
(2000) 02 AHC CK 0031

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 33419 of 1999

Shyam Sunder Misra

APPELLANT

Vs

Joint Director of Education and Another

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 UPLBEC 768

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : A.P. Shahi, for the Appellant; Anil Tiwari, for the Respondent

Judgement

D.K. Seth, J.—Order dated 25th May, 1999 (Annexure 24 to the writ petition) and order dated 12th May, 1999 (Annexure 15 to the writ petition) and the order dated 25th May, 1999 (Annexure 23 to the writ petition) have since been challenged in this writ petition. The first two order were passed by the District Inspector of Schools, Chitrakoot (in short, the DIOS) while the third order was passed by he learned District Judge, Chitrakoot in Misc. Civil Appeal No. 14 of 1999. The dispute in fact is with regard to the election of the Committee of Management of Tulsi Inter College, Banda, a recognized institution alleged to have been held on 20th May, 1999.

2. Mr. A.P. Shahi, learned Counsel for the petitioner contends that according to Clause 8 of the scheme of administration, the life of the Committee of Management, which is of three years and one month duration, was due to expire on 13th May, 1999 and as such, no election could be held on 20th May, 1999. He further contended that the petitioner is one of the life member and as such, he is interested and, therefore, he has locus standi to challenge the election on various grounds. The respondents themselves had moved writ petition No. 18452 of 1999, whereon an order dated 15th May, 1999 was passed (Annexure 16 to the writ petition) by which three weeks time was granted for finalization of the electoral college and after two weeks thereof the election was directed to be

held. It appears that the election was alleged to have been held on 20th May, 1999 on the basis of an alleged order dated 13th May, 1999 passed by the DIOS, Banda, without disclosing the existence of the said order when the order dated 15th May, 1999 was obtained. According to him, in view of the order dated 15th May, 1999, the DIOS was bound to finalize the electoral college within three weeks and hold the election thereafter. It is further contended that many of the members who were enrolled appears to be the residents of different districts and nothing was disclosed as to how they could become members. He again contends that the petitioner had filed Original Suit No. 166 of 1999 on which an interim order was passed on 19th May, 1999. Despite communication of the interim order of injunction on 19th May, 1999 the alleged election was held on 20th May, 1999. He contends further that by reason of Clause 9(3) of the scheme of administration, the list of the members of the general body is to be finalized and notified and displayed in the Notice Board one year before the elections are scheduled to be held. But no notice was ever issued. The allegation that such a list was sent on 10th April, 1998 by the respondent No. 4, appears to be a concoction as is apparent from Annexure 5, a letter dated 26th August, 1998 of the DIOS demanding such list of members from the respondent No. 4. The contents of the letter dated 26th August, 1998 of the DIOS pre-supposes that no list was submitted till the issue of the said letter, By a letter dated 12th November, 1998 (Annexure 6 to the writ petition), again the DIOS informed the respondent No. 4 that the list was not submitted as required under the scheme of administration. This situation finds support from letter dated 27th February, 1999, Annexure 13, 8th April, 1999, Annexure 14, 26th April, 1999, Annexure 15 to the counter affidavit respectively. He next contends that the alleged election was held in violation of the letters dated 8th April, 1999 (Annexure 12 to the writ petition) and 10th May, 1999 (Annexure 14 to the writ petition) by which the Joint Director of Education had directed a detailed inquiry into the issue of membership and only thereafter to proceed with the election. The election notified on 12th April, 1999 could not be held because the membership list was not finalized. In such circumstance, in order to seek advantage, the respondents had filed Writ Petition No. 18452 of 1999 and obtained the order dated 15th May, 1999 as detailed above. In such circumstances, Mr. Shahi contends that the alleged election held on 20th May, 1999 be cancelled and a fresh elections be held by the Prabandh Sanchalak after finalizing the list of members giving an opportunity to all the parties.

3. Mr. Anil Tewari, learned Counsel for the respondent No. 4 on the other hand contends that the question of finalization of the membership is no more open since the said exercise was concluded by order dated 26th August, 1996 (Annexure CA 10) passed by the DIOS. The said order was challenged in writ petition No. 37719 of 1996 by the High Court declined to interfere with the order dated 26th August, 1996 as would be apparent from the order dated 26th November, 1996 (Annexure CA 11) on the said writ petition. Thus the list of members having been approved, the same having been signed on 10th April,

