

(2012) 05 AHC CK 0195

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26916 of 2009 (with CMWP No. 42292 of 2011)

Committee of Management, Sri Vidya Mandir Junior High School, Tyorhi, Distt.Baghpat and Another

APPELLANT

Vs

State of U.R and Others

RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

Societies Registration Act, 1860 — Section 25

Citation : (2012) 05 AHC CK 0195

Hon'ble Judges : A.P.Sahi, J

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—These two writ petitions arise out of a common dispute relating to the controversy about the management by a Committee of a Junior High School established by a Society registered under the Societies Registration Act, 1860.

2. Both the matters have been heard with the consent of learned counsel for the parties and they have advanced their submissions with the aid of the documents on record with a request that the petitions be disposed of finally at this stage.

3. The dispute of Management of this institution has a chequered history inasmuch as the elections of 2006 were sought to be disputed when a contest was put forth by the Committee of Management in three writ petitions filed by individual persons claiming appointment in the institution. It is undisputed that the petitioner committee was recognized for a tenure of 3 years according to the byelaws in the year 2000 and again in the year 2003 by the Basic Education Officer, who is the author to attest the signatures of a Manager in an aided Junior High School. The Society, however, manages the institutions and the elections are held under the registered byelaws of the Society. The respondent No.7 Dharam Prakash Verma appears to have set up a claim of parallel Committee relation to the election of 2006 and the matter was referred to the Prescribed Authority under Section 25 of the Societies Registration Act for decision. The

Prescribed Authority passed an order holding that none of the elections are valid and accordingly proposed the appointment of an authorized controller. Writ petition No.2730 of 2008 was filed by the respondent Dharam Prakash Verma assailing the said order of the Prescribed Authority, which was dismissed on 16.01.2008 observing that the claim of Dharam Prakash Verma was not genuine and even otherwise if he has any possible claim, he should file a Suit.

4. The petitioners were also aggrieved by the order of the Prescribed Authority as their elections had also been discarded, as such, they filed writ petition No. 13910 of 2008 which was also dismissed on 13.3.2008 on the same grounds.

5. The respondent Dharam Prakash Verma did not assail the judgment of the High Court in his Writ Petition No.2730 of 2008.

6. The petitioner, however, assailed the judgment dated 13.3.2008 of the learned single Judge in Special Appeal No.814 of 2008. The said Special Appeal was allowed on 8.7.2008 and the order of the Prescribed Authority as well as the order of the learned single Judge insofar as it related to the petitioner was set aside. While passing the said judgment, this Court further observed that the Management of the institution shall be subject to the orders passed by the Prescribed Authority as a direction was issued to the Prescribed Authority to pass a fresh order. It was further directed that the payment of salary to the teachers and the staff shall be made under single operation of account. The judgment dated 8.7.2008 is on record and has been perused by me.

7. A perusal of the said judgment, therefore, leaves no room for doubt that so far as the claim of Respondent Dharam Prakash Verma is concerned that had already been put to rest by the dismissal of his writ petition on 16.1.2008. In such circumstances, the Prescribed Authority had to proceed to decide the claim of the petitioners and the validity and genuineness of their elections.

8. Accordingly, the Prescribed Authority proceeded to hear the matter and passed an order on 24.3.2009. According to the petitioner Ram Pal Sharma, fresh elections had already been held on 15.3.2009 when the Prescribed Authority passed the order on 24.3.2009. The Prescribed Authority concluded that the elections held by the petitioner Committee in the year 2006 were valid but since the tenure of the said Committee had come to an end in February 2009, therefore, a direction was issued by the Prescribed Authority to the SubRegistrar to hold fresh elections and he further passed an order that the Basic Education Officer be informed to appoint an Authorized Controller under the provisions of the Education Act.

9. The petitioner Ram Pal Sharma, who is heading the Committee of Management, has filed Writ Petition No.26916 of 2009 the leading Writ Petition, assailing the aforesaid order to the extent of the directions issued for holding fresh elections and appointment of Authorized Controller.

10. This Court passed an interim order on 26.5.2009 directing statusquo with

regard to the management of the institution as on the date of passing of the order dated 24.3.2009.

11. It appears that thereafter the Basic Education Officer passed an order for attesting the signatures of the petitioner Ram Pal Sharma on 17.6.2011. This order passed by the Basic Education Officer has been assailed by the respondent No.7 in Writ Petition No.42292 of 2011 questioning the correctness of the said action of the Basic Education Officer.

