

(2009) 07 AHC CK 0185

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29955 of 2009

Committee of Management, Sri Mad Brahmanand Inter
College, Aligarh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Citation : (2009) 07 AHC CK 0185

Hon'ble Judges : Dilip Gupta, J

Final Decision : Allowed

Judgement

Dilip Gupta, J.—The Committee of Management of Sri Mad Brahmanand Inter College, Aligarh (hereinafter referred to as the "College") and its Manager Bhoj Dutt Mishra have filed this petition for setting aside the order dated 14/18th May, 2009 passed by the District Inspector of Schools, Aligarh. The said order directs that the account of the College shall be operated singly and a recommendation has also been made for appointment of an Authorised Controller in the College.

2. The College is recognized under the provisions of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "Act") and the term of the Committee of Management under the Scheme of Administration of the College is four years.

3. According to the petitioners, the elections to the Committee of Management of the College were held on 19th September, 2004 and again on 23rd June, 2008 and in each of these elections, petitioner No. 2 Bhoj Dutt Mishra was elected as the Manager of the College. Jagvir Prasad Mishra, however, setup a parallel election on 3rd September, 2004. The Regional Level Committee passed an order on 26th October, 2006 that neither of the aforesaid elections were valid and appointed the Associate District Inspector of Schools as the Prabandh Sanchalak to manage the affairs of the College and hold the elections after finalising the electoral College.

4. This order of the Regional Level Committee was challenged by the petitioners by filing Writ Petition No. 62510 of 2006 in which on 28th November, 2006, the Court passed an order that till the next date of listing, the operation of the order dated 26th October, 2006 shall remain stayed. The Court also directed that status quo with regard to the Management of the College as on the date of passing of the impugned order shall be maintained.

5. It is said that on the basis of the said interim order passed by this Court, the petitioner Committee of Management continued to manage the affairs of the College and as the term of the Committee was coming to end in September, 2008, fresh elections were notified on 9th June, 2008. Initially, the District Inspector of Schools, in view of the interim order dated 28th November, 2006, did not send the Observer for holding the elections but ultimately by the order dated 21st June, 2008 he sent the Principal of the Rajkiya Uchchattar Madhyamik Vidyalaya, Ahraula as the Observer.

6. It is the contention of the petitioners that pursuant to the notification dated 9th June, 2008, 16 persons filed their nominations but on the date fixed for withdrawal of nomination, i.e., 23rd June, 2008 only 12 persons remained for the 12 posts and so they were declared elected unopposed. This exercise, according to the petitioners, was done in the presence of the Observer who also sent his report dated 23rd June, 2008 to the District Inspector of Schools after verifying the election proceedings.

7. It needs to be mentioned that earlier Om Prakash Shukla (respondent No. 4) and S.K. Sharma filed Writ Petition No. 28348 of 2008 during the summer vacation to restrain the petitioners from holding the elections and for appointment of an Authorised Controller and on 16th June, 2008, the Court directed that the petition be listed on 21st July, 2008 as a fresh case, but till that date status quo as it existed on the date of the order shall be maintained. According to the petitioners, this order was served upon petitioner No. 2 with a covering letter dated 26th June, 2008 on 26th June, 2008 but by that time the result had been declared on 23rd June, 2008 in which petitioner No. 2 was elected as the Manager.

8. Om Prakash Sharma, however, filed a complaint before the District Inspector of Schools alleging that the declaration of the result on 23rd June, 2008 was illegal and an Authorised Controller should be appointed. It is on this complaint that the District Inspector of Schools passed the order dated 14/18th May, 2009 which is impugned in the present petition.

9. This order of the District Inspector of Schools mentions that the interim order dated 28th November, 2006 passed by this Court in Writ Petition No. 62510 of 2006 was extended from time to time and was last extended upto 13th March, 2008 but the writ petition is still pending. The District Inspector of Schools further notices in the order that though he had appointed the Observer on 21st June, 2008 for supervising the elections but the election result was announced

on 23rd June, 2008 when according to the notification, the election was to be held on 13th July, 2008 and that too when the Court had passed an order of status quo on 16th June, 2008 in Writ Petition No. 28348 of 2008 filed by Om Prakash Sharma and another. It was for this reason that the show cause notice dated 10th February, 2009 was issued by him calling upon the petitioners to submit a reply as to why action may not be taken against them under the provisions of the Act and U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (hereinafter referred to as the "Payment of Salaries Act"). The order further mentions that the term of the Committee of Management elected in the year 2004 expired on 18th September, 2008 and in view of the fact that the elections could not be held in view of the interim order dated 16th June, 2008, the Committee of Management ceased to exist upon expiry of the term. The District Inspector of Schools, therefore, passed an order for single operation of the accounts under Section 5(1) of the Payment of Salaries Act and also made recommendation for appointment of an Authorised Controller.

10. I have heard Sri M.K. Gupta, learned counsel for the petitioners and the learned Standing Counsel for respondent Nos. 1,2 and 3 and Sri B.B. Paul for respondent No. 4.

