

(2001) 09 RAJ CK 0124

In the Rajasthan High Court

Case No : Civil Revision Petition No. 985 of 2001

Sumer Chand Chhajed and Another

APPELLANT

Vs

Administrator (S.D.M.), Gandhi Shikshan Samiti (Operated
Institutions), Gulabpura and Others

RESPONDENT

Date of Decision : 15-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115
Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and
Service Conditions etc. Rules, 1993 — Rule 23
Rajasthan Non-Government Educational Institutions Act, 1989 — Section 10(1)
Rajasthan Societies Registration Act, 1958 — Section 13

Citation : (2002) 2 WLN 451

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Advocate : Sangeet Lodha, for the Appellant; M.S. Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—The petitioners have challenged the order dated 23-8-2001 passed in appeal by the Additional District Judge, Gulabpura in Civil Misc. Case No. 16/2001 by which the appeal of the non-petitioners was accepted and the order of injunction dated 13-8-2001 passed by the Civil Judge (Senior Division), Gulabpura was set aside by the appellate Court in a matter of injunction sought by the plaintiff-petitioners against the defendant-non-petitioners.

2. The learned counsel for the petitioners submitted that the order of the appellate Court vacating the stay order is absolutely illegal and the learned appellate Court has not cared to deal with the grounds taken by the Court of first instance before setting aside the order of the trial Court. According to the learned counsel for the petitioners, the learned Judge of the appellate Court failed to peruse the point in controversy, the law involved in the matter and also

under wrong impression of law, exercised its jurisdiction and set aside the order of the trial Court, holding it that the order of the State Government or order of the department of education can be challenged only in the High Court. According to the learned counsel for the petitioners, the appellate Court even misunderstood the meaning of the ultra vires. According to the learned counsel for the petitioners even the appellate Court very specifically and categorically observed that one of the plaintiffs Sumer Chand Chhajed shown his awareness and filed the suit for injunction on the basis of infringement of his rights even then the appellate Court wrongly set aside the injunction order. According to the learned counsel for the petitioners, while considering the prima facie case of the plaintiff, the appellate Court again committed illegality resulting into irregularities in exercise of jurisdiction. In addition to above, according to the learned counsel for the petitioner, even the orders passed by the State Government were not correctly interpreted by the first appellate Court. Therefore, this is a clear case of wrong exercise of jurisdiction by the appellate Court resulting into the irreparable loss to the petitioners.

3. The learned counsel for the non-petitioner vehemently submitted that the High Court, while exercising jurisdiction u/s 115. C.P.C., should not interfere in the order passed by the first appellate Court because of the fact that there is no prima facie case in favour of the plaintiff-petitioners and even if there is any prima facie case in favour of the petitioner-plaintiffs, then it will riot result into occasion of failure of justice or irreparable loss to the plaintiff-petitioner"s because of the fact that this is matter of election in which the law laid down by not only this Court but also by the Hon"ble Apex Court, clearly provides that no interim order with respect to the holding of election should be passed and, here in this case, the substantial part of the election has already been completed and now the election of office bearers is to be held on 15-9-2001. The learned counsel for the non-petitioner tried to support the order on merit by submitting that the order of the State Government in pursuance of which the Administrator had taken over the charge of the management of the society itself has not been challenged by the plaintiff despite their knowledge and despite the fact that the order was acted upon by the administrator and the management of the society, in fact, was taken over, when the administrator has taken over the charge of the society and conducting the election then without challenging the order for taking over charge of the society or without challenging the authority to hold the office of the administrator over the society, the plaintiff has no right to challenge the only consequential action of holding election by the administrator. The learned counsel for the non-petitioner also submitted that the administrator was appointed by the State Government by order dated 19-5-2001. The charge was taken over by the administrator on 11-6-2001. The notification for holding election was issued on 16-7-2001, whereas the present suit was filed in the month of August, 2001, therefore, on account of this inordinate delay, the petitioner-plaintiff is not entitled for any equitable relief and also vehemently submitted that in case election will not be held within the time schedule then it

will result into the situation which will be against the interest of all the staff of the educational institution and the students as well as the school. Therefore, looking to the larger interest, the plaintiff is not entitled for any equitable relief of injunction.

