

(2006) 05 AHC CK 0125

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 6526 of 2005 and 15662 and 23457 of 2006

Mohammad Ayyub Siddiqui

APPELLANT

Vs

Committee of Management, Abdul Karim Khan Inter College
through its alleged Manager Sabir Ali Abbasi and Others

RESPONDENT

Date of Decision : 10-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 3 AWC 3044

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : W.H. Khan and S.C. Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the records.

2. At the outset, the counsel for the parties submits that two unlisted writ petition No. 15652 of 2006, Committee of Management, A.K. Khan Inter College v. State of U.P. and Ors. and writ petition No. 6526 of 2005, Committee of Management, A.K. Khan Inter College v. State of U.P. and Ors. are on the computer list having nexus with the same matter as has been raised in the writ petition No. 23457, which is a fresh case. It is stated counter and rejoinder affidavits in the aforesaid connected writ petitions No. 15652 of 2006 have been exchanged and as such all the writ petitions aforesaid having common questions of law and facts may be heard and decided together.

WRIT PETITION NO. 6526 OF 2005: -

3. This petition has been filed mainly for the following reliefs: -

(a) "To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 8.3.2004 (Annexure No. 1 to the writ petition) passed by

the Joint Director of Education recognizing forged and fictitious election dated 26.12.2003 of the Respondent No. 6.

(b) To issue a writ, order or direction in the nature of mandamus commanding and directing the Respondents/Regional committee headed by Joint director of Education Moradabad to recognise the election dated 25.6.2004 of the petitioners which has been held in pursuance and compliance of the order of Division Bench of this Hon''ble court as well as in accordance with the provisions contained in the Scheme of Administration.

(c) To issue a writ, order or direction in the nature of mandamus commanding and directing the respondents not to interfere with the working and function of the Petitioners as Manager and President of committee of Management A.K.K. Inter college, Amroha, Moradabad.

(d) To issue any other writ, order or direction which this Hon''ble court may deem fit and proper in the circumstance of the present case.

(e) To award the costs of the petition in favour of the petitioner.

4. By the order dated 8.3.2004, the Joint Director of Education accorded conditional recognition to the election dated 26.12.2003 subject to the decision of the writ petition Nos. 235 of 1994, 1655 of 2001 and 3\\46768 of 2001. The aforesaid order is assailed on the ground that the Joint Director of Education has recognised a forged and fictitious election dated 26.12.2003 of respondent No. 6 in most illegal and arbitrary manner as the said election was never held amongst the valid members and that the procedure followed in holding the said elections said to have been was not in accordance with law. The orders is also assailed on the ground being only paper transaction on the ground that it has been passed without application of mind as the objections raised by the petitioner dated 28.2.2004 have not at all been considered and is liable to be quashed as the direction given by this Court dated 25.5.2000 in Special Appeal No. 404 of 2000 and as modified by order dated 6.7.2000 were not followed and judgment dated 24.3.2004 and in Special Appeal Nos. 453, 454 and 455/2001 directing the respondents to conclude the election but restraining from declaration of the result or its implementation.

Writ Petition No. 15662 of 2006:-

5. This writ petition has been filed for the following reliefs: -

1. a writ, order or direction in the nature of certiorari quashing the order dated 3.3.2006 passed by the Joint director of Education, Moradabad (Annexure No. 19 to the writ petition).

2. a writ, order or direction of suitable nature restraining the respondents from interfering in the functioning of the petitioners as the management of Abdul Karim Khan Inter College. Amroha, Jyotiba Phule Nagar.

3. a writ/writs, and/or to pass such other and further order as this Hon ''ble court

may deem fit and proper.

4. award costs of the petition to the petitioners.

6. By order dated 3.3.2006, the Joint Director of Education, Moradabad proceeded to pass an order, whereby reference to judgment dated 3.12.2004, the order dated 8.3.2004 has been revoked and Sabir Ali Abbasi, petitioner No. 2 in that writ petition had been authorised to look after the Management of the institution being the elected Manger of election dated 14.1.2004.

