
(2014) 08 AHC CK 0086

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 39549 of 2014

Committee of Management, Sarvodaya Inter College

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Citation : (2014) 7 ADJ 245 : (2014) 6 ALJ 98 : (2015) 1 AWC 279 : (2014) 4 ESC 2081 : (2014) 3 UPLBEC 2560

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : P.K. Upadhyay, Advocate for the Appellant; R. Pundir and Shyam Sundar, Advocate for the Respondent

Final Decision : Allowed

Judgement

Manoj Misra, J.—Heard Sri G.K. Singh, learned Senior Counsel, assisted by Sri P.K. Upadhyay, for the petitioners; learned Standing Counsel for the respondents Nos. 1, 2, 3 and 5; and Sri P.C. Pathak for the respondent No. 6. In view of the nature of the order that is being passed as also the grounds on which it is being passed, the learned counsel for the respondents do not pray for time to file counter-affidavit and have agreed for disposal of the writ petition at this stage itself.

2. The dispute in the present case relates to the management of Sarvodaya Inter College, Vaina, District Aligarh (hereinafter referred to as the institution), which is a recognized institution governed by the provisions of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the Act, 1921) as also the U.P. Act No. 24 of 1971 (hereinafter referred to as the Act, 1971). The last election of the Committee of Management which was held on 12.10.2008 was finally accorded recognition, after several rounds of litigation, by the Regional Level Committee, vide order dated 21.2.2011, in which, the petitioner No. 2 was elected as a Manager. The order dated 21.2.2011 was challenged in Writ C No. 12459 of 2011 wherein an interim order dated 8.3.2011 was passed staying the

operation of the order dated 21.2.2011. It is the case of the petitioners that the interim order dated 8.3.2011 was for a limited period and was not extended, yet, illegally, the Joint Director appointed a Prabandh Sanchalak, vide order dated 4.4.2012, which was subject to interim order dated 8.3.2011 which was extended only up to 25.7.2011. The case of the petitioners is that they represented for removal of the Prabandh Sanchalak and a report was given by the District Inspector of Schools, however, on 24.9.2013, the Regional Level Committee directed for holding of elections by the Prabandh Sanchalak, which was challenged by the petitioners through Writ C No. 55168 of 2013 in which an interim order was passed on 8.10.2013 staying the operation of the order dated 24.9.2013. It is the case of the petitioners that thereafter they made a request to the District Inspector of Schools for appointing an Observer to hold the elections as the term of the Committee was to come to an end upon which, as also on the request of the Election Officer appointed by the Committee, the District Inspector of Schools appointed an Observer vide order dated 27.3.2014 and the elections were held on 30.3.2014. It is the case of the petitioners that the election papers were forwarded to the District Inspector of Schools who, vide order dated 19.4.2014, attested the signature of the petitioner No. 2, who was elected as the Manager. Thereafter the petitioners moved application for removal of the Prabandh Sanchalak and, when no orders were passed, Writ C No. 26394 of 2014 was filed for direction to remove the Prabandh Sanchalak, which was disposed vide order dated 12.5.2014 with direction to the Joint Director to decide the representation and pass appropriate order. Pursuant to the above direction, the Joint Director, by the impugned order dated 10.7.2014, declared the election dated 30.3.2014 as invalid being against the provisions of the scheme of administration and directed for holding of fresh elections through the District Inspector of Schools and under the supervision of the administration.

3. The Joint Director of Education declared the election, set up by the petitioners, invalid on the grounds: (a) that there was no proper notice to the members of the General Body inasmuch as under the scheme of administration if there are more than 100 members in the General Body then notice of the election should not only be published in local newspaper but should also be sent to members by ordinary post under certificate of posting, which was not done in the instant case; (b) that the approved list of the members of the General body was not sent to the Joint Director of Education; (c) that before the publication of the election program in the newspaper permission was not obtained from the District Inspector of Schools; (d) that information of the election was not given to the Superintendent of Police and the District Magistrate; and (e) that election, according to the Scheme of Administration, was required to be held within the premises of the institution and, although, the record suggested so but, according to the affidavit of the Principal and 25 members, election was not held in the premises of the institution, which suggests that the election was not conducted in a fair manner.