4. Much emphasis has been put by the learned counsel for the non-petitioner that in a matter relating to the election and with respect to the management of the educational institution, the Court should be reluctant in passing any interim order, for which, the learned counsel for the non-petitioner relied upon various judgments of this Court as well as the Hon'ble Apex Court, whereas the learned counsel for the petitioners submitted that even in case of election, when it comes to the notice of the Court that so called election is no election in the eye of law, the authority who has issued the notice of election, has no authority and when there is a clear case of colourable exercise of powers then such type of election cannot be equated with election held by the constitutional authority like election Commissioner for holding election for parliament and legislative assembly. The learned counsel for the petitioners also relied upon the interim order passed by this Court (by me) in S. B. Civil Revision Petition No. 627/2001.

5. In the light of the above arguments submitted by both the learned counsel for the parties, it will be relevant to consider the judgments cited by the learned counsel for the parties to first examine whether Courts have jurisdiction or have power to exercise its jurisdiction in the matter of election or not?

6. The learned counsel for the non-petitioner relied upon the judgment of the Hon'ble Apex Court delivered in A.K.M. Hassan Uzzaman and Others Vs. Union of India (UOI) and Others, This was the matter wherein the Hon'ble Apex Court examined the interim order passed by the learned single Judge of the Calcutta High Court dated 12 and 19th February, 1982 which were confirmed on 25th February, 1982. The writ petition was filed in the Calcutta High Court under Article 226 of the Constitution of India asking for the writs of mandamus and certiorari directing that the instructions issued by the Election Commissioner should not be implemented by the Chief Electoral Officer and others; that the revision of electoral rolls be undertaken de novo; that claims, objections and appeals in regard to the electoral roll be heard and disposed of in accordance with the rules; and that, no notification be issued u/s 15(2) of the Representation of the People Act, 1951 calling for election to the West Bengal Legislative Assembly, until the rolls were duly revised. The Hon'ble Apex Court, looking to the urgency in the matter deemed it proper to pass the order which was reported in the case of A.K.M. Hassan Uzzaman and Others Vs. Union of India (UOI) and Others, and detailed judgment was delivered by the Hon'ble Apex Court in Lakshmi Charan Sen v. A.K.H. Hassan Uzzaman. AIR 1985 SC 1233.

According to the learned counsel for the non-petitioner, the Hon'ble Apex Court very categorically held that the High Court in exercise of its power under Article 226 of the Constitution of India should not pass any order, may it be interim or otherwise which has the tendency or effect of postponing the election.

7. The learned counsel for the non-petitioner further relied upon the judgment of this Court delivered in *Ram Chander Sharma v. Bar Council of India*. 1982 Raj LR 426. Hon''ble single Judge of this Court observed that "can it be said that it would be in the public interest to give new lease of life to those members of the Bar Council whose term has expired and not to permit the newly born representatives of the Bar to breach in fresh air and fulfil the promises which they might have given about five thousands voters for the development, growth and for the all round expansions of the various fields of academic or the other activities of the Bar Council in the interest of this noble legal profession" and further observed that "would it be fair and the balance of convenience lies in putting these newly born leaders of the Bar. In "coma" in spite of a verdict of the members of the Bar in their favour" and this Court dismissed the stay petition and vacated the interim stay granted on 7-4-1982.

8. The learned counsel for the non-petitioner again relied upon the judgment of the Hon''ble Apex Court delivered in *Election Commission of India v. State of West Bengal JT (1993) 5 (SC) 101* , wherein it was held that process of election once begun not to be interfered with frequently unless there are exceptional circumstances and the Hon''ble Apex Court vacated the interim stay order granted by the High Court. Another judgment relied upon by the learned counsel is delivered in *Ashok Chand Singhvi Vs. J.N.V. University and Others*, wherein it was held that the High Court cannot interfere with the election process and permit petitioner to contest election at belated stage after election process has already started. In another judgment relied upon by the learned counsel for the non-petitioner delivered in *Council for Indian School Certificate Examination Vs. Isha Mittal and Another*, the Hon''ble Apex Court held that it is the obligation of the High Court to decide the matter before it in accordance with law and if the law was in favour of the appellant, the High Court was obliged to make order in favour of the appellant. In a recent judgment delivered in *O.P. Gupta Vs. Union of India and Others*, the Division Bench of this Court held that the writ petition questioning election has to be postponed till completion of proceeding.

