
(2013) 03 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12037 of 2013

Committee of Management, Kishan Inter College APPELLANT

Vs

Regional Level Committee/Joint Director of Education and Others RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2013) 2 UPLBEC 1091

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Yogesh Kumar Saxena, for the Appellant; Yogish Kumar Saxena, for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Kisan Education Society is a society duly registered under the Societies Registration Act having its own bye-laws. The society runs and manages a recognized intermediate college in the name and style of Kisan Inter College, Bhagya Nagar, Auraiya. These three writ petitions pertain to the office bearers of the society and the college run by it. The writ petitions are being clubbed together and are being decided by means of this common judgment.

I have heard Sri Yogesh Kumar Saxena on behalf of the faction led by Sri Shailendra Gupta and Sri Yogish Kumar Saxena on behalf of the faction led by Sri Ashok Yadav.

2. The facts in short relevant for deciding these writ petitions are as follows:

Upto 2003 there was no dispute with regards to the office bearers of the society/ college. Two elections were set up dated 10.5.2003 and that dated 25.5.2003. In the first election Sri Ram Sewak Gupta is stated to have elected as Manager while Sri Shailendra Gupta is stated to have elected as Deputy Manager. These elections are stated to have been approved by the Regional Joint Director of Education under order dated 11.9.2003. The elections dated 25.5.2003 were

disapproved in which Sri Ved Prakash Gupta claimed to be elected as the Manager. Writ Petition No. 44489 of 2003 was filed by Ved Prakash Gupta wherein an interim order was granted. During the pendency of writ proceedings, Ram Sewak is stated to have resigned and in his place Shailendra Gupta is stated to have elected as Manager for the remaining term on 26.2.2006. The election of Shailendra Gupta for remaining term is stated to be approved by Regional Joint Director of Education on 18.4.2006.

3. Again two sets of fresh elections dated 14.5.2006 and dated 23.5.2006 were pleaded by the rival parties. The Regional Level Committee, Kanpur under order dated 10.8.2006 held that the elections dated 14.5.2006 in which Shailendra Gupta was elected as Manager were not legal and the elections dated 23.5.2006 in which Ashok Yadav was elected as Manager were legal and valid.

While the matter was still engaging the attention of Regional Level Committee, Writ Petition No. 41453 of 2006 was filed by Shailendra Gupta alleging that he has no confidence in the Regional Level Committee, Kanpur Region and the matter may be transferred to some other Regional Level Committee.

4. Writ Petition No. 44489 of 2003 and Writ Petition No. 41453 of 2006 were clubbed together and decided under a common judgment dated 10.8.2006. The High Court directed that matter shall be heard by the Regional Level Committee at Allahabad. This order has become final between the parties.

5. The Regional Level Committee, Allahabad under its order dated 27.1.2010 held that the elections dated 14.5.2006 with Shailendra Gupta as Manager were valid while election dated 23.5.2006 with Ashok Yadav as Manager were illegal. The Regional Level Committee further directed that fresh elections be now held by the District Inspector of Schools from amongst the persons who had participated in the election of 2003 and the persons who held to be valid members of the general body under the order of the Prescribed Authority dated 18.6.2008.

6. Against the said order of the Regional Level Committee, Allahabad dated 27.1.2010 two writ petitions were filed one by Shailendra Gupta being Writ Petition No. 9177 of 2010 which was dismissed by the High Court under the order dated 19.2.2010. Other Writ Petition No. 8166 of 2010 filed by Ashok Yadav was entertained and an interim order was granted on 16.2.2010 providing therein that no fresh elections shall be held in the meantime by the District Inspector of Schools.

7. Since the term of the Committee elected was to expire two sets of elections dated 13.5.2012 were set up by the rival parties. Under the order dated 20.2.2013 the Regional Level Committee, Kanpur has held that the elections with Sri Ashok Yadav as Manager were valid while the elections that set up by Shailendra Gupta were in valid. Against the said order, Writ Petition No. 12037 of 2013 has been filed.

8. So far as the office bearers of the Society are concerned the facts on records are as follows.

9. The Prescribed Authority under the order dated 18.6.2008 held that the office bearers with Shailendra Gupta were valid while Sri Ashok Yadav was not even a primary member of the general body, therefore, his election were disapproved. This order was subjected to challenge by the Committee of Management with Sri Ashok Yadav as Manager by means of Writ Petition No. 36236 of 2008. The writ petition was allowed under the order dated 13.8.2008 and the matter was remanded to the Prescribed Authority to reexamine the legality of the elections in the light of the observations made in the judgment of the High Court. The Prescribed Authority on 25.6.2009 again held that the elections with Shailendra Gupta as Manager were valid while Sri Ashok Yadav was not even a primary member of the general body. This order has been challenged by means of Writ Petition No. 38164 of 2009, which has also been clubbed and is being decided under this judgment.

10. This Court may record that under the Scheme of Administration the Committee of Management of the Institution is to comprise of 12 members who are to be elected from the general body. These elected members are required to elect the office bearers from amongst themselves. The office bearers as detailed in Clause 2-A are President, Vice President, Manager, Vice Manager and Treasurer. The bye-laws of the society contemplates that the general body shall elect 15 persons who will constitute the Karyakarini. The Karyakarini shall also include the Headmaster of the institution as ex-officio member. The bye-laws contemplate five office bearers, namely, Adhyaksh, Upadhyaksh, Manager, Mantri and Up-mantri. However, no specific procedure in respect of election of the office bearers had been provided. As already noted above, the electoral college for the elections of the Committee of Management as well as for the office bearers of the society is one and the same, namely, the general body of the society, therefore, before any valid election can take place it is but necessary that the electoral college be determined in accordance with the bye-laws of the society.

