
(2009) 11 AHC CK 0240
In the Allahabad High Court

Committee of Management, Rastriya Inter College and Sri
Sunil Kumar Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 409

Citation : (2009) 11 AHC CK 0240

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narayan Shukla, J.—Heard Mr. Sharad Srivastava, learned Counsel for the petitioners and learned Standing Counsel as well as Mr. Ravi Singh, learned Counsel for opposite party No. 3 in writ petition No. 5418 (MS) of 2009.

2. Learned Counsel for the opposite party No. 3 raised preliminary objection on the maintainability of the writ petition filed by the Committee of Management through its Manager Shri Sunder Lal Dixit. He submits that the said Committee of Management is not approved by the competent authority, therefore, Mr. Sunder Lal Dixit in the capacity of the Manager has no locus to file the writ petition on behalf of the Committee of Management as the writ petition can be filed only by the approved Committee of Management. Further he has not shown any authority and permission of the Committee of Management through any agenda or its meeting to file the writ petition. He further submits that since the election has been conducted under the order passed by this Court in writ petition No. 1910 (MS) of 2003, it is not open to challenge the same by any one. He further claims that under Chapter V Rule III of the Bye-laws of the Society the power of filing the writ petition is vested only with the Secretary of the Committee of Management . He further submits that since process of election has also been challenged, which involves the disputed question of fact, which can be

adjudicated upon only by the Civil Court and not under the present writ petition filed under Article 226 of the Constitution of India. In support of his submissions he cited the following decisions:

(1) Umesh Chandra and Anr. v. Mahila Vidyalaya Society, Aminabad, Lucknow and Ors. reported in 2006 (24) LCD 1373.

(2) Bhairon Prasad Sharma v. Rent Control and Eviction Officer/ADM (Civil Defence), Kanpur City and Ors. reported in 1999 (17) LCD 141.

(3) Mataraj Pandey v. State of U.P. and Ors. reported in LCD 1994 (12) lcd 157.

(4) State of Orissa Vs. Dr. (Miss) Binapani Dei and Others,

3. In reply the learned Counsel for the petitioner Mr. Sharad Srivastava submits that since the alleged election has not been held in accordance with law there is no election in the eye of law and it is not in dispute that in the last election the petitioner No. 2 was recognized as Manager of the Committee of Management of the Institution, who is still continuing, therefore, he has locus and right to challenge the alleged election of the Committee of Management. He further submits that since the whole election as well as the authority of the District Inspector of Schools for holding the election, has been challenged which is purely a question of law, and that can be adjudicated upon by this Court only. In support of his submissions he cited the following decisions:

(1) Dayal Chand Jain v. Assistant Registrar, Firms, Societies and Chits, Allahabad and Ors. reported in 2008 (2) LBEC 1921.

(2) Muslim Educational Society, Shahjahanpur and Ors. v. D.I.O.S., Shahjahanpur and Ors. reported in (1999) 2 E.S.C. 1086

4. After considering the rival submissions of learned Counsel for the parties on the point of maintainability of the writ petition I find that the petitioner has challenged the verification of the signature of opposite party No. 3 who has been recognized as Manager of the Institution. It is correct to say that on behalf of the Committee of Management the writ petition can be filed only by the authorised person, whereas there is no any such authorization issued in favour of Mr. Sunder Lal Dixit to file the writ petition claiming himself as Manager of the Committee of Management even by the Committee of Management to whom he claims as Manager, therefore, I am of the view that he has no locus to challenge the election, but I find that being petitioner No. 2 Mr. Sunder Lal Dixit has filed the petition, on the ground that once the Prescribed Authority by means of order dated 20th of February, 2003 recognized the election of Committee of Management headed by him and the Deputy Registrar, Firms, Societies and Chits, Faizabad by means of order dated 7th of August, 2009 renewed the Society on his application and recognized the list of members submitted by him, there was no occasion for the District Inspector of Schools to hold the election otherwise, therefore, I am of the view that the writ petition filed by Mr. Sunder Lal Dixit, is well maintainable for final adjudication before this Court. Accordingly

I hereby proceed with the case on merit.

