
(2008) 02 RAJ CK 0100

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3028 of 2004

Meera Shiksha Samiti

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 10(1)

Citation : (2008) 2 WLN 432

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. The petitioner is aggrieved against the repeated interference of the State authorities in the matter of administration of the petitioner society which is a society registered under the Societies Registration Act and has its own constitution under which the petitioner society is working. The petitioner's contention is that since long the petitioner's working is being obstructed for which the petitioner approached this Court also and now, the respondent State has passed the order dt. 30.06.2004 (Annex.42) under the colour of purported power u/s 10(1) of the Rajasthan Non-Government Educational Institutions Act, 1989 (for short 'the Act of 1989') and appointed S.D.O., Sangaria as Administrator for six months or till fresh elections are held in the supervision of S.D.O., Sangaria. According to the petitioner, the action of the respondents is wholly without jurisdiction and the respondents have even no jurisdiction to proceed with the enquiry in pursuance of the notice dt. 25.03.2004 (Annex.37) because of the fact that the said notice dt. 25.3.2004 is also without jurisdiction.

3. Brief facts of the case are that the petitioner is a registered society under the Societies Registration Act. Petitioner society is running two schools and one hostel at Sangaria town of Hanumangarh District. The elections of the Managing Committee of the petitioner society were held in May, 1996, initially but thereafter Administrator was appointed on 25.06.1996 upon which SB Civil Writ

Petition No. 1964/1997 was filed by the petitioner society before this Court challenging the appointment of Administrator. This writ petition was allowed vide order dt. 14.07.1997 and in pursuance thereof, the elected Board of the Managing Committee took charge on 19.07.1997. On 15.08.1997, a resolution was passed by the general body to extend the term of elected board for a period of one year so as to complete its full term of three years. Respondent No. 4 Om Prakash Angi submitted a Writ Petition No. 3129/99 and sought direction of this Court for appointment of Administrator and for holding fresh election of the Managing Committee. During pendency of said writ petition, petitioner society took steps for holding elections and the election officer was appointed and the election officer issued notice inviting objections about the proposed voters list on 05.01.2000. The voters list was finalised on 22.01.2000. Notices of election programme were sent to all the members on 13.01.2000, then to obstruct the election process, a civil suit was filed by one Diwan Chand but therein, no injunction was granted by the civil Court and ultimately, that suite was withdrawn. Thereafter, one Suresh Kumar Jain filed a Writ Oetition No. 338/2000 which was got dismissed as withdrawn on 11.02.2000 and before that on 03.02.2000, the State Government passed an order staying the elections. According to the petitioner, the order dt. 03.02.2000 was served on the election officer at 5:30 PM i.e. after the time for submission of nomination papers had expired. The election officer continued the election process in view of the judgment of this Court dt. 20.07.1999 and after completion of election process, results were declared on 10.02.2000. The election of the office bearers were held on 16.02.2000 and its results were declared on the same day. In a short period, on 30.03.2000, Administrator was appointed for management of petitioner society by exercising powers u/s 10 of the Act of 1989. The petitioner challenged the said action of the State by filing Writ Petition No. 1014/2000 wherein the operation of the order dt. 30.03.2000 was stayed by this Court vide order dt. 13.04.2000. The stay was confirmed and ultimately, the term of election of the petitioner society came to an end.

4. On 01.01.2003, Shri O.P. Agarwal was appointed as returning officer to conduct fresh elections of the Management Committee and Shri H.M. Saxena, Director, College Education was appointed as Government nominee on 01.02.2003. As per the averments made in the petition, the elections of the members of the Managing Committee were held on 5.2.2003 and on the same day, results were declared. On the same day, according to the petitioner, the departmental representative directed the election officer to issue programme of election of office bearers and in pursuance to that, the election officer issued election programme on 05.02.2003 and thereafter, issued corrigendum on 06.02.2003 making changes in dates for filing nomination form from 13.02.2003 to 12.02.2003. Notice was also issued for co-option of the members on 06.02.2003 and all the Directors were informed about the meeting to be held on 12.02.2003. On 12.02.2003, the list of candidates was issued and on 13.02.2003, the nomination forms were scrutinised and thereafter, results were

declared as there was no contest and, therefore, there was no necessity for elections. The returning officer submitted report of election to the respondent No. 1 and copy was also forwarded to the Director, College Education; District Collector, Hanumangarh and Assistant Registrar, Cooperative Societies and other authorities on 13.02.2003. On 26.02.2003, the District Collector wrote a letter to the respondent No. 1 for taking steps for resolving the dispute about the election of the Managing Committee. On 13.05.2003, the Joint Director wrote a letter to the President of the Samiti which according to the petitioner was to pressurize the petitioner to withdraw the Writ Petition No. 1014/2000 filed by the petitioner. The Writ Petition No. 1014/2000 was withdrawn by the petitioner society on 19.07.2003. According to the petitioner on 02.08.2003, the State Government turned down the proposal of the Collector for appointment of the Administrator and even when the respondent No. 1 gave three proposals for release of grant in aid on 09.10.2003, the Joint Director expressed that the proposal No. 3 appears to be correct and it was communicated vide communication dt. 30.10.2003 and the respondent No. 1 accepted the third proposal on 07.11.2003. However, the Director vide his letter dt. 26.11.2003 expressed his doubts as to the validity of the constitution of the Managing Committee. According to the petitioner, at this stage, Shri Gurjant Singh, Local MLA from Sangaria intervened and pressed upon authorities in the government not to release grant-in-aid to the petitioner. He submitted a written complaint to Hon'ble Chief Minister to stop grant-in-aid. Petitioner alleged that due to the pressure of that MLA from Sangaria, ultimately, the respondent No. 1 appointed S.D.O., Sangaria as Administrator vide order dt. 13.06.2004, which is under challenge in this writ petition.

