

(2011) 02 AHC CK 0293

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 67556 of 2009

Dr. Ramesh Chandra Rai and Others

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Societies Registration Act, 1860 — Section 25, 25(2)

Citation : (2011) 3 ADJ 694

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

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—This dispute relates to the validity of elections of the Committee of Management of Bapu Inter College, Siyarahi, Mau, stated to have been held on 27.9.2009 which also involves the dispute relating to the electoral College entitled to elect the said Committee who are none other than the Members of the General Body of Shiksha Prasar Samiti, Siyarahi, Mau, the parent Society registered under the Societies Registration Act, 1860.

2. The orders under challenge in this writ petition are dated 25.8.2009 passed by District Inspector of Schools finalizing the electoral College and declaring the list of Members entitled to participate in the elections and the order dated 26.9.2009 whereby the District Inspector of Schools has recognized the said elections and attested the signatures of Respondent No. 4 as Manager of the institution. The writ petition was entertained and an interim order was passed on 14.12.2009 staying the operation of the order dated 26.9.2009.

3. The Respondents have put in appearance and two counter-affidavits have been filed; one on behalf of Respondent Nos. 1 to 3 by the learned Standing Counsel and the other on behalf of Respondent Nos. 4 and 5 through Sri S.P. Pandey, Advocate. The matter has been heard with the consent of the parties, who have requested that the petition be disposed of finally at this stage of

admission itself.

4. The background in which this dispute arose is that the grand father of the Petitioner No. 1 is stated to have established the institution and his father Dr. Jai Chandra Rai was functioning as Manager. The signature of Dr. Jai Chandra Rai were attested by the District Inspector of Schools in the year 1990 and the tenure of the Committee of Management of the institution being 3 years, an election was set up in December 1993 in which Dr. Jai Chandra Rai claimed himself to have been elected as the Manager. The documents pertaining to the said elections are stated to have been forwarded to the District Inspector of Schools who passed an order on 25.3.1994 recognizing the said elections of Dr. J.C. Rai.

5. Simultaneously, there appears to have been some proceedings relating to renewal of the parent Society before the Assistant Registrar, Firms, and Societies and Chits. The renewal Certificate is claimed to have been obtained by Respondent - Upend Rai for a period 10.10.1990 to 10.10.1995. This renewal and claim of Upend Rai to be an office-bearer of the Society came to be objected to by Late Jai Chandra Rai through a representation dated 2.6.1994 before the Assistant Registrar, Firms, and Societies & Chits. The Assistant Registrar vide letter dated 31.8.1994 forwarded the said claim to be decided by the Prescribed Authority u/s 25 of the 1860 Act as Upend Rai also set up an alleged claim of elections dated 8.8.1993 as stated in his Affidavit dated 18.12.2002. The contention of Late Jai Chandra Rai was that this was a fraudulent claim by Upend Rai having been set up and the renewal which was obtained by him is not on the basis of any validly elected Committee of Management and hence the same deserves to be rejected. These facts have been referred to in the order of Prescribed Authority dated 21.2.2003 which shall be dealt with later on in this judgment.

6. Dr. Jai Chandra Rai un-disputedly continued to function as Manager of the College. Aggrieved by his elections as the Manager of the College, Upend Rai instituted Original Suit No. 258 of 1994 before the Civil Court at Azamgarh. A prayer for an ad interim injunction was made. During the pendency of the application, an amendment application was filed in the Suit praying for declaring the elections set up by Dr. Jai Chandra Rai dated 12.12.1993 and also to declare the order passed by the District Inspector of Schools dated 25.3.1994 a nullity. The trial Court vide order dated 19.5.1998 rejected the application for interim injunction and allowed the application for amendment. The District Inspector of Schools was Defendant No. 1 in the said Suit, who filed an application stating therein that Dr. Jai Chandra Rai had effective control over the institution and that the Respondent - Upend Rai, who was the Plaintiff in the Suit, never had any effective control nor does he have any right to claim management over the institution. In paragraph No. 5 of the said application of the District Inspector of Schools, it was also mentioned that the name of Upend Rai does not find place in the list of the General Body as submitted by Dr. Jai Chandra Rai. Aggrieved by

the order of the trial court, Upend Rai preferred an appeal before the learned Addl. District Judge, Mau, being Appeal No. 78 of 1998 in which an application was moved on 10.3.2003 praying that the appeal be dismissed as the Appellant has preferred to withdraw the Original Suit itself. It has been conceded at the Bar on instructions by Sri S.P. Pandey that the Suit has been dismissed as withdrawn.

