
(2015) 04 AHC CK 0235
In the Allahabad High Court
Case No : C.M.W.P. No. 10118 of 2015

Mahadeo Singh and Others	Vs	APPELLANT
Up-Jiladhihari/Prescribed Authority and Others		RESPONDENT

Date of Decision : 02-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 243O, 243ZG, 329(b)
Societies Registration Act, 1860 — Section 4

Citation : (2015) 3 AWC 2770

Hon'ble Judges : Yashwant Varma, J

Bench : Single Bench

Advocate : C.M. Yadav, for the Appellant; Ashish Kumar Singh and Ramji Singh Patel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Yashwant Varma, J—This petition (one of the many which come before this Court and crowd its otherwise overburdened roster) lays challenge to an order dated 2.12.2014 in terms of which the Sub-Divisional Magistrate, Chunar, District Mirzapur has finalised the electoral college of 15 members to be utilised for holding the elections of the Committee of Management of the Society in question. From the facts brought on record and in respect of which there is no dispute it is apparent that the last elections of the Society are said to have been held in the year 1986. Three rival claims were set up in the course of the elections and ultimately, the dispute itself was decided on 17.10.1988. This fact has been duly noticed by the court while deciding Writ Petition No. 10747 of 2012 by its judgment and order dated 26.3.2012. This Court noticed that after 1980, no elections whatsoever had been held and accordingly, proceeded to direct the Sub-Divisional Magistrate of the area to take further steps in accordance with the provisions of Section 25(2) of the Societies Registration Act, 1860. This judgment required the Sub-Divisional Magistrate to determine the electoral college after inviting objections and upon such determination to hold elections within two months thereafter. It is pursuant to the above directions of

this Court that the impugned order has been made by the Sub-Divisional Magistrate, Chunar, District Mirzapur.

2. Learned counsel for the petitioner has sought to assail this order on various grounds. It has been submitted that the inclusion of the name of Badri Prasad Chaudhry on the basis of documents executed in 1962 was illegal. It was further contended that the co-option of two members was only for three years and therefore, came to an end in 1989 itself. Learned counsel further submits that the respondent Nos. 3 and 4 are family members and could not become the office bearers. He further refers to the pleadings taken in paras 52, 53 and 54 of the writ petition to contend that various members have been enrolled in 1983 and thereafter, under the forged signatures of one Lallan Ram Singh.

3. Sri Ashish Kumar Singh, learned counsel appearing for the contesting private respondents, has pointed out that this Court in its judgment dated 26.3.2012 had clearly noted the agreement between the parties that the last election of the Society had been held in the year 1986. He submits that at the relevant time there were 31 members forming the General Body of the Society out of which 16 have died and accordingly, the electoral college of 15 has rightly been settled by the Sub-Divisional Magistrate.

4. Having heard the learned counsel for the parties and having perused the records, this Court finds that the finalisation of the electoral college has been made pursuant to the directions issued by this Court on 26.3.2012. The directions themselves came to be issued, upon this Court finding that no elections had been held in respect of the Society after 1986. The judgment dated 26.3.2012 further required the Assistant Registrar to hold the elections within two months from the date of finalization of the electoral college. Since the above process has already been set in motion in light of the directions issued by this Court, this Court is of the firm opinion that no circumstances warrant interference in these sort of matters under Article 226 of the Constitution of India and any interference at this stage would clearly derail the election process which has been set in motion and as has been noticed hereinabove in the facts of this case after more than decades.

5. The second ground on which this Court finds itself unable to entertain the writ petition is that the various contentions advanced by the learned counsel for the petitioner would clearly entail an enquiry into disputed questions of fact. This Court has time and again noted that such disputed questions of facts arising out of and in course of election proceedings for constitution of Committees of Management of Societies/Educational institutions cannot be entertained.