1998, this question can never be reopened. According to him, writ petition No. 18452 of 1999 was moved for an order that the school authorities may be permitted to hold the election within 14th May, 1999 since the DIOS was not permitting it to hold the election. Since the list of members stood already finalized, therefore, there is no necessity to finalize the list of members in terms of the order dated 15th May, 1999 passed in writ petition No. 18452 of 1999. As such the election was rightly held on 20th May, 1999 in terms of the order dated 13th May, 1999. According to him the recognition of the earlier Committee of Management having been given on 14th June, 1996, the life of the Committee of Management was due to expire on 14th July, 1996 though the election was held on 14th April, 1996, which could not be treated to be the date since cognition was given on 14th June, 1996. As such the election was held well within time. Alternatively he submits that even if the life of the Committee of Management was due to expire on 14th May, 1996 till then the election having been held six days after the life of the Committee of Member had expired, cannot be discarded. The trifle delay in holding the election cannot stand in the way as has been held in the case of B.N.B. Inter College and Others Vs. Regional Deputy Director of Education, Vth Region and Others, and in the case of Smt. Vimla Devi v. Deputy Director of Education, Agra Region, Agra (1997) 3 ESC 1807, and in the case of Committee of Management, Mubarakpur Intermediate College v. Regional Deputy Director of Education (1997) 2 ESC 783 (All). In support of his contention that the term of the Committee of Management would expire after three years and one month from the date of grant of approval, he had cited the decision in the case of Girish Chandra v. Rajendra (1996) 3 ESC 152 (All). He had further contended that the petitioner has not locus standi and that he had approached the Civil Court. Therefore, he cannot maintain this writ petition. In this regard, he had relied on a decision in the case of Smt. Bimla Devi (supra) and in the case of, Committee of Management, Janta Intermediate College, Region I, Meerut. (1991) 1 UPLBEC 170. He then contends that in view of the provision contained in Order XXXIX. Rule 2 proviso (e) of the CPC as amended in U.P., there cannot be any injunction restraining holding of an election. He then contends that even if there is no doubt with regard to membership, the High Court cannot deal with the same as is held in the case of Basant Prasad Srivastava and others Vs. State of U.P. and others, , and in the case of Committee of Management, Brahmarshi Sri Ram Krishna Inter College and Another Vs. District Inspector of Schools and Others, . He further contends that the order dated 15th May. 1999 passed in writ petition No. 18452 of 1999 has since been complied with. For all these reasons, he prays that this writ petition should be dismissed.

4. The learned Standing Counsel on the other hand did not enter into the dispute between the two rival claimants. Though, however, the learned Standing Counsel has supported the order dated 13th May, 1999 passed by the DIOS and adopted the contention of the respondent.

5. I have heard all the learned Counsel at length.

6. The dispute relates to the holding of an election of the Committee of Management alleged to have been held on 20th May, 1999. Such dispute has since been raised by one of the alleged life members. It is contended by Mr. Anil Tewari that the petitioner though a life member, even assuming but not admitting, having not contested the election has not locus standi to challenge the same. This question is to be looked into on the basis of the facts and circumstances of the case. The basic proposition on which the petitioner proceeds is that no election had taken place on 20th May, 1999. Whether the petitioner was making a correct statement or the respondents are correct in their statement, is a question relating to determination of disputed questions of fact. This Court in exercise of its writ jurisdiction cannot enter into determining the disputed questions of fact. Therefore, it is not necessary to go into such question. It cannot be denied that a life member has interest in the well being of the institution and a right to participate in the election and even to contest the same. Thus, the petitioner fulfils the primary criteria of locus. But if he has not contested the election but had participated in it, then he could not have been said to have any locus to challenge the election. In case where the member or a life member has neither contested the election nor participated in the election similarly could not be said to have acquired any locus. But the second proposition is not an absolute proposition. This proposition is dependent on the facts of a given situation. If it is contended that he did not receive notice of the election, which is otherwise not disputed to have been held, in the event he could not challenge the election simply because he did not receive the notice personally when notices were published in the Notice Board and elections were duly held complying with all the other provisions. But the fact would be different if it is alleged that no elections was at all held or that there was infirmity or incompetence of the agency holding the election. In such circumstances the locus cannot be disputed. In such a situation, the Court ought not to throw away the petition on the ground of absence of locus. It is bound to examine the allegation. If the Court finds that the allegation is un-founded, then it had no alternative but to hold that the petitioner has no locus. But if it finds that there are some doubts and it is not possible to completely over-rule the contention of the petitioner and come to a conclusive finding that the election was held as alleged after complying with the provisions and there was no infirmity or incompetence on the agency holding the election, then the Court has no alternative but to hold that the petitioner has locus to challenge it.