Writ Petition No. 23457 of 2006:-

7. This petition has been filed for the following reliefs:

(i) to issue a writ, order or direction in the nature of certiorari quashing the order dated 3rd March, 2006 passed by Joint Director of Education in so far as it permits the respondent 1st set to continue as Manager of the committee of management of the institution.

(ii) to issue a writ, order or direction in the nature of mandamus directing the respondents to appoint authorized controller in the institution to hold the election as per direction given by this Hon''ble Court in Special Appeal No. 404 of 2000 and other writ petitions.

(iii) to issue a writ, order or direction of suitable nature restraining the answering respondents from functioning as manager of the committee of management.

(iv) to issue any other writ, order or direction of suitable nature which this Hon''ble Court may deem fit and proper in the facts and circumstances of the present case.

(v) to award the cost of the petition in favour of the petitioner.

Brief facts in Backdrop of Orders impugned in the writ petition

8. Dispute of Committee of Management arose with filing of writ petition No. 10862 of 1999 by the petitioner in this petition, Mohd. Ayyub Siddiqui s/o Mohd. Yakub Siddiqui, against orders dated 20.2.1999 and 25.2.1999, whereby Joint Director of Education directed the District Inspector of Schools to reconsider the approval of election of the Committee of Management dated 6.7.1997 and attestation of the signature of the petitioner. The aforesaid writ petition was allowed by judgment and order dated 25.5.2000 along with another writ petition No. 15615 of 1998 was also decided, which was filed against orders dated 16.2.1998 and 19.2.1998 issued by the District Inspector of Schools requesting the Joint Director of Education to take action in the interest of the institution as there was mis-management prevailing.

9. Against the order and judgment dated 25.5.2000, respondent 1M set filed Special Appeal No. 404 of 2000, which was disposed of modifying the judgment and order dated 25.5.2000 to the extent that in place of any judicial officer, the election shall be held by the Sub Divisional Officers/Sub Divisional Magistrate.

10. In the meantime during the pendency of special appeal elections were held, which was challenged by means of writ petition No. 40716 of 2000, which was disposed of directing the Sub Divisional Magistrate to hold elections as per directions given in special appeal No. 404 of 2000.

11. The Sub Divisional Magistrate in pursuance of the order passed in special appeal No. 404 of 2000 decided the dispute of membership recognising only 15 members as valid members of the Electoral College.

12. The order of the Sub Divisional Magistrate dated 4.1.2001 was challenged by means of writ petition No. 1655 of 2001 (Shane Ail Abbasi and Ors. v. State of U.P. and Ors.) by the remaining aggrieved members.

13. Election of the Committee of Management is said to have been thereafter held on 14.1.2001, allegedly against the provision of the Scheme of Administration and was challenged in writ petition No. 4768 of 2001 (Sujat Ali and Ors. v. State of U.P. and Ors.).

14. It appears that since the respondents 1st set were going to hold elections on 16.12.2003, the petitioner raised objection before the District Inspector of Schools regarding membership in which notices were issued by the District Inspector of Schools.

15. During the pendency of the above writ petition, election of the Committee of Management was held by respondent 1st set, which was recognised by the Joint Director of Education conditionally subject to decision of the writ petition vide his order dated 8.3.2004. Aggrieved by the order dated 8.3.2004, the petitioner again filed a writ petition No. 6526 of 2005, which is said to be still pending for consideration before this Court.

16. It is averred in the writ petition that when Joint Director of Education came to know about the fact that respondent 1st set had obtained recognition of the election fraudulently and by misrepresentation, he stayed the operation of his own order dated 8.3.2004, which has been passed by him earlier by which recognition of the election had been conditionally granted.

