

(2010) 04 AHC CK 0190
In the Allahabad High Court
Case No : Special Appeal No.283 of 2010

Educational Sahyogi Association, Indaipur, Ambedkar Nagar and Another APPELLANT

Vs

Deputy Registrar, Firms, Societies and Chits, Faizabad and Others RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Allahabad High Court Rules, 1952 — Chapter 8, 5

Citation : (2010) 04 AHC CK 0190

Hon'ble Judges : Pradeep Kant, J and Shabihul Hasnain, J

Final Decision : Allowed

Judgement

1. Heard the learned counsel for the appellants Sri Prashant Chandra, Senior Advocate, assisted by Sri Ghaus Beg, Sri Anuj Kudesia for the State and Sri Manish Kumar for respondents 5 and 6.

2. This special appeal has been filed challenging the order of interim stay passed by the learned Single Judge dated 25.3.2010, by means of which, the operation of the order recognizing the elections and attestation of signatures of the Manager dated 13.1.2010 has been stayed and a further direction has been issued that the Authorized Controller shall continue to manage the affairs of the institution.

3. The ground for passing the aforesaid order by the learned Single Judge is that the earlier elections held by the present Committee of Management on 4.11.09 were not held under the supervision of the Authorized Controller and were also held on the basis of the list of members, which was disputed, were not recognized by the DIOS vide order dated 16.12.09, but later on, though the present elections are said to have been held by the Authorized Controller in pursuance of the order dated 31.12.09 passed by the DIOS, but the list of members still remained disputed and, therefore, the recognition could not have been granted.

4. On the locus standi of the private respondents, the learned Single Judge has observed that since the renewal certificate of the Society was issued in favour of one of the petitioners to the writ petition, therefore, they have locus standi to challenge the proceedings as well as the order passed.

5. Sri Manish Kumar has raised a preliminary objection, saying that the special appeal under Chapter VIII Rule 5 of the High Court Rules would not lie against the interlocutory order. He further submitted that the appellants have given a copy of the counter affidavit to the respondents only on 21.4.2010 alongwith the application for vacation of stay order and, therefore, filing of the special appeal immediately thereafter was not required and the same cannot be entertained.

6. On merits, it has been submitted by Sri Manish Kumar that there is a genuine dispute of membership and the list which has been taken as final by the Deputy Registrar dated 11.9.09, could not have been made the basis for election.

7. Sri Manish Kumar has drawn the attention of the Court to various litigations, which had taken place from the year 1999 relating to membership dispute, which is still pending in the High Court in an earlier petition and urged that the respondents being life members could not be ousted by exclusion of their names in the list of members and that the elections so held are invalid. Besides the earlier writ petition, there are various other suits and proceedings are pending in various Courts, relating to membership dispute.

8. Sri Prashant Chandra, learned Senior Advocate, in response, submitted that since this interim order has the effect of ousting the duly elected Committee of Management, which came into power after due recognition of their election by the DIOS and also nullifies the attestation of signatures of the Manager vide order dated 13.1.2010, it seriously affects the rights, which the duly elected Committee of Management is entitled to exercise, as it in effect means ouster of the duly elected Committee of Management, from office, that too without deciding the validity of such elections finally.

9. Submission is that curtailment of right of the Committee of Management can only be done by due process of law and that simply because a dispute of membership is pending since before, the elections cannot be said to be invalid, particularly when it is the specific case of the appellants that the present respondents were never inducted as life members and that the present election was held after issuing the tentative list of members, which list was finalized after giving opportunity to file objections. The elections so held on the basis of final membership cannot be interfered with on the ground that some dispute of membership is pending since before.

10. We find from the record and as has been argued by both the parties that the last undisputed elections of Committee of Management were held some times in the year 1996, whose term came to an end in the year 1999. Since the year 1999, the dispute is going on. The election lastly held on 4.11.09 was not recognized by the DIOS on the ground that it was not held under the supervision

of the Authorized Controller and the list of members on which the elections were held was disputed. However, the present elections held later, by the Authorized Controller, were recognized by the DIOS.

