

(1992) 08 AHC CK 0033

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24098 of 1992

Committee of Management. Kalgidbar Kanya Junior High
School and Another

APPELLANT

Vs

District Basic Shiksha Adhikari and Others

RESPONDENT

Date of Decision : 17-08-1992

Acts Referred:

Citation : (1992) 4 AWC 356 Supp : (1996) 3 UPLBEC 1864

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Rakesh Dwivedi, for the Appellant;

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of Distt. Basic Shiksha Adhikari, Saharanpur, the Respondent No. 1 recognising Sri Ratneshwar Singh, the Respondent No. 2 as duly elected Manager of Kalgidhar Kanya Junior High School, Gurudwara Shardanagar, Saharanpur.

2. The dispute is between the two rival Committees of Management. There is a Society known as Kalgidhar Shiksha Prasar Samiti Gurudwara Shardanagar, Saharanpur. It is registered under the Societies Registration Act. The Society had established the Kalgidhar Kanya Junior High School (hereinafter referred to as the School). This school is recognised by Distt. Basic Shiksha Adhikari, Saharanpur and it is governed by provisions of U.P. Basic Education Act, 1972.

3. The claim of the Petitioners is based on an election alleged to have taken place on 10-3-91 on which date the members of the Committee of Management and their office bearers were elected by the General Body of the Society. Smt. Jasbir Kaur was elected as a president and Smt. Harkirat Kaur Sihghpuriya, the Petitioner No. 2 was elected as the Manager. The information regarding the election alleged to be held on 10-3-91 was transmitted to the Distt. Basic Shiksha Adhikari, Saharanpur, the Respondent No. 1. Subsequently, by letter dated 4-2-92 the president Smt. Jasbir Kaur resigned. Sri Mahendra Taneja was

elected as a president of the Committee of Management on 15-3-92. The information regarding the filling of the vacancy of the post of the President of the Committee of Management by the election of Sri Taneja was also given to the Distt. Basic Shiksha Adhikari who received the papers on 9-4-92. The school was allowed grant-in-aid in March 1992 w.e.f. March 1991. Thereafter, it became necessary to open a joint account in a Nationalised Bank. Accordingly, the Distt. Basic Shiksha Adhikari attested the signature of Petitioner No. 2 as Manager and sent information to the Manager, Punjab National Bank for opening a Current Account in the name of the Petitioner No. 2 and the Accounts Officer, Basic Shiksha Parishad, Saharanpur. The signature of the Petitioner No. 2 was attested and was sent to the bank on 8-5-92. The Petitioner No. 2 came to know that the Respondent No. 1 issued an order on 30-6-92 recognising Sri Rameshwar Singh, the Respondent No. 2 as President and Sri Darshan Singh as Manager of the School. This order has been challenged on various grounds.

4. I have heard the learned Counsel for the Petitioner and the learned Counsel for the Respondents at length.

5. The learned Counsel for the Petitioner submitted that the Respondent No. 1 had already attested the signatures of the Petitioner No. 2 on the basis of the election which had taken place in March 1991 and no fresh election had taken place on 19-4-92 on the basis of which the Respondent No. 1 has recognised these persons as President and Manager of the School. In fact, no election had taken place on 19-4-92 and it was a collusive affair.

6. It was further contended that if the Respondent Nos. 2 and 3 were claiming the rights on the basis of the election, the Petitioner should have been given an opportunity of hearing. The rival Committee of Management is set up before the Respondent No. 1. It was necessary for him to make enquiry after giving an opportunity of hearing to the parties concerned.

7. Lastly, it was submitted that the order passed by the Respondent No. 1 was malafide. The Petitioner had made a complaint against the conduct of the Basic Shiksha Adhikari who had passed the order on 30-5-92 and the Distt. Magistrate. Saharanpur had set up an enquiry against him and there by he was much aggrieved against the Petitioner No. 2 and just before transfer, he passed the order on 30-6-92.

