

(2010) 07 AHC CK 0260
In the Allahabad High Court
Case No : Special Appeal No. 1146 of 2010

Karamveer Singh and Another	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0260

Hon'ble Judges : F.I.Rebello, CJ and A.P.Sahi, J

Final Decision : Allowed

Judgement

A.P. Sahi, J.

This is an appeal by a Committee of Management of an Intermediate College through Karamveer Singh claiming himself to be the Manager of the College. The challenge is to the judgment of the learned Single Judge dated 5th July, 2010 dismissing the writ petition filed by the appellants and upholding the order dated 29th March, 2010 passed by the District Inspectors of Schools. The District Inspector of Schools by the said order has upheld the elections of the Committee of Management held on 12th October, 2008.

The dispute arises out of elections of the Committee of Management of the institution, which is governed by the provisions of the U.P. Intermediate Education Act, 1921 and by a duly approved Scheme of Administration acceptable to both the parties. In the previous elections of the Committee of Management of the institution, which were held on 5th December, 2004, the respondent no.5 Sant Pal Singh was elected as the President and the appellant Karamveer Singh was elected as the Manager. The said elections were previously approved by the Regional Level Committee headed by on 9th February, 2005 and the signatures of Karamveer Singh as the Manager were attested by the District Inspector of Schools. The term of the said Committee of Management was about to expire and, therefore, the elections of the Committee of Management, which is presently in dispute, were held on 12th October, 2008. The appellant, who was the Manager in the previous term is stated to have been elected as the President

and the respondent no.5 who was earlier the President is stated to have been elected as the Manager. The aforesaid elections were sent to the District Inspector of Schools but the said officer did not approve of the same vide order dated 5th November, 2008 and issued a direction for holding fresh elections under the supervision of a nominated Election Officer and an Observer.

It is claimed by the appellant that fresh elections were held on 7th December, 2008, in which he was elected as the Manager and one Manoj Kumar was elected as the President. The papers relating to the said elections were submitted to the District Inspector of Schools. In the meantime, the respondent Sant Pal Singh approached the District Inspector of Schools and informed him that a compromise had taken place between him and Karamvir Singh, the appellant no.1, and on the basis of said compromise requested that the elections held on 12th December, 2008, in which the appellant was elected as the President and the respondent Sant Pal Singh was elected as the Manager should be approved. Accordingly, the District Inspector of Schools, on such information being furnished, passed an order on 31st March, 2009 approving the elections of 12th October, 2008.

The said order dated 31st March, 2009 was challenged by Manoj Kumar through Writ Petition No. 31128 of 2009 and the appellant herein was arrayed as a respondent in the said writ petition. The petition was disposed of on 24th June, 2009 at the admission stage itself without calling for any counter affidavit from the respondents. The order passed by this Court dated 24.06.2009 has been gainfully quoted in the order of the learned Single Judge. The petitioner therein Manoj Kumar was given opportunity to file an application before the District Inspector of Schools for recall of the order dated 31st March, 2009 and for passing of consequential orders, if any. The allegation of Manoj Kumar was that two sets of persons have set up two fictitious elections which has prejudiced his right to contest the election. Accordingly, Manoj Kumar approached the District Inspector of Schools with a certified copy of the said order.

In the meantime, the appellant Karamveer Singh along with Manoj Kumar filed a fresh writ petition being Writ Petition No. 64147 of 2009 with a prayer that the District Inspector of Schools be directed to recognize the elections of the Committee of Management held on 7th December, 2008 in which Manoj Kumar is alleged to have been elected as the President and the appellant as the SecretarycumManager. The said writ petition was dismissed on 26th November, 2009 leaving it open to the petitioners therein to move an application for modification of earlier order dated 24th June, 2009. It is alleged that such an application was filed but no orders have been passed thereon.

