

**(2005) 07 UK CK 0033**

**In the Uttarakhand High Court**

**Case No : C.W.P. No. 456 (M/S) of 2005**

Sanjeev Tyagi and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

**Date of Decision : 20-07-2005**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 16

**Citation : (2005) 4 AWC 3103 : (2006) 3 UPLBEC 59**

**Hon'ble Judges : Prafulla C. Pant, J**

**Bench : Single Bench**

**Advocate : Alok Singh and B. Bisht, for the Appellant; S. Dhulia, N.S. Pundir and S.C., for the Respondent**

## Judgement

Prafulla C. Pant, J.—By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioners, some of members of the general body of Nehru Rastriya Inter College, Manglore, Haridwar, have sought writ in the nature of mandamus commanding the respondent Nos. 3 and 4 to call for and finalize the list of voters of the members of general body of the institution for getting the election conducted of the Management Committee. It is further prayed that writ in the nature of certiorari be issued to quash the election programme issued by respondent No. 7 for election of the Management Committee of the College. Finally, it is also prayed that mandamus commanding the respondent Nos. 3 and 4 i.e., Joint Director of Education, Garhwal Mandal, Pauri and District Education Officer, Haridwar respectively, to get the election of the Committee of Management held strictly in accordance with the provisions of the Scheme of Administration from amongst the valid members.

2. Brief facts of the case, as narrated in the writ petition, are that the petitioners are the life members of the Society, known as Nehru Rastriya Inter College, Manglore, Haridwar, which is running an educational institution in said name through its Committee of Management. The last election of Committee of

Management of the institution was held on 16.5.2002 in which Sri Sanjay Sharma (respondent No. 6) was elected as the Manager of the institution. The period of elected Committee of Management is three years, and it gets one month further period for the purposes of completing the process of election for new Committee of Management. A copy of Scheme of Administration has been annexed as Annexure-1 to the writ petition. Under Clause (5) read with Clause (8) of said Scheme, a person can be inducted as life member of the Society on payment of Rs. 1,000 as fee and a person can be inducted as member for three years on payment of Rs. 300 provided the said membership is duly approved u/s 16 of the U. P. Intermediate Education Act, 1921. It is alleged in the writ petition that respondent No. 6 illegally got inducted as many as 220 members in the Society between the period 10.10.2002 to 20.4.2003. Not only this, the respondent No. 6 vide meeting dated 27.1.2003 got amended the Clause (5) of the Scheme, enhancing the fee for life membership from Rs. 1,000 to Rs. 10,000, and for ordinary members from Rs. 300 to Rs. 3,000. On said amendment, a complaint was made against respondent No. 6 by other members including the petitioners to the higher authorities of the Education Department. On said complaint, the Principal, Government Inter College, Roorkee was appointed enquiry officer who found that many of the members shown to have attended said meeting dated 27.1.2003, have not attended and their signatures were fabricated. On said report under orders of respondent No. 3, respondent No. 4 vide his order dated 28.5.2004 directed the respondent No. 6 that the amendment made in the Scheme of Administration be cancelled and the membership of new members inducted by him, be declared invalid. Thereafter, respondent No. 6 submitted list of 338 members showing them as valid members. But said list was also in utter disregard to the orders issued by the authorities of the Education Department. The orders of the respondent Nos. 3 and 4 passed in this regard were not challenged by respondent No. 6 and were final. Respondent Nos. 3 and 4 are also under legal obligation to ensure the election of the new Management Committee strictly in accordance with the provisions of Scheme of Administration. According to the petitioners, the election programme published for the new Committee of Management being violative of the Scheme of Administration is liable to be quashed. Hence, this writ petition.

