

**(2012) 01 AHC CK 0659**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 25704 of 2011

Janardan Kumar Agrawal and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

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**Date of Decision :** 12-01-2012

**Acts Referred:**

**Citation :** (2012) 01 AHC CK 0659

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

Hon"ble Rajes Kumar, J.—Heard Sri Arun Kumar Singh-I, Learned Counsel for the petitioners in Writ Petition No. 25704 of 2011, Sri Irshad Ali, Learned Counsel for the petitioners in Writ Petition No. 28467 of 2011 and Sri G.K. Singh, Learned Counsel appearing on behalf of the respondent No. 5 along with Sri Anurag Khanna, Advocate.

2. Brief facts of the case are that there is a society registered under the Society Registration Act, 1860, which runs an Intermediate college in the name of Vidur Guru Grah Inter College, Bijnor. The scheme of administration of the society and the institution is common. The institution is recognised under the provisions of U.P. Intermediate Education Act, 1921.

3. It appears that an election of the committee of management of the college was conducted under the supervision of Civil Judge (Senior Division), Bijnor on 08.10.2000, on the list of 913 members. The said election was approved by the District Inspector of Schools, Bijnor on 04.01.2001, in which Sri Janardan Kumar Agrawal, the petitioner No. 1 in Writ Petition No. 25704 of 2011 was elected as President and Sri Dwijar Sharma, the respondent No. 4 in Writ Petition No. 25704 of 2011 was elected as Manager. The term of the committee of management was three years. Even though the term expired but the committee of management continued to work. On the letter of the respondent No. 4 to the District Inspector

of Schools permitted him to hold the election. The District Inspector of Schools vide order dated 08.09.2009 approved the list of 389 members of the general body for the election of the committee of management.

4. It appears that several members filed complaints against the list and the District Inspector of Schools vide order dated 23.09.2009 stayed the election process till the finalization of the membership dispute. The respondent No. 4 challenged the order dated 23.09.2009 before this Court in Writ Petition No. 54038 of 2009. This Court vide order dated 21.10.2009 directed the Joint Director of Education, 12th Region, Moradabad to decide the membership dispute. Joint Director of Education, Moradabad after considering the objection of all the parties, vide order dated 21.05.2010 has held that the election of 2000 was held by committee on the list of 930 members, which has been approved by the District Inspector of Schools.

5. It appears that meanwhile the election has been held on 29.09.2009. The Joint Director of Education, Moradabad in its order has held that the election dated 29.09.2009 was not in accordance to the scheme of administration. He directed to hold the election on the basis of alive members of 2000 list under the supervision of District Inspector of Schools in accordance to the scheme of administration within a period of three months. The respondent No. 4 challenged the order of the Joint Director of Education dated 21.09.2010 in Writ Petition No. 3903 of 2010, which has been disposed of by order dated 08.07.2010.

6. It appears that at the time of hearing of the aforesaid writ petition, Learned Counsel for the petitioner has only sought relief for the direction to provide the copy of the list of the members of the general body prepared in the year 2000. No other relief has been sought.

7. The Court has disposed of the writ petition with the direction to provide the list of members of the general body. The respondent No. 4 again filed writ petition on the ground that the list of members of 2000 supplied to him is illegible. This Court, vide order dated 04.10.2010 has directed the District Inspector of Schools to supply legible copy of the members and conduct the election till 30.10.2010. The District Inspector of Schools vide order dated 03.03.2011 sent a letter to the respondent No. 4 along with the typed copy of the list of the members of 2000 and directed to conduct the election on the basis of the list, under the supervision of the Presiding Officer as well as observer appointed by him. In pursuance of the order dated 04.10.2010 passed in Writ Petition No. 60579 of 2010, the election notification for conducting the election was published. As per the election notification the objection was invited by 17.04.2011 and election was to be held on 24.04.2011. The respondent No. 4 has challenged the election notification dated 30.03.2011 by way of Writ Petition No. 21360 of 2011. This Court vide order dated 13.04.2011 dismissed the writ petition giving liberty to the respondent No. 4 to challenge the election after the election is over.

8. It appears that the respondent No. 5 has made the complaint about the membership before Joint Director of Education, Moradabad on 13.04.2010, on which the Joint Director of Education, Moradabad vide order dated 15.04.2011 stayed the election process till the disposal of the objection of the respondent No. 5. Thereafter, District Inspector of Schools vide order dated 30.04.2011 in pursuance of the order dated 15.04.2011 of the Joint Director of Education approved the list of 389 members for conducting the election of the committee of management. The election notification was published in pursuance of the order dated 30.04.2011. At this stage the petitioners filed the present writ petition. This Court vide order dated 04.05.2011 has stayed the operation of the order dated 15.04.2011 of the Joint Director of Education, Moradabad and the order dated 30.04.2011 passed by the District Inspector of Schools, Bijnor and has observed that the election officer may conduct the election on the basis of the earlier order within a period of four weeks, which shall be subject to the decision of this Court.