7. The litigation and the dispute between the parties took a turn with the death of Dr. Jai Chandra Rai on 13.10.2002. The Petitioner - Ramesh Chandra Rai claims to have stepped into the shoes of Dr. Jai Chandra Rai as Manager. The Prescribed Authority, before whom the reference was pending in relation to the complaint of Late Dr. Jai Chandra Rai moved on 2.6.1994, proceeded with the same where Upend Rai filed an Affidavit and set up a claim that fresh elections had been held on 8.12.2002 relating to the parent Society and the Committee was accordingly constituted hence the dispute so referred by the Assistant Registrar in 1994 should accordingly be decided.

8. The Deputy District Magistrate proceeded ex-parte without issuing notice to Dr. Ramesh Chandra Rai, the present Petitioner, inasmuch as by that time Dr. Jai Chandra Rai was already dead. It is also to be noted that one Ram Awadh Mishra, who is stated to have been the Secretary of the Society had also died on 2.12.2001. The Prescribed Authority passed an order on 21.2.2009 holding that Upend Rai has been shown to be the elected Manager in the list dated 8.8.1993 and that the contention raised in the objection of Dr. Jai Chandra Rai that he is not even a Member of the General Body cannot be accepted. He further held that the power to enrol a member vests with the Secretary of the Society and further the election set up by Dr. Jai Chandra Rai could not be accepted as it appears to have been manipulated with the connivance of the then Principal Ramdhari Yadav, who has inducted members of his community. The Prescribed Authority also commented that the then Principal Ramdhari Yadav had an evil eye on the society as he intended to become Manager in future. However, while concluding he held that no-one has turned up on behalf of Dr. Jai Chandra Rai and, therefore, keeping in view the Affidavit filed by Upend Rai on 18.12.2002 and believing the contents thereof to be true as they remained un-rebutted, the claim of Upend Rai was accepted and he was declared to be the validly elected Manager of the Society. The District Inspector of Schools proceeded to finalize the electoral College for the purpose of holding of the elections of the Committee of Management of the institution on the strength of order of the Prescribed Authority.

9. Aggrieved by these two orders of the Prescribed Authority and the consequential order of the District Inspector of Schools, the Petitioner filed Writ Petition No. 49768 of 2003.

10. The writ petition was finally heard and allowed vide judgment dated 8.2.2008. The aforesaid judgment proceeds on the admission of the parties that the General Body of the Society and the General Body of the institution are one and the same and keeping in view the fact that the order of the Prescribed

Authority dated 21.2.2003 was in violation of principles of natural justice and ex-parte, the same was set aside. The Court also came to the conclusion that the Prescribed Authority did not adjudicate the issue of validity of membership and that the elections can be held only through the valid members under the bye-laws of the Society. It was also held that the Prescribed Authority assumed a jurisdiction with regard to the elections of 8.12.2002 set up by the Respondent - Upend Rai which had not even been referred to him nor there was any contest made known to Dr. Jai Chandra Rai about any such elections. It is to be noted that Dr. Jai Chandra Rai had died on 12.10.2002 and Upend Rai on 8.12.2002 set up new election after his death which was adjudicated upon and held to be valid by the Prescribed Authority behind the back of the Petitioner and without any notice to him. It was also held that the election held in the year 1993 could not have been decided as it was virtually infructuous. Consequently, the Court quashed the order on all the aforesaid counts.