11. The persons who feel aggrieved by the fact that despite they being genuine members who should have been inducted in the list of members, but their names were not included even after giving opportunity and the elections were held, are free to challenge the elections on the same ground in the appropriate forum, but simply because dispute of membership was under challenge in an earlier writ petition where there is no interim order, it cannot be said that the Authorized Controller or the Deputy Registrar was having no authority to hold the elections. The power and authority to hold election is different than to question the validity of the election. The elections can be challenged by the aggrieved persons, by filing an election petition.

12. Even otherwise, if an election is said to be held in violation of any statutory rule or may be on the ground, that lawfully enrolled members were excluded from participating in the election or the voter list was wrongly prepared, the invalidity of such elections can be raised in the election petition and not in writ petition.

13. The Deputy Registrar, before directing for holding the elections, issued a tentative list of members, gave opportunity to file objections and after finalizing the list, held the elections. The dispute of membership thus, which was raised earlier and was pending in this Court, lost all significance.

14. At this juncture, we suggested to both the parties that since the election dispute is pending right from the year 1999, if they agree, then the writ petition itself may be decided in pursuance of the order passed in this special appeal giving liberty to the private respondents to raise a dispute of election before the appropriate forum, may be the prescribed authority under Section 25 of the Act, to which both the parties agree.

15. We also take notice of the relief claimed in the present writ petition by the private respondents. Relief no.1 is for quashing of the order recognizing the elections and attestation of signatures of the Manager dated 13.1.2010 and the relief no.2 is a prayer for restraining the present appellant no.2 from functioning as Manager of the Institution on the basis of the election held on 8.1.2010.

16. It is to be noticed that in the writ petition, no relief has been claimed challenging the election or for setting aside the election held on 8.1.2010. If the elections have not been challenged and no relief has been claimed for setting aside the same, the question of setting aside the order dated 13.1.2010 recognizing the elections and attestation of signatures of the Manager would not arise.

17. In the absence of any challenge to the elections, no prayer could have been made that the elected members may not be allowed to function as such. This is

also one of the reason because of which, we are of the view that these long pending disputes of election should not remain pending in the High Court.

18. We, therefore, set aside the order passed by the learned Single Judge dated 25.3.2010, impugned in the present appeal.

19. We further direct that the aggrieved persons including the private respondents may take recourse to the proceedings under Section 25 of the Act for challenging the present elections, if they so desire and if such proceedings are initiated, we expect that the same would be concluded expeditiously, say preferably within a period of four months from the date of receipt of such a reference, subject to cooperation of the parties. If the parties do not cooperate in getting the proceedings concluded, still it will be open to the concerned authority to take appropriate decision, in accordance with law.

20. In view of the above, the Writ Petition No. 1564 (MS) of 2010 itself is dismissed.

21. The two writ petitions, namely, Writ Petition No. 2659 (MS) of 2008 and 5732 (MS) of 2009, apart from the present Writ Petition No. 1564 (MS) of 2010, which raise the dispute of membership, as per the prayer made by the learned counsel for both the parties, are also dismissed.

22. Sri Manish Kumar has submitted that though the writ petitions which were pending regarding the membership dispute stand dismissed, in view of the present order, but there are three regular suits also pending in the civil court, therefore, they may also be directed to be dismissed as withdrawn.

23. Sri Prashant Chandra has no objection. He, however, says that he will obtain a formal order of withdrawal from the civil court.

24. We direct that necessary applications for withdrawal of the aforesaid suits be filed before the trial court forthwith and the suits shall be allowed to be withdrawn without any further delay.

25. The special appeal is allowed. No order as to costs.

26. We, however, clarify that we have not addressed ourselves on the validity of the elections or the dispute of membership and, therefore, any observation made by us in the present order, which may fall upon such dispute, would not be binding upon the authority concerned in the deciding the matter in accordance with law.

(Special appeal allowed)