
(2014) 08 AHC CK 0200
In the Allahabad High Court
Case No : Civil Misc. Writ Petition No. 7604 of 2014

Panna Lal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16A(7)

Citation : (2015) 2 AWC 1626 : (2014) 4 UPLBEC 2747

Hon'ble Judges : Manoj Kumar Gupta, J

Bench : Single Bench

Advocate : Ashok Khare and Pradeep Upadhyay, Advocate for the Appellant;
K.B. Dixit and R.K. Ojha, Advocate for the Respondent

Judgement

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Manoj Kumar Gupta, J.—The petitioners, who are five in number and claim themselves to be life members of the General Body of a recognised institution, namely, Lallu Singh Inter College Kurawali, District Mainpuri hereinafter referred to as the "institution", have filed the present writ petition assailing the validity of the order dated 30.11.2013 passed by Regional Level Committee, whereby, objections filed by the petitioners against the elections dated 2.1.2013 held by authorised controller, have been rejected and the Committee elected with Jabar Singh as President and Kuldeep Kumar as Manager has been recognised. Further relief has been sought restraining respondent No. 6, the Committee with Sri Kuldeep Kumar as Manager, from functioning; for appointing authorised controller; and for directing the respondents to re-determine the membership of the General Body. Facts in nutshell relevant for deciding the controversy are that there is a registered society in the name of Lallu Singh Adarsh Janta Vidyalaya, Kurawali, Mainpuri (for short "society"). It is governed by its bye laws. It runs the institution, which got its recognition upto High School level in the year 1994. The institution has approved scheme of administration, whereunder, the term of

the Committee of Management is five years. An election of the Committee of Management of the institution was held on 28.6.2009 in which petitioners claim to have participated. One Madan Lal Verma was elected as Manager in the said elections. The election proceedings were submitted before District Inspector of Schools, Mainpuri for approval, who raised various queries by letter dated 7.8.2009. Thereafter, being not satisfied that the said elections have been held in accordance with the approved scheme of administration, the District Inspector of Schools, by order dated 19.11.2011, disapproved the same. The order was subject matter of challenge by the Committee through its Manager Madan Lal Verma in Writ Petition No. 74431 of 2011 on the ground that in view of objections raised by District Inspector of Schools by his letter dated 7.8.2009, the Committee decided to hold fresh elections on 9.8.2009, which were also approved on 11.8.2009, therefore, there was no justification on part of District Inspector of Schools to pass the order dated 19.11.2011. The writ petition was disposed of by judgment and order dated 20.12.2011, leaving it open to the petitioners therein to move application before District Inspector of Schools for cancelling/recalling his order dated 19.11.2011. The District Inspector of Schools, thereafter, passed an order dated 13.1.2012 recognising the elections dated 9.8.2009 in which Madan Lal Verma claimed to be elected as Manager. The order dated 13.1.2012 was subjected to challenge by Preetam Singh and others by filing Writ Petition No. 38364 of 2012. This Court by judgment and order dated 9.10.2012 came to the conclusion that in view of elections dated 28.6.2009 set up by Madan Lal Verma, the subsequent election dated 9.8.2009 was only an attempt to subvert the proceedings pending at the relevant time before District Inspector of Schools relating to recognition of elections dated 28.6.2009 and such elections cannot be recognised. This Court, with consent of parties, directed the District Inspector of Schools to recommend for appointment of authorised controller to the Joint Director of Education and who shall hold fresh elections of the Committee of Management of the institution after determining the electoral college as per the provisions contained in the scheme of administration.

2. In pursuance of the said direction, Associate District Inspector of Schools was appointed as authorised controller. He, by order dated 11.12.2012, proceeded to determine the electoral college and on basis of 3 lists submitted by Preetam Singh and others, Ranveer Singh and Madan Lal Verma determined the General Body as comprising of 149 members. The order was subjected to challenge by the petitioners No. 2 to 5 herein, by filing Writ Petition No. 67780 of 2012. This Court in view of the fact that election process had started, disposed of the writ petition by order dated 21.12.2012, permitting the petitioners No. 2 to 5 to file their objections in respect of the determination of the electoral college and the procedure followed for holding the elections, before the District Inspector of Schools, within one week from the date the elections are held. The District Inspector of Schools was directed to examine the objections and if required, refer the same to the Regional Level Committee constituted under Government Order