17. Thereafter both the writ petition Nos. 1655 of 2001 and 4768 of 2001 along with writ petition No. 235 of 1994 filed by the respondent 1st set were connected and decided. Writ Petition No. 235 of 2004 was dismissed directing that election be held in consonance with the observations and directions in Special Appeal No. 404 of 2000. Aggrieved by the order dated 24.3.2004, the petitioners of the aforesaid writ petition Nos. 1655 of 2001, 4768 of 2001 and 235 of 1994 filed Special Appeal Nos. 453, 454 and 455 of 2004 in which interim order was granted which was also modified vide order dated 14.5.2000 directing for holding the elections. Consequently the elections were held on 25.6.2004. The special appeals were decided on 3.12.2004 affirming the order of Sub Divisional Magistrate dated 4.1.2001 as valid. Subsequently the election dated 25.6.2004 was challenged in writ petition No. 29779 of 2004 by alleged 39 members, which

was dismissed.

18. Thereafter writ petition No. 11769 of 2004 was filed by respondent 1st set challenging the order dated 15.3.2004, which was allowed allegedly without giving any opportunity of hearing to the petitioner even though it is stated that the petitioner had filed caveat application along with the said writ petition. The aforesaid, writ petition No. 11769 of 2004 was decided with two other connected writ petitions by order dated 20.8.2005. The judgment and order dated 20.8.2005 was challenged in special appeal Nos. 1199, 1200 and 1201 of 2005 respectively which are still pending.

19. It also appears that during the pendency of the special appeal aforesaid, the Joint Director of Education again assed an order directing respondent 1st set to continue as Manager of the Committee of Management in pursuance of the election dated 14.1.2001 despite the fact that term of the Committee of Management was 3 years and recalled his order dated 8.3.2004 by which conditional recognition had been given to respondent 1st set.

20. Aggrieved respondent 1st set filed writ petition No. 15652 of 2006 challenging the order of Joint Director of Education dated 3.3. 2006 by which interim order was granted staying the operation of the order dated 3.3.2006. The present writ petition has been filed challenging that part of the order dated 3.3.2006 whereby permission has been accorded to respondent 1st set to continue as Manager of the Committee of Management in pursuance of the election held on 14.1.2001 inspite of the fact that the term of the Committee of Management is 3 years. It is urged that once the Joint Director of Education has decided to withdraw the conditional recognition given to respondent 1st set there was no occasion for permitting the respondent 1st set to continue after the term of Committee of Management came to an end.

21. The Counsel for the respondents submits that order dated 6.11.2000 is important by which writ petition No. 40716 of 2000 was disposed of directing the S.D.M. to hold the election as per directions given in Special Appeal No. 404 of 2000. He also submits that it is apparent from Annexure-3 dated 4.1.2005 that the list of 17 members was finalized but many valid members were not recorded therein and that election dated 14.1.2001 was not accorded recognition as such suit No. 185 of 2001 was filed inter alia that 15 members were wrongly excluded from the Committee of Management. No interim order in the suit was passed and it is still pending decision. He further submits that from the judgment of the Division Bench in Special Appeal appended as Annexure 11 to the writ petition No. 15652 of 2006 that the elections held by S.D.M. on 14.1.2001 was upheld. That election was not challenged by any of the parties and has become final. It is stated that the Division Bench in Paragraph 33 had ordered that election should have been held by an independent agency and the court has also drawn attention of the Court to the conclusion contained in Paragraphs 33, 35 and 36 of the judgment as under: -

33. This court while issuing directions for holding elections by independent official/person in its judgment dated 25.5.2000 had observed as follows :-

Since long litigation is going on between Mohd, Ayub Siddiqui and Hafiz Ikrar Ahmad Abbasi to the knowledge of this Court and a number of writ petitions have been filed by both the parties from time to time which are writ petition No. 26968 of 1995, WP No. 20041 of 1996, Special Appeal No. 824 of 1994, WP No. 35677 of 1994, WP No. 14604 of 1995, WP No. 35727 of 1997 and the present two writ petitions viz. WP Nos. 10860 of 1999 and 15615 of 1998, this Court feels that now these litigation could come to an end as it would naturally affecting the administration of the institution and badly affecting the studies and future career of the students, although on the direction of this Court passed in writ petition No. 235 of 1994.