6. A learned single Judge of our court in *Uttam Nisad Vs. State of Uttar Pradesh and Others*, (2006) 6 AWC 6354, summed up the legal position as follows:

"10. Counsel for the respondents has relied upon paragraph 4 of the *Basant Prasad Srivastava and others Vs. State of U.P. and others*, AIR 1994 All 112 : (1993) 2 UPLBEC 1333, in which it has been held that where in the educational

institution the election/finalisation of election process of Committee of Management is challenged under Article 226, the writ petition under Article 226 would not be maintainable and the only remedy in such cases is by filing election petition or filing civil suit. Paragraph 4 of the aforesaid judgment is quoted as under:

The learned single Judge has observed that it was well-settled proposition of law that in proceeding under Article 226 of the Constitution Courts should not interfere with election process and finalisation of list is not amenable to challenge in writ jurisdiction. It has also been observed that dispute regarding correctness of voters list is a highly disputed question of fact which can be decided only by civil court. With these observations the learned single Judge directed that the result of the election be declared forthwith and further steps be taken in accordance with law."

7. This specie of disputes was again noticed by the court in *The Committee of Management, Triveni Sahai Inter College and Satish Chandra Parasari Vs. The State of Uttar Pradesh, The Joint Director of Education IIrd Region, The District Inspector of Schools and The Committee of Management, Triveni Sahai Inter College through its alleged Manager, Brijendra Singh Rathore*, (2008) 6 AWC 5976 , wherein this Court held as under:

"In the instant case, there is series of litigations. The parties have approached the High Court number of times earlier but the factual dispute remains alive and has to be settled by adjudication of findings of facts through civil court. I am supported in my view by judgment rendered in *Uttam Nishad v. State of U.P. and others*, Civil Misc. Writ Petition No. 20719 of 2006, wherein it has been held if the parties approach the High Court more than once, disputing election of Committee of Management or the college of the Society, it is a sure indication that litigation has deep roots in disputed facts and in the circumstances the matter should invariably be ordered to be decided in civil courts which can give findings of facts on basis of oral and documentary evidence, which is not feasible in writ jurisdiction where courts are already burdened. If there is any grievance to either of the parties regarding election I am of the firm view that they have to approach the civil court and get the dispute settled by findings of facts there. It is not open to them to approach in the writ petition again and again under Article 226 of the Constitution without first getting the dispute settled finally through civil court."

8. The above position has been noticed and reiterated again in *Committee of Management, Gramya Vikas Uchattar Madhyamik Vidyalaya Samittee, Khuthan, District Jaunpur and Another Vs. State of U.P. and Others*, (2012) 10 ADJ 708 : (2013) 1 ALJ 189 :-

"21. Learned counsel for the petitioner has also placed reliance on the case of *Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti and another v. Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region*,

Gorakhpur and another, wherein this Court has taken view that Registrar has authority to see that the person is member of the society or not and power of registration is exclusively vested with the Registrar. Relevant extract of the judgment is being quoted below:

This appeal arises out of the order, dated 14.2.1994 dismissing the writ petition No. Nil of 1994. The plea of the second appellant is that he was elected as the Manager of Kisan Shiksha Sadan, Banksahi, District Basti (hereinafter referred to as the Shiksha Sadan) in January. 1992. This plea was denied by the second respondent herein stating that he was lawfully elected as the Manager of the Shiksha Sadan, and the second appellant was not even a member of the Shiksha Sadan, As the application filed by the second appellant herein was not considered by the Registrar of the societies, he filed a writ petition No. Nil of 1994 seeking a direction to the Registrar to decide his application. This writ petition was disposed of on 10th January, 1994 directing the Registrar to consider the plea of the second appellant herein and pass appropriate orders by giving reasons after considering the objections raised by the second appellant. Accordingly, the Registrar considered the plea of the second appellant in the light of the objections raised by him and passed the appropriate order dated 1.2.1994 holding that the second appellant herein was not even a member of the Shiksha Sadan. Therefore, he refuse to refer the dispute or doubt relating to the election of the Manager of the Shiksha Sadan. Aggrieved by that order, he filed writ petition No. Nill of 1994, the learned single Judge dismissed the writ petition holding that the Registrar was competent to pass such an order. Aggrieved by that order, this appeal is preferred.

