
(2007) 11 AHC CK 0117
In the Allahabad High Court

Sita Ram Tripathi

APPELLANT

Vs

Regional Committee and Others

RESPONDENT

Date of Decision : 29-11-2007

Acts Referred:

Citation : (2008) 2 AWC 2157 : (2008) 1 UPLBEC 725

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—By means of the aforesaid two writ petitions, petitioners of both the writ petitions are challenging the order dated 23.08.2007 passed by the Regional Level Committee. By the aforesaid order, the Regional Level Committee has approved the Committee of Management formed in an election held on 15.04.2007.

2. The petitioner of writ petition No. 43016 of 2007 claims himself to be the lire long member of the General Body of the institution and claimed to have elected as Manager in the election held on 05.05.1994, 06.04.1997 and 02.04.2000. The petitioners of writ petition No. 44079 of 2007 also claimed to be the life long members of the General Body of the institution as well as the Society.

3. Brief facts of the case are that there is a Society running an Intermediate College known as Shri Swami Krishnanand Intermediate College, Belwar, District Jaunpur. The institution is duly recognized under the U.P. Intermediate Education Act, 1921 and is also governed under U.P. Act No. 24 of 1971. The institution is being run by the Committee of Management under the Scheme of Administration. It appears that the dispute arose between the two sets of the Committees one headed by Sri Sita Ram Tripathi and other by Sri Manoj Kumar Singh. A Civil Misc. Writ Petition No. 61 135 of 2005 was filed by the Committee of Management headed by Sri Manoj Kumar Singh which was dismissed on 24.04.2006 by the learned Single Judge of this Court. Sri Manoj Kumar Singh

filed Special Appeal No. 97 of 2006 which was allowed vide order dated 06.07.2006. The Division Bench while allowing the writ petition has directed to appoint authorized controller to hold the election of the Committee of Management of the institution within two months from the date of service of the order. The order has been served. In pursuance of the aforesaid order, Prabandh Sanchalak was appointed. It is alleged that even though Prabandh Sanchalak was appointed and the order of the Division Bench of this Court was served on him still he did not proceed to hold the election of the Committee of Management. Thus a contempt petition No. 61 of 2000 was filed against the Prabandh Sanchalak Sri Harish Chandra Srivastava. The election was held on 05.04.2007. In the said election, Sri Sita Ram Tripathi was defeated by Sri Bairav Prasad Tripathi and a new Committee of Management has been formed. It appears that new Committee of Management had placed the papers before the District Inspector of Schools for its recognition which have been transmitted to the Regional Level Committee for final order. It appears that Ashutosh Shukla and others filed writ petition No. 1569 of 2007 questioning the electoral college as well as the election held on 15.04.2007. It has also been alleged that they have filed their objections before the Regional Level Committee which have not been decided. Learned Single Judge of this Court has disposed of the writ petition vide order dated 04.05.2007 with the direction to the Regional Level Committee to consider the objections after affording opportunity of hearing to the parties and shall pass a reasoned speaking order. This Court has further observed that the Regional Level Committee should record findings on the following three basic issues:

1. Elections have been held by a person competent to do so.
2. Valid members of the General body have participated in the elections.
3. Elections have been held in accordance with approved Scheme of Administration applicable to the institution.
4. In pursuance thereof, Regional Level Committee by the impugned order rejected the objections of the petitioners and recognized the Committee of Management formed by the elected office bearers in an election held on 15.04.2007.
5. Heard Sri Indra Raj Singh appearing on behalf of the petitioner in writ petition No. 43016 of 2007, Sri R.K. Ojha, learned Counsel for the petitioners in writ petition No. 44079 of 2007, Sri P.S. Baghel, learned Counsel appearing on behalf of the respondent, Committee of Management of which Sri Bhairav Prasad Tiwari is the Manager and the learned Standing Counsel.
6. Learned Counsel for the petitioners of both the writ petitions submitted that Prabandh Sanchalak has not followed the para-2 of the election procedure given under the amended Scheme of Administration of the institution; as no notice was issued to any members and published in the newspaper after finalization of the list of members of the General Body dated 11.04.2007; The Prabandh Sanchalak