The District Inspector of Schools, pursuant to the directions of this Court dated 24th June, 2009 passed in Writ Petition No. 31128 of 2009 issued notices to the appellant and the respondent fixing 18th November, 2009 for hearing in the matter and ultimately vide order dated 30.01.2010 directed that the elections of the Committee of Management should be held afresh within three months and till

such elections are held, the position existing on the said date would continue. The result of the said order was that the elections held on 12th October, 2008 and the subsequent election dated 7th December, 2008 both were discarded. Consequently, the appellant as well as the respondent challenged the said order by filing two separate writ petitions being Writ Petition No. 6212 of 2010 and Writ Petition No. 6962 of 2010. Both the writ petitions were allowed vide judgment dated 9th February, 2010 setting aside the order of the District Inspector of Schools dated 30.01.2010 with a direction to the District Inspector of Schools to pass a fresh order after allowing the parties access to the documents of both sides. The petitions had been allowed on account of violation of principles of natural justice, as both the parties contended that the decision has been taken by the District Inspector of Schools without providing any document to either side.

It is upon the aforesaid direction issued by this Court, that the District Inspector of Schools passed the order dated 29th March, 2010 holding that the elections held on 12th October, 2008 with the appellant as the President and the respondent as the Manager is valid and that the elections set up by the appellant on 7th December, 2008 with Manoj Kumar as the President and the appellant as the Manager were invalid.

The present appeal arises out the order passed by the learned Single Judge dated 5th July, 2010. The writ petition was filed by the appellants challenging the aforesaid order of the District Inspector of Schools dated 29th March, 2010.

The learned Single Judge found that the conduct of the appellant Karamveer Singh clearly indicates that he had switched over with one Manoj Kumar to set up an election on 7th December, 2008 which was surprising, inasmuch as Manoj Kumar had filed Writ Petition No. 31128 of 2009 wherein he had not claimed himself to be the President of any elections held on 7th December, 2008. On the contrary, Manoj Kumar had come up with a prayer that there were two fictitious elections set up and his rights have been prejudiced, as he had been deprived from contesting the elections. The learned Single Judge further found that the appellant Karamveer Singh shook hands with Manoj Kumar in between, in order to reinstall himself as the Manager and in view of the aforesaid facts, the claim of the appellant runs counter to the claim of Manoj Kumar.

The learned Single Judge further found that, as a matter of fact, it was the appellant, who was elected as the President in the elections held on 12th October, 2008 and he had presided over the meetings of the Committee of Management as President in view of the order passed by the District Inspector of Schools dated 31st March, 2009, but he turned around and in league with Manoj Kumar set up a dispute with regard to elections held on 7th December, 2008, which was rightly rejected by the District Inspector of Schools.

The appellant before the learned Single Judge had also raised a plea that the District Inspector of Schools, who was directed to hear the matter again under

the orders of this Court dated 9th February, 2010, fixed 18th March, 2010 as the date of hearing. On the very next day, i.e. 19th March, 2010, the District Inspector of Schools appointed a Committee consisting of two Members who were Principals of other institutions to submit a report with regard to the claim of either side, which report was submitted on 27th March, 2010. The District Inspector of Schools, without supplying a copy of the said report, and letting the petitioner-appellant know about the contents thereof, proceeded to pass the order dated 29th March, 2010 impugned in the writ petition. It was, therefore, contended that the order is in violation of the principles of natural justice.

The learned Single Judge rejected the aforesaid contention on the ground that the matter was examined on merit by the District Inspector of Schools who has found that the elections dated 7th December, 2008 cannot be accepted. Accordingly, the learned Single Judge declined to exercise his jurisdiction by concluding that it was not a fit case for interference.

We have heard Shri Vinod Sinha, learned counsel for the appellants, learned Standing Counsel for respondent nos. 1 to 4 and Shri P.N. Saxena, Senior Advocate assisted by Shri Nitinjai Pandey for respondent no.5.

Shri Sinha contends that the learned Single Judge erred by not accepting the plea of violation of principles of natural justice, inasmuch as once the District Inspector of Schools had chosen to call for an enquiry report, then the bare minimum that was required to be observed was that the appellant should have been given an opportunity to contest the said report, which was adverse to him. He submits that once the elections dated 12th October, 2008 had earlier been disbelieved, there was no occasion to reaffirm the validity of the said elections on the basis of the enquiry report. The dispute of the elections of the appellant of 7th December, 2008 has been decided on the basis of the facts stated in the report for which there is no justification.

