

(2008) 02 AHC CK 0206

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 49768 of 2003

Ramesh Chandra Rai And Others

APPELLANT

Vs

District Inspector of schools, Mau And Others

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Societies Registration Act, 1860 — Section 15, 25(1)

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A

Citation : (2008) 02 AHC CK 0206

Hon'ble Judges : V.K.Shukla, J

Final Decision : Disposed Of

Judgement

V.K. Shukla, J.—Present writ petition has been filed by the petitioners questioning the validity of the order dated 21.2.2003 passed by SubDivisional Magistrate, Ghoshi, District Mau in proceeding under Section 25(1) Of Societies Registration Act, 1860 and the order dated 15.10.2003 passed by District Inspector of Schools, Mau by means of which District Inspector of Schools has proceeded to determine the electoral college for holding the election of the Committee of Management of the institution in question.

2. Brief background of the case is that in District Mau there is registered society known as Shiksha Prasar Samiti Siyarahi. Said society in question was registered on 22.5.1961 and affairs of the same is to be run and managed as per the provisions as contained under Societies Registration Act, 1860 and as per the byelaws of the society. Said society runs an institution known as Bapu Inter College, Siyarahi Post Panail, District Mau which is duly recognized under the provisions as contained in U.P. Act No. II of 1921 and affairs of the said educational institution is to be run and managed as per the provision as contained under Scheme of Administration framed in exercise of authority vested under Section 16A of U.P. Act No. II of 1921. Father of Dr. Ramesh Chandra Rai, Dr. Jai Chandra Rai become manager of the institution in the year 1990 and his signatures were attested and thereafter fresh election took place on 12.12.1993 wherein Dr. Jai Chandra Rai was again elected as Manager and his signature was

attested on 25.3.1994. Sri Upendra Rai who has been impleaded and arrayed as respondent No. 5 in the writ petition got renewal of registration of the society in question for the period starting with effect from 10.10.1995 and then Dr. Jai Chandra Rai appeared before the Assistant Registrar concerned and contended that Upendra Rai was not even primary member of the society and has obtained the renewal certificate by practicing fraud. Assistant Registrar, Firms, Societies and Chits referred the matter to the Prescribed Authority for deciding the dispute under Section 25(1) of the Societies Registration Act, 1860 on 31.8.1994. Upendra Rai filed Suit No. 258 of 1994 questioning the validity of the election of Dr. Jai Chandra Rai as Manager. In the said suit application for grant of injunction was also moved and said injunction application was rejected on 19.5.1998. In the said suit stand has been taken by the District Inspector of Schools, Mau that Upendra Rai is not even member of General Body of the Society. Against the said order of refusal to grant injunction Appeal has also been filed being Misc. Appeal No. 78 of 1998. Dr. Jai Chandra Rai died on 13.10.2002. Petitioner, Dr. Ramesh Chandra Rai claims that he was elected in place of Dr. Jai Chandra Rai on 19.10.2002. Upendra Rai has also staked his claim that he was elected as Manager but no decision was taken on the papers which were [submitted, however, Prescribed Authority on 21.2.2003 accepted the claim of Upendra Rai. Misc. Appeal No. 78 of 1998 was got dismissed as not pressed on 12.3.2003. Petitioner moved an application on 6.3.2003 for recalling of the said order passed by Prescribed Authority. Petitioner has also made request to the Regional Joint Director of Education that no order be passed on the basis of order passed by Prescribed Authority. District Inspector of Schools sent his report to the Regional Joint Director of Education, Azamgarh and Regional Joint Director of Education on 8.5.2003 proceeded to appoint Authorized Controller. District Inspector of Schools, therefore, passed order on 9.11.2003 determining the electoral college. At this juncture present writ petition has been filed.

3. Counteraffidavit has been filed on behalf of Upendra Rai and therein stand has been sought to be taken that entire claim set up by the petitioner is farce and fictitious and further it has been sought to be contended that in the office of District Inspector of Schools there was no record available in respect of validity of the election and further documents has been forged. It has been contended that electoral college has rightly been determined for holding the election.

Rejoinderaffidavit has also been filed.

4. After pleadings mentioned have been exchanged, present writ petition has been taken up for final hearing and disposal with the consent of the parties.

5. Sri I.R. Srivastava, Advocate, appearing for petitioner contended with vehemence that in the present case both Prescribed Authority as well as District Inspector of Schools have totally transgressed and over stepped their jurisdiction in passing the order impugned without providing opportunity of hearing and without considering the material available on record, as such writ petition in question deserves to be allowed.

6. Learned Standing Counsel as well as Sri H.N. Singh, Advocate appearing on behalf of respondent No. 5 on the other hand contended that cogent reasons have been assigned, as such no interference is required.