11. In order to resolve the dispute, the Court further went on to issue directions for determination of the electoral College and for that the Court directed the District Inspector of Schools to decide the same after calling for the relevant records from the office of the Assistant Registrar, Firms, Societies and Chits, Azamgarh, and taking his assistance. A further direction was issued to the Assistant Registrar to hold elections simultaneously in terms of Sub-section (2) of Section 25 of the Societies Registration Act upon determination of the electoral College. This judgment of the learned single Judge was accepted by the parties and became final.

12. It is thereafter that the proceedings have been undertaken by the District Inspector of Schools who has passed the order dated 25.8.2009 determining the electoral College and holding that the list of the Members of the General Body has been finalized virtually accepting the claim of Upend Rai and his list as the valid electoral College on the basis whereof election should be held. The claim of the Petitioner was rejected holding that the list of Members of General Body as contended by the Petitioner was un-acceptable for the reasons given therein and got the elections held in which Upend Rai was elected as Manager that was accordingly recognized by the District Inspector of Schools.

13. Sri Anup Trivedi, learned Counsel for the Petitioner, submits that the order of the District Inspector of Schools is in violation of principles of natural justice inasmuch as the direction of this Court was to take the assistance of the records from the office of the Assistant Registrar, Firms, Societies & Chits, Azamgarh, about which the Petitioner moved several applications. The District Inspector of Schools ultimately informed the Petitioner vide letter dated 15.6.2009 that the office of the District Inspector of Schools does not have any original records. He further directed that in view of the directions of the High Court, since several dates had been fixed for disposing of the matter, it would be appropriate that the Petitioner supplies all available secondary documentary evidence forthwith without any delay so that the matter may be disposed of finally. Sri Trivedi

contends that the aforesaid letter, therefore, clearly establishes that there were no records available and the District Inspector of Schools was dependant upon the documents that were supplied by the Petitioner and by the contesting party.

14. He submits that the impugned order takes notice of certain records which are alleged to have been obtained from the office of the Assistant Registrar from 1977 to 1991 and the said records have been made the foundation for recording a finding in favour of the membership of Upend Rai and rejecting the claim of the Petitioner. It is submitted that this approach of the District Inspector of Schools without putting the Petitioner to notice about any such records having been obtained by him and reliance being placed by him violates the principles of natural justice as the Petitioner had never been given any opportunity to rebut any such document. Sri Trivedi submits that once the District Inspector of Schools himself had informed that there were no records available, he should at least have informed the Petitioner that some of the records have been made available by the office of the Assistant Registrar as claimed by him so that the Petitioner could avail his opportunity and submit his reply. This opportunity having been denied, the impugned order is vitiated.

15. The second contention raised by Sri Trivedi is that so far as the claim of Upend Rai is concerned, he had already burnt his boats by withdrawing the Suit being Original Suit No. 258 of 1994 where the District Inspector of Schools had filed an application indicating that Upend Rai was not shown to be a Member of the General Body in the list available before the District Inspector of Schools. He, therefore, contends that the District Inspector of Schools once having taken a stand in the aforesaid Suit, which was dismissed as withdrawn, the same authority could not have taken a stand contrary to the same. The District Inspector of Schools has, therefore, committed an error by ignoring the aforesaid aspect of the matter and, therefore, also the order dated 25.8.2009 is vitiated.

16. The third contention of Sri Anup Trivedi is that the presumption in relation to the membership as claimed by Upend Rai on the strength of enrolment through Ram Awadh Mishra is erroneous for which Sri Trivedi invites the attention of the Court to paragraph No. 59 of the writ petition where a categorical averment has been made that Ram Awadh Mishra had no authority to enrol Members as the Secretary of the Society as there was no such power available to him and even other wise he had been ousted from the post of Secretary. It is, therefore, contended that the finding recorded by the District Inspector of Schools that the Secretary had the authority to enrol members under bye-law No. 17 (Sa) is wrong. He contends that the aforesaid provision of the bye-law nowhere authorises the Secretary to enroll members and hence the impugned order is vitiated as the findings rests on a non-existent provision. The District Inspector of Schools according to Sri Trivedi has misread the aforesaid provision of the bye-laws.