5. One Om Prakash Angi submitted an application in the name of the petitioner itself claiming himself to be the President of Ad hoc Managing Committee constituted by the general body of the samiti and prayed that the applicant be impleaded as party respondent. This Court vide order dt. 11.10.2004 held that the application filed on behalf of Meera Shiksha Samiti cannot be accepted for the reason that the writ petition has been filed by Meera Shiksha Samiti itself. The prayer to implead Meera Shiksha Samiti as a respondent was rejected by this Court. However, the application of Om Prakash Angi was allowed and, therefore, he has been impleaded as party respondent in this writ petition. By the same order, this Court stayed the operation of Annex.42.

6. Learned Counsel for the petitioner vehemently submitted that a perusal of the reasons given in the show cause notice dt. 25.03.2004 clearly demonstrates that the show cause notice itself is wholly without jurisdiction and no proceedings could have been taken by the authorities on the basis of the reason given in the show cause notice dt. 25.03.2004. It is submitted that the elections were held on 13.02.2003 and those elections have not been challenged by anybody by initiating any lawful action under any provisions of law. The State had no jurisdiction to question the elections and decide the issue about legality and validity of the elections nor can look into any alleged irregularity in the process of election. The show cause notice was issued on the basis of the allegations which

were of the period before the new elected members were elected and malafides in issuing the notice is apparent because of the reason that on earlier occasions also, illegal interference was made in the working of the petitioner society.

7. Learned Counsel for the petitioner further submitted that there is no procedure provided under the bylaws of the society or under the Societies Registration Act by which any election can be cancelled even by general body as is projected by the respondents and relying upon the alleged decision of the general body dt. 16.03.2003. It is further submitted that no such general body meeting was held on 16.03.2003 nor it could have been. The entire story of convening the meeting on 16.03.2003 of general body is concocted.

8. Learned Counsel for the petitioner vehemently submitted that the elections were held on 13.02.2003 and as per the copy of the minutes submitted by the newly added respondent Om Prakash as Schedule-1, in the said resolution, it is nowhere mentioned who convened the meeting and how the members were given information to attend the meeting and under which bylaw or provision of rule, an adhoc committee could have been appointed. Nothing has been mentioned. The action of the respondents as well as the conduct of respondent Om Prakash have been assailed by the petitioner.

9. Learned Counsel for the petitioner further vehemently submitted that the person who is claiming himself to be interested in the smooth working of the petitioner society is happy with the order of appointing Administrator and has not challenged the same, even after taking stand that new committee was constituted by the general body of the petitioner society. This clearly shows that only a few persons are interested that the society should not run properly and smoothly and for that purpose, they have used the State to achieve their objects.

10. Learned Counsel for the petitioner further submitted that the writ petition against show cause notice is maintainable and can be filed when there is inherent lack of jurisdiction in issuing the notice as held in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, and also submitted that in the matter of internal management of the society and particularly, the management of the educational institutions, the Court should be slow in interfering and let the petitioner manage its affairs without interference of Government.

11. Firstly, it was contended by learned AAG for the respondent State that the writ petition of the petitioner has become infructuous in view of the fact that the term of office of the Managing Committee has already come to an end as back as in February, 2006 as admitted by the petitioner in the writ petition itself. It is also submitted that the entire endeavor of the respondent State is to see that the management of a society should be in the hands of right persons and fresh elections may be held in supervision of any election officer appointed by this Court. Learned AAG for the respondent State also submitted that the election of the petitioner may be directed to be held under supervision of the independent

person/authority. The contention of the respondent Om Prakash is that the election of the petitioner has already been cancelled.

12. Learned Counsels for the parties also relied upon several judgments in support of their contentions.

13. I need not deal the matter in much detail because of the plain and simple reason that it is admitted case of the parties that the term of the managing committee had already expired long back in the month of February, 2006 and both the parties are in agreement that now fresh elections are required to be held. The only question remains is that who should conduct the election.

14. So far as the respondent No. 4 is concerned, his status cannot be recognised in view of the fact that he failed to show how the elections could have been cancelled or set aside by general body of the society and further this Court after perusal of all the documents and minutes dt. 16.03.2003, copy of which has been shown to this Court, is of the view that the resolution taken on 16.03.2003 neither can cancel the election nor can appoint any adhoc committee to manage the affairs of the petitioner society because no such provision is available under the Constitution or bylaws of the petitioner society.

15. The respondents failed to show any law under which the State or State's Officers can question the election and can hold inquiry about alleged irregularity in the process of election and further failed to show that State can declare any election of society illegal.

16. In view of the above reason, the petitioner society through its President Shri Krishan Kumar Jain alone can be recognised. The order of the State Government appointing the Administrator dt. 30.06.2004 (Annex.42) as well as the notice dt. 25.03.2004 (Annex.37) are quashed and set aside. The petitioner society now may complete the process of election expeditiously.

17. The writ petition is allowed accordingly with no order as to costs.