dated 19.12.2000. The Regional Level Committee was required to decide the legality of the elections by passing a speaking order. After elections were held and objections were filed, the District Inspector of Schools, by order dated 19.1.2013, rejected the objections filed by petitioners and approved the elections dated 2.1.2013 held by the authorised controller. The order dated 19.1.2013 by District Inspector of Schools, was subjected to challenge by the petitioners No. 2 to 4 herein by filing Writ Petition No. 11060 of 2013. This Court by judgment and order dated 4.3.2013 held that there is a bona fide dispute qua the electoral college and as such, the District Inspector of Schools ought to have referred the dispute to the Regional Level Committee. Accordingly, order of the District Inspector of Schools recognising the elections, was quashed and he was directed to transmit all the papers to Regional Level Committee for its decision. Pursuant thereto, the impugned order 30.11.2013 has been passed. The Regional Level Committee recognised the elections dated 2.1.2013 held by authorised controller, in which Committee with Kuldeep Kumar as its Manager was elected and rejected the objections filed by the petitioners. It also held that petitioners No. 2 to 5 cannot be treated to be members enrolled as per scheme of administration. Aggrieved by the said order, present writ petition has been filed.

3. The parties have exchanged their pleadings and with their consent, this writ petition was heard and is being decided finally as per Rules of the Court.

4. I have heard Sri Ashok Khare, Senior Advocate assisted by Sri Pradeep Upadhyay on behalf of the petitioners, learned standing Counsel on behalf of respondents No. 1 to 5 and Sri R.K. Ojha, Senior Advocate assisted by Sri K.B. Dixit on behalf of respondent No. 6.

5. Sri Ashok Khare, learned Counsel for the petitioners submitted that the finding in the impugned order of the Regional Level Committee dated 30.11.2013 rejecting the claim of membership of petitioners No. 2 to 5, is wholly illegal. It is submitted that the Regional Level Committee has wrongly ignored from consideration the receipts evidencing payment of subscription fees by the petitioners, though it bears the signatures of Mr. Madan Lal Verma, the then Secretary/Manager of the society. It is further submitted that the petitioners have participated in the elections held on 28.6.2009 and their name also finds place in the list of members submitted by Mr. Madan Lal Verma, the then Manager and copy whereof obtained under Right to Information Act, has been filed alongwith writ petition as Annexure-8. It is further submitted that Sri Kuldeep Kumar, who was elected as Manager, has never been the member of the General Body and as such, his election is exfacie illegal. It is urged that Kuldeep Kumar and Rajeev Kumar are sons of earlier Manager Madan Lal Verma and were illegally inducted as members. It is further submitted that Rajeev Kumar, during whose tenure, membership of large number of ordinary members was converted into life membership, was wholly illegal. It is contended that the list of 290 members submitted by one Ramveer Singh was the valid list of the General Body and the elections should have been held from said list, which was wrongly

rejected by the authorised controller while determining the electoral college. It is contended that detailed objections filed by the petitioners have been wrongly ignored from consideration. The procedure adopted by the Regional Level Committee in deciding the controversy is also wholly illegal, inasmuch as the petitioners were not given the documents submitted by the rival claimants, as such, there is breach of principles of natural justice.

6. On the other hand, Sri R.K. Ojha, learned Counsel appearing on behalf of respondent No. 6 submitted that the petitioners herein did not challenge the order of District Inspector of Schools dated 13.1.2012 recognising the elections dated 9.8.2009, in which Madan Lal Verma was elected as Manager. It is only Preetam Singh and certain other persons and not the petitioners herein, who have approached this Court challenging the said order by way of Writ Petition No. 38364 of 2012. It is further submitted that none of the petitioners herein have filed any objection nor have submitted any list of members before the authorised controller. It is further contended that under the impugned order of the Regional Level Committee petitioners No. 2 to 5 have not been recognised as members of the General Body and as such, they have no locus to file the present writ petition. It is further contended that after excluding petitioners No. 2 to 5, the petitioner No. 1 is the only member out of electoral college of 149 members, who has assailed the validity of the elections dated 2.1.2013 held by the authorised controller. In view of it, this writ petition, at his instance, is not maintainable in view of the judgment of this Court dated 7.9.2010 in Special Appeal No. 1380 of 2008 Rajveer Singh v. State of U.P. and others. It is further submitted that in any case, it is not a fit case for interference under Article 226 of the Constitution of India and petitioners should be relegated to the remedy of filing suit.

