

**(2011) 07 AHC CK 0028**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 54633 of 2009

Prafulla Chandra Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision :** 08-07-2011

**Acts Referred:**

Constitution of India, 1950 — Article 19(1)

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A

**Citation :** (2011) 8 ADJ 439 : (2011) 3 UPLBEC 1938

**Hon'ble Judges :** Ran Vijai Singh, J

**Bench :** Single Bench

**Advocate :** Ramendra Asthana and Vijai Kumar Ojha, for the Appellant; Pradeep Kumar and Uma Nath Pandey, for the Respondent

## Judgement

Ran Vijai Singh, J.—By means of this writ petition, the Petitioner has prayed for issuing a writ of certiorari quashing the order dated 12.10.2009 passed by District Inspector of Schools Basti, by which, the District Inspector of Schools has attested the signature of Sri Satrughan Prasad Pandey (the Respondent No. 4) as a Manager of Committee of Management of Kisan Inter College Rasulpur, Tareta, District Basti (hereinafter referred to as Committee of the College) and withdrawn the order of single operation.

2. The facts giving rise to this case are that there is a registered society known as Kisan Ucchattar Madhyamic Vidhayala Samiti Rasulpur, District Basti. The Society runs an Institution known as Kisan Inter College Rasulpur, Tareta District Basti which is imparting education upto Intermediate level and is recognized by the Uttar Pradesh High School and Intermediate Board. The affairs of the Institutions are being managed by scheme of administration duly approved u/s 16-A of the U.P. Intermediate Education Act, 1921.

3. It appears an election of office bearers of the Committee of Management of the aforesaid College was held on 28.5.2006 of which one Sri Durga Prasad Pandey was elected as a Manager/Secretary of the Committee of Management.

His term was for the period of five years. Sri Durga Prasad Pandey died on 19.6.2007. According to the Petitioner, a meeting of general body of the society as well as the Committee of Management was convened for selecting the Manager for remaining tenure of the Committee of Management on 15.7.2007 in which the present Petitioner was elected as a Manager. It appears the Respondent No. 4 has also come up with the case that he was elected as a Manager on the basis of the election dated 2.8.2007.

4. However, the signature of the Petitioner namely Sri Praful Chandra Mishra was attested by the District Inspector of Schools on 4.8.2007. The order dated 4.8.2007 was challenged by the Respondent No. 4 through Writ Petition No. 42280 of 2007, and by an interim order of this Court the order attesting the signature of the Petitioner dated 4.8.2007 passed by District Inspector of Schools was stayed and this writ petition was finally allowed on 15.9.2007 and matter was remitted back to the Regional Committee for taking fresh decision. The Regional Committee thereafter passed a detail order on 13.3.2008 by which the claim of Respondent No. 4 was accepted and direction was also issued to the District Inspector of Schools to attest the signature of Respondent No. 4 as Manager.

5. Aggrieved by this order, the present Petitioner filed Writ Petition No. 41124 of 2008. This writ petition was dismissed on 19.8.2008. However, the aforesaid order was challenged through Special Appeal No. 1251 of 2008 which was finally decided vide judgment and order dated 25.9.2008 and the matter was again remitted back to the Regional Committee for taking fresh decision. At this time, the Committee vide order dated 12.12.2008 has found the claim of the Petitioner valid.

6. Aggrieved by the order dated 12.12.2008 passed by the Regional Committee, the Respondent No. 4 has filed Writ Petition No. 66257 of 2008. This writ petition was allowed on 14.7.2009 with the direction to the District Inspector of Schools to hold the election of only Manager of Committee of the College from amongst the members of general body excluding the nominating members.

7. Aggrieved by the order dated 14.7.2009, the present Petitioner has filed Special Appeal No. 1243 of 2009, Hi which on an application for interim relief following order was passed.

Mr. Asthana Prays for interim relief.

In view of the order dated 21.8.2009 passed in Writ Petition No. 44223 of 2009, we are not inclined to grant any interim relief.

Prayer for interim relief stands rejected.