It is submitted by the learned counsel for the appellants that the Registrar has no power or jurisdiction to decide the question relating to the membership of the second appellant. When he raised a dispute about the election of the Manager of the Shiksha Sadan, he had no other alternative but to refer the doubt or dispute relating to the election of the Manager of the Shiksha Sadan to the Prescribed Authority under Section 25 of the Societies Registration Act, 1860 (in short "the Act"). On the other hand, it is submitted by the learned counsel appearing for the respondents that the Registrar may or not refer a dispute or doubt relating to the election of the Manager of a society to the Prescribed Authority for valid reasons and the Registrar is under no obligation to refer any dispute or doubt relating to the election, without applying his mind, to the Prescribed Authority. It is further submitted that the Registrar is under an administrative obligation under Section 4 of the Act to maintain a register of members of the managing body for his own administrative purpose. He is under an obligation to record the names of the elected members of the managing body and for that purpose he can be held an enquiry so as to find out who are the elected members of the managing body of a society. On the basis of such enquiry, if the Registrar comes to the conclusion that a person or persons are not even the members of the Society, he will be quite justified in not referring the doubt or dispute as to the election of members of the Managing body of a Society.

Having regard to the provisions of the Act we see force in the submission of the learned counsel for the respondents. Section 4 of the Act provides that a list of members of the managing body of a Society shall be filed with the Registrar. That list is maintained by the Registrar for the purpose of performing his administrative functions as a Registrar. Section 25 of the Act provides that whenever any doubt or dispute is raised regarding the election of members of a managing body of a society, the Registrar may refer such doubt or dispute to the Prescribed Authority for his decision. But when one-fourth members of the Society raise a doubt or dispute relating to the election of the members of managing body or Society, the matter automatically goes to the Prescribed Authority for decision and in such a case the Registrar does not come into the picture. In exercising this power whether to refer or not any doubt or dispute relating to the election of members of the Managing body of a Society to the Prescribed Authority. The Registrar has to apply his mind to the facts of the case and take a decision. In taking such a decision the Registrar will be quite justified to take into account all the relevant circumstances, as he has done in the present case. If an objection is raised about the membership of a person. In our view, it is the duty of the Registrar, for his own administrative purpose, to inquire into whether the person concerned is a member of the Society or not. If the Registrar comes to the conclusion that such a person is not a member of the Society then he is under no obligation to refer the dispute or doubt relating to his election to the Prescribed Authority for decision. In the present case, the Registrar has applied his mind to the facts of the case to find out whether the second appellant herein or was not a member of the Shiksha Sadan. He found that he was not even a member of a Society. It is a pure question of fact. If any person feels aggrieved by such a decision, the proper course open to him is to approach the civil court and seek appropriate relief. The Registrar is bound by the decision of the civil court and his decision will be subject to the decree passed by the civil court."

23. Similar view was taken in, Committee of Management, Chacha Nehru Vidyalaya Vs. State of U.P. and Others, (2013) 1 AWC 836 . Paragraph-5 of the judgment reads as under:

"5. The contention of the petitioner could have been accepted provided there was some material to even prima facie establish that the petitioner's claim of entering into the society is based on any valid material. There is nothing either on record nor there was anything before the Assistant Registrar and therefore, the Assistant Registrar is not bound to refer every dispute, inasmuch as, it is only a bona-fide claim which can be gone into for the purpose of deciding the claim of rival parties under Section 25 of the Societies Registration Act. The Assistant Registrar is not a mere post office as held by this Court in the Division Bench of this Court in the case of Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti and another v. Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur and another, 1995 (2) UPLBEC 1242."

9. The last aspect of the matter and of which this Court must necessarily take notice is with respect to the nature of power which is exercised by the Assistant Registrar or by the Educational Authorities while deciding issues of the electoral college and/or finalising the dispute with respect to rival claim set up during the election process. The Apex Court in *A.P. Aboobaker Musaliar v. District Registrar (G), Kozhikode and others*, 2004 (11) SCC 247, has held that the powers exercised by the District Registrar while finalising or accepting a particular list as constituting the electoral college is only prima facie and not final. It does not prevent a person from establishing his claim before a competent court.