3. A joint counter-affidavit has been filed on behalf of respondent Nos. 2, 3 and 4 in which it has been stated that in the enquiry report dated 20.1.2004, the enquiry officer clearly specified that in the meeting of the general body which was held on 27.1.2004, 18 signatures were found forged and out of them 13 members had submitted their affidavits to this effect. It is also stated in the counter-affidavit that the Regional Joint Director of Education, Garhwal Mandal (respondent No. 3) vide its order dated 2.4.2004 has cancelled the amendment in Scheme of Administration and the membership of the newly inducted members was also rejected. It is further stated that on 16.5.2002, the Committee of Management was approved by the then District Inspectors of Schools, in which 120 members were shown as life members and 45 members

were inducted for the period of three years. On 14.6.2004 prior to 11 months from the date of next election, a list of 338 life members and ordinary members was given for approval by the Committee of Management, however, the said list was not approved and this time the total members shown by the Committee of Management have further increased to 615, which clearly shows that members have been illegally inducted by the Committee of Management and, as such, the proposed election of the Committee of Management is violative of the provisions of Scheme of Administration. It is also stated that respondent No. 6 gave an application to respondent No. 3 concealing the facts on which the order dated 18.2.2005 was passed by respondent No. 3. However, subsequently, on directions received from respondent No. 2, the respondent No. 3 passed an order dated 24.3.2005 directing the respondent No. 4 to inquire into the matter and thereafter the illegal induction of the members by the Committee of Management was disapproved.

4. In the counter-affidavit filed on behalf of respondent No. 6 the allegation of induction of 220 members by the Committee of Management was made by fraud, has been denied. It has also been denied that the Committee of Management has made no new members on the enhanced fee. It has been stated by respondent No. 6 that the enhancement of membership fee has never been given effect to. It has further been stated in the counter-affidavit that the Committee of Management vide meeting dated 12.1.2005 had notified the date of election as Sunday, 15.5.2005. The proposed elections were being held according to the Scheme of Administration.

5. I heard learned Counsel for the parties and perused the record.

6. It is not disputed that respondent No. 6 was elected as Manager in the elections held on 16.5.2002, It is also not disputed that the term of Management Committee was three years. The dispute relates to induction of new members and holding of elections which were due to be held in the month of May 2005.

7. Before further discussions, it is pertinent to mention here the relevant provisions contained in Scheme of Administration relating to the membership of the general body and elections of the Management Committee, which are being reproduced below :

? 8- Ik/kkj.k IHkk ds InL; cuus dh izf?;k & dksbZ Hkh O;fDr tks laLFkk dk "kqhk fpUrd gks pkgs og fdLH Hkh tkfr vFkok /keZ dk gks Ik/kkj.k IHkh dk InL; gks ldrk gS A ;fn og ikxy u gks vkSj mldh vk;q de ls de 21 o"kZ dh gks] InL; "kqYd fo|ky; ds uke cSad M?Q~Q }kjk tek djuk gksxk A ;g cSad M?Q~Q }kjk tek djuk gksxk A ;g cSad M?Q~Q fdLH Hkh inkf/kdkjh @ InL; }kjk izkIr dj dks"kk/;{k v/;{k dks Hkstsaxs tks izCU/k lfeFr dks vxyh cSBd esa fopkj gsrq j[ksaxs A izCU/k lfeFr ;fn fdLH dks InL; cukuk Lohdkj ugha djrh rks ;g izdj.k iqu% fopkj gsrq Ik/kkj.k IHkh dh cSBd esa j[kk tk;sxk A ;fn Ik/kkj.k IHkk InL; cukuk Lohdkj jdrh gS rks og InL; cSad M?Q~Q dh frfFk ls gh InL; ekuk tk;sxk A blh izdkj izCU/k lfeFr }kjk Lohdkj djus ij Hkh cSad M?Q~Q okil dj fn;k tk;sxk A Ik/kkj.k IHkh ds bl fu.kZ ;s fo:)

