

(2000) 01 AHC CK 0117
In the Allahabad High Court
Case No : Civil Writ Petition No. 2621 of 2000

Dina Nath Misra and Ors.

APPELLANT

Vs

District Magistrate, Chandauli Authorised
Controller, Sakaldeepa Degree College, Chandauli & Anr.

RESPONDENT

Date of Decision : 21-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh State Universities Act, 1973 — Section 2(13)

Citation : (2000) 01 AHC CK 0117

Hon'ble Judges : D.K.Seth, J

Final Decision : Disposed Of

Judgement

D. K. Seth, J.—Mr. D.S. M. Tripathi, learned counsel for the petitioners submits that the notice for holding election in terms of the judgment and order dated 8th February, 1999 in CMWP No. 12008 of 1997 was published in the newspaper on 13th January, 2000. It appears from the said notice that the date of publication of the members list was 12th January, 2000. According to him, the notice having been published on 13th January, 2000, there cannot be any publication of members list on 10th January, 2000. He further contends that objections were invited to the members list within 17th January, 2000 and the objections were to be determined on 18th January, 2000. According to him, from 14th January, 2000 to 16th January, 2000 being holidays the petitioners could not effectively object to the members list. Therefore, the election cannot be held since in the absence of any copy of the members' list, it was not possible for the petitioners to raise proper objections. At the same time, the petitioners are not being permitted to participate in the election on the ground that they are not members. However, Mr. D.S.M. Tripathi has not answered the question as to whether the petitioners have filed their objection or not. There is nothing in the writ petition that the petitioners had objected to the members' list. Mr. Tripathi contends that he had prepared the writ petition on 16th January, 2000 therefore, there is no scope for mentioning the said fact. In the amendment filed today Mr. Tripathi

contends that he has pointed out that the petitioners had applied for supplying the members' list but that has not been supplied. On these grounds, he prays that the election should be postponed and be held after giving opportunity to the petitioners to file their objections and after deciding the same.

2. Mr. VK. Shukla, learned counsel for the respondents on the other points out from copies of certain papers that at least two petitioners namely. Shri Binod Pandey and Shri Dina Nath Misra had filed their objections. He had submitted a copy of the objection filed by Shri Binod Pandey on 13th January, 2000 which is being contended by Mr. Tripathi to have been filed on 17th January, 2000. He also filed two orders by which the objection of Shri Dina Nath Misra and Mr. Binod Pandey has since been rejected. Mr. Shukla contends that all the petitioners had filed their objection which has since been decided by the authority concerned. But he could obtain only two orders out of the four orders passed. Apparently on the face of the material which was permitted to be produced by Mr. Shukla, it appears that the objection was filed at least on 17th January, 2000 if not on 13th January, 2000 and that there are two orders refusing two such objections. In the amendment application, the petitioner has not categorically disclosed the said fact. There may be some substance in the contention of Mr. Tripathi to the extent that the members' list was not published but the fact remains that the members' list was published in the notice board on 10th January, 2000 though the notice was issued in the newspaper on 13th January, 2000. On these grounds Mr. Shukla contends that the writ petition cannot be maintained since necessary facts have not been disclosed and that objections were filed and considered.

3. I have heard both the learned counsel at length.

4. Apparently, it appears that certain objections were filed and were disposed of. Whether there is any truth or genuineness in the filing of the objection and the disposal thereof or not is a question which cannot be gone into at this stage by this Court since the election is scheduled to be held on 29th January, 2000. Since the election process has started, I do not think that it would be wise to interfere with the said process at this stage particularly, when Mr. Shukla had pointed out that objections were filed and considered. In that view of the matter without entering into the merits of the case, I feel that I should not decide any question relating to the merit of the respective cases. Whether objections were really filed or not, whether these were decided or not, such question shall remain open for fresh decision at appropriate stage. However, at the moment this writ petition is disposed of with the observation that the election as scheduled be held in accordance with law. The result may also be published but the petitioners shall be at liberty to file their objection before the ViceChancellor within three days after the declaration of the result of the election. The ViceChancellor shall recognize or approve the result of the election under Section 2(13) of the U.P. State Universities Act only after disposing of such objections giving opportunity to both the parties. The question of grant of approval to the result of the election by the ViceChancellor shall be subject to decision of the ViceChanceDor on such

objection. The decision of the ViceChancellor may also be communicated to both the parties within three days from the dateof his decision.

5. With these observations, this writ petition is disposed of. However, there will be no order as to costs.

6. Let it be noted that I have not entered into the merit of the case and none of the observation made in this order shall influence to the ViceChancellor while deciding the objection raised by the petitioners.

7. Since I have not entered into the merit of the case, it will be open to the petitioners to challenge the election on all grounds including the grounds which have been taken in this writ petition at appropriate stage if they are so advised. It is also expected that the ViceChancellor shall take his decision on the question of objection as above within a period of two weeks.

8. Let a certified copy of this order be given to the counsel for both the parties within 48 hours on payment of usual charges.