4. Sri G.K. Singh appearing for the petitioners submitted that after elections

were already approved by the District Inspector of Schools and no parallel Committee of Management was set up by any rival claimant, the Joint Director could not have adjudicated on the validity of the elections set up by the petitioners. He further submitted that the irregularities, if any, on which the election held on 30/31 March 2014 has been declared invalid, are not such on which the result of the election could be said to have been materially affected. It has been submitted that according to the report of the post office since the year 2011, certificate of posting was not being issued, therefore, apart from publication in newspaper, agenda was circulated personally to the members who have signed in acknowledgment. Thus, there was substantial compliance of the provisions of the Scheme of Administration with regard to the proper publication of the election program and notice to the members of the General Body and, therefore, on the said ground the election could not have been declared invalid. Further, the affidavit of Principal and alleged 25 members denying holding of elections was nothing but false as the alleged members were close relative of rival group and so far as the Principal is concerned, a complaint was filed against him with regards to his qualification, therefore, he made false allegations. It has been submitted that the representation was made to the Joint Director of Education for removing the Prabandh Sanchalak and, therefore, the Joint Director of Education was only required to see whether the continuance of the Prabandh Sanchalak was legally justified in view of the fresh elections or not. It has been submitted that minor variation in the procedure cannot be a ground to declare the election invalid unless a finding is returned that there is substantial non compliance of the procedure thereby materially affecting the result. It has been submitted that every procedure is not mandatory unless it can be shown that non compliance of the same would materially affect the result. It has been submitted that the election procedure was substantially complied with, therefore, declaring the election as invalid for minor infractions was not legally justified.

5. Sri P.C. Pathak, who has put in appearance on behalf of respondent No. 6 submits that the respondent No. 6 had submitted a detailed objection before the Joint Director of Education, in which various grounds were taken to demonstrate that the elections set up on 30/31 March, 2014 were not valid and, therefore, the prayer of the petitioners for removal of the Prabandh Sanchalak was liable to be rejected. Sri Pathak further submitted that the last election of the Committee of Management was held on 12.10.2008. The term of the Committee of Management was five years and one month and therefore the term of the Committee, even if assumed to be a valid Committee, stood expired in the month of November, 2013, therefore, elections held in the month of March 2014 by the outgoing Committee, which had become defunct, were completely invalid, inasmuch as, elections could have been held only by a Prabandh Sanchalak. Sri Pathak further submitted that from the records, it is clearly established that the Prabandh Sanchalak was managing the affairs of the institution on the date on which the elections were held, therefore, such elections could not have been held by the outgoing committee.

6. At this stage, it would be useful to observe that under the scheme of administration, the term of the Committee of Management is five years with a grace period of one month. Clause 10(a) of the Scheme of Administration, provides that on expiry of five years, the officer bearers of the out going Committee would continue for further period of one month and if, within the said period, fresh elections are not held then the Committee of Management would become defunct and the Regional Joint Director of Education would appoint a Prabandh Sanchalak for managing the affairs of the institution and to hold the elections.

7. Sri G.K. Singh, appearing for the petitioners, submitted that even though the election of the last out going committee was held on 12.10.2008, but since the Committee was accorded recognition on 31.3.2009, the term of the Committee would commence from that date and, therefore, the term would extend up to April 2014. He further submits that the commencement of the term of the Committee is to be reckoned from the date it takes over charge. In support of his submission, he placed reliance upon a division bench decision of this Court in case of Committee of Management, Jangali Baba Intermediate College Garwar, District Ballia and another v. Deputy Director of Education Vth Region, Varanasi and others, (1991) 2 UPLBEC 1183, where, in paragraph Nos. 5 and 6, it has been observed as follows:

"5. In case where the petitioners' Committee of Management, even if duly elected, is not made to take charge of the office even for a single day in view of the stay order passed by this Court, then the period of three years and one month would not start from the date of such election. There was some controversy regarding taking over charge by the elected Committee of Management and it has been argued on behalf of the respondents including the learned Standing Counsel that the attestation of signatures is not the starting point as the date of functioning of the Committee of Management. Attestation is only for the purpose of distribution of salary under the Payment of Salary Act. It is true that the functioning of the Committee of Management is varied and is not confined merely for the purposes of distribution of the salary and thus the attestation of the signatures by the District Inspector of Schools could not be the starting point of the life of the Committee of Management. It may be in a given case from the date of the election's results are declared as urged by the respondents. However, in case the election took place earlier than the prescribed period of the earlier Committee of Management coming to an end. In such cases it cannot be said that the period started from the date of election. Question, therefore, would be as to what would be the date which can be said that the period of the Management Committee starts. We find that there is nothing in the Act, Rules or under the Scheme of Administration. However, we feel after perusing the Scheme of Administrations, the various provisions of the Act and the Rules that its period would start running either from the date of election validly held where the period of earlier Committee of Management has already come to an end prior to this date and there being no dispute or from the date the

elected Committee of Management takes over the charge of the Management.

