
(2008) 01 AHC CK 0008
In the Allahabad High Court
Case No : C.M.W.P. No. 3131 of 2008

Narendra Deo Rai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A

Citation : (2008) 6 AWC 5985

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ram Prakash Rai, for the Appellant; Shashi Nandan, S.K. Rai and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri R. P. Rai, learned Counsel for the Petitioner, Sri Shashi Nandan, learned senior counsel assisted by Sri S. K. Rai, learned Counsel for the Respondents and the standing counsel.

2. This writ petition has been filed challenging the validity and correctness of the order dated 9.10.2007, passed by the Regional Level Committee under the Chairmanship of Joint Director of Education, Gorakhpur Division, Gorakhpur appended as Annexure-8 to the writ petition.

3. By the aforesaid impugned order, the Regional Level Committee has accorded approval to the election held by Committee of Management, Sarvodaya Shiksha Samiti Kauri Ram, Gorakhpur through its Manager, Sri Sita Ram. After granting approval the Committee of Management has directed the D.I.O.S. to proceed further in the matter.

4. The Petitioner claims himself to be a life member of the aforesaid society. The elections of the Committee of Management were held on 17.5.2007 in pursuance to the directions given by a Division Bench of this Court in Special Appeal No. 21

of 2007. Consequently notice for holding election was issued by the Regional Committee and elections have been held.

5. The Petitioner in the present writ petition has assailed the impugned order on the ground that it has been passed without affording any opportunity of hearing or notice to the Petitioner who was a necessary party. He has also challenged the impugned order on the ground that the D.I.O.S. has accorded approval beyond his jurisdiction while submitting the report without controverting the earlier report submitted by his predecessor.

6. I have perused the impugned order and the record. The contention of the Petitioner that has not participated in the election on the ground that he had not received any notice does not appear to be correct. Further, the statement of the Petitioner that no notice had been issued to any person and the election has been held even without waiting one day as statutory period of 60 days is provided in the bye-laws also appears to be incorrect as the Regional Committee has found that election has been held in accordance with the law.

7. It appears that the notice had been issued in pursuance to the directions given by this Court and the list of members has been finalized. It also transpires that an objection was raised on 5th May, 2007 regarding the validity of the members of the Committee of Management. The Registrar gave the list of the members on 16th May, 2007 to the Respondents and the election has been held in accordance with the aforesaid list of valid members. Out of 63 valid members 47 have participated in the election. This Court is not interfering into the disputed question of fact and law for setting aside the elections held in accordance with law. The Respondent Committee of Management is already in office. The writ petition at the behest of the Petitioner who has neither participated in the election nor elected as member of the Committee of Management is therefore, not maintainable. If the Petitioner challenges the factual aspect of the matter, he has a remedy by way of filing civil suit. The Court in Civil Misc. Writ Petition No. 20719 of 2006, Uttam Nisad Vs. State of Uttar Pradesh and Others, has held that if the parties approach the High Court more than once, disputing election of Committee of Management or the college of the Society, it is a sure indication that litigation has deep roots in disputed facts and in the circumstances the matter should invariably be ordered to be decided in civil courts, which can record findings of facts on basis of oral and documentary evidence, which is not feasible in writ jurisdiction where Courts are already burdened. If there is any grievance to either of the parties regarding election I am of the firm view that they have to approach the civil court and get the dispute settled by findings of facts there. It is not open to them to approach in the writ petition again and again under Article 226 of the Constitution without first getting the dispute settled finally through civil court.

8. For the reasons stated above and in view of the aforesaid decision in Uttam Nishad (supra) no interference is required in the matter.

The writ petition is accordingly, dismissed. No order as to costs.