initially published a list of 1875 members and finally on 11.04.2007 published a list containing 2199 members, therefore, it was incumbent upon him to issue notices to all such members after finalizing the list by both modes i.e. publication in newspaper and by ordinary post which was not done as a result of which out of 2199 members only 1154 members participated in the election; the alleged Manager Bhairu Prasad Tripathi being Acting Headmaster of recognized Junior High School managed by U.P. Basic Education Board and one Rama Kant Pandey alleged elected member who being Assistant Teacher in Recognized Sarvjanik Inter College, Gohka, Jaunpur could not be office bearers in the Committee of Management in view of bar given in Chapter-III Regulation V of U.P. Intermediate Education Act, 1921; The Joint Director of Education fixed 4.6.2007, 28.06.2007 and 17.7.2007 date of hearing, but none of the dates all the three members, namely, Regional Committee comprising Joint Director of Education, Varanasi Region, Varanasi, Deputy Director of Education, Varanasi Region, Varanasi and the District Inspector of Schools, Jaunpur were present and heard the petitioners, therefore, the impugned order dated 23.08.2007 passed by the Regional Committee is ex-parte and without providing opportunity of hearing to the petitioners.

7. Sri P.S. Baghel, learned Counsel appearing for the respondent University submitted that it is wrong to say that the order has been passed without giving opportunity of hearing to the petitioners. He submitted that the membership of the electoral college was finalized by the Prabandh Sanchalak after hearing the members of both the rival committees and, therefore, it cannot be said that there is any error in the finalization of the membership. He submitted that record reveals that there was a proper publication of the membership inasmuch as the letters by ordinary post were sent to all the members as required under the Scheme of Administration. He further submitted that if any member has a grievance that he was prevented in participating in the election, the said grievance should be raised by the said member and not by any one else. He submitted that the petitioners have participated in the election, therefore, the objection with regard to the electoral college is baseless and liable to be rejected. He further submitted that on the date fixed the petitioners appeared and their signatures are available on record and they were heard. The order is being signed by all the three members and, therefore, the allegation that all the three members were not present on the date fixed and the petitioners have not been heard are baseless and contrary to the record.

8. Learned Standing Counsel placed the record of the proceeding and submitted that on the date fixed all the members were present and the petitioners were heard. The signatures of the petitioners are available in the register relating to the proceedings.

9. Having heard the learned Counsel for the parties, I have perused the counter and rejoinder affidavits and the record produced by the learned Standing Counsel.

10. From the perusal of the order of the Regional Level Committee, it is clear

that the Committee has dealt with each and every objections raised by the petitioners. One of the objection is that the Manager Bhairo Prasad Tripathi being Acting Headmaster of recognized Junior High School managed by U.P. Basic Education Board and one Rama Kant Pandey being alleged elected member, who being Assistant Teacher in Recognized Sarvjanik Inter College, Gohka, Jaunpur could not be office bearers of the Committee of Management appears to have not been raised before the Regional Level Committee and therefore, the same has not been dealt with. It is not open to the petitioners to raise such issue at this stage.

11. The Regional Level Committee in the impugned order has observed that for the formation of the new Committee, the Parbandh Sanchalak has published notification in the newspaper "Dainik Jagran" and "Dainik Manywar" in which 7th and 8th April, 2007 was fixed for the publication of the electoral, 09.04.2007 was fixed for filing of the application for the amendment in the electoral, 11/04.2007 was fixed for publication of the final electoral, 13.04.2007 was fixed for nomination, enquiry and withdrawal and 15.04.2007 was fixed for election. In the impugned order, it has been observed that the electoral college containing 2199 members have been finalized after the discussion by the members of both the Committees, therefore, there was no dispute in this regard. It has also been observed that the election process was published in the newspaper and information has been sent by post.

12. The record reveals that on 28th June, 2007 Sri Sita Ram Tripathi and Sri Bhairo Prasad Tripathi both appeared and put their signatures at the end. The case was adjourned to 17.07.2007. The proceeding register of 17.07.2007 reveals that the proceeding was signed by Sri Bhairo Prasad Tripathi, Sri Sita Ram Tripathi and Sri Ashutosh Shukla. It is also signed by all the three members. In view of the above, it cannot be said that the petitioners have not been heard by all the three members of the committee.

13. The record also reveals that the letters were sent to the members by ordinary post, the detail of which are on record. It also reveals that an exercise was carried on to settle the membership. It also appears that on publication of the list no objection was filed in this regard. In any view of the matter, the members whose right of casting the vote alleged to has been denied has not filed the writ petition, therefore, such objection has no substance.

14. In the case of Committee of Management, Janta Inter College, Sultanpur, District Haridwar and Anr. v. Joint Director of Education. I Region, Meerut and Ors. reported in 1999 UPLBEC 170 it has been held by this Court that the prevention of any member from participation in election can be challenged by the said member following the decision of the Apex Court in the case of Nanhoo Mal and Others Vs. Hira Mal and Others,

15. In view of the above, both the writ petitions are devoid of any merit and are, accordingly, dismissed.