6. The purpose of prescribing period of three years is that elected Committee of Management to function. If for some reasons even after election, the newly elected Committee of Management is not made to take charge from the earlier Committee of Management or from the Prabandh Sanchalak the period of that Committee of Management would not start. However, the day such elected Committee of Management takes over charge and or starts functioning as such, then the period of three years starts running. By looking to the relevant clause of the Scheme of Administration we feel thereafter the period of three years is fixed and in no case extended even if intermittently such Committee of Management is not able to discharge its function on account of infighting litigation between the parties, or on account of stay order passed by this Court. It is thus necessary for the authority to come to the conclusion, in case of such dispute, of the date from which the elected Committee of Management has taken charge or started to function as such. In the present case the dispute raised by the petitioners is that even after the election on 7th July, 1985 on account of stay order of this Court as aforesaid it could neither take charge nor start functioning, thus the period of three years could not be from the date of election and thus the impugned order holding its period having come to an end is legally not justified."

8. In reply to the above submission, the learned counsel for the respondents submitted that the term of the Committee of Management would commence from the date of election as the order of recognition is only for the purpose of payment of salary under the Payment of Salaries Act whereas functioning of the Committee commences from the date of its elections.

9. Having considered the rival submissions of both the parties at length, this Court finds that the grounds (a) to (d) as noted in paragraph 4, herein above, on which the Joint Director of Education has declared the elections of the petitioners' Committee of Management as invalid, are essentially minor infraction of the prescribed procedure or may be minor variation from the prescribed procedure, therefore, before taking them as a ground to declare the election as invalid, it should first be seen whether the procedure, which was violated, was mandatory or directory. In *Thakur Pratap Singh Vs. Shri Krishna Gupta and Others*, it was observed by the Apex Court that it is the substance that counts and must take precedence over mere form. It was observed that some rules are vital and go to the root of the matter and, therefore, those rules cannot be broken; whereas others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as whole and no prejudice ensues. In *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, it was observed that whether a provision is directory or mandatory, it is useful to see first the purpose for which the provision has been made. Therefore, in the instant case, whether the provisions, the infraction of which has been noticed, were mandatory or directory requires consideration first, and, if found directory, whether there has been substantial compliance thereof or

not. However, this aspect has not been considered at all by the Joint Director of Education while passing the impugned order. So far as the ground No. (e) is concerned that relates to the merit of the allegations, therefore, before taking the said ground to declare the election as invalid, the explanation, if any, of the other side should also have been considered. However, the impugned order does not discuss the explanation, if any, given from the petitioners' side with regards to the correctness or otherwise of the statement made in the affidavits denying the elections. More importantly, the contention of the learned counsel for the respondent No. 6 that the outgoing committee had become time barred/defunct on the date of election and, therefore, was incompetent to hold elections, being a very important aspect requiring consideration, has not at all been considered by the Joint Director while considering the validity of the elections. Ordinarily, while deciding whether an election was validly held or not, certain issues are fundamental, which require determination, these are: (i) who was competent to hold the elections; (b) whether the elections have been held from valid members of the General Body; and (c) whether the elections have been held in accordance with the scheme of administration, etc. or not. As various vital aspects as noticed above, have not been considered while passing the impugned order, this Court is of the view that the matter requires reconsideration.

10. At this stage, learned counsel for the parties are in agreement that since the validity of the election is in question, therefore, the matter may be re-examined at the level of the Regional Level Committee, which is authorized under the Government Order dated 19.12.2000.

11. In view of the discussion made above, the order dated 10.7.2014 passed by the Joint Director of Education Aligarh, is hereby set aside. The Joint Director of Education will forward the papers to the Regional Level Committee for consideration and decision. The Regional Level Committee will consider the case of both the parties and will decide the matter in accordance with law and in the light of the observations made herein above, preferably, within a period of two months from the date of production of a certified copy of this order, after giving opportunity of hearing to the parties. The writ petition stands allowed to the extent indicated above.