7. I have examined the submissions made by learned Counsel for the parties and perused the record. I first proceed to examine the argument of learned Counsel for the respondent regarding maintainability of the writ petition at the instance of the petitioners.

8. This Court while deciding the dispute relating to validity of the order of the District Inspector of Schools dated 13.1.2012 approving the elections held on 9.8.2009 had held that there is inconsistency between bye laws of the society and the scheme of administration and in view of clause 24 of the scheme of administration, the provisions thereof will prevail. It was held that only persons enrolled as members of the General Body under the scheme of administration would be entitled to participate in the elections. The relevant finding in this regard is reproduced below:-

"Having heard learned Counsel on this issue reference be had to Clause 24 of the approved Scheme of Administration which categorically states that in the event of any inconsistency between the provisions of the Scheme of Administration and the bye-laws of the parent society, the provisions of the Scheme of Administration will prevail. In the opinion of the Court, the elections of the Committee of Management will therefore be held under the Scheme of

Administration and from amongst the members of the General Body as enrolled under the Scheme of Administration. Clause 24 has been incorporated clearly in view of the overriding effect given to a Scheme of Administration as per Section 16A of the U.P. Intermediate Education Act, 1921.

Accordingly when the statute provides for an overriding effect, then Clause 24 has to prevail and it is only such members who are defined in the Scheme of Administration as referred to hereinabove and contended by Sri Ojha would be entitled to participate in the elections and not the members of the parent society as urged by Sri Pandey.

Accordingly, the writ petition is allowed. The order dated 13.1.2012 is quashed subject to the directions contained hereinabove. The District inspector of Schools shall forthwith recommend the appointment of an Authorised Controller in the Institution. The Joint Director of Education shall within fifteen days from today appoint an Authorised Controller. The Authorised Controller shall be appointed only for the purpose of holding of the elections of the Committee of Management discharging routine work of the Committee till fresh elections are held. The Authorised Controller shall proceed to determine the electoral college in the light of the directions and observations made hereinabove within one month of taking over charge after giving an opportunity of filing objections by either of the parties. After the electoral college is decided the elections shall be held within one month thereafter and the newly elected Committee shall be handed over charge to discharge its functions."

(emphasis supplied)

9. The said judgment was not challenged by any one and has attained finality. The Regional Level Committee in paragraph 22 of the impugned order has considered the claim of petitioners No. 2 to 5 regarding their membership. It has been observed that the petitioners claim to be inducted as life members in accordance with the scheme of administration. However, they have not filed any original receipt evidencing deposit of subscription fee nor have furnished any detail regarding the bank where such fee was deposited. In paragraphs 23 and 24 of the order, the Regional Level Committee has taken into consideration the evidence filed by the petitioners No. 2 to 5 in their earlier Writ Petition No. 11060 of 2013. It comprises of photostat copies of receipts regarding deposit of subscription fee and proceedings of the meeting dated 1.7.1992, wherein, they were allegedly inducted as members. The same set of receipts have been filed as Annexure-2 to the writ petition. The Regional Level Committee noted that these receipts, even if, taken into consideration, are not sufficient to accept the claim of membership of petitioners No. 2 to 5, inasmuch as the scheme of administration was approved on 3.6.1993, while the petitioners under these receipts claim to have deposited the subscription fee on 13.6.1992. It was further noted that even the meeting dated 1.6.1992, in which the petitioners claim to have been inducted as members, relates to the period prior to approval of the scheme of administration. Accordingly, the claim of the petitioners of being

inducted as life members as per the approved scheme of administration was not accepted.

10. It is noteworthy that the petitioners name was not included in the electoral college prepared by the authorised controller. The petitioners aggrieved by the said order filed Writ Petition No. 67780 of 2012, which was disposed of with liberty to file objections after the elections are held. Thus, the main issue before the Regional Level Committee qua the petitioners No. 2 to 5 was whether they are members of the General Body. Yet the petitioners chose not to file the receipts relating to deposit of subscription fee. They also did not offer any explanation for not filing such receipts and evidence before the Regional Level Committee. Their entire claim regarding membership was determined by Regional Level Committee on the basis of documents filed by them in their Writ Petition No. 11060 of 2013. Even in the present writ petition, the objections allegedly filed by the petitioners before the Regional level Committee, have not been annexed, though in paragraph 29 of the writ petition, they claim to have filed objections/evidence and have claimed that the same was not considered.