12. Sri P.N. Saxena, learned Senior Counsel, assisted by Sri H.N. Pandey for Ram Pal Sharma and his Committee of Management contends that the Prescribed Authority exceeded his jurisdiction in proceeding to issue directions to the authorities for holding of fresh elections and further for appointment of Authorized Controller under the Education Act for managing the institution. He contends that once the election of the petitioner of the year 2006 were found to be valid, then it is the petitioner who was entitled to hold fresh elections and has in fact held elections on 15.3.2009. He further contends that reference before the Prescribed Authority was only with regard to 2006 elections and not with regard to the election held in 2009 or otherwise of any fresh election. It is further submitted that had the Prescribed Authority called upon the petitioner to give any information with regard to fresh elections, the same could have been tendered and, as : such, the direction for holding fresh elections was unwarranted and beyond the jurisdiction of Prescribed Authority once it was found that the petitioner's election 2006 was valid.

13. Sri Saxena further contends that under the Societies Registration Act the only jurisdiction of the Prescribed Authority is to direct the Assistant Registrar, Firms, Societies & Chits, to hold fresh elections in case the elections are found to be invalid or if the tenure of the election has come to an end. In the instant case, according to Sri Saxena, the direction was issued against facts as narrated herein above and there is no provision under the Education Act authorizing the Prescribed Authority under the Societies Registration Act, 1860, to issue any such direction to the Basic Education Officer or appoint any Authorised Controller. He, therefore, contends that the Prescribed Authority over stepped his jurisdiction and travelled beyond the powers as conferred on him under Section 25 of the Societies Registration Act.

14. Apart from this it is also evident that Basic Education Officer proceeded to attest the signature of the petitioner Ram Pal Sharma keeping in view the interim order passed by this Court dated 26.5.2009.

15. Learned Standing Counsel representing the State authorities including the Prescribed Authority has filed a counteraffidavit and in paragraph No.24 thereof it is admitted that the petitioner Committee had intimated the holding of fresh elections. Nonetheless, the letter dated 15.4.2009 has been brought on record issued by District Basic Education Officer, Baghpat, informing the petitioner that the fresh elections as alleged to have been held on 15.3.2009 is unacceptable as

it is not in accordance with law and, therefore, a direction has been issued by Basic Education Officer to the petitioner to hold fresh elections after calling for an observer j and after constituting a 3 Member team.

16. Learned Standing Counsel, therefore, contends that the claim of the petitioner Committee that it held fresh elections on 15.3.2009 is unacceptable and in the aforesaid circumstances, the petitioner Committee cannot claim any right to manage on the basis of fresh elections dated 15.3.2009.

17. Sri Deepak Jaiswal for respondent Dharam Prakash Verma Contends that once it has been found that tenure of the earlier Committee had come to an end then the only option was to hold fresh election and in such circumstances, the order of Basic Shiksha Adhikari that has been brought on record along with the counteraffidavit of the State, is fully justified. He further contends that there is no prayer made in the writ petition for quashing of the order dated 15.4.2009, as such, the petitioner cannot claim any further relief in view of the existence of the aforesaid order.

18. In the other writ petition Sri Deepak Jaiswal, who appears for the petitioner Dharam Prakash Verma, contends that there was no occasion to attest the signatures of Ram Pal Sharma after 2 years of the filing of writ petition No.26916 of 2009 and passing of the interim order therein on 26.5.2009. He submits that the order was passed in violation of principles of natural justice without giving any opportunity of hearing to the petitioner Dharam Prakash Verma. He further contends that an Authorized Controller was appointed, who was entitled to manage the institution, and the fresh elections have to be held as per the directions of the Basic Shiksha Adhikari. In such circumstances, the claim of Ram Pal Sharma to manage the institution in terms of the order of the Special Appellate Bench and the interim order dated 26.5.2009 is unjustified.

19. Having heard learned counsel for the parties and having perused the records so far as the claim of Dharam Pal Verma is concerned, the same has now been put to rest by the order of the Prescribed Authority dated 24.3.2009. Sri Dharam Pal Sharma has not assailed the said order. Even otherwise the previous order passed by the Prescribed Authority was challenged by him in Writ Petition No.2730 of 2008 which was dismissed on 16.1.2008. Sri Dharam Pal Verma did not file any Special Appeal challenging the same and, therefore, the said judgment also adds to the disadvantage of the petitioner Dharam Prakash Verma. In the aforesaid circumstances, he has no locus now to maintain any claim with regard to either the Management of the institution or his own claim for managing the institution.

