
(2009) 07 AHC CK 0204
In the Allahabad High Court

Ishwar Chand and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Societies Registration Act, 1860 — Section 4

Citation : (2009) 07 AHC CK 0204

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—When Special Appeal No. 695 of 2008 was decided on 22nd July, 2008 this Court was very hopeful, in view of the stand taken by the respective parties, that the long drawn litigation between the two parties with regard to the election of the Committee of Management of the Institution as well as the Office Bearers of the Society will come to an end but that has not come true.

2. On the basis of the elections held pursuant to the directions of the Court in the aforesaid Special Appeal, the District Inspector of Schools attested the signatures of the Manager of respondent No. 5-Committee of Management by the order dated 16th December, 2008 and the Deputy Registrar, Firms, Societies and Chits, Kanpur (hereinafter referred to as the ""Deputy Registrar") has registered the list of office bearers u/s 4 of the Societies Registration Act, 1860 (hereinafter referred to as the ""Act") by the order dated 25th April, 2009. The petitioners have approached this Court for quashing these two orders.

3. It is stated that the term of the Committee of Management of Sardar Patel Inter College, Kannauj (hereinafter referred to as the ""College") as well as that of the Society namely Sardar Patel Mahavidyalaya Society (hereinafter referred to as the ""Society") is three years and the last undisputed elections of the Committee of Management of the College were held on 24th June, 2001 and there is no dispute with regard to the membership of the General Body as

existing on 24th June, 2001.

4. However, in the year 2004 two parallel Committee of Managements were set up and a number of writ petitions were filed challenging the elections and the matter came to be finally decided by the Division Bench in Special Appeal No. 695 of 2008. It would, therefore, be useful to reproduce certain paragraphs of the judgment which are as follows:

After the matter was heard at length by us, the learned Counsel for the parties were fair enough to submit that it would be in the interest of the Institution as well as of the Society that the litigation between the parties may be brought to an end at the earliest and, therefore, the parties in agree that fresh elections may held through an independent agency.

Learned Counsel for the parties further agree that the Assistant Registrar may be required to exercise power u/s 25(2) of the Societies Registration Act for holding fresh elections of the Societies which in turn would also constitute the Committee of Management of the Institution. The contesting parties are also in agree that the S.D.M. Tirva, District Kannauj may be appointed as an Election Officer by the Assistant Registrar for holding fresh elections to avoid any further controversy.

We approve the efforts made to resolve the controversy once for all. We in the agreement of the parties and for getting the election of the office bearers of the Society and Committee of Management held in the best possible fair manner, direct the Assistant Registrar, Firms, Societies and Chits to exercise power u/s 25(2) of the Societies Registration Act and to appoint S.D.M., Tirva as an Election Officer for the purpose within a period of two weeks from the date of production of a certified copy of this order. The Election Officer so appointed, shall publish a tentative list of member for inviting objections in the local newspaper with reference to the members who had participated in the last undisputed elections of 2001. The parties are at liberty to file their objections to the said tentative list of the general body supported by such documents in qua induction/removal of existing member to the general body, Election Officer shall decide the objections by means of a reasoned order and shall thereafter proceed to hold the election of the office bearers of the Society and Committee of Management immediately thereafter strictly in accordance with the bye laws and scheme of the administration. The paper qua the election so held shall be transmitted to the Regional Level Committee for approval of Committee of Management and for registration of the list of office bearers of the Society u/s 4 of the Society Registration Act. Up to this stage the proceedings, none of the parties shall have any right to file any objection or to challenge the election proceeding. They are at liberty to file objection as may be permissible under law before the Regional Level Committee/Assistant Registrar. The Assistant Registrar/ Regional Level Committee decide the objections, if any, before approving the election and shall hand over the charge immediately thereafter to the newly elected office bearers if the elections are approved. The Election Officer shall conclude the election proceedings within a period of four months from the date of production of his

appointment.

Till then, there shall be single operation of the account in the Institution.

5. Sri P.N. Saxena, learned Senior Counsel for the petitioners submitted that the elections have been held contrary to the directions issued by this Court and the Deputy Registrar has passed the order without taking into consideration the objections raised by the petitioners. He further submits that even the District Inspector of Schools has not considered the objections raised by the petitioners and has attested the signatures of the respondent-Committee of Management.

6. Sri P.S. Baghel, learned Senior Counsel for the respondent-Committee of Management has submitted that the elections have been held in accordance with the directions of this Court and that the petitioners have an alternative remedy against both the orders. He submits that against the order passed by the Deputy Registrar, the petitioners can invoke the remedy provided for u/s 25(1) of the Act and in respect of the order passed by the District Inspector of Schools, the petitioners can approach the Joint Director of Education or the Regional Level Committee.

7. Sri P.N. Saxena, learned Senior Counsel for the petitioners does not dispute that against the order passed by the Deputy Registrar, the petitioners can invoke the remedy provided for u/s 25(1) of the Act but what he contends is that the District Inspector of Schools could not have attested the signatures of the Manager of the respondent-Committee of Management since this Court by its judgment and order dated 22nd July, 2008 had directed the Regional Level Committee to decide the matter.

8. Sri P.S. Baghel, learned Senior Counsel for the respondent Committee of Management and the learned Standing Counsel have, however, pointed out that under the Government Order dated 20th December, 2008, power has been conferred upon the District Inspector of Schools to recognise the elections and attest the signatures of the Manager and it is in such circumstances that the order was passed by the District Inspector of Schools. They have further submitted that in any view of the matter, the petitioners have already approached the Joint Director of Education for setting aside the order passed by the District Inspector of Schools and the Joint Director of Education is also the Chairman of the Regional Level Committee. He can, therefore, either decide the matter or place the matter before the Regional Level Committee. It is for this reason that they contend that this petition should not be entertained.

9. The contention of Sri P.N. Saxena, learned Senior Counsel for the petitioners, however, is that once there was a direction by this Court to the Regional Level Committee to take a decision, the District Inspector of Schools, even under the Government Order dated 20th December, 2008, could not have assumed jurisdiction and the representation filed by him before the Joint Director of Education is not a statutory representation.

10. The Government Order dated 20th December, 2008 was issued after the decision was rendered in Special Appeal on 23rd July, 2008. Under the said Government Order the District Inspector of Schools can take a decision with regard to recognition of the Committee of Management and attestation of the signature of the Manager under certain conditions, otherwise he has to refer the matter to the Regional Level Committee. The District Inspector of Schools has taken a decision himself. The petitioners have filed a representation to the Joint Director of Education and the Joint Director of Education has sent a communication dated 15th January, 2009 to the parties to appear before him on 27th January, 2009. It has also been stated in paragraph 20 of the writ petition that the petitioners appeared before the Joint Director of Education on 27th January, 2009 and submitted documents. The petitioners have also stated that no order has been passed by the Joint Director of Education.

11. In such circumstances, when the matter is already engaging the attention of the Joint Director of Education, it would not be proper to entertain this petition.

12. This petition is, accordingly, dismissed. However, the Joint Director of Education or the Regional Level Committee, as the case may be, shall pass an appropriate order after hearing the parties concerned expeditiously, preferably within a period of six weeks from the date a certified copy of this order is filed by either of the parties before the Joint Director of Education. In respect of the order dated 21st April, 2009 passed by the Deputy Registrar, it would be open to the petitioners to avail of the remedy u/s 25(1) of the Act in accordance with the procedure prescribed therein.