7. In the present case, on the basis of the allegations made and the materials produced, it is a very difficult proposition to hold conclusively that the election as alleged, was held or that the agency that held the election had no infirmity or incompetence and over-rule the contention altogether. It also cannot over-rule the contention of the petitioner that the alleged election even if held, was improper as would be apparent from the discussion made hereafter. As such, it falls within the category of cases in which the Court is required to examine the situation and ought not to throw away the petition on the ground of absence of

locus.

8. Thus, it is a case where the examination of the situation is required to be undergone. It is alleged by the respondents that the election was held on 20th May, 1999 on the basis of an order dated 13th May, 1999 passed by the DIOS, Banda. It appears that the respondents themselves had moved writ petition No. 18452 of 1999, which was disposed of on 15th May, 1999. On the said date, it was not disclosed that an order dated 13th May, 1999 has since been passed directing the respondents to hold the election. The said writ petition was filed in order to obtain an order directing the DIOS to permit the petitioner to hold the election on 14th May, 1999. If the order dated 13th May, 1999 was issued, in that event, the respondents ought not to have pressed the said petition since the relief sought for was already attained and the petition had become infructuous.

9. Even if it is alleged that till 15th May, 1999, namely, the order was passed on the said writ petition No. 18452 of 1999, the respondents were not aware of the said order, still then it was not open to hold the election on the basis of the said letter dated 13th May, 1999 after having obtained the order dated 15th May, 1999 by which the list of members were to be finalized within three weeks and to hold the election within two weeks thereafter. It would have been open to get the list finalized and pass an appropriate order even within one day and to hold the election thereafter. But nothing has been shown that the DIOS had finalized the list of members in terms of the said order. Since it is the respondents themselves who had obtained the said order, it was binding on them as well as on the DIOS. The election could be held only after the list of members were finalized. The allegation that the list stood finalized by reason of the order dated 26th August, 1996 passed by the DIOS and the order dated 26th November, 1996 passed in writ petition No. 37719 of 1996 cannot be available. Inasmuch as earlier election had taken place on 14th April, 1996 and there was no occasion for finalizing the list for the election to be held in 1999 in 1996. The order dated 26th August, 1996 was passed with regard to the validity of the members enrolled in 1994 and 1995 having regard to the election held in 1996. So far as the election for the year 1999 is concerned that is to be held on the basis of the scheme of administration which in Clause 9 (3) provides finalization of the list of members one year before the proposed election. There is nothing on record to show that all such steps were taken and the list of members was finalized. At the same time the respondents have claimed that the list of members have since been sent on 10th April, 1998. Therefore, it is not open to them to claim that the list of members was finalized for the 1999 collection in 1996. It is the list of members, if sent on 10th April, 1998 for the purpose of holding election in 1999, was to be finalized. This ending of list has since been disputed by the petitioner. The respondents have not been able to show anything that this list of members was ever sent. On the other hand it appears from the letter dated 26th August, 1998 issued by the DIOS being Annexure 5 that the records relating to membership which were demanded by the DIOS were not produced till 26th August, 1998. From the letter dated 12th November, 1998 (Annexure 6 to the writ petition), it

appears that the DIOS was intimating the Deputy Director of Education that no steps were taken by the respondent No. 4 as is required under the scheme of administration. These facts are also apparent from the subsequent letters dated 27th February, 1999 (Annexure CA 13), 8th April, 1999 (Annexure CA 14) and 26th April, 1999 (Annexure CA 15). Thus on the face of the record, it appears that the dispute with regard to the list of members for the purpose of election to be held in 1999 was still unsettled. The order dated 15th May, 1999 passed in writ petition No. 18452 of 1999 seems to have taken note of such a situation while passing the order with the direction for finalization of the members list. In such circumstances it cannot be said that the list of members stood already settled.

