
(2005) 04 AHC CK 0149

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 812 of 2004

Haji Nizamuddin and Ors.

APPELLANT

Vs

District Inspector of Schools, Bijnor & Ors.

RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Citation : (2005) 04 AHC CK 0149

Hon'ble Judges : Janardan Sahai, J

Final Decision : Dismissed

Judgement

Janardan Sahai, J.—The writ petition has been filed by 21 petitioners claiming to be life members of the general body of Hafiz Mohd. Ibrahim Inter College, Nehtaur, Bijnore an institution governed by the U.P. Intermediate Education Act. The petitioners have challenged the order of the District Inspector of Schools dated 212004 by which the District Inspector of Schools has held that the petitioners are not life members and their names cannot be included in the list of members of the general body. The petitioners' case is that they deposited life membership fee through bank draft which was accepted by the manager and that they were admitted to membership and a list containing the names of the petitioners as members was issued by the Manager on 2791995 and 581998 which was duly countersigned by the District Inspector of Schools and on that basis they participated in the earlier elections of the committee of management held on 2791995 and 581998 and their names are included in the list of members.

2. A counteraffidavit has been filed by the District Inspector of Schools and also by the respondent No. 4 the manager. According to the stand of respondent No. 4 while the election process was going on, on 1891991 some persons wanted to be enrolled as members and submitted their applications alongwith bank draft, which was kept by the Manager. No meeting of the general body or of the committee of management was ever held as the election process was already going on and there was no acceptance of their membership by the committee of

management or by the general body as such these persons never became members. According to the respondents the election of the committee of management held on 6101991 was not recognized and consequently an authorised Controller was appointed by the Joint Director of Education by his order dated 27121991 and these 23 persons were unauthorisedly enrolled by the authorised controller who was not competent to do so. Reliance is placed upon the order passed by the Civil Judge dated 2751992 in Civil Suit No. 231 of 1992 in which according to the respondent it was found that bank draft received by the Manager was not deposited in the bank. It is stated in the counteraffidavit that in the previous election held in the year 2000 these 23 members were not included in the list of members and did not participate in the elections held in 2000. A letter dated 11122000 was sent by the District Inspectors of Schools to the Prabandh Sanchalak for the purpose of elections that were to be held relying upon a list of 30 members which did not include the petitioners as members of the general body. The District Inspector of Schools in his impugned order dated 212004 has found that 23 persons which include the 21 petitioners were included in the list of members issued earlier by the District Inspector of Schools on 2791995 and 581998 on the basis of which elections were held in the previous years. It has also been found however that the petitioners' names were not included in the list of members on the basis of which the elections were held in the year 2000 and that the petitioners never participated in the elections held in the year 2000.

3. Apart from oral submissions, written arguments have been filed by the parties' Counsel. The contention of the petitioners is that the order of the District Inspector of Schools dated 212004 is without jurisdiction. It appears that fresh elections of the committee of management were scheduled to be held in 2004. The petitioner No. 1 submitted an application before the Joint Director of Education on 4122003 that their names be included in the list of members and they be permitted to participate in the elections. The District Inspector of Schools also gave a report to the Joint Director. The petitioners prayed that the matter be referred to the regional committee constituted under Government Order dated 19122000 but the Joint Director of Education instead directed the District Inspector of Schools to take a decision in the matter. According to respondent No. 4, who has filed writ petition No. 52580 of 2003 which was also heard alongwith the present petition the unamended scheme of administration contained in paragraph No. 7 a provision for appeal to the District Inspector of Schools if membership was refused to a person. Paragraph 7 of the scheme of administration has since been amended in 2003 and the amendment was approved by the Joint Director of Education by letter dated 2312003 and under the amended provision the right of appeal to the District Inspector of Schools has been deleted. The petitioners in the present writ petition No. 812 of 2004 have challenged the jurisdiction of the District Inspector of Schools to pass the impugned order but on a different ground viz., that the regional committee was competent to take a decision and not the District Inspector of Schools. It appears

that there is no provision in the scheme under which the District Inspector of Schools or the Joint Director could have taken a decision on the question of membership of the petitioners. It is only while deciding a dispute under Section 16A7 of the Intermediate Education Act or for the administrative purpose of grant of recognition to a committee of management that the validity of an election may have incidentally to be examined. While so examining the validity of an election the Joint Director or the Regional Committee may have to decide whether the persons who participated in the elections were members. The enquiry which the Joint Director or Regional Committee may make in such a situation is a summary one. The findings are subject to a decision in a Civil Suit in which alone the status of a person as a member can be finally determined. Although the Regional Committee or the Joint Director or the District Inspector of Schools has no right to decide the membership issue unless there is a provision in the scheme empowering them to do so or when the Regional Committee or Joint Director is examining the validity of an election as aforesaid, the petitioners themselves had applied to the Joint Director/Regional Committee of which he is the Chairman to include their names. The Joint Director had directed the District Inspectors to look into the matter. The District Inspector of Schools by his impugned letter has said that the petitioners name cannot be included in the list of members. The communication does not amount to determination of the rights of the petitioners. It only contains the reasons for declining in effect their prayer to permit them to participate in the elections. However, the fact whether the petitioners are life members of the general body or not is a highly disputed issue. The fact remains that the names of the petitioners were not included in the list of members on which the elections of the year 2000 were held. The issue whether the committee of management had enrolled the petitioners as members or it was the authorized controller who had done so and whether the authorised controller had any right to enrol any members are hotly contested questions some of them being of fact. The fact remains that in the list of general body members on the basis of which the elections were held in the year 2000, the names of the petitioners were not included and they were not permitted to participate in those elections. In the circumstances the petitioners' case that they were entitled to participate in the election cannot be accepted. Disputed issues of facts are involved which cannot appropriately be decided in the petition. Moreover elections have already been held in 2004. It is open to the petitioners to get their rights declared in a civil suit and to challenge the elections too. No relief can be granted to the petitioners by this Court. The writ petition No. 812 of 2004 is dismissed.