8. Pursuant to the order dated 14.7.2009, the District Inspector of Schools vide order dated 4.8.2009 has appointed one Sri Arun Kumar Associate District Inspector of Schools, Bastias Election Officer/Departmental Supervisor and fixed 23.8.2009 for holding the election of Committee of Management at 11 a.m. in

the College campus. Consequently, the Associate District Inspector of Schools vide order dated 10.8.2009 has published the schedule of the election i.e. date of election 23.8.2009, nomination, checking of the papers, withdrawal of the nomination and announcement of result on the same day i.e. 23.8.2009, the date fixed by the District Inspector of Schools.

9. It appears some objections were raised about the holding of the election as the date was fixed contrary to the order of this Court dated 14.7.2009. On this, the District Inspector of Schools has stayed the schedule of election vide order dated 20.8.2009. The order dated 20.8.2009 was challenged by the Respondent No. 4 through Writ Petition No. 44223 of 2009 and this Court vide order dated 21.8.2009 has directed the Respondent No. 4 to hold the election on the scheduled date but not to declare the result.

10. It appears that pursuant to the above interim order the election was held on 23.8.2009. However, after the election was over the Respondent No. 4 has got his writ petition dismissed as having become infructuous on 7.10.2009.

11. After dismissal of the writ petition, the District Inspector of Schools has passed the impugned order dated 12.10.2009 (Annexure 16 to the writ petition) attesting the signature of Respondent No. 4 as Manager of Committee of Management and withdrawn the order of single operation dated 27.12.2008.

12. Sri Ramendra Asthana, learned Counsel appearing for the Petitioner has challenged the aforesaid order on the following grounds.

(1) Because the District Inspector of Schools has exceeded his jurisdiction in fixing the date 23.8.2009 for holding the election of Committee of Management pursuant to the order dated 14.7.2009 passed in Writ Petition No. 66257 of 2008 as in that case the District Inspector of Schools was only directed to hold the election of the Manager for remaining period of the then existing Committee of Management of which Late Durga Prasad Pandey was a Manager and who died on 19.6.2007. Further the Respondent No. 4 was not eligible to be elected as Manager of the Committee of Management as this Court vide judgment and order dated 14.7.2009 has held that both, the Petitioner as well as the Respondent No. 4 were not eligible to be elected as a Manager. In the submissions of Sri Asthana, the impugned order, in fact, has been passed in incomplete derogation of the order dated 14.7.2009.

(2) Because the order dated 14.7.2009 was never challenged by the Respondent No. 4 and in fact the factum of his ineligibility to be elected as Manager stands uncontroverted, whereas the Petitioner has challenged the aforesaid order through the Special Appeal No. 1243 of 2009. However his application for interim relief was rejected in view of interim order passed in Writ Petition No. 44223 of 2009.

(3) Because once the Writ Petition No. 44223 of 2009 was dismissed as having become infructuous and the interim order granted in that case was discharged

every outcome of an interim order has become void-abinitio.

(4) Because Sri Shatrughan Prasad Pandey (the Respondent No. 4) was made a member of the general body only on 8.3.2007 and he had not completed three years of member-ship of general body in the election held on 23.8.2009, therefore, he was ineligible to be elected as a Manager. Reliance has been placed upon paragraph No. 4 of the bye-laws (Annexure 1 to the writ petition)

(5) Because the plea of reducing the term of Committee of Management as per scheme of administration from five years to three years is unsustainable as this was never lis before the Court either in the Writ Petition No. 66257 of 2008 or in the Writ Petition No. 44223 of 2009 and altogether new case has been carved out therefore it is unsustainable and for the sake of argument even if it is assumed to be correct, for that a separate notice to that effect, to individual member was necessary to be issued or published.

13. In response to the writ petition, the Respondent No. 4 has filed short counter-affidavit sworn on 28th October, 2009, detail counter-affidavit sworn on 27th April, 2010 and supplementary counter-affidavit. The Petitioner has also filed short rejoinder affidavit and detail rejoinder-affidavit to the short counter-affidavit, detail counter-affidavit. A counter-affidavit has also been filed on behalf of Respondent No. 3 of which rejoinder affidavit has been filed by the Petitioner. The details of these affidavits are not being discussed here but it will be referred as and when occasion arises.