7. After respective arguments have been advanced, factual position which is emerging in the present case is that Dr. Jai Chand Rai was elected as Manager on 12.12.1993 and his signature was attested on 23.3.1994. Upendra Rai filed suit against the order of District Inspector of Schools attesting the signature of late Jai Chandra Rai on 19.5.1994. Upendra Rai had got renewal of the registration of the society done and qua the same complaint was made by Dr. Jai Chandra Rai. Assistant Registrar, Firms, Societies and Chits, on account of fact that both set of persons claiming themselves to have been validly elected in separate proceedings referred the dispute to the Prescribed Authority on 31.8.1994. This is undisputed position is that till 13.11.2002 Dr. Jai Chandra Rai was functioning as Manager and after the death of Dr. Jai Chandra Rai it appears that Prescribed Authority has proceeded to take up the matter. This is admitted case that the group led by the petitioner has not at all been heard before the Prescribed Authority. The Prescribed Authority has taken note of the factum of death of Dr. Jai Chandra Rai but at no point of time Prescribed Authority endeavoured to see that notices were issued to the said group of interring appearance and put up their version. In the present case once factum of death of Dr. Jai Chandra Rai was informed to the Prescribed Authority and said fact was noted by the Prescribed Authority in the impugned order, then it was wholly improper on the part of the Prescribed Authority to proceed to pass order without providing opportunity of hearing to the said group as dispute raised was in respect of validity of entire election and not individual election dispute. Order passed by the Prescribed Authority in the present case is in gross violation of the principles of natural justice as such it cannot be subscribed by any in sans whatsoever.

8. Coupled with this in the present case Prescribed Authority has totally misdirected itself for the simple reason that dispute which was raised was the dispute in respect of election which has been held in year 1993. Group headed by Upendra Kumar claimed election on 8.8.1993 whereas group headed by Dr. Jai Chandra Rai had claimed election on 12.12.1993. Prescribed Authority has proceeded to note down the case, and then Proceeds to mention that he has heard Counsel appearing for Upendra Rai and perused the record, and no one has entered appearance on behalf of Jai Chandra Rai. Ex parte written statement of Upendra Rai has been perused and then Prescribed Authority further proceeds to mention that main complaint had been of Jai Chandra Rai, that Upendra Rai was not valid member, whereas, record reveals that Upendra Rai has been member. Thereafter, Prescribed Authority proceeds to mention that on 3.11.1993, list of officebearers has been registered as such said election is valid. Prescribed Authority further mentions that election dated 8.8.1993 and 12.12.1993 are valid and proceeding for renewal be undertaken. Prescribed Authority on mere surmises and conjecture proceeded to accept the validity of the election and the fact of the matter is that Prescribed Authority has not at all

adjudicated the matter at all as for determining as to who is valid member, exercise has to be undertaken in term of Section 15 of Societies Registration Act, and for holding any election to be valid, finding will have to be returned on following three counts (i) Elections have been held in the meeting convened by officebearers entitled to convene the meeting (ii) persons who participated in the said election had right to participate in election (iii) elections have been held strictly in accordance with the provisions as contained under byelaws of society and not only/ this even the matter which was not referred to the Prescribed Authority, qua the validity of the election held on 8.12.2002, even same has been declared to be valid. This is glaring case of failure to exercise authority vested in Prescribed Authority and total transgression of jurisdiction in holding election dated 8.12.2002 valid which was not at all referred to him. Elections held in the year 1993 had already been outlived its utility, as such on the date fixed on which it has been decided it was virtually infructuous dispute and once dispute in respect of election held on 8.12.2002 has not been referred then it was wholly improper on the part of the Prescribed Authority to decide the validity of the said election. Present Authority in the present case has proceeded to decide entire matter exparte and proceeded to decide the validity of the election, the term of which has already run out and further proceeded to hold the election dated 8.12.2002 as valid which was not even referred before the Prescribed Authority, in this background on all these scores the order passed by Prescribed Authority cannot be subscribed, as such order dated 21.2.2003 is being quashed.

9. In the present case fresh election of the Committee of Management of Institution as well as Managing Committee Society is to take place. This fact has been admitted by both sides that members of the Society who constitute General Body of Society to elect the Committee of Management of Society and institution are one and the same. In respect of determination of the electoral College it has been agreed by the parties that as earlier adjudication done by District Inspector of Schools was based on the order passed by Prescribed Authority, same be quashed and independent person be directed to determine the electoral college and get the election held.

10. Consequently, District Inspector of Schools, Mau, is hereby directed to redetermine the electoral college i.e. who are valid members of the General Body of the Society in terms of Section 15 of Societies Registration Act, 1860 and for this purpose he may call for relevant record from the office of Assistant Registrar, Firms, Societies and Chits, Azamgarh also and take help of said authority also. Needless to say that reasoned and speaking order be passed while determining the dispute in respect of valid members and thereafter on the basis of electoral college so determined election be held as per the provisions as contained under Scheme of Administration. Assistant Registrar shall also see that elections of Managing Committee of Society is also held simultaneously, in terms of authority vested under Section 25(2) of Societies Registration Act, 1860.

In terms of above, present writ petition is allowed and disposed of. Orders

impugned in writ petition are quashed.