9. It appears that the District Inspector of Schools has granted the permission to the respondents to hold the election on the basis of the membership list approved vide order dated 30.04.2011 and in pursuance thereof the election has been held on 07.05.2011, which has been accorded recognition vide order dated 10.05.2011, which are being challenged in Writ Petition No. 28467 of 2011. One more Writ Petition No. 27611 of 2011 has been filed challenging the order of the Election Officer dated 06.05.2011 cancelling the nomination of the petitioner.

10. Learned counsel for the petitioners submitted that once the Joint Director of Education, Moradabad in his order 21.05.2010 has directed to hold the election on the basis of the alive members of 2000 list. The Joint Director of Education, Moradabad should not entertain the objection of the respondent No. 5 and should not ask the District Inspector of Schools, Bijnor to decide the objection. He further submitted that the District Inspector of Schools, Bijnor has erred in approving the list of 389 members without any basis and the order of the District Inspector of Schools, Bijnor amounts to superseding the order of the Joint Director of Education, Moradabad dated 21.05.2010. He submitted that the order of Joint Director of Education, Moradabad dated 21.05.2010 has not been set aside by any of the competent authority and, therefore, it is not open to any of the authority to entertain the membership dispute afresh.

11. Sri G.K.Singh, Learned Counsel appearing on behalf of the respondent submitted that the Joint Director of Education, Moradabad in his order dated 21.05.2010 has directed that the election to be held on the basis of the alive members of the 2000 list in accordance to the scheme of administration. The scheme of administration provides that the membership ceases if a member remains absent for three years without any information. In the list, names of several such persons have been shown who were simply doner and not member and never participated in any meeting and never claimed their membership. He further submitted that as per scheme of administration only the person can

become members while perusal of the list shows that the name of the firms have also been included, therefore, while finalizing the list in accordance to the scheme of administration the various provisions of the scheme of administration have to be looked into for the purposes of holding the election and if such exercise has been made by the District Inspector of Schools, Bijnor, the same can not be said to be illegal.

12. I have considered the rival submissions. The order dated 21.05.2010 passed by Joint Director of Education, Moradabad has not been set aside by any of the competent authority, therefore, the election has to be held in accordance to the direction given by the Joint Director of Education, Moradabad. In the aforesaid order, the Joint Director of Education, Moradabad has directed to hold the election on the basis of the alive members of 2000 list in accordance to the scheme of administration. Therefore, the electoral list has to be prepared for the purpose of the election on the basis of the members list of 2000 and having regard to the provisions of the scheme of administration.

13. I have perused the order of the District Inspector of Schools, Bijnor dated 30.04.2011, by which he has approved the list of 389 members. In the said order, the order of the Joint Director of Education, Moradabad dated 21.05.2010 has not been taken into account. No exercise has been made in deciding the membership of 389 members. The membership list of 2000 has not been made basis for the determination of membership in accordance to the provision of scheme of administration. Therefore, the order of the District Inspector of Schools, Bijnor dated 30.04.2011 can not be sustained and accordingly, the election held on the basis of the list of 389 members, approved by the District Inspector of Schools, Bijnor vide order dated 10.05.2011 also can not be sustained.

14. Learned counsel for both the parties agree that the matter may be referred to the Joint Director of Education, Moradabad to finalize the electoral list in the light of the order of the Joint Director of Education, Moradabad dated 21.05.2010 having regard to the scheme of administration and the order of the Commissioner dated 31.12.2003.

15. In view of the above, both the writ petitions are allowed. The order of the District Inspector of Schools, Bijnor dated 30.04.2011, the election dated 07.05.2009 and the order of the District Inspector of Schools, Bijnor, dated 10.05.2009 approving the election are quashed. The Joint Director of Education, Moradabad is directed to finalize the electoral roll on the basis of the membership list of 2000, having regard to the scheme of administration and order of Commissioner dated 31.12.2003. This exercise may be carried on within a period of two months and, thereafter, necessary direction be issued to hold the election expeditiously, within a period of one month thereafter.

16. At present there is no committee of management in existence and the term of the committee of management has been expired. In the circumstances, to

look after the affairs of the institution and to conduct the further election the Joint Director of Education, Moradabad is directed to appoint the authorized controller within a period of one week from the date of presentation of the certified copy of this order.