With a view to avoid further litigation and in the interest of the institution in question and its students, this Court directs that instead of entrusting the burden of conducting of next elections on any party, it would be proper that a Returning Officer be nominated who will see that elections of the members of the committee of management be conducted in accordance with scheme of administration fairly and impartially.

35., Our conclusions are as follows:

(a) Sri Hafiz Ikrar Ahmad Abbasi was not validly removed in the meeting dated 25.7.1993.

(b) Even if it is taken that Sri Hafiz Ikrar Ahmad Abbasi wrongly participated in the elections held on 14.1.2001, his vote did not affect the result, of the election.

(c) No person other than Sri Hafiz Ikrar Ahmad Abbasi was removed.

(d) The committees of management elected after the undisputed 1991 elections were disputed. The members made by any of them were not entitled to participate in the elections held by the S.D.M.

36. In view of our conclusion, the special appeals are allowed. Writ petition No. 235 of 1994 is allowed, whereas writ petition No. 1655 of 2001 and writ petition No. 4768 of 2001 are dismissed. The order of DIGS dated 28/29/12/1993 and 31.5.1994/4/6/1994- so far as they uphold the removal of Sri Hafiz Ikrar Ahmad Abbasi- are quashed. The elections held by the SDM on 14.1.2001 are upheld.

22. It appears that there is a long drawn litigation between the parties, which is not coming to an end and the parties have approached to the High Court many a times on the question of validity of membership and elections. After hearing the counsel for the parties at length and on perusal of records, I am of the opinion that where highly disputed question of facts require adjudication of facts on basis of documentary and oral evidence by the parties who are appearing the High Court in inning after innings, it is in the interest of justice that such hotly contested disputed questions of facts decided by a Civil Court for selection and

finalisation of questions of facts.

23. I am supported in my view by judgment of this Court in (1993) 2 UPLBEC 1333, Basant Prasad Srivastava and Ors. v. State of U.P. and Ors., 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 be declared forthwith and further steps be taken in accordance with law.

24. I am also supported in my view by a recent judgment rendered by two Division Benches of this Court in Special Appeal No. 1078 of 2005, Munna Lal Singh and Anr. v. State of U.P. and Ors. and Special Appeal No. 1394 of 2004, Committee of Management v. Regional Joint Director of Education and Anr.

25. Regard may also be had to the recent judgment of the Hon'ble Supreme Court in Himmat Singh Vs. State of Haryana and Others, wherein in paragraph 11 it has been held that only question of law can be raised and not statement of fact and it was further held that "whether statements of the appellants or the respondents were correct or not could not ordinarily be decided in a writ jurisdiction. It is well known that in writ petition ordinarily such a disputed question of fact could not be entertained. The High Court arrived at finding of fact on the basis of affidavit evidence.

26. The aforesaid cases have been followed by this Court in Civil Misc Writ Petition No. 20719 of 2006, Uttam Nishad v. State of U.P. and Ors., wherein it has been held that the Regional Level Committee cannot exercise judicial or quasi-judicial function until it is specifically directed by the High Court or Hon'ble Supreme Court in a given case. Even if any of the parties are not satisfied, then in that case remedy is not before the High Court in writ petition under Article 226 of the Constitution, but before the Civil Court by means of suit as disputed questions of facts can only be decided by the Civil Court after documentary and oral evidence is adduced.

27. For the aforesaid reasons and in view of law that highly disputed question of facts cannot be adjudicated under Article 226 of the Constitution as the require findings on basis of oral and documentary evidence to be proved by witnesses, the writ petition is not maintainable as the questions involved in these petitions are not based on legal grounds but on statement of facts which cannot be

decided merely on basis of affidavits.

28. The writ petition along with connected writ petition Nos. 15652 of 2006 and 6526 of 2005 are dismissed on the ground of alternative remedy before the Civil Court.