On the other hand, Shri P.N. Saxena contends that the elections dated 7th December, 2008 set up by the appellant with Manoj Kumar as the President has been disbelieved for which there are cogent reasons and that it has been found by the learned Single Judge that the elections dated 7th December, 2008 have been set up by the appellant with the aid of Manoj Kumar which cannot be said to be a genuine election as the appellant himself continued to function as the President on the basis of the elections held on 12th October, 2008 and even thereafter. It is only after the appellant and Manoj Kumar joined hands to upset the elections of respondent Sant Pal Singh as the Manager that the entire story of the elections dated 7th December, 2008 has been set up.

Learned Standing Counsel contends that the District Inspector of Schools has found, as a matter of fact, that the elections dated 12th October, 2008 were valid and this finding need not be disturbed at the instance of the appellant, inasmuch the learned Single Judge has, after a threadbare consideration, upheld the order of the District Inspector of Schools.

Having considered the aforesaid submissions, and keeping in view the facts that have been brought on record, as also indicated in the judgment of the learned Single Judge, this appeal can be disposed on a short ground namely the plea raised by the petitioner-appellant in respect of violation of the principles of natural justice. It is undisputed that on 19th March, 2010, the District Inspector of Schools appointed a two Member Committee to enquire into the rival claims in regard to the elections. The appellant on 23rd March, 2010 appears to have filed a representation before the District Inspector of Schools with a copy of the same to the Members of the Inquiry Committee staking his claim in respect of the elections held on 7th December, 2008. It was also alleged that the elections dated 12th October, 2008 were set up on the basis of forged and fake documents. The two Member Committee has submitted a report on 27th March, 2010 but it does not recite the receiving of the representation dated 23.03.2010. Learned counsel are at issue that the same was considered in the report dated 27th March, 2010. However, the fact remains that the said report was submitted on 27th March, 2010 which has been made the basis for passing of the order dated 29th March, 2010. This report was submitted on 28th March, 2010 and the order impugned was passed on 29th March, 2010. Neither the impugned order recites giving of any opportunity to the appellant prior to the passing of the said order nor does it indicate that the appellant was supplied a copy of the said report to file any objections in that regard. This, in our opinion, was necessary as the appellant had moved his objection on 23rd March, 2010 itself. The report has been prepared thereafter on 27th March, 2010. In our opinion, the appellant had a right to have a copy of the said report and file objections, if any, before the District Inspector of Schools could have proceeded to take a decision in the matter. The District Inspector of Schools, therefore, committed an error by proceeding to take a decision on the basis of a report which ought to have been made known to the appellant before any prejudicial order was passed against him. The conclusions drawn by the District Inspector of Schools are founded on the said report and, therefore, we are of the view that the order dated 29th March, 2010 has been passed without observing the minimum rules of fair play and is in violation of principles of natural justice.

Accordingly, to the aforesaid extent, we respectfully do not find ourselves in agreement with the conclusion drawn by the learned Single Judge and, hence, the impugned judgment dated 5th July, 2010 is set aside. Consequently, in view of the reasons aforesaid, the order of the District Inspector of Schools dated 29th March, 2010 is also unsustainable and is hereby quashed.

The matter is remitted back with a direction to the District Inspector of Schools to pass an order in consonance with the directions issued on 9th February 2010 after giving opportunity to the appellant and the respondent and after considering the objections to be filed against the report submitted by the two Member Committee. The appeal is, therefore, allowed to the aforesaid extent. The District Inspector of Schools shall proceed to pass the orders as expeditiously as possible preferably within a period of eight weeks from the date

of presentation of a certified copy of this order before him.

We further direct that the status quo with regard to the Management of the institution, as was existing on the date of the impugned order, shall continue till final orders are passed by the District Inspector of Schools.