not supported by Chapter III of the Regulations as no power has been conferred on the Authorized Controller to admit members or expel members. As held by the Supreme Court in Smt. Damyant Naranga v. The Hindi Sahitya Sammelan, AIR 1971 (SC) 966, such a provision if provided, would clearly be violative of Article 19 (1)(c) of the Constitution of India. Therefore, while exercising powers of the management under Chapter III of the Regulations, the Authorized Controller or

an Administrator cannot exercise powers to enroll or remove members. This limitation on the powers of the Authorized Controller can be considered in the context of Section 16D (9) of the Act whereby he has no power to dispose of or eliminate the property. Thus where the Committee of Management under Chapter III of the Regulation exercises powers, all those powers can also be exercised by the Prabandh Sanchalak, unless excluded.?

18. The said enunciation of law by this Court which has also been indicated in the other judgements referred to by the learned counsel, leaves no room for doubt that the Authorized Controller cannot proceed to enrol members of the general body as the same would amount to trenching upon the right to freedom of Association of the society and its members. This would violate the provisions of Article 19(1)(c) of the Constitution. This being the position in law the enrolment of any person including that of the petitioner Neel Mani Rai would be contrary to the tenets of Societies Registration Act and the Byelaws of the society as also and unconstitutional. The argument of Sri R.K. Ojha is therefore has to be accepted.

19. The provisions of Section 58 of the U.P. State Universities Act, 1973 which make provision for appointment of an Authorised Controller do require him to discharge all the functions of the management. The said provisions, however are in parimateria to the provisions of Section 16D of the U.P. Intermediate Education Act, 1921, the scope whereof was under consideration before this Court in the two Division Bench judgments referred to hereinabove. Accordingly, to same reasoning with regard to the limitation of powers on the Authorised Controller would apply with full force in the instant case.

20. Having this concluded that the Authorized Controller had no authority to enrol any members, it is held that any member enrolled by the Authorized Controller who are stated to be 39 in number are not entitled to claim their membership by virtue of such enrolment.

21. The question that now arises is about the alternative argument raised by Sri Shekhar and as accepted by Sri Ojha. The Court has been placed in a piquant situation where only two members, Har Govind Prasad and RamBilas Pandey are still stated to be surviving members of the general body.

22. The Apex Court in the case of B.P. Achala Anand v. S. Appi Reddi & Anr., JT 2005 (2) SC 233, has given an indication that the Courts in extraordinary situation can apply their legal tools to provide extraordinary remedies.

Paragraph 1 of the decision is as follows:

?1. Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice. ?The definition of justice mentioned in Justinian's Corpus Juris Civilis (adopted from the Roman jurist Ulpian) states "Justice is constant and perpetual will to render to everyone that to which he is entitled." Similarly, Cicero described justice as

"the disposition of the human mind to render everyone his due".?

The law does not remain static. It does not operate in a vacuum. As social norms and values change, laws too have to be reinterpreted, and recast. Law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment, human relations by elimination of social tensions and conflicts. Lord Denning once said: "Law does not stand still; it moves continuously. Once this is recognised, then the task of a judge is put on a higher plain. He must consciously seek to mould the law so as to serve the needs of the time."

23. The aforesaid decision has already been discussed and followed in the case of Balbhadra Pandey v. State of U.P. & others, decided on 10.11.2010 in Special Appeal No. 1380 of 2010.

24. Applying the aforesaid principles this Court finds it necessary that in order to save the society from any dissolution and to provide for a mechanism so as to constitute the general body as well as the committee of management it would be in the fitness of things to accept the alternative argument of Sri Shekhar which has also been consented to by Sri R.K. Ojha. Accordingly, the Sub Divisional Magistrate Ghosi who is an Ex Officio Member of the Society shall with the consultation of the two surviving members, Sri Har Govind Prasad and Ram Bilas Pandey proceed to amicably consider and resolve to enrol members of the general body to a minimum that may be required for the purpose of holding elections of the committee of management. Such enrolment shall be in accordance with the Byelaws and in accordance with the wishes of the other two surviving members of the society. Once, the general body is constituted to the minimum which is required for holding the elections of the committee of management, then the said list shall be forwarded to the Assistant Registrar, Firms, Societies and Chits Funds for his records. The Sub Divisional Magistrate shall accordingly then formulate an election schedule and hold the elections of the committee of management. The Committee so elected, shall be handed over charge after recognition by the Vice Chancellor of the University. The Vice Chancellor of the affiliating University shall pass orders within a period of three weeks of the receipt of the documents in accordance with law and immediately intimate the State Government about the same. With the recognition of such a committee of management the appointment of the Authorized Controller shall cease and in the event such committee is recognised prior to 28th June, 2011, then order dated 28th July, 2010 would stand quashed allowing the newly elected committee to take over charge.

25. With the aforesaid directions all the writ petitions stand disposed of.