dksbZ Hkh vihy fujh{kd dsk ,d ekl esa dh tk ldsxh ftldk fu.kZ; vfUre gksxk A

9- izcU/k lfefr dk dk;Z&dky&inkf/kdkjh ,oa lfefr ds lnL;ksa dk dk;Zdky rhu o"kZ ds ckn ,d 3ekg ds vUnj uo;pfur lfefr dk;ZHkkj xzg.k ugh jdrh rks 3 o"kZ ,d ekg ckn dkykrhr lfefr dk;Z dk;Zdky Lor% lekIr le>kk tk;sxk vksj IEHkkxh; mi&f"kk{k kuns"kd }kjk eukuh ,d O;fDr izcU/k lapkyd dk;Zjr ekuk tk;sxk ftls izcU/khdj.k ds iw.kZ vf/kdkj gksaxs A og izcU/k lapkyd uo p;fur lfer dh "kh?kzkfr"kh?kz dk;Zjr dj;sxk vkSj ;fn pquko ugha gqv kS rks pquko dj;sd pa;fur lfefr dks dk;Zjr dj;sxk vkSj ;fn izcU/k lfefr;ksa esa vf/kdkj ;k nkok gS rks ftlds i{k esa dk;Zjr dj;sxk A

10- pquko dh izf;k & ?d? pquko ds fy;s izcU/k lfefr dk dk;Zdky iw.kZ gksus ds rhu ekl iwoZ lefr dh cSBd cqykbZ tk;sxh ftlesa pquko vf/kdkjh dh fu;qfDr dh tk;sxh A blh cSBd esa pquko dk;Z?e fu/kkZj.k fuokZpd ukekoyh dk vuqeksnu gksxk A vuqeksfnr fuokZpr ukekoyh dh izfr;ka ,d lRkg esa fujh{kd} mi&f"kk{k kuns"kd ,oa i;kZIr la;k esa pquko vf/kdkjh dks miyC/k dj nh tk;sxh A ;fn izcU/kd cSBd ugha cqy;k;s rks v/;{k Lo;a cSBd cqy kdsaxs A ;fn nksuksa gh cSBd u cqy;k;s rks lfefr ds 1@2 lnL; vFok lk/kkj.k lHkk ds 1@10 lnL; fyf[kr izkFkZuk ij fujh[kd dh vuqefr izkIr dj cSBd cqy kdsaxs A ftlesa mDr izdj.k ij gh fopkj fd;k tk ldrk gS A

?[k? pquko xzIr ernku }kjk gksxk A pquko laca/kh leLr dk;Zogh ;Fkkdk;Z?e dks lekpj i= esa izdk"ku] ukekadu izkfr tkap leh{k} okilh ernku O;oLFkk erx.kuk ,oa ifj.kke ?kks"k.kk pquko vf/kdkjh }kjk dh tk;sxh A

?x? pquko dk;Z?e dh frfFk] LFkku ,oa le; lfgr lwpuk fuokZpdksa dks jftLVMZ Mkd }kjk Hksth tk;sxh A ;fn fuokZpd lap;k 100 ls vf/kd gS rks fujh{kd }kjk vuqeksfnr lekpj i= esa izdk"ku ds lFk ;q?ih?lh? Mkd }kjk nh tk;sxh A mDr lwpuk ds lFk lFk fujh{kd} iqfyl v/kh{kd ,oa ftyf/kdkjh ls pquko i;Zos{kds esa fdlh dkj.k fdlh ds u vk lds ij Hkh pquko vf/kdkjh }kjk pquko dk;Zokgh fu;ekuqlj iw.kZ dj nh tk;sxh A fuokZpd vf/kdkjh }kjk pquko ifj.kke dh lwpuk lnL;ksa ,oa inkf/kdkfj;ksa ,oa fujh{kds dks vius gLrk{kjksa ls Hkstsaxs A fujh{kd le:d fopkjksijUr lfefr dks ekU;rk iznku djsxk A tks fuo`reku lfefr dk;Zdky lekIr gksus ij dk;ZHkkj xzg.k djsxh A

??k? lk/kkj.k lHkh ds lnL;ksa dh lwph izcU/k lfefr ds rhu o"kZ ds dk;Zdky lekIr gksus ls 11 ekg iwoZ ?kksf"kr dj nh tk;sxh A ftldh tkap kuns"kd dks Hksth tk;sxh rFkk ,d izfr IEHkkxh; mi&f"kk{k kuns"kd dks Hkh Hksth tk;sxh A

?M?? pquko xzIr ernku }kjk gksxk A pquko i= ij ihBklhu vf/kdkjh ds gLrk{kj gksus vfuo;Z gksaxs A ernku i= vxys pquko rd lqjf{kr j[k tk;saxs A ?

