
(2010) 07 AHC CK 0301

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43747 of 2010

Mohd. Abbas and Another

APPELLANT

Vs

State of U. P. and Others

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0301

Hon'ble Judges : Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The petitioners have sought the quashing of the order dated 17th July, 2010 passed by the Assistant Registrar, Firms, Societies and Chits, Moradabad (hereinafter referred to as the "Assistant Registrar") by which he has, pursuant to the directions issued by this Court on 26th October, 2009 in Writ Petition No.24673 of 2002, determined the electoral college of 19 persons and has directed for holding of the elections on 29th July, 2010.

2. In Writ Petition No.24673 of 2002, the following order dated 26th October, 2009 was passed:

"This writ petition has been filed for issuing a writ of certiorari quashing the order dated 17.5.02 passed by Joint Director of Education, Moradabad Division, Moradabad by which the Joint Director of Education has held the elections of Committee of Management of Asim Behari Kanya Junior High School, Moradabad dated 19.10.1997 and 24.10.2000 illegal and appointed finance and account officer of the office of Regional Director of Education Moradabad as Prabandh Sanchalak with the direction to hold an election within a period of three months on the basis of the list of valid members.

I have heard Sri M.A.Zaidi learned counsel for the petitioner, Sri K.A.Ansari, learned counsel appearing for the President of the Society, learned standing counsel and Sri Girish Chand Shukla holding brief of Sri Kamlesh Shukla learned counsel appearing for respondents.

Learned counsel for the petitioner has submitted that the term of Committee of Management is five years whereas this fact has been disputed by Sri K.A.Ansari learned counsel appearing for the President of the Society, in his submissions, the term of the Committee of Management is three years.

Sri Zaidi learned has further submitted that in the minority institution Prabandh Sanchalak cannot be appointed, in his submissions, the order passed by Joint Director of Education Region Muradabad is without jurisdiction as Joint Director of education has no role in the affairs of Committee of Management of a Junior High School run under the Basic Education Act and rules framed thereunder. This legal position could not been disputed either by learned standing counsel or by the other respective counsel appearing for respondents.

Be that as it may after hearing learned counsel for the parties, I find that the term of the earlier elections held either in the year 1997 or in the year 2000 has expired in both ways either term of elections was for three years or five years. therefore, no relief can be granted to the petitioner with respect to those elections as no cause of action to that extent survives today.

So far as the appointment of authorised controller is concerned, I find that the order passed by Joint Director of Education appointing authorised controller is without jurisdiction and unsustainable in the eye of law.

The Assistant Registrar Chits Funds and Societies Regional Office Moradabad is directed to hold an election of the Committee of Management of the society after finalizing the list of voters in accordance with law if possible within a period of six months from the date of receipt of certified copy of this order. It is also provided that unless the election is held the Principal of the said institution shall look into the affairs of the college pursuant to the order of this Court in Special Appeal No. 690 of 2002.

Subject to above observation the writ petition is disposed of."

3. The Assistant Registrar in the impugned order has noticed that petitioner no.2Abdul Hai had submitted a list of 40 members while respondent no.4Mohd. Mukhtar had submitted a list of 24 members. He found that in the list of 40 members submitted by Abdul Hai, 13 persons had died and regarding the remaining 27 members, only photostat copies of the receipts had been filed but original documents regarding enrollment had not been filed and nor any evidence had been submitted to show in which Bank the amount received through aforesaid photostat receipts was deposited. He also found from the documents submitted by respondent no.4Mohd. Mukhtar that out of these 40 members, the membership of 17 persons had been cancelled on 3rd April, 1998 because of nondeposit of the membership fee and that there was no dispute regarding four members. The Assistant Registrar also found that the membership of 8 members was not in accordance with the Scheme of Administration.

4. While deciding the validity of the list of 24 members submitted by respondent

no.4Mohd. Mukhtar, the Assistant Registrar found that the claim of five members was not correct but that of the remaining 19 members was correct since the ledger book showed that they had deposited the amount and the amount was subsequently also deposited in the Bank. He, therefore, prepared the list of 19 members on the basis of which the election was to be held and the election has been notified to be held on 19th July, 2010.