10. That apart, it was the respondents themselves who had invited the order dated 15th May, 1999 on their own application and had never challenged the said order. They had neither applied for review nor they moved against the said order. On the other hand, they had accepted the said order. After having accepted the order, it was not open to them to hold the election without the list of members being settled by the DIOS in terms of the said order. It further appears that the election was held on 20th May, 1999 without any order from the DIOS resolving the disputes with regard to the members. It is apparent from the letter dated 27th February, 1999 (Annexure 13) issued by the DIOS, Chitrakoot that the respondents were to produce the documents for the purpose of inquiry about the validity of the members list. In the letter dated 8th April, 1999 (Annexure 14 to the C.A.) the election was withheld until the list of members is finalized since the validity of the members list was not clear. In the letter dated 26th April, 1999, the DIOS, Chitrakoot had pointed out about the unreliability of the members list. It was found on inquiry that the people from the districts of Allahabad, Rae Bareilly, Hardoi and Orai were enrolled as members. A question was raised as to how in absence of any notice or advertisement in those districts wherefrom these people could get the notice and had applied for enrolment as members and as such the list of members could not be finalized. Therefore, respondent No. 4 was requested to produce the relevant proof so that further proceedings may be pursued. It appears from the letter dated 10th May, 1999 contained in Annexure CA 16, that respondent No. 4 had sent his explanation. At the same time it further appears from letter dated 13th May, 1999 (Annexure CA 18) issued by the DIOS, Chitrakoot that the respondent No. 4 was asked to send a copy of the decision in the writ petition No. 18910 of 1996 along with the letter dated 20th February, 1995 by which the list of members were approved in order to enable the DIOS to take appropriate steps. From Annexure CA 19, which is dated 13th May, 1999, it appears that the desired papers were forwarded on the same date and thereupon the order dated 13th May, 1999 (Annexure CA 20) was issued approving the list of members. The series of correspondences indicate that all were carried on the same date i.e. 13th May, 1999 which is susceptible to suspicion and not free from doubt. It is very difficult to accept the proposition which was carried out on one day, namely, 13th May, 1999. Thus, it appears that

this situation in the issuing of the order dated 13th May, 1999 was well known to the petitioner. Non-disclosure of this situation while order dated 15th May, 1999 was obtained raised a doubt in the mind of the Court and is sufficient to suspect that these orders were rigged. If it was so, it was necessary for the respondents to accept the order dated 15th May, 1999 passed in writ petition No. 18452 of 1999 directing the finalization of the list of members which according to them was alleged to have been finalized on 13th May, 1999 which fact ought to have been brought to the notice of the Court. Since the situation appears to be of suspicious nature even then this matter should have been gone into once again in terms of the said order.

11. Then again it appears from the letter dated 13th May, 1999 that the order was passed on the letter dated 10th May, 1999 (Annexure CA 17) by which the Joint Director of Education, Jhansi Region. Jhansi had directed the DIOS, Chitrakoot to hold the election after examining the inquiry to the list of members though it was mentioned that the respondent No. 4 did not commit any irregularity. It is not known how the Joint Director could make such an observation when he was not in seisin of the matter and could issue a direction to the DIOS, Chitrakoot to hold an inquiry expressing his own opinion that the respondent No. 4 has not committed any irregularity. It is wholly uncalled for and the said Joint Director would be well advised to confine himself within the jurisdiction conferred on him and not to go out of his way. Furthermore, the letter dated 13th May, 1999 reveals that it had in fact accepted the opinion expressed in Annexure CA 17 by the Joint Director as a command. In fact the tenor of the contents of Annexure CA 17 can very well be interpreted to be a mandate of the Joint Director upon the DIOS which is also reflected from the expression used in the letter dated 13th May, 1999 (Annexure 15 to the writ petition) or CA 20. But then the said letter had permitted holding of election according to the scheme of administration after having published the same in "Dainik Karmayug" within 15 days from 13th May, 1999 since there has already been a delay. Similarly on 15th May, 1999 the DIOS, Chitrakoot had approved the programme of election and had also intimated the name of the observers after which the notice was issued on 16th May, 1999 and the election was alleged to have been held on 20th May, 1999.

12. In the circumstances it does not appear that the entire situation are above board and that no doubt or suspicion could be harboured. Though it was said that after inquiry the list of members was approved but it is not known how everything could be done in one day when there is nothing to show as to how the clarifications sought for by the DIOS, Chitrakoot in his successive letters contained in Annexures 14, 15 and 16 to the counter affidavit were clarified. There is every reason to suspect that the entire process was carried out by the DIOS on the basis of the mandate of the Joint Director contained in CA 17.

13. Therefore, it is not necessary to go into the other questions raised by the respective Counsel, namely, that the election having held shortly after the expiry

of the life, the management was competent to hold the election nor it is necessary to go into the question as to whether the management would be competent to hold the election till the expiry of three years one month from 14th June, 1996. namely, the grant of approval of the Committee of Management elected in 1996. It is also not necessary to go into the question about the holding of election despite the existence of the interim order passed in suit on 19th May, 1999. though, however, in view of the embargo created in proviso (c) to Rule 2 of Order XXXIX of the CPC as amended in U.P. about the grant of an injunction restraining holding of election.