11. Sri M.K. Gupta, learned counsel for the petitioners submitted that the notice dated 10th February, 2009 cannot be said to have been issued under the second proviso to Section 5(1) of the Payment of Salaries Act and even otherwise proper explanation was given by the petitioners which has not been considered at all. He further submitted that since fresh elections were held and the result of the election was declared on 23rd June, 2008, it cannot be said that the Committee of Management had ceased to exist upon expiry of the term of the earlier Committee of Management. Elaborating his submission, learned counsel for the petitioner submitted that the election was required to be held on 13th July, 2008 only if the number of the candidates exceeded the number of posts, but in the present case as only 12 candidates remained in fray on 23rd June, 2008 after withdrawal of nominations for the 12 posts. They were, therefore, declared elected unopposed on 23rd June, 2008 in the presence of the Observer who also forwarded his report to the District Inspector of Schools. According to him, the order of status quo passed by this Court on 16th June, 2008 is of no benefit to the respondents since it was served upon the petitioners only on 26th June, 2008 by the covering letter of the said date and even otherwise, this order cannot be interpreted to mean that fresh elections cannot be held after expiry of the term of the Committee of Management. He, therefore, submits that in the facts and circumstances of the case, the District Inspector of Schools was not justified in passing the impugned order dated 14/18th May, 2009.

12. Sri B.B. Paul, learned Senior Counsel for the respondents, however, submitted that there is no infirmity in the impugned order. It is his submission that after 1993, valid elections have never been held and nor was any

recognition granted to the petitionerCommittee of Management which has been illegally continuing for all these years. He further submitted that the interim order dated 28th November, 2006 was not extended by the Court and in view of the interim order dated 16th June, 2008 in Writ Petition No. 28348 of 2008 filed by Om Prakash Sharma and S.K. Sharma, the election result could not be declared on 23rd June, 2008, particularly when the elections were scheduled for 13th July, 2008.

13. I have considered the submissions made by the learned counsel for the parties.

14. The last elections of the Committee of Management were held in the year 2004. According to the petitioners, they were elected on 19th September, 2004 whereas according to Jagvir Prasad Mishra, the election was held on 3rd September, 2004. The Regional Level Committee did not recognise either of these elections and directed for holding of fresh elections by the Prabandh Sanchalak appointed by it but this order of the Regional Level Committee was challenged by the petitioners in Writ Petition No. 62510 of 2006 in which an interim order was passed on 28th November, 2006 that till the next date of listing, the operation of the order dated 26th October, 2006 passed by the Regional Level Committee shall remain stayed and status quo with regard to the Management of the College as on the date of the passing of the impugned order dated 26th October, 2006 shall be maintained.

15. It is on the basis of the interim order that the petitionerCommittee of Management continued to manage the affairs of the College and before the expiry of the term published the notification dated 9th June, 2008 for holding of fresh elections. The election programme as per the notification is as follows:

1 Filing of nomination paper for 12 posts 22nd June, 2008 8.00a.m.11.00a.m.

2 Scrutiny of nomination papers 23rd June, 2008 From 9.00 a.m.

3 Withdrawal of nomination paper and declaration of final list of candidates 23rd June, 2008 4.00 p.m.6.00 p.m.

4 Election (if considered necessary) 13th July, 2008 8.00a.m.1.00p.m.

5 Counting and declaration of result 13th July, 2008 After elections

16. The petitionerCommittee of Management made a request to the District Inspector of Schools for sending an Observer which request was accepted and the District Inspector of Schools sent the Observer on 21st June, 2008. The case of the petitioners is that though 16 nomination papers were filed on 22nd June, 2008 but on 23rd June, 2008, four persons withdraw their nominations and only 12 persons remained in fray for the posts. They were, therefore, declared elected unopposed on 23rd June, 2008 itself and there were no necessity of holding elections on 13th July, 2008. The entire exercise was done in the presence of the Observer appointed by the District Inspector of Schools. The papers were then

forwarded to the District Inspector of Schools alongwith the note of the Observer that the proceedings were held in his presence.

17. The District Inspector of Schools has, however, concluded that since the elections were required to be held on 13th July, 2008 the result could not have been declared on 23rd June, 2008. The District Inspector of Schools is not justified in coming to this conclusion. As noticed hereinabove, after the last date for withdrawal of the nominations, only twelve candidates remained in the contest for the twelve posts. In such a situation, there was no necessity of holding the elections and they could be declared elected unopposed. Infact, the election programme also mentions that election will be held on 13th July, 2008 only if it is considered necessary. The District Inspector of Schools failed to examine this aspect and jumped to the conclusion that since the result could not be declared on 23rd June, 2008, the Committee of Management did not exist as the term of the earlier Committee of Management elected in 2004 had come to an end.

18. The second reason given by the District Inspector of Schools needs to be examined now. There is nothing on the record to show that the interim order dated 16th June, 2008 was served upon the petitioners prior to 23rd June, 2008 and nor any finding to this effect has been recorded in the impugned order. The petitioners have placed on record the communication dated 26th June, 2008 sent by Om Prakash Sharma to the Manager Secretary of the College by which the interim order dated 16th June, 2008 was served. Thus, the District Inspector of Schools was not justified in holding that because of the interim order dated 16th June, 2008 the result should not have been declared on 23rd June, 2008, Even otherwise, the order directing the parties to maintain status QUO cannot be interpreted to mean that the term of the Committee of Management gets extended automatically and elections cannot be held after the expiry of the term. The order dated 16th June, 2008 does not prohibit the holding of fresh elections. If such an interpretation is given then the petitioner Committee of Management will continue to manage the affairs on the basis of the interim order dated 16th June, 2008 even after the expiry" of the term which would be contrary to the observations made by the District Inspector of Schools that upon expiry of the term, the Committee of Management ceases to exist.

19. The contention of Sri B.B. Paul, learned Senior Counsel for the respondents that after 1993 no Committee of Management had been recognised need not be examined in the present petition which is directed against the order dated 14/18th May, 2009 passed by the District Inspector of Schools.

20. Thus, for the reasons stated above, the order dated 14/18th May, 2009 passed by the District Inspector of Schools cannot be sustained and is, accordingly, set aside. The writ petition succeeds and is, accordingly, allowed.