14. Sri Pradeep Kumar assisted by Sri Uma Nath Pandey, learned Counsel appearing for the Respondent No. 4 has vehemently argued that the writ petition on the instance of the Petitioner Praful Chandra Mishra is not maintainable, for the reason that he has filed this writ petition as a Special Member whereas he could not be made a Special Member in view of Clause 4(3) of bye-laws of the Society. He further submitted that an individual member has no right to challenge the validity of the election of Committee of Management.

15. In support of his submissions, he has placed reliance upon the few judgments of this Court i.e. Shri P.P. Rastogi and Ors. v. Meerut University Meerut and Anr. 1997 (1) UPLBEC 415; Committee of Management Sri Kachcha Baba Inter College Varanasi and Ors. v. Regional Committee Pancham Mandal Varanasi and Ors. 2007 (7) ADJ 414 and Committee of Management Vaidik Inter College and Anr. v. State of U.P. and Ors. 2010 (6) ADJ 595. He has also submitted that one Civil Suit challenging the election of Committee of Management has been filed by Sri Prem Narayan Uppadhaya being Original Suit No. 174 of 2009 before the Civil Judge (Junior Division) Basti, Prem Narayan Uppadhaya v. Shatrughan Prasad Pandey which is already pending and this kind of controversy can only be decided by filing of civil suit, therefore, the writ petition deserves to be dismissed on this ground alone.

16. In his further submissions, the District Inspector of Schools has very rightly fixed the date for holding the election of Committee of Management as the term

of the erstwhile Committee of Management elected in the year 2006 has already expired because the term of Committee of Management has been reduced from five years to three years by making an amendment in the scheme of administration which was approved in the year 1983.

17. In the submission of Sri Kumar earlier the Respondent No. 4 was not aware about the reduction of the term of Committee of Management from five years to three years, therefore at different places contrary averments have been made, therefore it may be ignored while deciding the case on merit.

18. Learned Standing Counsel has also supported the order passed by the District Inspector of Schools by submitting that the term of Committee of Management has been reduced from five years to three years by amending the scheme of administration. In the submission of learned Standing Counsel the rider of three years of continuous membership for the election of the Manager has been wiped out by the erstwhile Committee of Management and the Respondent No. 4 was fully eligible to be elected as a Manager. In paragraph No. 7 of the counter-affidavit, it is stated that in view of para 5 of the bye-laws of the Society, the term of Committee of Management has been reduced from five years to three years.

19. I have heard Sri Ramendra Asthana assisted by Sri V.K. Ozha, learned Counsel for the Petitioner, Sri Pradeep Kumar assisted by Sri Uma Nath Pandey learned Counsel for Respondent No. 4 and learned Standing Counsel for the State Respondents.

20. It is not in dispute that the election of erstwhile Committee of Management was held on 28.5.2006 of which one late Durga Prasad Pandey was elected as a Manager who unfortunately died on 19.6.2007.

21. It is also not in dispute that the impugned order dated 12.10.2009 is an outcome of the order dated 14.7.2009 passed by this Court in Writ Petition No. 66257 of 2008. The lis in Writ Petition No. 66257 of 2008 was with respect to the election of Manager against a casual vacancy in place of late Durga Prasad Pandey who was elected as Manager of the Committee of Management held in the year 2006 and died in the year 2007. This Court while allowing the Writ Petition No. 66257 of 2008 has directed the District Inspector of Schools to hold the election of Manager and not the Committee of Management. There was also an observation that the Petitioner as well as Respondent No. 4 both were ineligible to be elected as a Manager.

22. In this scenario, following points would arise for deciding the controversy in hand:

(a) Whether the election held on 23.8.2009 was in consonance with the order dated 14.7.2009 passed in Writ Petition No. 66257/2008.

(b) Whether the election dated 23.8.2009 held pursuant to the interim order dated 21.8.2009 passed by this Court in Writ Petition No. 44223 of 2009 can be

said to be valid election after dismissal of writ petition as having become infructuous.

(c) Whether the present writ petition is maintainable on the instance of the Petitioner challenging the order dated 12.10.2009.

23. I would like to decide the point (c) in the beginning as while deciding the same, if it is found that the writ petition is not maintainable then the remaining questions need not to be decided.

Point No. (c):

24. Whether the writ petition on the instance of the present writ Petitioner is maintainable against the order dated 12.10.2009 passed by District Inspector of Schools Basti.?