17. The fourth submission of Sri Trivedi is that the Petitioner had been enrolled in the year 1974 as a Member of the General Body. This enrolment was clearly

pleaded and documents in support thereof were brought on record but the District Inspector of Schools has completely failed to record a finding on the said issue. He contends that relying on the alleged files of the office of the Assistant Registrar, the District Inspector of Schools has wrongly concluded that the Petitioner was not a Member of the General Body whereas the documents filed by the Petitioner clearly demonstrated to the contrary.

18. Lastly, Sri Trivedi submits that the enrolment made by the Petitioner's father of the members was validly done and receipts were issued inasmuch as Late Dr. Jai Chandra Rai continued to be in effective control which has also been found as a matter of fact dated 8.2.2008. In such a situation, the enrolment of members by Late Dr. Jai Chandra Rai should be accepted and the District Inspector of Schools has committed an error by rejecting the same.

19. Replying to the aforesaid submission, Sri S.P. Pandey, learned Counsel for Respondent Nos. 4 and 5, submits that Upend Rai was already a member and was even an office-bearer of the Society. These facts are clearly reflected in the documents that have been obtained from the office of the Deputy Registrar and relied on by the District Inspector of Schools. He submits that there is no reason to disbelieve the same as no record to the contrary was produced by the Petitioner. On the other hand, it is also submitted that the name of the Petitioner does not find place in any of the records and, therefore, he was not a member of the General Body. It is submitted that the Petitioner came into existence only after the death of his father and prior to that he was nowhere concerned either with the Society or the Management of the institution. The records relating to 1974 are all manipulated and, therefore, the claim of membership of the Petitioner is without any basis.

20. Sri Pandey submits that those members, who have been enrolled by the Petitioner's father Dr. Jai Chandra Rai belong to one community and are related to the then Principal of the institution and such membership was set up only with a view to keep a hold on the Society as an exclusive affair of the family of the Petitioner. It is contended that such enrolment is neither envisaged under the Scheme of Administration or under the bye-laws and Dr. Jai Chandra Rai had no authority to enrol any such members. It is for this reason that the District Inspector of Schools rightly came to the conclusion that the membership as claimed through such methods is invalid and not only that 4 other members who had been stated to have been enrolled after 1993, have been rightly discarded. He, therefore, contends that the District Inspector of Schools adopted a correct approach of accepting such members who existed prior to the dispute in 1993-94. His contention, therefore, is that the electoral College so finalized by the District Inspector of Schools is in the interest of the Society and does not suffer from any legal infirmity. The claim set up by the Petitioner is full of manipulation and it does not establish his claim.

21. Sri Pandey submits that the direction of the High Court was complied with and the District Inspector of Schools upon perusing the records before him

including the files of office of the Assistant Registrar did not commit any violation of principles of natural justice as he was bound to do so under the direction of this Court. The contention is that the Petitioner's late father had himself removed all records and he was trying to frame a claim on the basis of a frivolous letter being sent to the District Inspector of Schools demanding original records. The contention is that there was no violation of the principles of natural justice.

22. It is the submission of Sri Pandey that the power to enrol members was with the Secretary, who had the power to receive the membership fee. This was the continuous customary practice of the Society and there is no specific procedure provided for enrolment of the members of the General Body either in the bye-laws of the Society or in the Scheme of Administration of the institution. He, therefore, contends that all such members, who had been enrolled prior to the dispute in 1993, had been enrolled in the same fashion and no such objection was ever taken to such enrolment. In such view of the matter, the finding of the District Inspector of Schools that the members enrolled through the then Secretary Ram Awadh Mishra was valid does not suffer from any infirmity.

23. Coming to the issue relating to the filing of the Suit by the answering Respondent, he submits that the said suit was confined only to the election of the Committee of Management of the College and the same had become infructuous by passage of time and even other wise there is no adjudication on merit in the said suit relating to the membership of the electoral College. It is urged that the judgment of the High Court dated 8.2.2008 supersedes the proceeding before the Civil Court and the District Inspector of Schools, therefore, had to decide the matter afresh. The contention is that there would be no adverse impact of the withdrawal of the Suit on the answering-Respondent.

