

(2009) 11 RAJ CK 0059
In the Rajasthan High Court

Sampat Raj and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-11-2009

Acts Referred:

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 10(1)

Citation : (2010) 1 WLN 315

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the petitioners and learned Counsel for the respondents No. 2 and 3/caveators who have filed reply to the writ petition also.

2. The petitioners No. 1 to 4 - Vice President, Treasurer, Parents" member and Manager of Shri Gandhi Shikshan Samiti, Gulabpura (for short "Samiti") have approached this Court by filing writ petition challenging the order dated 7.10.2009 (Annex.P/5) relating to the taking over the charge of the Samiti and with further relief that the respondent No. 2 may be directed to handover the charge of Samiti immediately to the petitioners and also prayed for direction against the respondents not to take any action regarding dissolution of the management of the Samiti and holding fresh election. The petitioners further prayed that directions be issued against the respondent No. 3 regarding illegally taking over the charge of the samiti. Probably, the petitioners meant for rehanding over of the charge only.

3. As per the petitioners, the samiti is a registered society and running total 6 institutions namely, (1) Gandhi Shikshak Mahavidhyalaya; (2) Gandhi Kanya Mahavidhyalaya; (3) Shri Gandhi Sharirik Mahavidhyalaya; (4) Shri Gandhi Higher Secondary School; (5) Shri Gandhi Primary School and (6) Shri Gandhi Science and Technical Institution. The institutions No. 4 and 5 are aided

institutions in which the respondent No. 1 provides 90% grant and both the institutions are guided by the Rajasthan Non-Government Education Institutions Act, 1989. The remaining institutions No. 1 to 3 and 6 are self financed institutions in which the respondent No. 1 - State do not have any grant or any aid is being given by the State.

4. The respondent No. 1 issued a notice u/s 10(1) of the Act of 1989 to the Secretary of the respondent No. 2 and directed him to redress the grievances of the employees of aided institutions - Shri Gandhi Higher Secondary School and Shri Gandhi Primary School with clear indication that otherwise the proceedings for appointment of Administrator will be initiated. Ultimately, the respondent No. 1 appointed the Administrator by issuing order on 6.10.2009 (Annex.P/4). The order is in relation to above two aided institutions of the Samiti. According to the petitioners, the Administrator in the garb of the order dated 6.10.2009 took over charge of the Samiti without there being any order of the State Government and when it was complained by the petitioner No. 4 by sending letter dated 15.10.2009 (Annex.P/7), then the State Government issued order dated 28.10.2009 (Annex.P/8) wherein explanation was sought from the Administrator as to how he took over charge of the Samiti and it was directed that he should hand over charge to the Samiti forthwith. According to the petitioners, inspite of the order dated 28.10.2009, the Administrator did not hand over the charge of the Samiti and he gave false reasons in the letter dated 4.11.2009 (Annex.P/10). The petitioners' contention in additional affidavit is that now yet another order has been issued on 10.11.2009 purporting to recognise the continuation of the Administrator as Administrator of the Samiti and the said Administrator has issued election notification for holding election of the Samiti which is absolutely illegal.

5. The respondent No. 2 - Administrator on behalf of the Samiti as well as on his own behalf has submitted reply to the writ petition and pointed out that the writ petition deserves to be dismissed on the ground of suppression of facts and documents as well as relevant resolutions from this Court and further because of misleading this Court to believe that the respondents took over charge of the society illegally.

6. Learned Counsel for the respondents No. 2 and 3 pointed out that on 14.8.2009, a resolution was passed by all the members of the Samiti condemning the conduct of the petitioner No. 4 and the Samiti requested for appointment of Administrator. The charge was handed over by the Samiti in writing to the Administrator on 7.10.2009 by specifically saying that they are handing over charge of the Samiti and it has been signed by the petitioners No. 1 to 3. The respondents also placed on record other documents which are not very much relevant for the purpose of this writ petition. From the facts referred above and the documents placed on record by the respondents, it is clear that the petitioners No. 1 to 3 condemned the petitioner No. 4 by taking a resolution of the Samiti and all sought appointment of the Administrator, then acting upon

that resolution in writing, handed over charge of the Samiti to the Administrator, then without explaining the reason for their joining hands with the respondent No. 4 and without disclosing these resolutions and without placing on record these documents, have preferred this writ petition to condemn their own resolution and act. The petitioner No. 4 also for the reasons best known to him could join hands with the petitioners No. 1 to 3 knowing it well that his conduct has been condemned by the petitioners No. 1 to 3 to the extent that all the members of the executive of the Samiti had to resign because of the alleged conduct of the petitioner No. 4. The petitioners are, therefore, guilty of suppression of facts and material documents as well as guilty of misleading this Court by projecting that the Administrator illegally took over the charge of the Samiti in the garb of the order of the State Government whereas in fact, the petitioners No. 1 to 3 and the committee of the Samiti itself decided to have Administrator for their Samiti and voluntarily handed over charge to the Administrator. The writ petition of the petitioners, therefore, is a clear case of abuse of process of court.

7. The resolution passed by the Samiti dated 14.8.2009 neither could have been challenged by the petitioners No. 1 to 3 nor they have challenged the handing over the charge of the Samiti to the Administrator and it has been projected that the Administrator has acted illegally. The petitioners failed to explain their conduct as there is no pleading as to under what circumstances, the petitioners No. 1 to 3 joined the petitioner No. 4 and the petitioner No. 4 under what circumstances joined the petitioners No. 1 to 3. This conduct of the petitioners disentitles them from any relief in equitable jurisdiction and, consequently, the writ petition of the petitioners is dismissed only on this ground.