

(2006) 04 AHC CK 0129

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 51345 and 61750 of 2005

Committee of Management Sri Swami Krishnanand
Intermediate College and Manoj Kumar Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A(7)

Citation : (2006) 9 ADJ 594 : (2006) 3 AWC 2848 : (2006) 2 UPLBEC 1562

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Brij Raj Mishra, for the Appellant; D.S.M. Tripathi, Indra Raj Singh and Sanjeev Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the records.

2. Shri Swami Krishnanand Intermediate College, Balwar, Jaunpur is an aided recognised institution and is governed by the provisions of Uttar Pradesh Intermediate Education Act, 1921 and U.P. Act No. 24 of 1971.

3. The Deputy Director of Education has approved scheme of administration by which the term of committee of Management is specified for a period of 3 years with a stipulation that after the expiry of the term, the Committee of Management shall be entitled to continue for a period of one month and in case fresh election is not being conducted, the Deputy Director of Education shall appoint Prabandh Sanchalak for getting fresh election held.

4. On 2.4.2000 election of Committee of Management was conducted in which Shri Ram Naresh Mishra was elected as President and Shri Sita Ram Tiwari was elected as Manager and they were granted approval by the D.I.O.S. by the order dated 1.5.2000. In view of the provision, the Committee of Management elected

on 2.4.2000 was entitled to continue till 1.4.2003. On 2.3.2003 1/3rd member of general body made an application to President and Manager for convening the meeting of general body in order to get fresh election held and copy of the same was sent to D.I.O. Further reminder in this regard was given to D.I.O.S. on 12.3.2003 and copy of the same was also given to the Joint Director of Education. On 22.3.2003, 1/3rd member of general body made representation to D.I.O.S. seeking permission to hold fresh election.

5. The District Inspector of Schools has not passed any order on the representation submitted by the petitioner along with 1/3rd members of general body. The 1/3rd members of the general body have published a notice in the newspaper Rastrashakshi on 29.3.2003 for convening the meeting. Individual information was also given to the members of general body in this regard on 8.4.2003.

6. Pursuant to the agenda circulated amongst the members of the general body the meeting of the general body was convened on 6.4.2003. In the said meeting Shri Nawal Kishor Srivastava was elected as President, Shri Uma Niwas Shukla appointed Election Officer and Shri Jagdish Tiwari was appointed as Observer. On 27.4.2003 single nomination paper for each of the office bearers were filed. On 29.4.2003 Election Officer declared the result in which Shri Jagdish Dwivedi elected as President and petitioner No. 2 Shri Manoj Kumar Singh was elected as Manager. On 2.5.2003 papers regarding the aforesaid election were submitted before D.I.O.S. and copy of the same forwarded to the Joint Director of Education. D.I.O.S. forwarded the entire papers regarding election conducted by petitioner as well as by respondent No. 6 on 22.5.2003 before Regional Joint Director of Education, Varanasi. On 10.9.2003 Petitioner submitted an application regarding election conducted on 29.4.2003.

7. The Regional Joint Director of Education rejected the election of the petitioner as well as the election of respondent No. 6 by an order dated 31.12.03. Aggrieved by the said order, the petitioner as well as respondent No. 6 filed writ petition Nos. 330 of 2004 and 5 1345 of 2005.

8. The contention of the counsel for the petitioner is that after discarding both the elections, the Joint Director of Education has permitted Shri Sita Ram Tripathi, Respondent No. 6 to hold fresh elections and has acted beyond jurisdiction. Shri Sita Ram Tripathi in collusion with respondent No. 7, Shri Harendra Prasad Shukla submitted few cheques amounting Rs. 90,000/- before the Branch Manager, Gomti Gramin Bank, Belwar, Jaunpur. They were trying to misuse and misappropriate the funds of the institution. Only valid management who has been recognised by the Joint Director of Education and attested by the District Inspector of Schools is entitled to withdraw the amount from the said bank. It is prayed in the writ petition that the respondents be restrained from withdrawing the amount from the bank, which is illegal and not justified in the eye of law. It has also been prayed that the Regional Level Committee has not passed any order with regard to subsequent election which has been conducted

in the year 2004 and the dispute regarding election conducted in the year 2004 and in the year 2003 is still pending.

9. There is disputed question of facts and it can be decided only after adducing oral and documentary evidence. Even if any of the parties are not satisfied, then in that case remedy is not before the High Court in writ petition under Article 226 of the Constitution, but before the Civil Court by means of suit as disputed questions of facts can only be decided by the Civil Court after documentary and oral evidence is adduced.

10. I am supported in my view by judgment of this Court in *Basant Prasad Srivastava and others Vs. State of U.P. and others*, , in which it has been held that where in the educational institution the election/ finalisation of election process of Committee of Management is challenged under Article 226, the writ petition under Article 226 would not be maintainable and the only remedy in such cases is by filing election petition or filing civil suit. Paragraph 4 of the aforesaid judgment is quoted under:

The learned Single Judge has observed that it was well settled proposition of law that in proceeding under Article 226 of the Constitution Courts should not interfere with election process and finalisation of list is not amenable to challenge in writ jurisdiction. It has also been observed that dispute regarding correctness of voters list is a highly disputed question of fact which can be decided only by Civil Court. With these observations the learned Single Judge directed that the result of the be declared forthwith and further steps be taken in accordance with law.

11. The aforesaid case has been followed by this Court in Civil Misc. Writ Petition No. 20719 of 2006, *Uttam Nishad v. State of U.P. and Ors.*, wherein it has been held that the Regional Level Committee cannot exercise judicial or quasi-judicial function until it is specifically directed by the High Court or Hon'ble Supreme Court in a given case. Even if any of the parties are not satisfied, then in that case remedy is not before the High Court in writ petition under Article 226 of the Constitution, but before the Civil Court by means of suit as disputed questions of facts can only be decided by the Civil Court after documentary and oral evidence is adduced. Though the basis of the G.O. has been upheld in Special Appeal No. 1394 of 2004 the constitution of Regional Level Committee is only that of a recommendatory body and it has no authority or jurisdiction to decide the disputes of Committee of Management under the Government Order dated 19.12.2000, for a Government Order cannot override or replace the provision of law i.e. Section 16-A (7) of the U.P. Intermediate Education Act, 1971. Therefore it cannot exercise powers of Section 16-A (7) which are quasi judicial and are to be exercised only by the Authority specified This Court is not inclined to interfere in the writ petition in exercise of powers under Article 226 of the Constitution. The petitioner has an alternative remedy before the Civil Court.

12. For the reasons stated above, without entering in disputed questions of facts,

the petitions are dismissed on the ground of alternative remedy.