14. Since in this proceeding, this Court does not propose to decide the dispute with regard to the list of members, therefore, it is not necessary to refer to the decisions cited by Mr. Anil Tewari in this regard/In exercise of writ jurisdiction, this Court cannot take upon itself the responsibility of determining the disputed questions of fact. On the other hand, it is a questions as to whether the election was held in accordance with law after the order dated 15th May, 1999 was obtained by the respondents themselves in their writ petition No. 18452 of 1999 particularly when the records produced does not conclusively show that the list of members was finalized on the basis of a suspicious situation as is apparent from the correspondences referred to herein before. Admittedly, in the meantime the life of the managing committee had expired, if not on 14th May, 1999. on 14th July, 1999. But then in writ petition No. 18452 of 1999 the respondents themselves had sought for a relief to hold the election within 14th May, 1999 accepting the date on which they had preceded that the life of the Committee of Management was due to expire. Be that as it may. The order dated 15th May, 1999 passed in the said writ petition having not been complied with and there having been infraction thereof the alleged election could not be so held on the said date in terms of the said order dated 15th May, 1999. The alleged approval of the members list (Annexure 15 of the writ petition), is not free from suspicion and having been found to have been passed by the DIOS on the basis of the letter dated 10th May 1999 A C 17). Apparently a mandate from the Joint Director cannot be taken to be a determination of the dispute.

15. In the present case it is apparent that it is the education which has become the victim. It is the administration of the school that is suffering. Therefore, this Court rmay enter into the question when it is brought to its notice without sending the same for decision by the Civil Court particularly when on the facts, it is apparent that the election has not been validly held as alleged having regard to the delay in the process in determination of civil suit. In fact the respondents themselves had not shown proper regard to the order passed by this Court invited by themselves. Therefore, it is necessary that this Court should exercise its jurisdiction and interfere in the matter. As such it is not necessary to refer the matter for decision to the Civil Court when on the given situation, it is apparent that it can safely be held that the alleged election was not properly held in terms of the order passed by this Court dated 15th May, 1999. Similarly, it is not necessary to refer to the decisions cited by Mr. Anil Tewari with regard to the

validity of the life of the Committee of Management from the date of its approval as well as those relating to the cases where election was held within a short while after the expiry of the term of the Committee of Management. At present, these questions have lost its significance in view of the facts and circumstances of this case. Similarly, it is not necessary to refer to the decisions cited by Mr. A.P. Shahi on these questions.

16. In the result, the writ petition succeeds and is allowed to the following extent:

The DIOS, Chitrakoot shall decide the validity of the list of members on the basis of the documents as produced by the respondents or such documents as may be produced within two weeks from the date of receipt of a certified copy of this order after giving opportunity to the parties, including the petitioner. The petitioner may also submit his written submissions and may produce such documents as he may be advised. The DIOS shall consider the said questions on merits and in accordance with law without being influenced by any observation made in Annexure CA 17, afresh, having regard to the materials produced before him. He should intimate his decision to both the parties together with the reasons supporting such decision and finalize the list of members within three weeks from the date of receipt of the materials that might be produced before him within two weeks from the date of receipt of the certified copy by either of the parties. Since in the meantime the life of the Committee of Management had expired, therefore, the DIOS or the Authority concerned shall take immediate steps for appointment of a Controlling Officer (Prabandh Sanchalak), who may also participate in the said inquiry and may produce relevant documents before the DIOS in the matter relating to the finalization of the members list. The election be held after the list of members is finalized by the DIOS, Chitrakoot within a period of six weeks from the date of such finalization of members' list. All steps relating to the holding of election shall be taken by the Controlling Officer in accordance with law in terms of this order. After the election is held and the result is declared, the Controlling Officer shall submit his reports to the DIOS, who will approve the election of Committee of Management and attest the signature of the Manager within two weeks from the receipt of such report. Immediately on the approval of the Committee of Management and attestation of the signature of the Manager, the Prabandh Sanchalak shall hand over charge to the Committee of Management, the life of which shall be counted from the date of its election according to the scheme of administration. The petitioner shall withdraw within one week from this date the Original Suit No. 166 of 1999 filed by him in the Civil Court and the Appeal No. 14 of 1999. The order dated 13th May, 1999 (Annexure 15 to the writ petition) and the order dated 25th May, 1999 (Annexure 24 to the writ petition are), hereby, quashed. In the facts and circumstances, the order dated 25th May, 1999 passed by the learned District Judge, Chitrakoot in Misc. Civil Appeal No. 14 of 1999 loses its significance and becomes infructuous in view of the order passed above.

There, will, however, be no order as to costs.