
(2005) 02 AHC CK 0076
In the Allahabad High Court
Case No : C.M.W.P. No. 40122 of 2004

Lokendra Kumar and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226

Citation : (2005) 5 AWC 4713 : (2005) 2 ESC 957

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashok Khare and S.D. Shukla, for the Appellant; R.N. Singh, V.K. Singh and G.K. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Ashok Khare Senior Advocate, assisted by Sri S.D. Shukla on behalf of the petitioner, Standing Counsel on behalf of Respondent Nos. 1 to 4 and Sri R.N. Singh Senior Advocate, assisted by Sri G.K. Singh on behalf of Respondent Nos. 5 and 6.

2. Vidya Mandir Inter College, Chhaprauli, Baghpat is an institution aided and recognised under the provisions of U.P. Intermediate Education Act. An approved scheme of administration has been enforced in the institution under the order of the Joint Director of Education dated 26.12.1982.

3. This writ petition arises out of the order of Regional Level Committee dated 13.9.2004 and the consequential order of the District Inspector of Schools. Baghpat dated 16th September, 2004, whereby it has been held that the election of Sri Iswar Singh as Manager of the Committee of Management cannot be accepted as the same is in violation of Clause 293 of the Education Code. However, the elections of the other office bearers of the Committee of Management, so elected, have been recognised with a condition that so long as fresh elections for the post of Manager is not held, Sri Mange Ram, the Deputy

Manager, shall discharge the functions of the Manager of the institution. Against the aforesaid order Writ Petition No. 40122 of 2004 has been filed by Lokendra Kumar and three others with the allegations that the order passed by the Regional Joint Director of Education recognising the elections of other office bearers, is patently illegal.

4. On behalf of the petitioner it is contended that the order passed by the District Inspector of Schools is wholly illegal inasmuch as the Regional Level Committee, constituted under the Government Order dated 19th December, 2000, has not afforded any opportunity of hearing, prior to recognising the elections set up with Sri Mange Ram as Deputy Manager. Reliance in that regard has been placed upon paragraph 31 and 34 of the writ petition. It is further submitted that the Regional Level Committee has not considered the objections raised by the petitioner including the basic objection that there were 24 contestant for the 12 posts. Instead of allotting separate symbol to individual contestant, two sets of symbol were allotted i.e. one symbol to 12 candidates and other symbol to other 12 candidates. It is submitted that the election officer himself had constituted two sets of contestants instead of getting the individual elections held in respect of the respective posts.

5. On behalf of the respondent it is contended that petitioners had set up their independent rival elections. The issue of symbols having been awarded in an illegal manner can only be raised by a contestant of the elections only. The petitioners having not participated in the elections, wherein the symbols were allotted, cannot legally be permitted to raise such an objection. It is further submitted that the Regional Level Committee is not oblige to hear individual members. Sufficient opportunity of hearing has been afforded to the parties concerned. The present petition is in the nature of an election petition, which raises disputed question of fact and, therefore, civil suit is the proper remedy.

6. I have heard counsel for the parties and have gone through the records of the writ petition.

7. It is settled law that this Court while exercising jurisdiction under Article 226 of the Constitution of India does not exercise appellate powers vis-a-vis the orders passed by the authorities below. The jurisdiction is supervisory in nature and the Court has to see as to whether the decision making process has been fair and in accordance with the principles of natural justice and further sufficient reasons in support of the impugned order have been recorded. The legal position in that regard has been settled by the Hon''ble Supreme Court in the judgment of M. Naina Mohammed Vs. K.A. Natarajan and Others, ,

8. In view of the aforesaid legal background, it has to be seen as to whether the decision taken by the Regional Level Committee in the facts of the case is in compliance of the principles of natural justice or not.