24. Sri Pandey further contends that the answering-Respondent had obtained the renewal and, therefore, there was ample evidence to indicate that the answering Respondent was a member not only at the time of renewal between 1990-95 but even prior to that. Consequently, it is submitted that the decision of the District Inspector of Schools finalizing the electoral College does not suffer on any count and the consequential elections held are valid which does not call for any interference.

25. Sri Pandey further points out that the elections held on 17.6.2000 as claimed by the Petitioner's late father was found to be forged and manipulated in a report submitted by the Deputy Director of Education and hence any continuance on the basis of such document or effective control, would be erroneous.

26. Learned Standing Counsel, on the basis of the averments contained in the counter-affidavit sworn by Sant Lal on behalf of the State, submits that the order of the District Inspector of Schools is in strict compliance of the judgment of the High Court dated 8.2.2008 and the same raises disputed questions of facts that cannot be gone into in the exercise of writ jurisdiction. He further submits that

the finding recorded by the District Inspector of Schools did not suffer from any infirmity and that the claim of the Petitioner is founded on manipulation, hence the writ petition deserves to be dismissed.

27. Having heard learned Counsel for the parties and having perused the records, the first issue that has to be gone into is the impact of the withdrawal of the Suit by the Respondent - Upend Rai. From a perusal of the plaint a copy whereof has been filed and the amendment application, it is evident that the Suit has been framed assailing the elections and the consequential action of the District Inspector of Schools recognizing the same in which Dr. Jai Chandra Rai had been elected as Manager.

28. The impact of withdrawal of the Suit is well known inasmuch as under the provisions of the CPC Code, Order 23 prescribes the consequences of the withdrawal of a Suit. A suit having been withdrawn, the claim therein in relation to the relief prayed for stands abandoned. In the instant case, there is, however, an intervening factor that dilutes the impact of the aforesaid withdrawal of the Suit namely the decision of the High Court dated 8.2.2008. This judgment has been acquiesced to by the Petitioner as well as by the Respondents. The judgment of the High Court, therefore, leaves the question of membership to be determined afresh after having noticed the aforesaid litigation between the parties. Consequently, the withdrawal of the Suit would not amount to an abandonment of the claim of either of the parties in relation to the dispute of membership. The District Inspector of Schools, therefore, could not have commented upon this situation even though the injunction application filed by the Respondents in the Suit had been rejected and the appeal was also dismissed as withdrawn.

29. Coming to the prime submission of Sri Trivedi that the principles of natural justice have been violated by relying on the records of the office of the Assistant Registrar, needless to say that the said approach of the District Inspector of Schools to rely on the same cannot be said to be erroneous as otherwise the direction of this Court in the judgment dated 8.2.2008 would be violated. The District Inspector of Schools, however, fell into an error by not informing the Petitioner about the reliance being placed on such records after the District Inspector of Schools himself had intimated the Petitioner that there were no records available with him vide letter dated 15.6.2009. If the District Inspector of Schools was proceeding to rely on such documents that according to him favoured the Respondent - Upend Rai, then the Petitioner ought to have been informed about the same before proceeding to consider the documents available on the alleged files obtained from the office of the Assistant Registrar. The Petitioner was obviously not given any opportunity to rebut the said documents on which reliance was being placed. This approach of the District Inspector of Schools is in violation of principles of natural justice in view of the ratio of the decision of a Division Bench of this Court in the case of M/s Rayeen Fruit Company and 30 Ors. v. State of U.P. and Ors. 2000 Selected Allahabad Cases

V-2 Page 172. The order, therefore, is vitiated on this count. This was necessary as it was the consistent case of the Petitioner that the Respondent - Upend Rai is not a Member of the General Body whereas the case of the Respondent - Upend Rai was that he had obtained the renewal in the year 1993-94 as he was the office-bearer of the Society. The aforesaid contention required examination as the order of the Prescribed Authority accepting the claim of Respondent - Upend Rai had already been quashed by this Court on 8.2.2008 with the observations as noted herein above.

