
(2006) 01 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19803 of 2004

Mansa Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 3 AWC 2468 : (2006) 1 UPLBEC 1082

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Indra Raj Singh and Ashok Khare, for the Appellant; D.S.M. Tripathi, Arvind Upadhyay and Veer Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran, J.—Heard Sri Indra Raj Singh, learned counsel appearing for the petitioners as well as learned Standing Counsel appearing for the State-respondents and Sri D.S.M. Tripathi, learned counsel appearing for the contesting respondent No. 6. Counter and rejoinder affidavits have been exchanged between the parties and with the consent of the learned counsel for the parties, this writ petition is being disposed of at this stage.

2. The dispute in this writ petition is with regard to the recognition of the election of the Committee of Management held on 14.5.2002 granted by the Joint Director of Education vide his order dated 27.3.2004, whereby Smt. Geeta Devi Dwivedi has been recognized as elected Manager of the Committee of Management.

3. This case has a chequered history as the Prabandh Sanchalak has been continuing to manage the institution since the year 1990. Various petitions have been filed from time to time for a direction that the elections of the Committee of Management be held. After the elections had been held, it was in Writ Petition No. 19464 of 2002 and other connected petitions in which following directions

had been issued on 23.10.2002 by the learned Single Judge of this Court:--

In the circumstances all these writ petitions are disposed of with a direction that the paper relating to election which have been submitted to the District Inspector of Schools will be permitted to be examined by both sides, who may file their respective representations objections, with regard to the voter list from which elections have been conducted as well as any other objection to the election. If such objections are received by the D.I.O.S. within three weeks from today he will refer all the objections alongwith record to the Joint Director of Education, Varanasi Region who will look into the matter and after hearing both sides will decide the issue within one month from the date on which he receives papers.

The approval of the result of election will depend upon the decision of Joint Director of Education, Varanasi Region, Varanasi.

(emphasis supplied)

The aforesaid order was challenged by the petitioners herein by filing Special Appeal No. 1203 of 2002. By the judgment and order dated 5.1.2004 the Division Bench of this Court declined to interfere with the order of the learned Single Judge but however, observed that "the contention that some voters have wrongly been included in the voter list and therefore, the election held on the basis of that list is illegal and as such this Court can set aside the same in exercise of writ jurisdiction cannot be accepted as the appropriate remedy is to challenge such election either by raising claim before the committee constituted by G.O. dated 19.12.2000 consisting of Joint Director of Education and others or by filing suit before the competent court but the writ petition at the first instance cannot be maintained." However, in the end. it was also observed that since it was stated at the Bar that in terms of the order of the learned Single Judge the parties had already filed their objections before the Joint Director of Education for consideration, it was provided that the District Inspector of Schools shall forward the objections which shall be considered and disposed of by the Committee after affording opportunity of hearing to the parties.

4. Pursuant thereto, notices were issued to the parties by the Joint Director of Education to appear on various dates. However, the petitioners sought adjournment on every date and did not appear on the dates fixed. By a notice dated 4.2.2004 the Joint Director of Education had fixed 20.2.2004. Prior to that date, on 19.2.2004 the petitioner No. 6 Smt. Arti filed an application for adjournment. Thereafter the next date fixed by the Joint Director of Education was 4.3.2004. Then again on 3.3.2004, the petitioners filed an application praying for adjournment on the ground that they have already filed Civil Suit No. 149 of 2004 in the Court of the Civil Judge (Senior Division), Varanasi. In the said suit the prayer was to hold the election of the Committee of Management from the valid list of members dated 28.8.2000 and further to declare the result of the election dated 14.5.2002 as null and void. However, after filing the application dated 3.3.2004, the petitioners again did not appear on the date

fixed, i.e. 4.3.2004. The Joint Director of Education then on 27.3.2004 passed the impugned order whereby the election of the Committee of Management held on 14.5.2002 in which Smt. Geeta Devi Dwivedi had been elected as Manager was duly recognized.

5. The main ground for challenge to the order dated 27.3.2004 is that the said order has been passed by the Joint Director of Education alone, and not by the Committee as required by the Government Order dated 19.12.2000. Learned counsel for the petitioners has also submitted that the elections ought to have been held as per the list of members notified by the Prabandh Sanchalak/City Magistrate vide order dated 28.8.2000, in which the names of the petitioners were included and as the elections were held in pursuance of some other list and the petitioners were not permitted to participate in the election, the said elections ought to have been declared as null and void.

6. After the election dated- 14.5.2002 had been held, the petitioners have not filed any objections before the District Inspector of Schools or the Joint Director of Education, although permitted to do so by this Court vide its order dated 23.10.2002. The only objection filed by the petitioners with regard to the list of members for holding the elections, either before the District Inspector of Schools or the Joint Director of Education, are the one dated 27.4.2002 (Annexure-17 to the writ petition), which is of a date prior to the elections which were held on 14.5.2002. After the elections were held on 14.5.2002, there are no objections of the petitioners with regard to the voter list, on the basis of which the said elections were held. However, in the impugned order the question of voter list has been dealt with and reliance has been placed on the voter list prepared and finalized by the District Inspector of Schools on 5.12.2000 (Annexure-C.A.II to the counter affidavit of the State-respondents), on which basis the elections were held, and not on the basis of the list dated 28 8.2000 prepared by the Prabandh Sanchalak.

7. As regards the impugned order dated 27.3.2004 having been passed by the Joint Director of Education alone and not by the Committee in accordance with the Government Order dated 19.12.2000, it has been submitted that in the order itself it has been stated that the said order was being passed with the concurrence of the Regional Committee. Further, this Court had, vide order dated 10.1.2006, directed the learned Standing Counsel to produce the record pertaining to the proceedings before the Regional Committee. The original order, as produced before me, has been signed by all the three members of the Committee. However, learned counsel for the petitioners disputes such position and has produced a photo stat copy of the same order wherein only the Joint Director of Education has signed and not the other two members. He thus alleges that the other two members had signed the orders subsequently, Be that as it may, if the petitioners have any such grievance as to whether the proceedings of the Regional Committee were conducted properly or not and as to whether the Joint Director of Education had alone taken the decision and not the

Regional Committee in accordance with the Government Order dated 19.12.2000, the said questions can be raised and decided effectively in the suit which has been filed by the petitioners or in any other subsequent suit which may be filed by them.

8. In my view, the writ Court would not be the appropriate Court for adjudicating upon such factual disputes, which can only be decided after evidence is adduced by the parties, and not in proceedings under Article 226 of the Constitution of India. The petitioners have already filed a suit praying that the election dated 14.5.2002 be declared as null and void, which is being contested by the respondents and written statement has already been filed. The petitioners may raise all questions with regard to the correctness of the voter list and the correctness of the order dated 27.3.2004 or any other issue, for which, if so advised, they may get the suit suitably amended or institute a fresh one. However, in the facts of the present case, in the present proceedings I am not inclined to interfere with the order dated 27.3.2004 passed by the Joint Director of Education. Subject to the aforesaid observation, this writ petition fails and is, accordingly, dismissed. There shall be no order as to costs.