8. From the above provisions it is clear that eleven months before the elections a list of members of the general body were to be submitted to the Regional Joint Director of Education and the Director of Education has power to examine the same. As mentioned above, while narrating the facts from the affidavit and Annexure-4 to the writ petition, it is clear that the list submitted by the present

Management Committee was disapproved by the respondent Nos. 3 and 4. The said letter is dated 5th July, 2004 whereby, it has been asked by the District Education Officer, Haridwar to the Manager of the institution (returning the list of 338 members of general body which was sent through his letter dated 14.6.2004) that the keeping in view of the enquiry report submitted by the Principal, Government Inter College, Roorkee after removing the names of the members illegally inducted, fresh list of valid members be sent. It appears that the respondent No. 6 sent with his letter dated 17.5.2005 containing names of as many as 615 members. The said list is annexed at page 75 to 124 (at the end of Annexure-5 to the writ petition). In reply to that, the District Education Officer, Haridwar vide his letter dated 29.1.2005 (copy Annexure-8) reminded the Manager that in the said list of 615 persons, names of those are included whose membership was cancelled. The respondent No. 6 was informed that the said list is declared disapproved, and returned.

9. From the above discussion, it is now clear that the sudden rise of membership which is being submitted time and again by the present Manager appears to be with an eye on the elections which are due for the . constitution of new Committee of Management. That is why, it appears that instead of abiding by the directions of the Education authorities who have examined new list after getting inquiry done through the Principal, Government Inter College, Roorkee and disapproved it, new list every time with more members being insisted upon by the Manager who has failed to delete the names of members disapproved by respondent Nos. 3 and 4.

10. This Court is conscious of the fact that in the writ jurisdiction it cannot go into factual dispute like the one in the present case, and simultaneously it is necessary to see that one particular Management Committee after completion of its term is not permitted to continue for an indefinite period which is against the spirit of the Scheme of Administration of the institution approved u/s 16 of the U. P. Intermediate Education Act, 1921. This Court is also bound to keep in mind the order passed on 27.6.2005 by a Division Bench in Special Appeal No. 31 of 2005 which arose out of the interim order passed in this writ petition. In the said order of the Court, it has been observed as under :

"Hence, the special appeal is disposed of hoping that the writ petition will be disposed of by the learned single Judge as early as possible and directing that the Managing Committee which was in office prior to 15.5.2002 shall continue to manage the affairs of the College till the disposal of the writ petition. The further continuance in office of the Managing Committee after disposal of the writ petition will depend on the decision in the writ petition. We make it clear that even if any Administrator has already been appointed by the educational authorities, such appointment shall stand revoked and it shall not be given effect to, in view of the directions above."

11. Keeping in view of the above directions, after hearing the parties, for the reasons as discussed above in this judgment, this Court disposes of this writ

petition with the directions as\_ under :

1. A fresh election programme will be published within fifteen days from today, from the stage it got held up under interim orders of this Court.
2. Since membership of the newly inducted voters is seriously disputed between the parties at this stage, therefore, from amongst the voters, the list of voters as it existed prior to 10.10.2002 shall be treated to be a valid voters list for the impugned election.
3. The elections shall be supervised by the District Education Officer, Haridwar, or his nominee, and the Election Officer (respondent No. 7) already nominated by the Management Committee shall conduct the elections.
4. The elections shall be held as per the Scheme of Administration subject to observations made in this judgment. In case, the elections are not held within 45 days from today, the Education authorities shall be at liberty to appoint an Administrator/Controller as per the Rules.
5. As to the new members which were inducted on or after 10.10.2002, their matters will be examined once again by the respondent Nos. 3 and 4 if necessary through some responsible , officer of Education Department, who shall submit his report within reasonable time to the Education authorities. The Education authorities shall intimate to the Manager of the College in due course (before or after the impugned elections) as to which of the new members are approved.

The writ petition is accordingly disposed of with above directions."