25. Sri Pradeep Kumar, learned Counsel appearing for Respondent No. 4 has submitted that the writ petition filed by an individual member challenging the election of Committee of Management is not maintainable. In support of his submissions, he has placed reliance upon the judgments of this Court in the case of Dr. P.P. Rastogi, Committee of Management and Ors. v. Meerut University Meerut and Anr. Sri Kachcha Baba Inter College Varanasi v. Regional Committee Pancham Mandal Varanasi and Ors. and Committee of Management Vaidik Inter College and Ors. v. State of U.P. and Ors. (supra).

26. Whereas Sri Ramendra Asthana learned Counsel appearing for the Petitioner submitted that writ petition on the instance of the present Petitioner is maintainable. In support of his submissions he has placed reliance upon the judgment of this Court in the case of Ratan Kumar Solanki v. State of U.P. and Ors. 2010 (1) ADJ 262 : 2010 (1) ESC 474 and Kamla Kant Agrawal v. State of U.P. and Ors. 2008 (4) SCC 2531.

27. In the case of Dr. P.P. Rastogi (supra), a Division Bench of this Court has held that an individual member of Committee of Management has no locus standi to challenge the election of Committee of Management and it is only the legal entity i.e. the Committee of Management alone or a person authorised by a resolution of the Committee of Management can appear as a party in the case.

28. Here the Division Bench was considering a Review application filed by an individual member against the judgment passed by this Court while deciding the dispute of Committee of Management and in that context the Division Bench has made the above observation. Likewise in the case of Committee of Management Sri Kachcha Baba Inter College the learned Single Judge of this Court has held that the writ petition on behalf of an individual member challenging the election of the Committee of Management is not maintainable.

29. The cases of Dr. P.P. Rastogi and others (supra) and the Committee of Management Sri Kachcha Baba Inter College have been considered in the case of Ratan Kumar Solanki (supra) and the Division Bench has observed as under:

(23). ...The proposition, therefore, that an individual member cannot challenge an election in any circumstance is not correct. When a writ petition can be maintainable at the instance of an individual member of the general body of the society or the office bearer of the society or by the body itself is a different issue but when an election itself can be challenged is another aspect. Similarly whether a writ petition would be maintainable at the instance of an individual or the collective body and in what circumstances stands on different footings.

(24). ...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.

(25). ...In the above facts and circumstances, we find it difficult to subscribe the view as canvassed by the Respondents that the Petitioner has no locus standi to maintain the writ petition and, therefore, reject the same, We hold that the Petitioner is a person aggrieved and has locus standi in the matter.

30. The Apex Court in the case of Kamla Kant Agrawal v. State of U.P. and Ors. (supra) has held as under:

(34)The principle, as broadly stated on behalf of the Respondent, cannot be accepted by the Court. This Court holds that in the given set of fact a writ petition by an individual member, challenging the elections held for constituting the Committee of Management, would be maintainable provided he is able to establish violation of Article 19(1)(c) of the Constitution of India or that the order impugned has been passed by a State authority amenable to writ jurisdiction.

(36) Similarly, it is always open to an individual member to contend that he is a member of association and has been illegally excluded by an instrumentality of the State, from the association. Such exclusion from the association by an instrumentality would be violative of Article 19(1)(c) of the Constitution of India. The result of such exclusion may ultimately result in questioning the elections held for constituting the Committee of Management of the institution.

31. From the perusal of the judgments cited by learned Counsel for the parties it appears that no straight jacket formula can be made with regard to the non-maintainability of the writ petition by an individual member of the Committee of Management, as in particular circumstance the writ petition may lie, on the instance of an individual and in different circumstances it may not.

32. Here in the present case without going into the further discussions made in numerous cases cited by either of the side, I find that the lis involved in this present writ petition is an out come of an order of this Court dated 14.7.2009

where both the parties i.e. Petitioner and Respondent No. 4 were party, therefore in my considered opinion both the party can challenge the aforesaid order after being aggrieved by that order. Here the question of non-maintainability of the writ petition by either of side cannot be raised as in earlier proceeding i.e. in Writ Petition No. 66257 of 2008 it was not raised and the present order is an out come of the order dated 14.7.2009 which was passed in the aforesaid writ petition.