11. It has been in practice according to the parties that the office bearers are elected by the general body and the parties further agree that the same procedure may be followed in respect of the fresh election in order to avoid any further complication.

From the records of these petitions, this Court finds that the Prescribed Authority under the order dated 25.6.2009 has held that Sri Ashok Yadav had deposited a sum of Rs. 1010/- when the fee prescribed for life members is Rs. 1001/- only. This money as per respondent Shailendra Gupta represents the ordinary membership of 10 persons. On this ground alone the Prescribed Authority has held that Sri Ashok Yadav is not even a member of the general body.

12. In my view the reason so disclosed is legally not sustainable. Mere deposit of more money than prescribed for being accepted as life member shall not in itself

vitiating the enrollment. The Prescribed Authority should have examined as to whether Shailendra Gupta had participated in the meeting after such enrollment or not and whether the procedure for his admission as member as per the bye-laws had been followed or not which aspect of the matter has been ignored.

13. This Court further finds that High Court while remanding the matter to the Prescribed Authority under the order dated 13.8.2008 passed in Writ Petition No. 36236 of 2008 had specifically observed as follows: "this apart, the Prescribed Authority has not recorded any reason whatsoever for arriving at the conclusion that the elections of the respondent-Committee of Management were valid". The respondent Committee of Management in the said petition was committee headed by Shailendra Gupta.

14. The Prescribed Authority, therefore, was under legal obligation to record specific reasons for coming to the conclusion that the elections set up by Shailendra Gupta dated 14.5.2006 were legal and valid and for coming to the said conclusion in my opinion findings should have been recorded on at least three basic issues (a) the elections have been held by a competent person (b) the elections have been held from amongst valid members of the general body and (c) the elections have been held as per the bye-laws of the society.

15. This Court has no hesitation to record that despite the order of the writ Court referred to above, the Prescribed Authority has not recorded any reason for approving the election pleaded by Shailendra Gupta.

16. The findings recorded by the Prescribed Authority that Sri Ashok Yadav was not a member of the society as well as for approving the elections set up by Shailendra Gupta as aforesaid cannot be legally sustained and are hereby quashed.

17. Now coming to the election of the Committee of Management of the institution this Court finds that it is common case of the parties that legality of the electoral college is dependent upon the order of Prescribe Authority which order has already been quashed by this Court as above. Once the legality of the election of the year 2006 is put in jeopardy because of the quashing of the order of Prescribed Authority determining the electoral college, the legality of the elections held in the year 2009 and thereafter in the year 2012 would also become doubtful.

18. It may be noticed that Regional Level Committee, Kanpur Region had recognized the election set up by Ashok Yadav while on the same date the High Court decided the Writ Petition No. 44489 of 2003 and Writ Petition No. 41453 of 2006 and directed that the matter be heard by the Regional Level Committee, Allahabad Region. The Regional Level Committee, Kanpur had, therefore, withdrawn its order dated 10.8.2006 vide order dated 31.8.2006. The earlier order of approval, therefore, ceases to exist on record.

19. So far as the order of the Regional Level Committee, Allahabad dated

27.1.2010 is concerned this Court finds that the said order is under challenge in Writ Petition No. 8166 of 2010 wherein an interim order dated 16.2.2010 was granted staying fresh elections by the District Inspector of Schools. As a result whereof no elections could have been held so long as the interim order was in operation. This Court further finds that the election of 2009 dated 19.7.2009 set up by both the parties were never granted approval. Admittedly the earlier elections set up by Sri Shailendra Gupta of the year 2006 were granted recognition. Therefore, Ashok Yadav could not have held elections in the year 2012 and further the elections of 2012 as set up are in violation of the interim order passed in Writ Petition No. 8166 of 2010 which is operative till date. Consequently, for the reasons recorded above, the order of the Regional Level Committee approving the elections of Ashok Yadav dated 20.2.2013 cannot be legally sustained.

20. In the totality of the facts on record neither of the elections set up by the parties can be accepted. In order to avoid any further complications, this Court directs as follows:

21. The order dated 25.6.2009 passed by the Prescribed Authority is hereby quashed. The order of the Regional Level Committee, Kanpur dated 20.2.2013 is also quashed alongwith all consequential orders which could have been issued from time to time.

22. Fresh election for constituting the election of the office bearers of the society shall be held by the Assistant Registrar, Kanpur Nagar u/s 25(2) of the Societies Registration Act. For valid elections to be held the electoral college shall be determined by the Assistant Registrar. He shall publish a tentative list of the members of the general body including the name of superviving members who had participated in the election of 2003 and the names disclosed in the list to be supplied by Shailendra Gupta as well from Ashok Yadav. The parties will be at liberty to file objections to the said tentative list of members. The objections shall be decided by the Assistant Registrar by means of a reasoned order. This exercise shall be completed within six weeks. List of members of general body so determined shall be forwarded to the District Inspector of Schools for holding elections of the Committee of Management. This exercise of holding of elections of office bearers of the society by the Assistant Registrar and that of the Committee of Management by the District Inspector of Schools shall be completed within four weeks. If any person feels aggrieved by the determination of the electoral college and the elections to be so held will have a right to challenge the same after the elections are over before appropriate forum. All these three writ petitions are allowed subject to the directions above.