30. The third issue relating to claim of the Petitioner of his having been enrolled as Member in the year 1974 was clearly raised and documents had been filed by the Petitioner. No finding has been recorded by the District Inspector of Schools on the said documents. Sri Pandey submits that the name of the Petitioner does not find place in any of the documents filed before the Assistant Registrar. The said evidence relied on by the District Inspector of Schools was never put to notice to the Petitioner and the District Inspector of Schools did not proceed to assess these competing sets of evidence namely that of 1974 and the files alleged to have been received from the office of the Assistant Registrar. It is to be noticed that the claim of the Petitioner is that he was enrolled in 1974 whereas the files of the Assistant Registrar according to the impugned order related to the year 1977 to 1991. The District Inspector of Schools was, therefore, in error in ignoring the aforesaid aspect of the matter. The order, therefore, is vitiated on this count as well.

31. The fourth issue relating to the power of the Authority to enrol Members is also under a serious cloud. The bye-laws and the Scheme of Administration nowhere provide the procedure for the enrolment of Members. It is the admitted case of the parties that the Members of the General Body of both the Society and the Committee of Management are same. The contention of the Respondents that it was customary for the Secretary to have received the membership fee which amounts to acceptance of the membership is not supported by any provision of the bye-laws of the Society. At the best, the Secretary could have received the membership fee but such acceptance is not defined to be an automatic enrolment of the members in the bye-laws. The District Inspector of Schools has referred to bye-law No. 17 (Sa) but a perusal thereof does not spell out any such power conferred on the Secretary. The District Inspector of Schools has presumed and inferred that since the Secretary received the membership fee, therefore, he is the authority to enrol members. In the opinion of the Court, the right to freedom of association is available qua-acceptance by the consent of the majority of the members of the Society. Even otherwise it is the Committee of Management which is the Executive Body to take such a decision. In the absence of any specific power on the Secretary, it is either the Committee of Management or the General Body of the Society which can include within its fold any new member. Even assuming for the sake of averments that there was a custom for enrolment of members by deposit of fee through the Secretary, such custom ought to have been proved on the basis of material on the record. The

order of the District Inspector of Schools does not discuss any material or any such further evidence that may lead to the conclusion that the Secretary was authorized for such enrolment of Members. The order of the District Inspector of Schools, therefore, appears to be based on a misreading of the aforesaid provision of the bye-law.

32. Apart from this, the Petitioner had clearly contended that there were Members, who had been enrolled in 1974 along with him and who are alive including one Lalta Rai, who was enrolled on 30.5.1965 and they could have also been examined or could have informed about the Members of the General Body about which there is no finding in spite of a specific plea having been raised in the contention of the Petitioner. The aforesaid aspect has also not been examined by the District Inspector of Schools and, as such, the order is vitiated on this count as well.

33. There is yet another aspect of the matter. If certain Members, who have been enrolled and have been continuously participating in the proceedings without any demur or opposition than such Members, can be accepted to be the Members of the General Body provided the same is substantiated and corroborated by any further proof. The District Inspector of Schools instead of approaching the problem with this end in view has relied on material as suggested by the Respondent - Upend Rai without giving an opportunity to the Petitioner to rebut the same.

34. There is one aspect, however, that needs to be clarified that the Scheme of Administration does not indicate any power with the Manager of the institution to enrol Members. Sri Anup Trivedi could not point out any such provision in spite of a specific query by the Court in this regard. Accordingly, any enrolment by Late Jai Chandra Rai of persons claiming themselves to be the Members of Bapu Inter College cannot be accepted and the enrolment so made would be invalid. The finding of the District Inspector of Schools to that extent has to be upheld.

35. Accordingly, the writ petition is allowed to the aforesaid extent and the impugned order dated 25.8.2009 and the consequential order dated 26.9.2009 of the elections are set aside. The District Inspector of Schools shall proceed to decide the matter afresh after giving an opportunity of hearing to the Petitioner and the Respondent No. 4 or to any other concerned contesting party and pass a fresh order within 3 months from the date of production of a certified copy of this order before him. The District Inspector of Schools shall thereafter proceed to hold elections accordingly.