33. The submissions of the Respondent's counsel with regard to non-maintainability could carry some weight provided the present Petitioner was not party in the earlier proceeding, therefore, I am of the view that Petitioner being aggrieved by the impugned order would fall under the category of the aggrieved person and has locus standi to file the writ petition in view of the Division Bench decision of this Court in the case of Ratan Kumar Solanki (supra).

34. Otherwise also, order impugned has been passed by the State authority by which Petitioner's individual right has been affected therefore it is amenable to writ jurisdiction in view of Apex Court's decision of Kamla Kant Agarwal v. State of U.P. and Ors. and Ratan Kumar Solanki (supra).

35. In view of the aforesaid discussions, I find that writ petition is maintainable on the instance of the Petitioner.

Point No. (a):

36. Next question which needs consideration is whether the election dated 23.8.2009 was in consonance with the order dated 14.7.2009 passed by this Court. For deciding this question, the direction given by this Court in the order dated 14.7.2009 is required to be looked into which is reproduced below.

Thus in the light of the provisions of the bye-laws of the society, I find that both of them were not eligible for being elected as Manager of the Committee of Management therefore, the election of either of the parties for the office of Manager of the Committee of Management cannot be upheld.

Keeping in view the facts and circumstances of the case, I hereby quash the order impugned dated 12.12.2008 and remit the matter to the District Inspector of Schools concerned to hold election afresh after determining the eligibility criteria of all the members of General Body in the light of the provisions provided under the Scheme of Administration as well as under the bye-laws framed by the society. The District Inspector of Schools shall proceed for election after notifying the same and fix the date within two months from the date of production of a certified copy of this order, which shall be produced by the Petitioner within a week after obtaining certified copy of the order. It is further directed that the authority concerned before holding the election shall analyse the eligibility of contesting candidates as per the Scheme of Administration as well as bye-laws of the Society and only then it shall proceed to elect the Manager amongst the members of General Body. Further direction is issued to the District Inspector of

Schools concerned to make arrangement by appointing authorized controller to manage the affairs of the college or he may himself manage the affairs of the College in the capacity of authorised controller for the period till election takes place in terms of the order passed hereinabove.

37. From the perusal of above directions, it is apparent that this Court has only directed the District Inspector of Schools to proceed with the election of Manager from amongst the members of the general body excluding the nominated members. Further the Petitioner as well as Respondent No. 4 both were found ineligible to be elected as Manager.

38. The District Inspector of Schools taking note of the order dated 14.7.2009 has passed an order on 4.8.2009 appointing Sri Arun Kumar Associate District Inspector of Schools as Election Officer/Departmental Supervisor to hold the election of Committee of Management. It appears after announcement of the election programme on 10.8.2009 by Associate District Inspector of Schools some objections were filed and the District Inspector of Schools has stayed the election to be held on 23.8.2009 vide order dated 20.8.2009.

39. Here it appears that the order dated 4.8.2009 passed by District Inspector of Schools is in incomplete disregard of the order passed by this Court on 14.7.2009 as this Court has only directed to hold the election of the Manager and not the election of entire Committee of Management. Further the District Inspector of Schools has erred in holding that the eligibility criteria of three years to be elected as a Manager has been wiped out by the erstwhile Committee of Management whereas only on this ground, in the order dated 14.7.2009 the Court has held that the Petitioner as well as the Respondents both were ineligible to be elected as a Manager, without seeking modification of the order dated 14.7.2009. In fact the District Inspector of Schools has exercised the appellate power over the judgment of this Court that too without any material and this act of District Inspector of Schools falls in the domain of contempt of Court's order also.

40. However, the District Inspector of Schools has tried to justify his stand by way of filing counter-affidavit taking same stand as of Respondent No. 4 by saying that the term of erstwhile Committee of Management was three years which stood expired in May 2009, therefore in August 2009 there was no occasion to hold the election of only Manager of Committee of Management. Hence, the decision was taken for holding the election of entire Committee of Management. It is the stand of both Respondents i.e. the private Respondent No. 4 and the State Respondents that the term of Committee of Management has been reduced from five years to three years and the scheme of administration stood amended and approved in the year 1983 itself.