9. In paragraph 30 of the writ petition it is stated that the Regional Joint Director of Education vide order dated 7th July, 2004 fixed 7th August, 2004 as the date

for filing explanation. In paragraph 31 it is stated that the petitioner No. 3 was present in the office of the respondent No. 2 on the said date, however, no hearing took place and thereafter no other date was communicated to the petitioner. In paragraph 34 of the writ petition it has been stated that the Regional Level Committee, constituted under the Government Order dated 19th December, 2000, has not afforded any opportunity of hearing to the petitioners.

10. The contents of paragraph 31 of the writ petition have been replied by means of paragraph 50 of the counter affidavit, while paragraph 34 has been replied by means of paragraph 52 of the counter affidavit. In paragraph 50 of the counter affidavit it has been stated that Regional Joint Director of Education, on receipt of the papers from the District Inspector of Schools in respect of the rival elections, returned the same to the District Inspector of Schools for submitting his report. The District Inspector of Schools submitted his report, which was placed before the Regional Level Committee and the said Regional Level Committee considered the matter on 13th September, 2004. It is further stated that the petitioners are not even member of the general body and therefore the claim set up by the petitioner was bogus and the Regional Level Committee has rightly rejected the claim of petitioners. In paragraph 52 of the counter affidavit it has been stated that full opportunity of hearing was given to petitioner No. 4 by the Regional Level Committee. So far as the petitioner Nos. 1, 2 and 3 are concerned, they are not required to be heard by the Regional Level Committee.

11. The copy of the recommendation of the Regional Level Committee has not been filed In Writ Petition No. 40122 of 2004. However, same has been enclosed in the connected Writ Petition No. 39098 of 2004 as Annexure 21, which is also being decided today.

12. In the order of the Regional Level Committee dated 13.9.2004, it is stated that two rival elections have been set up by the parties, said to have taken place on 26th June, 2004 and 27th June, 2004. So far as the elections set up by the petitioner are concerned, it has been noticed that the information of the said election alone has been forwarded to the District Inspector of Schools. So far as the elections dated 27th June, 2004 are concerned, it has been noticed that the said elections have been held by an Election Officer duly approved by the District Inspector of Schools. However, in view of the provisions of Clause 293(4) of the Education Code, the elections of Sri Iswar Singh cannot be recognised. Except for noticing in paragraph 2 of the order that certain members orally informed that Sri Iswar Singh has wrongly been elected as Manager. The order of the Regional Level Committee does not refer to any date on which hearing took place nor it refers to the facts pleaded by the rival claimants.

13. In the opinion of the Court there is nothing on record on the basis whereof it can be alleged that sufficient and fair opportunity of hearing has been afforded to the parties by the Regional Level Committee before passing the order dated 13.9.2004. It is no doubt true that if two rival sets of elections are pleaded, the Regional Level Committee may disbelieve one set of election on the ground that

said elections have not been held by the competent person or that same have not been held in accordance with the scheme of administration. However, it does not mean that the legality or otherwise of the elections set up by the other party, even if they have been held by the election officer approved by the District Inspector of Schools, is not to be examined. In the opinion of the Court, the Regional Level Committee is obliged to record the specific finding, before recognising any election, in respect of the following issue :

(a) Elections have been held by a competent person.

(b) The elections have been held strictly in accordance with the provisions of the approved scheme of administration.

(c) Valid members of the general body only have participated in the said elections.

14. In absence of findings having been recorded regarding aforesaid basic issues, the order passed by the Regional Level Committee cannot be legally sustained. In such set of circumstances, this Court has no hesitation to hold that the order passed by the Regional Level Committee is in violation of the principles of natural justice and even otherwise not supported by sufficient reasons, which are necessary, for recognising the elections of the Committee of Management as aforesaid. The decision taken by the Regional Level Committee dated 13.9.2004 is accordingly quashed. The consequential order passed by the District Inspector of Schools dated 16th September, 2004 is also quashed. Writ petition is allowed.

15. The matter is remanded to the Regional Level Committee to decide the dispute afresh within one month from the date a certified copy of this order is filed, after affording opportunity of hearing to the parties concerned, by means of a reasoned speaking order.