9. A careful reading of all the above cited judgments, it will be relevant to mention here that what has been laid down by the Hon''ble Supreme Court and this Court in relation to the matter of election when comes before the Courts of law.

In the judgment delivered in the case of *A. K. Hassan Uzzaman (AIR 1985 SC 1233)* (supra), the Hon''ble Apex Court observed as under (at P. 1246. Para 28 of AIR) :

"Secondly, though the High Court did not lack the jurisdiction to entertain the writ petition and to tissue appropriate directions therein, no High Court in the exercise of its powers under Article 226 of the Constitution should pass any orders interim of otherwise which is reasonability imminent and in relation to which its writ jurisdiction is invoked. The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the

High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation which the Government of a State cannot be carried on in accordance with the provisions of the Constitution India is an oasis of democracy, a fact of contemporary history which demands of the Courts the use of wise statesmanship in the exercise of their extraordinary powers under the Constitution. The High Court must observe a self-imposed limitation on their powers to act under Article 226, by refusing to pass orders or give directions which will inevitably results in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are a part of the process of "election" within the meaning of Article 329(b) of the Constitution. We will pronounce upon that question later in our judgment."

In this very judgment, partly dissenting, the Hon"ble Baharul Islam, J. observed as under :

"I regret my inability to associate myself with some of the observations made by My Lord, the Chief Justice, in para (2) of the Order Just pronounced. While I do not have any doubt in the integrity and impartiality of the Election Commission, I am not satisfied that all the Electoral Registration Officers concerned and all the staff working under them, were beyond reproach in their conduct in implementing the relevant provisions of the Constitution." A bare perusal of the above judgment of the Hon"ble Apex Court, It is clear that the Hon"ble Apex Court very specifically held that the High Court did not lack jurisdiction to entertain the writ petition and to issue appropriate directions (it was matter of election of Legislative Assembly) but observed that the High Court should not pass any order interim or otherwise which has tendency or effect of postponing of election which is reasonably imminent and, thereafter, held that when the process is imminent the greater reluctance be of the High Court to do anything or direct anything to be done which will postpone that process indefinitely. The above has been laid down by the Hon"ble Apex Court in a matter of election of the Legislative Assembly and the Hon"ble Apex Court observed that the Government of State cannot be carried on in accordance with the provisions of the Constitution by such type of order postponing process indefinitely or which may result into creating a situation of like nature.

Therefore, from the above judgment, it is clear that Hon"ble the Apex Court delivered the judgment (by five-Judges Bench) and recognised jurisdiction of the High Court to entertain the writ petition even in case of election of the Legislative Assembly but cautioned that power is to be exercised with extreme care and caution. Therefore, it can be said that there is power vested in the Court of law to pass appropriate order in the facts and circumstances of the case in the matter of election and there is no blanket bar of entertaining the petition. In the

above case, the writ petition which was filed in the Calcutta High Court was dismissed by the Hon''ble Apex Court. The reasonings given for dismissal by the Hon''ble Apex Court are also relevant which, as mentioned in the judgment, are : (1) no material for passing order was placed before the High Court for passing interim order. (2) allegations of the writ petition were vague and of general nature, (3) the argument advanced on behalf of the petitioner that the Election Commissioner, or the Chief Electoral Officer or the Electoral Registration Officer have, in any manner, acted in violation of the Constitution, was rejected by the Hon''ble Apex Court, and (4) it was the matter with respect to constitutional functionaries. The Hon''ble Apex Court also held that the imminence of the electoral process is a factor for passing the order, therefore, the stay order was set aside and the writ petition was decided on merit and not because of any lack of Jurisdiction of the Court to pass interim order and the order if would have been passed might have been resulted into indefinitely postponing the process of the election, therefore, in the above situation, the interim order was passed. The detailed judgment delivered in the above case is reported in AIR 1985 SC 1233 makes it further clear that that there was no merit in the case of the petitioner.

