
(2013) 04 AHC CK 0044

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 29758 and 64753 of 2010 and 20504 of 2013

Committee of Management

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Citation : (2014) 2 UPLBEC 1152

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Arun Tandon, J.—These three writ petitions pertain to the elections of the office bearers of the Society duly registered in the name and style of Kisan Junior High School, Mubarakpur, District Bijnor. The office bearers of the Society ipso facto become the Committee of Management of the Kisan Junior High School, an institution recognized under the U.P. Basic Education Act, 1972. It is agreed between the parties that up to the year 2005, there was no dispute with regard to the office bearers of the Society and that one Dilip Singh was the elected Manager and Jograj Singh was the President. According to the registered bye-laws of the Society, as then applicable, the term of the office bearers was provided as three years and it was stipulated that the Mantri shall hold elections after expiry of three years of the earlier elections.

2. According to the faction lead by Megh Raj Singh, since the term of the elected office bearers was to expire in the year 2008, fresh elections took place on 26.1.2008. In the said elections Dilip Singh was again elected as the Manager, Megh Raj Singh was elected as the Deputy Manager and Jog Raj Singh was elected as the President. It is then stated that Dilip Singh became ill and he resigned from the post. In his place Deputy Manager (Megh Raj Singh) was authorized to act as the Manager. Dilip Singh stated to have expired on 14.1.2010 and Megh Raj Singh was elected as the Manager for the remaining

term. The signatures of Megh Raj Singh were attested by the Basic Shiksha Adhikari under order dated 16.6.2009.

3. According to the other faction lead by Vipin Kumar, no elections took place in the year 2008. Elections did take place on 7.2.2010 and in the said elections Vipin Kumar was elected as the Manager. These elections were approved under order of the Basic Shiksha Adhikari dated 4.3.2010.

4. However, on dispute being raised, the Basic Shiksha Adhikari on 10.3.2010 passed an order for single operation of accounts in the institution. This lead to filing of two writ petitions before the High Court being Civil Misc. Writ Petition No. 14956 of 2010 and Civil Misc. Writ Petition No. 16117 of 2010. First petition was filed by Vipin Kumar challenging the single operation of accounts while the other was filed by Megh Raj Singh challenging the attestation of signatures of Vipin Kumar. Both the writ petitions were clubbed together and decided vide Judgment dated 26.3.2010 requiring the Basic Shiksha Adhikari to hear the parties and finalize the dispute with regard to lawful Committee of Management within the time permitted.

5. The Basic Shiksha Adhikari under order dated 4.5.2010 held that the elections dated 7.2.2010 were legal and valid and accordingly directed that the order of single operation of accounts be withdrawn. Vipin Kumar has been recognized as the Manager, his signatures were attested accordingly. This order has been challenged by means of Civil Misc. Writ Petition No. 29758 of 2010 by Megh Raj Singh. In the said petition, no interim order has been granted.

6. It appears that a representation was made before the Regional Joint Director of Education against the order of the Basic Shiksha Adhikari upholding the elections dated 7.2.2010. The Regional Joint Director of Education vide order dated 20.9.2010 directed that records pertaining to the elections dated 7.2.2010 did need examination and, therefore, provided that the order recognizing the elections shall remain in abeyance and further that Principal, Government Inter College, would act as the Authorized Controller. Such direction was issued with reference to the powers u/s 6(3) of U.P. Act No. 6 of 1979.

7. This order of the Regional Joint Director of Education dated 20.9.2010 has been challenged by Vipin Kumar along with the Committee of Management by means of Civil Misc. Writ Petition No. 64753 of 2010. In the said writ petition an interim order has been granted and operation of the order of the Regional Joint Director of Education has been stayed.

8. The Regional Joint Director of Education has now passed an order dated 20.2.2013 holding therein that the elections dated 7.0.2010 have been held by a time barred Committee. The elected office bearers have responded to the notice being issued for the appointment on compassionate ground of the dependent of Late Puran Singh. He has, therefore, superceded the Committee of Management and has appointed an Authorized Controller u/s 6(3) of U.P. Act No. 6 of 1979. It is against this order that the third writ petition being Civil Misc. Writ Petition No.

20504 of 2013 has been filed.

9. Since all these writ petitions (Writ Petition No. 20504 of 2013, No. 64753 of 2010 and No. 29758 of 2010) pertain to the same Committee of Management all the three writ petitions are being decided by means of this common judgment.

Writ Petition No. 29758 of 2010:

10. Under the order impugned dated 4.5.2010, the Basic Shiksha Adhikari has recognized the elections dated 7.2.2010 and has attested the signatures of Vipin Kumar as the Manager. The Basic Shiksha Adhikari has held that the elections pleaded by the petitioner, Megh Raj Singh of the year 2008 had not been validly held and that enrollment of members, as suggested by Megh Raj Singh, was factually incorrect.