10. The same view has been reiterated by a learned single Judge in *Committee of Management, Gyan Bharti Shiksha Sadan Vs. State of U.P.*, (2014) 3 ESC 1506 : (2014) 2 UPLBEC 1654, in the following terms:

"34. Regard may be had to the fact that in the Societies Registration Act, Section 25 has been inserted by the Uttar Pradesh Amendment. There is no corresponding section in other States. Thus, the dispute of the office-bearers are decided under Section 4 of the Societies Registration Act by the Registrar on the basis of prima facie satisfaction, as he has to deal with them for performing his administrative functions under the various provisions of the Act, as detailed above. The aggrieved parties are left open to adopt the other remedies available to them such as civil suit."

11. If the nature of the adjudication undertaken by the above authorities, is based only on prima facie satisfaction and be not final, surely the extraordinary jurisdiction of this Court would not come to the aid of a litigant assailing the same unless the order itself be tainted by perversity, irrationality or a patent and manifest error of law appearing on the face of the record.

12. Lastly this Court cannot lose sight of the fact that the preparation of the electoral list/finalisation of the electoral college are all steps in aid/furtherance of holding of elections. It is always open to a person to assail the validity thereof upon the culmination of the elections on the ground that the election was vitiated on account thereof or that the results stand materially affected pursuant thereto. The election process once commenced must not be stalled by unnecessary interference at the intermediate stage. In fact noticing the above aspect, a Division Bench of our court in *Committee of Management, Maharana Pratap Vidyalaya Prabandh Samiti and Another Vs. State of U.P. and Others*, (2013) 10 ADJ 532 : (2014) 1 ALJ 298 : (2013) 101 ALR 880, held as under:

"9. In order to avoid a large number of writ petitions filed for quashing the orders passed by the educational authorities during the process of elections and in seeking directions to them, we hereby declare that the principles of law laid down by the Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, AIR 1952 SC 64 : (1952) 1 SCR 218 : *Harcharan Singh Vs. S. Mohinder Singh and Others*, AIR 1968 SC 1500 : (1969) 1 SCR 198 : *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi*

and Others, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 : Jyoti Basu and Others Vs. Debi Ghosal and Others, AIR 1982 SC 983 : (1982) 1 SCALE 115 : (1982) 1 SCC 691 : (1982) 3 SCR 318 : (1982) 14 UJ 186 : Harikrishna Lal Vs. Babu Lal Marandi, (2003) 8 JT 460 : (2003) 9 SCALE 74 : (2003) 8 SCC 613 : (2003) 4 SCR 1170 Supp and Shyamdeo Pd. Singh Vs. Nawal Kishore Yadav, AIR 2000 SC 3000 : (2000) 9 JT 486 : (2000) 6 SCALE 135 : (2000) 8 SCC 46 : (2000) 2 SCR 668 Supp : (2001) 1 UJ 78 : (2000) AIRSCW 3247 : (2000) 6 Supreme 12 , restraining the courts from interfering in the process of election after the elections are notified is equally applicable to the elections of the office bearers of the committee of management of the societies as well as the Committee of Management to be elected in accordance with the provisions of the scheme of administration of the educational institutions. The principles of law that the courts should keep their hand off in electoral matters and that all election disputes must be tried by the Election Tribunal, is also incorporated in the Constitution of India under Art. 329(b) for the elections of the Parliament or to the house or either house of the Legislature, under Art. 243O for the elections of panchayats and Art. 243ZG in the matter of elections of the municipalities.

10. There is no reason as to why these time tested and settled principles should not be made applicable to the elections of the office bearers of the societies and for the Committee of Management under the scheme of administration of the educational institutions.

11. We have every reason to believe that in future the court will refuse to interfere in the process of elections until the elections are concluded and will refuse to entertain election disputes and relegate the parties to approach the Election Tribunals or to file civil suit to challenge the results of the elections.

12. The huge pendency in the court denies access of justice to the thousands of litigants in need of justice from the court. The filing of frivolous, premature and unnecessary writ petitions take away the valuable time of the court and clogs the entire justice delivery system. This Court has to be conscious of the fact that writ petitions should be entertained only when parties have acquired a cause of action and have exhausted the alternative remedies before approaching the court."

The present case and the various submissions advanced before this Court do not qualify it in any of the exceptions noticed above. Accordingly and in view of the above, this Court declines to interfere with the impugned order assailed in the present writ petition and it is accordingly dismissed.