41. Here a question would arise whether this stand can be taken in view of the order dated 14.7.2009 without seeking any modification of the aforesaid order or without affording an opportunity of hearing to the affected/aggrieved parties.

42. Considering the entire circumstance of this case, I am of the view that the District Inspector of Schools has misinterpreted the order of this Court dated 14.7.2009 and in fact passed the order dated 4.8.2009 incomplete derogation of the aforesaid order. This Court while dealing such situation in the case of Sateyendra Pal v. The Regional Transport Authority Agra and Anr. 1982 ALJ 310, has observed as under:

In fact, there is another principle of law still more puissant and not less irrevocable, viz. that he who chooses to defy the order of a Court must face the Nemesis, the wages of disobedience is penalty. It follows as a corollary that if a person is able to secure any advantage by flouting an order of the Court, he must be made to disgorge such gain. Likewise, proceedings taken by an authority in flagrant disregard of the Order of a Court are nullity and the Court should have no compunction in putting the hand of the clock back and restoring the status quo ante. Where an order of a Court is disobeyed, a writ must be issued to redress the injury suffered by a person on account of the disobedience of such order. To borrow the words of Chinnappa Reddy, J., in Capt. Dushyant Somal Vs. Smt. Sushma Somal and Another,

Where what is complained of is an impudent disregard of an order of a Court, the fact certainly cries out that a prerogative writ shall issue.

It is precisely this principle, which looms large in the present case and all other aspects ultimately converge to this single point. Hence, we do not consider it necessary to advert to the submission of Sri R.A. Sharma that the Petitioner in the present case was actually set up by other operators of the route and that for that reason no relief should be granted to the Petitioner. Since we have held that the Transport Appellate Authority issued permits in disregard of the interim order passed by this Court, the order dated 1.10.1980 cannot be allowed to stand.

43. So far as the stand of Respondent No. 4 is concerned, it is stated in paragraph No. 16 of the present writ petition that term of the Committee of Management, in paragraph Nos. 6 and 7 of the Writ Petition No. 42280 of 2007 filed by Respondent No. 4, has been described as under:

That the last Committee of Management of the Institution has been elected and approved on 28.5.2005 and is valid for a period of five years i.e. till 27.5.2011.

44. The reply of paragraph No. 16 of the writ petition has been given, by the Respondent No. 4, in paragraph No. 16 of the counter-affidavit. It is stated that the Respondent No. 4 was unaware of the amended scheme of administration and this averment was made only on the basis of old scheme of administration.

45. It is quite surprising that the Respondent was unaware of such amendment whereas the term of Committee of Management from five years to three years according to him was reduced in the year 1983 and the said writ petition was filed in the year 2007. It appears that the Respondent's stand has been vacillating from time to time and has been taken on his own convenience, as

when he filed the Writ Petition No. 42280 of 2007 he mentioned the term of Committee of Management five years and when the election dated 23.8.2009 taken place he took the stand that earlier term was three years. The Respondent may take any stand which he may like but it cannot be approved by this Court. I am of the view that unless this question was decided by the District Inspector of Schools afresh after the order dated 14.7.2009 or any modification was sought in the said order the District Inspector of Schools would not have proceeded to hold the term of erstwhile Committee of Management three years. I am of the view that the decision taken by the District Inspector of Schools is illegal and arbitrary in both ways. Firstly it was in derogation of the direction of this Court dated 14.7.2009 and secondly this was never decided whether a term of elected of Committee of Management is five years or three years after inviting the objections in this regard. The answer of this question is in negative. I am of the view that the election dated 23.8.2009 is contrary to the direction of this Court dated 14.7.2009 passed in Writ Petition No. 66257 of 2008

Point No. (b):

46. What will be the effect of election dated 23.8.2009 in view of the interim order dated 21.8.2009 passed in Writ Petition No. 44223 of 2009.

47. From the perusal of record, it appears that after the order dated 4.8.2009 passed by the District Inspector of Schools Basti and 10.8.2009 passed by Associate District Inspector of Schools Basti fixing 23.8.2009 for holding the election of Committee of Management. The District Inspector of Schools vide order dated 20.8.2009 has stayed the election which was scheduled to be held on 23.8.2008. This order was challenged before this Court through Writ Petition No. 44223 of 2009 in which a direction was issued on 21.8.2009 to hold the election on the scheduled date but it was made specific that the result of the same will not be declared. The relevant portion of the order dated 21.8.2009 is reproduced below.