5. Sri R.K. Ojha, learned counsel appearing for the petitioners has submitted that the Assistant Registrar committed an illegality in finalizing the electoral college of 19 members. It is his submission that the membership fees of 27 members had been deposited and finding to the contrary is incorrect.

6. Sri P.N. Saxena, learned Senior Counsel appearing for respondent no.4 assisted by Sri M.A. Zaidi, however, submitted that there is no infirmity in the finalisation of the electoral college by the Assistant Registrar and as petitioner no.2Abdul Hai could not substantiate his claim before the Assistant Registrar regarding the list of 40 members submitted by him and respondent no.4Mohd. Mukhtar was able to substantiate his claim, the Court should not interfere with the impugned order. It is also his submission that in any view of the matter, factual controversy has been raised by the petitioners as to whether the membership fee was actually deposited or not and this issue cannot be decided in the absence of evidence. It is, therefore, his contention that the petitioners should file a Civil Suit.

7. I have considered the submissions advanced by the learned counsel for the parties.

8. The dispute raised in the present petition is as to whether the list of 40 members of the General Body submitted by petitioner no.2Mohd. Mukhtar is correct or not. The Assistant Registrar has found as a fact that the membership fees of 27 persons had not been deposited. It is the contention of the learned counsel for the petitioners that the fee was deposited. It will not be possible for the Court to decide this issue in this petition as evidence has to be led by the parties for this purpose.

9. A Division Bench of this Court in *Basant Prasad Srivastava & Anr. Vs. State of U.P. & Anr.*, (1993) 2 UPLBEC 1333 observed as follows:

"The election process having started, it must come to its logical conclusion. Once it comes to its logical conclusion by declaration of result of the election the aggrieved person may challenge the election by filing election petition or civil suit in accordance with law. In such a proceeding the election may not be set aside if the alleged illegality or irregularity has not materially affected the result of the election. Approach to Court at intermediate stage in the election is bound to result in an office either remaining vacant or being occupied by a person whose entitlement to hold the office has ceased. Neither is a happy situation. It is, therefore, desirable that the election process should end as early as possible and the declaration of result should not be deferred through repeated interim orders

passed from time to time." (emphasis supplied)

10. Another Division Bench of this Court in Committee of Management Sri Radha Krishna Sanskrit Mahavidyalaya & Ors. Vs. Deputy Director of Education, Gorakhpur & Ors, 195051 (4) AIEC 155 also made the following observations:

"In this State there are large number of educational institution and the functioning of such institutions are 11. controlled and managed by a Committee of Management. Such Committee is constituted under the rules, regulations or certain Administrative Schemes. The term of such Committee of Management is limited by time. The election process inter alia involves the determination of the members who can vote and participate in the election, nomination, preparation and publication of programme, scrutiny and declaration of result. In case, at the intermediate stage of the elections process the High Court entertains petitions under Article 226 of the constitution it will further delay the election process. Secondly, the disputed question of fact as to who are the members and other related matters cannot be decided in the writ jurisdiction. A person who has any grievance can take recourse to the remedy provided under the Statute, Rules or Regulations or by filing suit in the competent court of law."

11. These two judgments were relied upon and followed by a Division Bench of this Court in Gulab Dhar Pandey Vs. State of U.P. & Ors., 2009 (3) ESC 1640 and it was observed:

"This Court has consistently held that once the election process has been started this court should not interfere. If any party has any grievance about the finalization of the voter list or about the voter list, it is always open to such person to challenge the same in the appropriate proceedings namely under the Statute, Rules or Regulations or by filing suit in the Competent Court of law."

12. Inasmuch as factual dispute has been raised in the present petition which can only be decided after evidence is led and in view of the aforesaid decisions of this Court, this Court declines to interfere with the impugned order but leaves it open to the petitioners to file a Civil Suit.

The writ petition is, accordingly, dismissed.