11. On behalf of the petitioner it is contended that the Basic Shiksha Adhikari has not examined as to who could have held the elections of the year 2010 and what procedure had been followed. It is his case that the three basic ingredients in respect of elections before it can be said to be valid have not been examined. The issues raised shall be decided latter.

Writ Petition No. 64753 of 2010 and Writ Petition No. 20504 of 2013:

12. So far as the other two writ petitions are concerned whereunder the order of the Regional Joint Director of Education is under challenge, this Court may record that once the legality of the order of the Basic Shiksha Adhikari dated 4.5.2010 in respect of recognition of the elections dated 7.2.2010 was under consideration before this Court in a writ petition, there was no occasion for the Regional Joint Director of Education to have intervened. Even otherwise, this Court may record that the Regional Joint Director of Education, after coming to a conclusion that records pertaining to the elections dated 7.2.2010 did need examination and, therefore, summoned the same from the office of the Basic Shiksha Adhikari, he could not have proceeded to pass an order staying the recognition of the elections by the Basic Shiksha Adhikari. No such power vests in the Regional Joint Director of Education. Therefore, this Court has no hesitation to record that such order of the Regional Joint Director of Education only result in uncalled for litigation. The Regional Joint Director of Education must confine himself to the powers vested in him. He could not travel beyond the same. If such mistakes are repeated in future, this Court will have no other option but to impose exceptional cost. The order of the Regional Joint Director of Education dated 20.9.2010 is hereby quashed. The writ petition No. 64753 of 2010 is allowed.

13. So far as the writ petition No. 20504 of 2013 is concerned, this Court finds that not only the order passed by the Regional Joint Director of Education is without jurisdiction. It is a clear case of non-application of mind to the provisions as per the bye-laws of the Society as well as to the provisions of the Societies Registration Act. Under the bye-laws of the Society, there is no provision whereby the earlier Committee of Management becomes time barred or loses its

right to hold elections even if its term has expired. Even if the case set up by the petitioner that it has extended its term to five years is not accepted by this Court, it has been to be kept in mind that u/s 25(2) of the Societies Registration Act, it is only the Registrar/Assistant Registrar who can convene a meeting of general body to hold fresh elections, if the elections are not held within time. The Regional Joint Director of Education has no right to appoint the Authorized Controller in the institution so far as Junior High Schools are concerned qua whom the bye-laws of the Society alone apply.

14. This Court may record that if the elections are not held by the existing Committee of Management despite repeated letters written by the education authorities, it may give a cause for action being taken either for directing single operation of accounts in the institution for want of lawful Manager or for request being made to the Registrar u/s 25(2) of the Societies Registration Act for getting fresh elections of the office bearers/Committee of Management held.

15. Even otherwise this Court finds that the order passed by the Regional Joint Director of Education does not record that there is deliberate noncompliance of any order referable to Section 4 or Section 5(3) of U.P. Act No. 6 of 1979. Therefore, exercise of powers u/s 6(3) in the facts of the case, is patently illegal and unsustainable in the eyes of law. The order dated 20.2.2013 passed by the Regional Joint Director of Education is also, therefore, quashed. The writ petition No. 20504 of 2013 is also allowed.

16. This leads the Court to the basic issue as canvassed in Writ Petition No. 29758 of 2010 i.e. as to which of the elections are to be granted recognition so that the controversy may be laid to rest. Should the elections of Megh Raj Singh of the year 2008 or that pleaded by Vipin Kumar of the year 2010 are to be treated as valid.

17. In my opinion such issue can be appropriately examined by the Prescribed Authority u/s 25(1) of the Societies Registration Act. Therefore the Basic Shiksha Adhikari is directed to transmit the papers received in respect of the elections held in the year 2008, as pleaded by Megh Raj Singh and those held in the year 2010, as pleaded by Vipin Kumar to the Prescribed Authority, within two weeks of the receipt of this order.

18. On such papers being received, the Prescribed Authority shall enter into the dispute and after affording opportunity of hearing to the parties shall decide as to which of the elections are valid. The Prescribed Authority shall decide the matter within six weeks thereafter.

19. All consequential action shall be taken immediately thereafter.

20. It goes without saying that the Prescribed Authority, while examining the legality of the elections shall record his specific findings amongst other on three basic issues :

(i) who was competent to hold the elections.

(ii) whether the elections have been held from valid members of the Society.

(iii) whether the elections have been held in accordance with the bye-laws of the Society.

Writ petition No. 29758 of 2010 is disposed of, with the said directions.