5. The petitioner is aggrieved with the order dated 20th of July, 2009, whereby the signature of the opposite party No. 3 has been certified as Manager of Rastriya Inter College, Ranapur, Haidergarh, Barabanki. Briefly the facts of the case are that the election of office bearers of the Society held on 26th of March, 2000 for three years, the term of which was to expire on 25th of March, 2003, but it appears that in the meantime on 24th of March, 2002 the President of the Society dissolved the Committee of Management on 24th of March, 2002 and constituted a new Committee of Management on 5th of April, 2002. Thereafter on arising out the dispute regarding the validity of election of the Committee of Management, the same was referred to the Prescribed Authority u/s 25(1) of the Societies Registration Act. The Prescribed Authority by means of order dated 28th of February, 2003 cancelled the proceedings took place on 24th of March, 2002 and 5th of April, 2002 and upheld the validity of the Committee of Management, which was functioning prior to 24th of March, 2002. It appears that the dispute of Committee of Management did not take rest at that very stage, but it reached the High Court through the several writ petitions. This Court by means of order dated 18th of February, 2008 disposed of all the writ petitions finally with the direction to the District Inspector of Schools to hold the elections of the Committee of Management of the Institution expeditiously and complete the same within six months from the date of production of a certified copy of the order produced before him. Pursuant to the order passed by this Court the petitioner persuaded the District Inspector of Schools, Barabanki to appoint an observer to supervise the election. It appears that simultaneously same request was made by the opposite party No. 3, therefore, the District Inspector of Schools issued them letters to furnish the relevant documents to verify their identity as to who is the valid Committee of Management to hold the election in accordance with law. In the meantime the matter was placed before the Deputy Registrar, Firms, Societies and Chits, Faizabad for renewal of the Society. Both the rival parties were called upon to submit their stand in favour of the list of members submitted by them. After considering the facts and circumstances submitted by them as well as upon perusal of records available before the Deputy Registrar concerned, he passed an order on 7th of August, 2009 and renewed the Society w.e.f. 10th of October, 2008 for five years along with members of general body placed by the petitioner No. 2. Upon perusal of the proceeding of election brought on record through the counter affidavit filed by the opposite party No. 3, it appears that the election of Committee of Management of the Institution took place on 30th of June, 2009, in which the opposite party No. 3 has been elected as Manager of the Institution.

6. The petitioner has also raised finger on the validity of the election by inviting the attention of this Court towards the scheme of administration of the Institution in question. The scheme of administration provides that the general body of the Society shall be constituted with minimum 60 members and all the members would be of the same category without categorizing to any one as life

or distinguished member. It is further provided that the office bearers of the Committee of Management shall be elected by 3/4th members of the total members of the society. The election shall be held under the supervision of any officer appointed by the District Inspector of Schools on one month prior notice issued by the Secretary of the Society. It is also provided that to the strength of 100 members notice shall be given through the registered post and on the event of being more, then that the notice shall be published in the local News paper or shall be sent through the ordinary post. The scheme further provides that Head Master/Principal as well as two assistant teachers shall be ex-officio members of the Committee of Management. Through the Government Order dated 21st of November, 2008 it has been provided that for election of the office bearers of the Committee of Management of the Institution only the members of the parent body shall be the electors.

7. In the light of the aforesaid provisions of Scheme of Administration the learned Counsel for the petitioner submits that out of 60 members 7 had already died, accordingly strength of members reduced to 53, which is less than 60. The petitioner has brought on record the affidavit of 5 members, who have denied from having any information or intimation regarding holding of election on 30th of June, 2009. Moreover three members of the Institution have also given affidavit that on 30th of June, 2009 no such election took place.

8. Through the counter affidavit filed by the petitionr in writ petition No. 4399 (MS) of 2009, it has been submitted that once the District Inspector of Schools asked the parties to submit the relevant documents, there was no occasion of holding the election of Committee of Management without verifying the documents, thus he submits that the election held on 30th of June, 2009 is not in accordance with law, therefore, on the basis of the said election the opposite party No. 3 cannot be recognized as Manager of the Institution. In this background he submits that the order impugned issued by the District Inspector of Schools verifying the signature of the opposite party No. 3 as Manager of the Institution suffers form error and deserves to be quashed.

9. On the other hand Mr. Ravi Singh, learned Counsel for opposite party No. 3 submitted that the petitioner never responded the letter issued by the Deputy Registrar, Firms, Societies and Chits, Faisabad for production of relevant documents, rather he challenged those orders through the writ petition No. 309 (MS) of 2009. This Court stayed the operation of letter dated 28th of November, 2008, but did not interfere in the election proceeding. Subsequently the petitioner withdrew the said writ petition. He further submits that since the answering respondent replied the letter of the Deputy Registrar and submitted the required documents, after completing the full formalities the election was held on 30th of June, 2009, in which the answering respondent has been elected as Manager. He has also brought on record the Notification dated 15th of June, 2009 issued by the District Inspector of Schools, whereby the date of election was intimated as 30th of June, 2009. A list of members was also published

containing 60 members. The proceeding of election has also been brought on record as annexure No. 7 through the counter affidavit, which discloses that only 40 members participated in the election, in which the opposite party No. 3 and one Mr. Naval Kishore Sharma have been elected in the capacity of representative of the life member of the Society and further the opposite party No. 3 has been elected as Manager of the Institution. To justify the election the answering respondent has brought on record the bye-laws of the Society framed on 31st of December, 1956, in which the different categories of members have been provided viz. Life members, patron members etc. The aforesaid bye-laws provides that the president and two vice presidents shall be elected by general body of the Society for three years, Manager, Secretary and Deputy Secretary shall be elected by the Committee of Management for three years.