11. It is not in dispute that this Court has already held in its judgment dated 9.10.2012, while deciding Writ Petition No. 38364 of 2012 that only such members, who have been enrolled as per the provisions in the scheme of administration, are entitled to participate in the elections and not the members of the parent society. Thus, the petitioners, who were allegedly inducted as life members before the scheme of administration of the institution was approved, could only be members of the General Body of the society under its bye laws. There is no evidence that they got themselves enrolled as life members as per the provisions of the scheme of administration. The Regional Level Committee in its impugned order has taken the same view. The petitioners could not point out any perversity in the finding recorded in this regard to warrant interference by this Court.

12. However, it is contended by the petitioners that they have participated in all the elections held in the past. In this regard, proceedings of the election dated 28.6.2009 are brought on record, in which they allegedly participated. A list submitted by erstwhile Manager Panna Lal Verma in the year 2009, copy whereof was obtained under Right to Information Act, has also been filed to buttress the said claim. However, it is noticeable that District Inspector of Schools by order dated 7.8.2009 expressed doubts about the legality of the elections held on 28.6.2009. Thereafter, by order dated 19.11.2011, the District Inspector of Schools disapproved the elections held on 28.6.2009. These elections were, thus, never recognised. Consequently, it would not be safe for this Court to record any finding in favour of the petitioners merely on the basis of their participation in the elections held on 28.6.2009.

13. For upholding the plea that the petitioners have participated in all the elections in past, and should thus be treated to be members of the General Body entitled to participate in the elections of the Committee of Management of the

institution, it would be necessary for the petitioners to adduce oral and documentary evidence in this regard. The other side will naturally be given opportunity for filing evidence in rebuttal. In my view, such exercise cannot be carried out in writ jurisdiction, and the remedy of the petitioner lies in filing civil suit.

14. In view of the above, I decline to go into other pleas regarding validity of elections dated 2.1.2013, at the instance of petitioners 2 to 5. Accordingly, objection of the Counsel for the respondent, made in this regard, is upheld.

15. This takes me to the second objection of the respondent. It is contended that after excluding petitioners No. 2 to 5, whose membership has not been accepted, petitioner No. 1 is the only life member before this Court challenging the elections held by the authorised controller. It is submitted that no other member out of the electoral college of 149 members, determined by the authorised controller, has approached this Court challenging these elections. He himself has not contested the elections. In his objections, he claims election dated 28.6.2009 to be last validly held elections, which dispute is not open for consideration by the Regional Level Committee in view of order of District Inspector of Schools dated 19.11.2011 and the previous judgment of this Court in Writ Petition No. 38364 of 2012, wherein these elections were also not recognised. Further, he has relied on a list of members submitted by Ramveer Singh, for which there is a categorical finding in the impugned order that documents evidencing the deposit of subscription fee of said members has not been filed. It is, thus, contended that firstly, only one life member has no locus to challenge the elections and the impugned order of the Regional Level Committee and second, it is not a fit case for entering into the controversy regarding validity of the elections at his instance.

16. For appreciating the submissions made by learned Counsel for the respondent in this regard, I first refer to the judgment relied upon by learned Counsel for the respondent for the said purpose by a Division Bench of this Court dated 7.9.2010 in Special Appeal No. 1380 of 2008 *Rajveer Singh v. State of U.P. and others*, wherein, this Court has held as under:-

"This Court is already over-burdened with the writ petitions filed by the rival Committees of Management, or the members, who have taken part in the elections, and did not succeed, in the matters arising out of thousands of educational institutions across the State. Every year thousands of writ petitions are being filed. In fact every election of the Committee of Management of education institution is challenged in the High Court, on the question of its recognition by the Regional Deputy Director of Education (now the Regional Level Committee), under Section- 16A(7) of the UP Intermediate Education Act, 1921. A single Judge has been assigned determination relating to only such matters. The valuable time of the Court for deciding important questions of law to reduce inequities and injustice in the society, is spent in resolving disputes between rival groups to gain control over the educational institutions for the purpose of access

to the funds provided by the State Government. In most of the cases the Courts find that the elections are set up only on papers, without holding election meetings.