I find substance in the submissions of learned Counsel for the Petitioner.

In view of that it is provided that the election scheduled to be held on 23.8.2009 be held as per election programme published on 10.8.2009 and Superintendent of Police District Basti is directed to provide all necessary force demanded by election officer/ associated D.I.O.S. for conducting the election peacefully. However, the result of the election be not declared and that will depend on the fate of the writ petition.

Sri R.P. Tiwari learned standing counsel who appears for State Respondent shall inform this order today to the D.I.O.S. Basti the election officer/associated D.I.O.S. Basti as well as District Magistrate and Superintendent of Police Basti. The Petitioner may also inform the D.I.O.S. Basti and election officer on affidavit about the order passed today.

48. This writ petition was not decided on merit. The present Petitioner has got

this writ petition dismissed as having become infructuous on 7.10.2009. For appreciation the said order is quoted below.

Sri Pradeep Kumar, learned Counsel for the Petitioner states that this petition has become infructuous as the elections have already been held.

Petition is accordingly dismissed as infructuous.

Interim order, if any, stands discharged.

49. From the perusal of order dated 7.10.2009 it appears that the writ petition was dismissed as having become infructuous on the statement of learned Counsel for the Petitioner and the interim order granted by this Court was also discharged.

50. In the interim order dated 21.8.2009 although the direction was issued for holding the election on the scheduled date i.e. 23.8.2009 but there was a specific rider that the result of the same will not be declared and that will depend on the fate of the writ petition. The Respondent No. 4 who filed the Writ Petition No. 44223 of 2009 challenging the order dated 20.8.2009 staying the election has got himself dismissed the writ petition as infructuous.

51. The question would arise what will be effect of an order where the writ petition has been dismissed as having become infructuous.

52. The word "infructuous" in Wharton's Law Lexicon Fifteenth Edition has been defined as under:

Infructuous means ineffective, unproductive and unfruitful.

In The New Shorter Oxford English Dictionary, 1993 Edition the word infructuous has been defined as under:

"Infructuous" means Not bearing fruit, unfruitful, barren, unprofitable, ineffective.

The Apex Court while dealing the meaning of the word infructuous in the case of Union of India (UOI) and Others Vs. Narender Singh, has observed as under:

The expression infructuous means ineffective, unproductive and unfruitful. It is derived from the Latin word fructus (fruit). By implementing an order, the challenge to the validity of the order is not wiped out and is not rendered redundant.

53. Learned Counsel for the Respondent has submitted that as the main relief in this writ petition was seeking direction of this Court to hold the election and that was done pursuant to the order of this Court dated 21.8.2009, therefore, the relief sought by the Petitioner stood exhausted and there was no occasion to keep the writ petition pending.

54. The argument advanced by learned Counsel for the Respondent to my mind is totally misconceived as the election was held only on the basis of an interim

order passed by this Court where there was a specific mandate that the result of the election will not be declared and that will depend on the fate of writ petition and once the writ petition was dismissed as having become infructuous and the interim order was discharged the every out come of such an order become void abinitio. Further once the writ petition was dismissed and interim order discharged, the source of any stream, flowing out of that, come to an end and the things stood revived as it was before filing of the writ petition i.e. the revival of the order of District Inspector of Schools dated 20.8.2009.

The view taken by me finds support from the perusal of the meaning of word Infructuous and decisions on the point.

55. The Apex Court in the case of State of Gujarat and Others Vs. Dilipbhai Shaligram Patil, has observed as under:

5. It is well settled that an order of stay granted pending disposal of a writ petition/suit or other proceedings, comes to an end with the disposal of the substantive proceedings and that it is the duty of the Court in such a case to put the parties in the same position they would have been but for the interim orders of the Court. Any other view would result in the act or order of the Court prejudicing the party for no fault of his and would also mean rewarding the writ Petitioner inspite of his failure. Any such unjust consequence cannot be countenanced by the Courts. See Kanoria Chemicals and Industries Ltd. v. UPSEB 1

56. In the case of Amarjeet Singh and Ors. v. Devi Ratan and Ors. 2010 (1) SCC 147 the Apex Court has held as under:

17. No litigant can derive any benefit from mere pendency of case in a Court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the Court shall prejudice no one, becomes applicable in such a case. In such a fact situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. Vide *Shiv Shankar v. U.P.S.R.T.C.* 2; *GTC Industries Ltd. v. Union of India* and *Jaipur Municipal Corporation v. C.L. Mishra* 4.