This Court in the case of Ram Chander Sharma (1982 RajLR 426) (supra) held as under :

The above principle laid down by the Apex Court of this country in the election dispute provides valuable guidelines though Mr. Lodna was correct when he pointed out that the election of the parliament and Assemblies governed by Article 329 and other provisions of the Constitution stands on a different high pedestal."

In the case of Election Commission of India. JT (1993 (5)(SC) 101) (supra), the Hon''ble Apex Court, in the facts of the above case, held that process of election once begun should not be frequently interfered with more particularly after the polling is over, unless there are very strong and exceptional circumstances to interfere with and, thereafter, held that prima facie there was no such extraordinary or exceptional circumstances to dislodge the order of the High Court. Therefore, the Hon''ble Apex Court issued notice to examine the legal question raised therein at the final hearing of the case.

In the case of Ashok Chand Singhvi Vs. J.N.V. University and Others, this Court observed that under the circumstances of the case no relief could have been granted to the petitioner regarding contesting election in absence of prayer in the writ petition.

The Division Bench of this Court in the case of O.P. Gupta (2000 Lab IC 3614) (supra) observed that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. It was relied upon the judgment of the Division Bench delivered in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, The Division Bench observed that the validity of election process. If questioned, then

the aggrieved person has to wait till the election is over and, thereafter, he can institute a petition in accordance with the regulations providing for calling in question the election of the successful candidate. The Division Bench of this Court observed as under (Para 7 of Lab IC) :

"It is seen from the record that the writ petition has been filed with reference to an election of an Association, a Trade Union registered under the Trade Unions Act. It is settled by a catena of decision that an election of an Association is a matter of internal management of Association wherein no fundamental right or legal right of the appellant-petitioner is involved and consequently, the appellant-petitioner cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. It is also settled by many rulings of the Apex Court that the word "election" comprehends the entire process starting from the notification calling upon the Association to elect the office-bearers and culminating in the candidate being declared elected. A person aggrieved by any election process is expected to wait till the election results are announced and then challenge the same by filing a suit or an election petition."

10. It is clear from the above that in a matter of relief sought against the election, when there is a procedure prescribed under the Act then no other procedure is available and, as per the decision of the Hon"ble Apex Court given in the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, the law does not contemplate two attacks of matters connected with election, under Article 226 of the Constitution during the process of election and other when it is completed by election petition under the Representation of the People Act. The Hon"ble Apex Court, in addition to above, further held that where a liability is created by a statute which gives special remedy for enforcing it, the remedy provided by that only must be availed of. Therefore, it is further clear that if a right is created by statute and remedy is available in the statute then that remedy alone is to be followed and availed of, whereas here in the present case, this is a matter with respect to the right of a member of society, registered under the Rajasthan Societies Registration Act, 1958 (for short "the Act of 1958") and governed by its own Constitution which provides how the society will be having its general body, members, its working, controlling and election. There is no contention of any of the parties that any alternative remedy is available for challenging the election in the constitution of the society. Therefore, it is clear that the right has not been created by statute and there appears to be no remedy provided under the statute in the matter of election of the society of respondent No. 3. It is also clear that neither the above society is discharging any constitutional functions nor its functions can be equated with functions of any of the constitutional authority, rather it can be said that the society is not even discharging any statutory functions. It is also clear from the Constitution of the society that the members of the society are accepted as per the constitution of the society and the management of the society lies with the management committee of the society which are to be elected by the general body of the society. Therefore, it appears that all powers vest in the general body

of the society. The objects for which the society was constituted, is also given in Clause (3) of the Constitution of Society.

11. In view of the above facts, it cannot be said that by entertaining or by granting any interim relief there will be any constitutional crises or there will be hurdle in discharging any statutory duties of the statutory authority and the election of the present society cannot be put at high pedestal with the election of the Parliament and the Legislative Assemblies.