8. The learned Counsel for the Respondent submitted that no election had taken place on 10-3-91 as claimed by the Petitioners. He placed various documents and demonstrated that the alleged election dated 10-3-91 was forged. He said that there was no agenda, there was no approval of the list of the members. In the minutes of the proceedings 9 persons have been shown to have "been elected as member of the Committee of Management while at places 13 persons have been shown as members of the Committee of Management. He contended that there was no validly elected committee of Management as alleged by the Petitioners there was no option before the Respondent, No. 1 except to recognise the duly

elected Committee of Management on 19-4-1992. The Respondent Nos. 2 and 3 had placed all the relevant papers before the Respondent No. 1 which established that valid election of the Committee of Management had taken place on 19-4-92 and it was within the powers of the Respondent No. 1 to recognise such Committee of Management.

9. It is not necessary to dwell upon the controversy in the present writ petition as to whether any valid election had taken place on 10-3-91 or on 19-4-92. The Distt. Basic Shiksha Adhikari while recognising the Committee of Management was to satisfy himself as to who, according to him are the validly elected office bearers of the School. The U.P. Basic Education Act 1972 does not contemplate any enquiry to be conducted by Basis Shiksha Adhikari but he has to recognise some one as a Manager of the Institution and he has to deal with the members of the Committee of Management while exercising the powers under Basic Education Act and the rules framed therein. It is, further, admitted that the Govt. has sanctioned grant to the School and the account has to be operated jointly by the Basic Shiksha Adhikari with the Manager of the School concerned and while performing this duty he has to recognise a Committee of Management and the Office bearers. He has to take a decision in the matter. The dispute, if raised before him regarding the validity of election or any other rival Committee of Management is set up, he has to apply his mind and form an opinion as to who is validly elected Committee of Management and to whom he should recognise as Manager and in this process he must give an opportunity of hearing to the parties which may be affected by his order and he further must base his decision on the relevant material. In *Committee of Management v. DIOS Meerut 1978 All. LR 123*, this Court while considering the function of Distt. Inspector of Schools while performing his statutory functions under the Intermediate Education Act and the U.P. High School & Intermediate Colleges (payment of salaries of teachers and other employees Act 1971) took the view that it was the duty of the DIOS to make an enquiry and to find out as to who is the elected office bearers of the Institute.. The Court observed as under :

But in our opinion the mere raising of a dispute did not absolve the DIOS from his duty to find out on an administrative level as to who are the real office bearers of the college. In order to perform his Statutory functions under the aforesaid two Acts, it was the duty of the DIOS to satisfy him as to who, according to him, are the validly elected office bearers of the institution.

10. In the present case the Respondent No. 1 did not apply his mind as to whether the election as alleged by the Petitioners had taken place on 10-3-91 and whether it was valid election. The learned Counsel for the Respondent urged that no material was placed by the Petitioner before the Respondent No. 1 and there was no occasion before the Respondent No. 1 to consider the validity of the election (alleged to have taken place on 10-3-91. This argument does not appear to be correct. The Petitioner has annexed the copy of the letter dated 14-3-91 sent to the Respondent No. 1 regarding the election which in alleged to have

taken place on 10-3-91. The result of the election was also published in the Newspaper on 23-3-91 and lastly he relied upon the letter sent to the Punjab National Bank on 8-5-92 on behalf of the office of the Respondent No. 1 indicating that the Petitioner No. 2 is the Manager of the School and she was entitled to operate the bank account. In view of these facts, it is necessary that the Respondent No. 1 be directed to consider the validity of the election dated 10-3-91 relied upon by the Petitioner 2 & 3 and the validity of the election dated 19-4-92 as claimed by the Respondents 2 & 3. The Petitioner No. 2 and the Respondent Nos. 2 & 3 shall be entitled to make representations before the Respondent No. 1 and they will also be entitled to place all the material evidence on which they rely as proof of the validity of the election. The Respondent No. 1 will decide this controversy within a period of one month from the date of filing of certified copy of this order along with a copy of this writ petition. There will be no order as to costs.