
(2010) 05 AHC CK 0283
In the Allahabad High Court

Nand Lal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-05-2010

Acts Referred:

Citation : (2010) 05 AHC CK 0283

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dilip Gupta, J.—The petitioner has sought the quashing of the order dated 6th May, 2010 passed by the District Basic Education Officer, Maharajganj (Annexure-11 to the writ petition) by which he has withdrawn the order of single operation of the salary account of the Institution and has attested the signatures of Nandini Devi as the Manager of the Committee of Management of the Institution. The petitioner has also sought the quashing of the order dated 5th May, 2010 passed by the District Basic Education Officer (Annexure-11-A to the writ petition) by which he has approved the election of Nandini Devi as Manager of the Committee of Management of the Institution for the remaining term.

2. Dharmendra Kumar Janta Laghu Madhyamik Vidyalaya Madhoganj, District Maharajganj (hereinafter referred to as the "Institution") is an educational Institution up to the Junior High School level and is recognized under the Basic Education Act. The petitioner claims to have been elected as the Manager of the Committee of Management of the Institution in 1982 and thereafter. It is asserted that in the last undisputed election of the Committee of Management held on 24th February, 1996, the petitioner was again elected as the Manager and his signatures were also attested by the District Basic Education Officer. It is also asserted that the Headmaster of the Institution late Ram Nawal Yadav manipulated forged recognition of the petitioner and set up his wife Durgawati Devi as the Manager in place of the petitioner and the District Basic Education Officer also attested her signatures. The petitioner filed Original Suit No. 1067 of

1996 in which temporary injunction was granted in favour of the petitioner and the District Basic Education Officer thereafter again attested the signatures of the petitioner as Manager by the order dated 26th December, 1996.

3. Durgawati Devi filed Writ Petition No. 23712 of 1997 to challenge the order passed by the District Basic Education Officer attesting the signatures of the petitioner as Manager, but during the pendency of the writ petition, an order dated 17th October, 1998 was passed by the District Basic Education Officer again attesting the signatures of Durgawati Devi as Manager as a result of which the petitioner filed Writ Petition No. 35398 of 1998 in which an interim order was passed by the Court on 9th November, 1998 that Durgawati Devi may function as Caretaker Manager only and shall not take any policy decision and shall not make any appointment in the Institution.

4. The Assistant Registrar, Firm, Societies & Chits, in the meantime, registered the list of office bearers of the Committee of Management of the Society in which the petitioner was elected as the Manager against which Durgawati Devi filed Writ Petition No. 8127 of 2001.

5. Both the aforesaid two writ petitions were heard together and decided by the order dated 8th August, 2002. Writ Petition No. 35398 of 1998 was allowed and the order dated 17th October, 1998 by which the petitioner was removed from the post of Manager and the signatures of Durgawati Devi were attested was set aside. Writ Petition No. 8127 of 2001 was also partly allowed to the extent that the Assistant Registrar was directed to adjudicate the dispute about membership.

6. Durgawati Devi filed two Special Appeals which were dismissed. The District Basic Education Officer submitted a report dated 3rd March, 2009 to the Assistant Director, Basic Education for appointment of an Authorized Controller and an order was also passed on 4th May, 1999 for single operation of the salary account of the Institution.

7. Nandini Devi daughter-in-law of Durgawati Devi, however, claimed that her mother-in-law Durgawati Devi was working as the Manager but she submitted her resignation because of ill health on 15th September, 2009 and subsequently the Committee of Management in its meeting held on 25th September, 2009 elected Nandini Devi as Manager for the remaining term of the Committee of Management. She filed Writ Petition No. 10024 of 2010 which was disposed of by the Court by the order dated 23rd February, 2010 with the following observations:

This writ petition has been filed with the grievance that though the papers regarding the election of the Committee of Management of the Institution were sent to the District Basic Shiksha Adhikari, Maharajganj by Registered Post on 4th November, 2009, but till date no decision has been taken by the District Basic Shiksha Adhikari for granting recognition to the Committee of Management.

Sri G.S. Maurya has put in appearance on behalf of respondent No. 2. He states that an appropriate decision shall be taken expeditiously.