10. Through the writ petition No. 4399 (MS) of 2009 filed by the opposite party No. 3, it has been stated that the election has held under the direction of this Court. It is stated that against the petitioner No. 2 First Information Report has been lodged u/s 409 of the I.P.C. for embezzlement of the fund of the Institution.

11. After considering the rival claims as well as perusal of record I find that it is not in dispute that this Court by means of order dated 18th of February, 2008 passed in writ petition No. 1910 (MS) of 2003 and other connected matters issued direction to the District Inspector of Schools to hold the election of the Committee of Management within six months from the date of receipt of a certified copy of the order. Pursuant to which the District Inspector of Schools issued notices to the petitioner No. 2 as well as opposite party No. 3 for verification of the records to permit any one of them to hold the election, but it has not been indicated that what decision was taken by the District Inspector of Schools nor a decision taken by him finally has been brought on record. The District Inspector of Schools issued notification of election on 15th of June, 2009 publishing a list of electors containing 60 names. Pursuant to which the election also took place on 30th of June, 2009, but one letter dated 14th of May, 2009 issued by the District Inspector of Schools to the Deputy Registrar, Firms, Societies and Chits, Faizabad Division, Faizabad has been brought on record through the counter affidavit, which establishes that the said list containing 60 members was sent to the Deputy Registrar, Firms, Societies and Chits, Faizabad for verification so that the election can be conducted pursuant to the order passed by this Court, but by the date of Notification of election or the date of election itself no decision of the Deputy Registrar concerned was communicated to him as the Deputy Registrar took decision only on 7th of August, 2009 whereby he issued direction to renew the Society alongwith list of members as submitted by the petitioner No. 2, thus once the District Inspector of Schools submitted a request to the Deputy Registrar, Firms, Societies and Chits, Faizabad for verification of the list, unless the same was verified, there was no occasion to proceed with the election pursuant to the list which was already under verification of the competent authority. The petitioner has pointed out that according to the scheme of Administration the election has not taken place as the

sufficient number of members, as is required for holding election, was not available, therefore, no election could take place. He has indicated the discrepancy in the election on the basis of the provisions of provided under the Scheme of Administration, which governs the institution, whereas on the other hand learned Counsel for the opposite party No. 3 has brought on record bye-laws of the Society and submits that under the bye-laws of the Society the election has been conducted, therefore, there is no error in the order. So far as the application of bye-laws is concerned that is applicable with respect to the election of office bearers of the Society but it is well settled that the election of Committee of Management of the Institution is governed under the Scheme of Administration. The opposite party No. 3 has not brought on record any different scheme of administration before this Court. The dispute relates to the dispute of election of Committee of Management of the Institution, which is governed under the Scheme of Administration of the Institution. Under the scheme of administration 3/4th members are required for holding election, but here only 40 members participated in the election and out of that list of 60 members, it has been stated that seven members have already died and 5 members have submitted affidavit that they were not intimated for election.

12. Thus keeping in view the aforesaid short comings, I arrive at conclusion that the election held on 30th of June, 2009 on the basis of which the signature of opposite party No. 3 has been verified as Manager of the Committee of Management suffers from error, therefore, I hereby quash the order impugned dated 20th of July, 2009, annexure-1, passed by the opposite party No. 2 i.e. the District Inspector of Schools, Barabanki and further issue direction to the District Inspector of Schools, Barabanki to proceed for holding election of the Committee of Management of the Institution under the strength of order dated 7th of August, 2009 passed by the Deputy Registrar, Firms, Societies and Chits, Faizabad Division, Faizabad. The District Inspector of Schools is directed to complete the exercise of election within two months from the date of production of a certified copy of this order before him. Till the next election is held the affairs of the Institution in question shall be managed under the control of District Inspector of Schools, Barabanki.

13. In the result writ petition No. 5418 (MS) of 2009 is allowed and the writ petition No. 4399 (MS) of 2009 is dismissed.