57. In *Shri Arya Mahila Hitkarini Maha Parishad Varanasi and Anr. v. Assistant Registrar Firms Societies and Chits Varanasi and Ors.* 2005 (1) ESC 515 the learned Single Judge of this Court has observed as under:

In any view of the matter, it was always open to the Petitioner to challenge the order of the Hon"ble Single Judge dismissing the writ petition as infructuous by means of a Special Appeal under Chapter VIII, Rule 5 of the Rules of the Court which has not been done and the Petitioner has permitted the order dismissing his earlier Writ Petition No. 15105 of 1995 as infructuous to be final. In such circumstances, this Court has no hesitation to hold that the Assistant Registrar is justified in recording a finding that in view of the dismissal of Writ Petition No. 15105 of 1995 as infructuous the order passed by the Prescribed Authority dated 12.5.1995 revived and fresh elections for electing the office bearers of the Society can be held in accordance with the order dated 12.5.1995 passed by the Assistant Registrar only and no one else.

58. The same view has been taken in the case of Smt. R.S. Khan Vs. State of U.P. and Others, where the learned Single Judge of this Court has held as under:

The effect of dismissal of writ petition as infructuous did not result in setting aside, or quashing the order of removal, dated 18.3.1999. The Petitioner should have requested the Court to decide the petition on merits, or she could have filed a review petition. She did not challenge the order, dated 16.11.2002, dismissing her Writ Petition No. 12246 of 1999 as infructuous after expiry of her term. *Invita beneficium non datur*. The law confers upon a man no right or benefits which he does not desire, whoever waives, abandons or disclaims a right will loose it. The, removal order would cast a stigma on the Petitioner. It is true that after the Petitioner's term elapsed, a writ of mandamus cannot be issued, but a writ of certiorari to quash the removal order could have been issued. The effect of the quashing the order would have been that the removal order, dated 18.3.1999, would have ceased to exist and the position existing prior to the removal order would have been restored. Therefore, it cannot be said that after the expiry of term of the Petitioner as President, she had no longer any interest in getting the removal order quashed, because if the removal order remained intact, the Petitioner would be disqualified for contesting subsequent election.

59. In view of the above settled position I am of the considered opinion that every proceeding after holding the election on the strength of the interim order dated 21.8.2009 passed in Writ Petition No. 44223 of 2009 cannot bear any fruit and in fact it is a nullity. Consequently the impugned order dated 12.10.2009 cannot be sustained.

60. In the result, the writ petition succeeds and is allowed. The impugned order dated 12.10.2009 is hereby quashed. The stage of the case go back as it was existing on 20.8.2009 i.e. the order passed by District Inspector of Schools Basti staying the election scheduled to be held on 23.8.009.

61. It is also noticeable that by now a new case has been set up by the Respondents with regard to the reduction of the term of Committee of Management and expiry of the term of erstwhile Committee of Management elected in the year 2006, therefore, it is directed that before holding the election

pursuant to the order dated 14.7.2009 passed in Writ Petition No. 66257 of 2008 the District Inspector of Schools shall first decide the term of erstwhile Committee of Management after due notice to the parties by publishing the notice inviting objections in accordance with law without being influenced by any observation made in this judgment in that regard and thereafter hold the election of Committee of Management after finalizing fresh list of voters after inviting objection in accordance with law for the reason that even if the term of Committee of Management is taken to be five years that has also expired as the last election of Committee of Management was held on 28.5.2006. This exercise has to be done within a period of three months. For the period of three months or till the fresh election takes place and newly elected Committee of Management assume the charge, the arrangement made by this Court in the judgment and order dated 14.7.2009 passed in Writ Petition No. 66257 of 2008 shall continue.