In view of the aforesaid, this petition is disposed of with a direction to the District Basic Shiksha Adhikari, Maharajganj to pass an appropriate order on the papers submitted by the petitioners expeditiously, after hearing the parties, if there be any, preferably within a period of six weeks" from the date a certified copy of this order along with a copy of the letter dated 4th November, 2009 is served by the petitioners before the District Basic Shiksha Adhikari, Maharajganj.

It is made clear that this Court has not adjudicated upon the merits of the case, which shall be considered by the District Basic Shiksha Adhikari in accordance with law.

8. It is as a consequence of the aforesaid order passed by the Court that the District Basic Education Officer passed the orders dated 5th May, 2010 and 6th May, 2010 that have been impugned in this petition.

9. Sri H.N. Singh, learned Counsel for the petitioner submitted that the District Basic Education Officer was required to decide the dispute after giving opportunity to the parties in terms of the judgment and order dated 23rd February, 2010 rendered in Writ Petition No. 10024 of 2010 and though the petitioner had filed detailed objections before the District Basic Education Officer on 13th April, 2010 but without taking into consideration the said objections, the District Basic Education Officer has approved the election of Nandini Devi as the Manager for the remaining term of the Committee of Management of the Institution. It is his submission that even otherwise, when Durgawati Devi was not the Manager, and orders had been passed in Writ Petition No. 35398 of 1998 on 8th August, 2002, a false case was set up by Nandini Devi who is the daughter-in-law of Durgawati Devi that she had been elected as Manager for the remaining term after the resignation of Durgawati Devi. He has, therefore, submitted that the orders dated 5th May, 2010 and 6th May, 2010 deserve to be set aside on the ground that no opportunity had been provided to the petitioner before passing the order.

10. Sri S.N. Srivastava, learned Counsel appearing for respondent No. 3- Nandini Devi, on the basis of the averments made in the counter affidavit, submitted that the petitioner cannot be a member of the General Body in terms of the Bye-Laws of the Society and under the amended Bye-Laws of the Society, Durgawati Devi was to continue on the post of Secretary/Manager during her lifetime. He also submitted that Durgawati Devi had been functioning as Manager of the Committee of Management of the Institution, but because of her illness she submitted her resignation which was accepted in the meeting held on 25th September, 2009 and Nandini Devi was consequently elected as the Manager for the remaining term of the Committee of Management of the Institution.

11. I have considered the submissions advanced by learned Counsel for the parties.

12. The sole dispute that is required to be examined in this petition is whether the District Basic Education Officer has considered the objections filed by the

petitioner before passing the order dated 5th May, 2010 (Annexure- 11-A to the writ petition) as was required to be done in terms of the judgment and order dated 23rd February, 2010 passed by this Court in Writ Petition No. 10024 of 2010 filed by Nandini Devi. A perusal of the impugned order shows that there is no consideration at all of the objections filed by the petitioner. It is the contention of Sri S.N. Srivastava, learned Counsel for Nandini Devi that in fact objections had not been filed by the petitioner. Even if this contention is accepted, then too, in view of the observations made in the judgment and order dated 23rd February, 2010, it was obligatory for the District Basic Education Officer to have heard the parties concerned and since the petitioner had been contending throughout that he is the Manager of the Committee of Management of the Institution, it was necessary for the District Basic Education Officer to have invited objections from the petitioner. Learned Counsel for the parties state that one Sri Ram Lal is also claiming to be the Manager. There is nothing on the record to indicate that he has been heard by the District Basic Education Officer.

13. Thus, for the reasons stated above, the order dated 5th May, 2010 (Annexure-11-A to the writ petition) and the order dated 6th May, 2010 (Annexure-11 to the writ petition) passed by the District Basic Education Officer are set aside. It shall, however, be open to the District Basic Education Officer to pass a fresh order in accordance with law after inviting objections from the petitioner and Ram Lal. Such objections may be filed within a period of two weeks from today. The District Basic Education Officer shall pass an appropriate order in accordance with law within the next four weeks. Till an order is passed by the District Basic Education Officer, the salary account of the Institution shall be operated singly. Liberty is also given to the parties to inform Sri Ram Lal about the order passed today.

14. The writ petition is allowed to the extent indicated above.