If the individual members of the general body of the educational society not directly affected by the election results, are also allowed to file objections and to challenge the elections, the fight for gaining control over the school funds will flood the High Courts with litigation. The election may be challenged by members of the general body separately after raising objections before the educational authorities, and thereafter filing writ petitions on variety of grounds.

We may add here that an individual member in such case, is not without remedy. He may file a suit challenging the elections, to enforce his right of association guaranteed under Section 19(1)(g) of the Constitution of India."

17. In the same judgment, the Division Bench has also considered the law laid down by this Court in another Division Bench judgment in the case of Ratan Kumar Solanki Vs. State of U.P. and Others , in which this Court held that there is no absolute prohibition for a single member to maintain the writ petition. It was held as under:-

"24. What is discernible from the above discussion is where the right of an individual is affected or infringed, and, he has no other effective remedy, if such rights of the individual concerned are borne out from the statute or the provision of bye-laws etc. having the flavour of statute, a writ petition at his instance may be maintainable subject to attracting the condition where the Court may decline to interfere namely availability of alternative remedy, delay, laches etc. but where a legal right of an individual is not directly affected, a writ petition expousing the cause of the collective body or other members of the collective body would not be maintainable at the instance of an individual who himself is not directly affected. We may add here that in a given case, if it is found that an election was held by an imposter and he is supported by DIOS or other educational authorities, such an action of DIOS as also the election can be challenged by the individual member since it cannot be said that he is not a person aggrieved but whether a writ petition at his instance would be maintainable or he can challenge the election by filing a civil suit etc., would be a different aspect of the matter and has to be considered in each and every case considering the facts, relevant provision and other relevant aspects of the matter."

18. In my view, the principle of law which emerges is that though there is no absolute prohibition for maintainability of writ petition at the instance of an individual member but it is a matter of judicial discretion to entertain such writ petition or not. For the said purpose, the Court is guided by well established legal principles on basis of which writ petition is entertained. If it transpires that the individual member is not directly affected by the elections" result but is expousing because of the collective body or the members of the collective body,

this Court may decline to go into the controversy at his instance. While considering the said question, the totality of facts and circumstances of the case have to be taken into consideration.

19. In the instant case, it is noticeable that petitioner No. 1 has not challenged the order of District Inspector of Schools dated 13.1.2012, whereunder, elections dated 9.8.2009 were recognised. The present elections are in sequel to the litigation arising out of order of District Inspector of Schools dated 13.1.2012. Similarly, petitioner No. 1 was again not aggrieved by order dated 19.1.2013 passed by District Inspector of Schools recognising the present elections dated 2.1.2013. He did not approach this Court. It is only petitioners No. 2 to 5 who felt aggrieved by the said order and filed Writ Petition No. 11060 of 2013 before this Court. It is also noteworthy that petitioner No. 1 does not claim to have contested the elections dated 2.1.2013 held by the authorised controller. The objections filed by him before the Regional Level Committee as dealt with in paragraphs 30 and 31 of the impugned order merely places reliance on elections held on 28.6.2009, which already stands disapproved by order of District Inspector of Schools dated 19.11.2011. The petitioner No. 1 never challenged the order dated 19.11.2011. He has placed reliance on the list of General Body of 290 members submitted by one Ramveer Singh, who does not appear to be aggrieved by the impugned order and is not before this Court. It is further noticeable that although the petitioners in several paragraphs of the writ petition have alleged that their objections and documents were not considered by the Regional Level Committee but copy of said objections have not been filed either with the writ petition or alongwith two rejoinder affidavits which they have filed. There is no explanation for the same. It thus seems that the name of petitioner No. 1 has been included in the writ petition by petitioners No. 2 to 5, as they knew that their claim for membership has been negated and writ petition at their instance may not be entertained.

20. In view of the aforesaid facts, I do not find it a fit case to go into the validity of the impugned order at the instance of petitioner No. 1, as remedy under common law is still available to him in case he is really aggrieved by the impugned elections. This Court cannot lose sight of the fact that out of electoral college of 149 members, only one person i.e. petitioner No. 1 is before this Court, who also does not seem to be serious nor could show direct infringement of any of his individual rights. In view of the discussion made above, writ petition lacks merit and is dismissed.