20. Coming to the claim of the petitioner Ram Pal Sharma, the judgment of the special appellate Bench dated 8.7.2008 clearly went in his favour with a direction to the Prescribed Authority to decide the matter. The Prescribed Authority vide order dated 24.3.2009 has found that the elections of Ram Pal Sharma held in February 2006 were valid. In such circumstances, the claim of petitioner Ram Pal

Sharma having been found to be genuine and valid cannot be now disputed for the reasons given in the order itself.

21. The only dispute now remains with regard to the direction issued by the Prescribed Authority in the order dated 24.3.2009 and the status of the order of Basic Shiksha Adhikari dated 15.4.2009. Needless to mention that Basic Shiksha Adhikari has passed the order on 15.4.2009 only on the strength of the order dated 24.3.2009 passed by the Prescribed Authority. Accordingly, I am of the opinion that in the event the order dated 24.3.2009 insofar as it directs for holding of fresh elections is unsustainable, then the order of the Basic Shiksha Adhikari also cannot be sustained.

22. I have perused the provisions of the Societies Registration Act and have not been able to find out any such provision which may authorize the Prescribed Authority to issue any direction to the District Basic Education Officer for appointing an authorized controller or holding of fresh elections. The only power vested in the Prescribed Authority under Section 25 of the Act is to decide the claim of election and if it is found that the elections are invalid or otherwise the tenure has come to an end, then the Assistant Registrar, Firms, Societies & Chits, under the aforesaid Act can hold an election. In my opinion, the Prescribed Authority, therefore, travelled beyond his authority in issuing a direction to the District Basic Education Officer for that purpose.

23. Apart from this, the reference before the Prescribed Authority was limited and only to the extent of the elections of 2006. It was not a dispute with regard to the elections of 2009 or any inquiry in relation thereto. The observation made by the Prescribed Authority about the term having come to end without calling upon the petitioner to explain the holding of any future election was, therefore, an exercise of futility and beyond the jurisdiction of the SubDivisional Magistrate while acting as Prescribed Authority under the Societies Registration Act, 1860. In the absence of any reference about the dispute of 2009, the Prescribed Authority could not have recorded any conclusion about the tenure having come to an end on the premise that no future election has been held. The assumption that the term had come to an end, fell short of recording any fact of the elections dated 15.3.2009. The holding of any future elections was dependent not only on the end of earlier tenure but only if no future elections had been held. This was lost sight of by the Prescribed Authority.

24. Apart from this, paragraph no.24 of the counteraffidavit categorically records that paragraph Nos. 44 and 45 of the writ petition are admitted. It is relevant to mention that paragraph Nos. 40 to 45 of the writ petition categorically indicate holding of fresh elections. Paragraph No.23 of the counteraffidavit does not dispute the aforesaid paragraph of the writ petition. In such circumstances, the contention raised on behalf of the learned Standing Counsel or by Sri Deepak Jaiswal on behalf of Respondent no.7 Dharam Prakash Verma cannot be accepted. So long as the elections dated 15.3.2009 have not been discarded or derecognized or disputed, there was no occasion for the Prescribed Authority to

have issued a direction for holding fresh elections or appointing an Authorized Controller. Neither the learned Standing Counsel nor Sri Deepak Jaiswal have been able to point out any provision empowering the Prescribed Authority under the Societies Registration Act for appointing an authorized controller or calling upon the Basic Shiksha Adhikari to hold fresh elections. In the opinion of the Court, the order dated 24.3.2009 insofar as it issues the aforesaid directions cannot be sustained.

25. Accordingly, the writ petition No.26916 of 2009 is allowed and the order dated 24.3.2009 insofar as it directs the holding of fresh elections and appointment of authorized controller, is hereby quashed. As a consequence thereof the order of the Basic Shiksha Adhikari dated 15.4.2009 is also unsustainable.

26. So far as writ petition No.42292 of 2011 is concerned, it has already been held that Dharam Prakash Verma has now no locus to maintain the said writ petition and even otherwise the order passed for attesting the signature of Ram Pal Sharma was in conformity with the interim order passed by this Court in Writ Petition No.26916 of 2009. The question of violation of principles of natural justice, therefore, did not arise at all as such the said petition is dismissed.