
(2010) 05 AHC CK 0201
In the Allahabad High Court
Case No : Special Appeal No. 395 of 2010

Committee of Management Maharashi Ravidas Inter College,
Sitapur and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 26052010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 05 AHC CK 0201

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Allowed

Judgement

Pradeep Kant and R.R. Awasthi, JJ.—Heard the learned Counsel for the appellant Sri G.C Verma and Sri Lakshman Singh for the respondents Nos 8 and 9.

2. This special appeal challenges the order passed by the learned Single Judge dated 4.5.2010, by means of which the order of attestation of signatures of appellant No. 2 as Manager of the Institution made by the District Inspector of Schools on 11.10,2009 has been set aside and a further direction has been issued while allowing the writ petition giving liberty to the District Inspector of Schools, respondent No. 4 to hold a fresh election on the basis of a valid list of members provided by the Deputy Registrar. In the meantime, it has been provided that the college shall function under the governance of the authorized controller appointed by the Regional Joint Director of Education.

3. At the outset, we feel our duty to observe that in the matter of administration of a public institution, governed by the statutory provisions of the Act, Rules or Regulations, which specifically provide the circumstance and conditions under which the authorized controller is to be appointed with designated authority to exercise his powers after following the due procedure, it would be in the rarest of rare case where the High Court will take the responsibility upon its own shoulders of appointing an authorized controller. The judicial review in the matter of appointment of authorized controller would be with regard to the facts prevailing

in each and every case and of course of the procedure prescribed for the purpose. If the order passed is grossly illegal, irrational or arbitrary, the Court would interfere in the matter. The responsibility of good governance and strict discipline in educational institutions is of college management, principal and of course of the educational authorities, by whom the disciplinary and administrative powers under the Act are exercised.

4. In the instant case, simply because the learned Single Judge found that the elections were not held from a valid list of elected members on the basis of averments made by appellant No. 2 in the counteraffidavit, has not only set aside the election which was duly recognized by the District Inspector of Schools, but has also issued a direction for holding a fresh election on the basis of valid list of members provided by the Deputy Registrar. Since the elections were already held and the committee of management was in control of the affairs of the institution as a result of election held on 11.10.2009, therefore, for the interregnum period, the learned Single Judge has appointed the authorised controller.

5. Assailing the aforesaid order, learned Counsel for the appellant submits that in the writ petition, there was no challenge to the election held in 11.10.2009 nor the quashing of the same was prayed for. The prayer made in the writ petition mainly was for quashing of the order dated 12.10.2009 passed by the District Inspector of Schools. Two additional prayers were made, namely, (E) to issue a writ, order or direction in the nature of mandamus commanding the opposite parties to decide the controversy of election proceeding dated 11.10.2009, which was submitted before the Joint Director of Education on 12.10.2009 and (ii), to issue a writ, order or direction in the nature of mandamus commanding the opposite parties to appoint authorized controller to manage the affairs of the college till the decision is taken by Joint Director in accordance with the Government order dated 19.12.2000.

6. Lodging a claim of election having been held by the respondents would not mean that the elections already held, which have been recognized by the educational authorities, would lose their impact and effect and on such a dispute having been raised, the authorized controller would be appointed. According to the own showing of the appellant, he had raised some dispute with regard to the elections, which was pending before the Joint Director of Education and unless the Joint Director of Education sets aside the election said to have been held by the appellant and election said to have been held by the respondents is recognized by him, no right would accrue in favour of the respondents to either occupy the office of the committee of management or to seek any restraint order against the elected committee of management.

7. It is a different matter that the continuance of the committee of management would depend upon the outcome of the election dispute which has been raised and is to be decided by the educational authorities.

8. The plea of the respondents, that an authorized controller be appointed, would

also not be acceptable for the reason that when the election held has not been challenged by them in the writ petition nor there is any prayer for quashing of such election, the question of appointment of authorized controller would not arise.

9. The learned Single Judge while holding that the election of office bearers of committee to management of Institution held on 11.10.2009 as well as attestation of signature of appellant as Manager was bad in law, has mainly relied upon the plea of the appellant made in para 33 of the counteraffidavit. We have perused the aforesaid paragraph and find that by no stretch of imagination It can be said to be an admission on part of the present appellant that the list of members on the basis of which the election was conducted, was not a valid list. It did mention that some dispute had arisen and explanation was called for from Kamlesh Kumar and the matter was pending decision to the knowledge of the appellant. It was further said that the fist filed by the respondents was never approved under section 4 of the Societies Registration Act.

10. Be that as it may, merely because there appears to be a dispute of membership at the time when the elections were held, the jurisdiction under Article 226 of the Constitution would rarely be exercised by the High Court on the basis of aforesaid alleged dispute of membership when there is a specific provision provided under the Act for challenging the election so held in the specified forum,

11. In view of the fact, that the respondents had already challenged the election on the same very ground before me Joint Director of Education as alleged in the writ petition and the Joint Director of Education having not decided the matter, there was no occasion for the learned Single Judge for holding the said election as invalid.

12. At this juncture, Sri G.C. Verma, learned Counsel for the appellant submits that in fact the respondents have not challenged the election of appellant held on 11.10.2009, but have sent their own proceedings saying that they have held the election on 11.10.2009 and their election be recognized.

13. We are thus, of the opinion that the learned Single Judge has exceeded his jurisdiction in setting aside the election and ordering for appointment of authorized controller. The impugned order, therefore, cannot sustain and is liable to be set aside.

14. We are, however, of the view that in case any election dispute has been raised or is raised by the respondents before the appropriate forum, the same may be considered and decided in accordance with law expeditiously, say, within a maximum period of four months from the date of making of such a claim.

15. With the aforesaid liberty, the special appeal is allowed. The impugned order passed by the learned Single Judge is set aside.