

(2004) 08 AHC CK 0356
In the Allahabad High Court
Case No : C.M.W.P. No. 31258 of 2004

Committee of Management, Mahip Narain Shahi, Janata Inter
College and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-08-2004

Acts Referred:

Citation : (2004) 4 AWC 3295

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : S.P. Pandey and Satyawar Shahi, for the Appellant;

Judgement

Arun Tandon, J.—Heard Sri S. P. Pandey on behalf of the Petitioner and standing counsel on behalf of Respondent Nos. 1 to 5. It is not necessary to issue notice to Respondent Nos. 6 and 7, in view of the order proposed to be passed by this Court.

2. Committee of Management, Mahip Narain Shahi, Janata Inter College, Mahavir Chhapara district Gorakhpur through its Manager Rajendra Shahi has filed this writ petition against an order passed by the Joint Director of Education dated 29th July, 2004, in compliance of the decision taken by the Regional Level Committee on the same day. By means of the said order the Committee of Management of the institution has been declared to be illegal and time barred. Prabandh Sanchalak has been appointed in the institution for holding fresh elections of the Committee of Management.

3. On behalf of the Petitioner it is contended that the elections of the Committee of Management had taken place on 20th January, 2001, in accordance with the provisions of scheme of administration. It is further stated that all the relevant papers pertaining to aforesaid elections were submitted in the office of the District Inspector of Schools. However, since the Manager, who was elected in the aforesaid elections, was the same person who was continuing as manager since

prior to elections, no formal order for attestation of signature of newly elected Manager was passed by the District Inspector of Schools. It has further been submitted that the term of the Committee of Management is 5 years, as such the elected committee has to continue till the year 2006.

4. The Petitioners were served two notices dated 19th July, 2004 and 20th July, 2004, by the office of the District Inspector of Schools seeking certain information with regards to the elections of the Committee of Management which had taken place in the year, 2001 and relevant documents were asked for. The Petitioner in compliance of the aforesaid notices submitted all the necessary documents vide letter dated 26th July, 2004, in the office of the District Inspector of Schools.

5. It is contended that thereafter no notice was issued to Petitioner by the Regional Level Committee. The Regional Level Committee has proceeded to take an ex parte decision in its meeting held on 29th July, 2004 and as a consequence thereto the Regional, Joint Director of Education has passed the order dated 29th July, 2004. Hence the present writ petition.

6. It is contended that the report submitted by the District Inspector of Schools dated 29th July, 2004, was never brought to the knowledge of the Petitioner nor they were afforded opportunity to controvert the allegations made therein. It is further submitted that the report is said to have been submitted by the District Inspector of Schools on 29th July, 2004 and on the same day impugned decision has been taken by the Regional Level Committee, which on the face is sufficient to record a finding that order impugned has been passed in violation of principles of natural justice.

7. It is also submitted that only ground mentioned for declaring the elections dated 20th January, 2001, as illegal, is that the Committee of Management did not ask for observer for the elections, which were scheduled for 20th January, 2001.

8. The writ petition can be decided on short ground that the impugned order dated 29th July, 2004, has been passed without notice and opportunity of hearing to the Petitioners. If any adverse report had been submitted by the District Inspector of Schools on 29th July, 2004, it should have been communicated to Petitioner and opportunity should have been afforded to controvert the allegations made therein. Since without following the said procedure the Regional Level Committee has passed the order dated 29th July, 2004, which is only based on the report of the District Inspector of Schools, the same is legally not sustainable and is, accordingly liable to be set aside.

9. So far as the reason mentioned in the impugned order for declaring the elections dated 20th January, 2001, as illegal is concerned, notice may be had to the provisions of scheme of administration, copy whereof has been enclosed as Annexure-2 to the writ petition. Under Clause 5 of the said scheme of administration there is no requirement of any observer being asked for by the

Committee of Management before holding fresh elections. The only requirement is that the committee shall forward the list of members entitled to participate in the election, one month before scheduled election. On receipt of the list of members, the District Inspector of Schools gets an option to appoint observer. From the impugned order it is not clear as to whether the list of the members of the general body, was forwarded to District Inspector of Schools by the Petitioner or not. If the list of member was forwarded to District Inspector of Schools by the Petitioner, there was no further obligation to ask for observer inasmuch as the District Inspector of Schools has been conferred a power to appoint observer, if he so wants. The relevant portion of Clause 5 is being quoted herein below :

10. The decision of the Regional Level Committee dated 29th July, 2004, as communicated under the letter of the Joint Director of Education dated 29th July, 2004, cannot sustain and is hereby set aside. However, it is provided that the Regional Level Committee shall decide the matter afresh, after affording opportunity of hearing to the Petitioner and such other interested persons, within one month from the date a certified copy of this order is produced before the Joint Director of Education, who is the Chairman of the Regional Level Committee.

11. With these observations, writ petition is disposed of.