12. Now, the question arises with respect to the Interference in the matter of election of non-petitioner No. 3-Society, for which the learned counsel for the petitioners, as mentioned above, submitted that this is a matter of election and this Court should not interfere while exercising jurisdiction u/s 115, C.P.C. It appears that the process of the election has been placed at very high pedestal, because as observed by the Hon'ble Apex Court in the case of A.K.M. Hassan Uzzaman (AIR 1985 SC 1233) (supra). It takes years to build up public confidence in the functioning of constitutional institutions and it was further held that it is the duty of the Courts to protect and preserve the integrity of all constitutional institutions which are devised to foster democracy. This proposition which was given in the case of the election to the members of the Parliament and the Legislative Assemblies as back as in the year 1952 while considering the election matter of election of Legislative Assemblies by the Apex Court in the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, The Courts have, as a matter of procedure, stressed it to all the elections and, therefore, there is a great reluctance in Interfering with the matter of election and its process unless the process is completed. The reason behind reluctance in the interference by the Court in the matter appears to be because of the reason that the elections are placed at very high pedestal. In my view, when the elections are placed at high pedestal, the elected members are given a high status and recognition then it is also the duty of the Courts to see that this high pedestal be kept as high as it must be and the elected members should be kept on high pedestal and when the process is polluted by any authority or a person to lower down the status of the elected members by polluting the process or by polluting the election itself then the Courts are required to interfere to maintain the dignity and decorum of the election. Simply by saying that this is a matter of election and is required to be interfered with in exceptional circumstances, does not mean that there is a complete ban against the passing of the appropriate order even when exceptional and grave reason to pass the order. When Courts can protect the decorum and dignity of the election and elected members by passing appropriate order even then if Court will not pass order to maintain decorum and dignity of the election and of elected member, it will be failing in its duty causing harm to the public. At the same time it is the duty of the Court to see as held by the Hon'ble Apex Court, if there is chance of delay or postponement of election and election will be deferred for indefinite or long time, the Court should not pass the interim order and the aggrieved party should wait the result of the election.

13. It was also submitted by the learned counsel for the non-petitioner that the Courts are required to be too slow in interfering with the working of the elected members. If both the things are taken together then during process of the election, no Court can interfere and, thereafter, no Court can restrain the elected members from functioning then it will lead to the only conclusion that no relief can be granted to an aggrieved person even in case of absolutely illegal and without jurisdiction holding of election and the persons will be permitted to use illegal mode for election and will also get encouragement for polluting the process of the election for their election and, thereafter, they will claim immunity.

14. The Court of law are well guided by the decisions of the Hon''ble Apex Court as well as by the decisions of this Court and also by the various other High Courts. More cautions and cares are required to be taken in the matter of election disputes. Therefore, there are sufficient guidelines available before the Courts to handle the matter of the election disputes. The Court of law is established to impart justice and the Court will be falling in its duty in case when the illegality is brought to the notice of the Court and the Court refused to exercise its jurisdiction and aggrieved person will be left to suffer, No Court can or should tolerate the illegality and permit any person to take benefit of Illegal action. Therefore, in my opinion, there cannot be a complete ban on the interference in the election matter.

15. The Hon''ble Apex Court in the case of Bar Council of Delhi and Others Vs. Surjeet Singh and Others, after rejecting the pleas of alternative remedy, the challenge to the election after it was held and the objection on the ground that the petitioner himself was the candidate, upheld the decision of the Delhi High Court by which the Delhi High Court allowed the three writ petitions for setting aside the election of the Bar Council of Delhi held in the year 1978 and the Hon''ble Apex Court dismissed the special appeals against the above judgment of the Delhi High Court. Here in this case also, the learned counsel for the petitioners vehemently submitted that one of the candidates himself, not only participated in the election but was elected and, therefore, he has no right to challenge the election after taking part in the election and after he himself being elected. The answer is in the above judgment of Bar Council of Delhi and Others Vs. Surjeet Singh and Others, Hon''ble the Apex Court held that even though the contesting respondent came to challenge the election after it was held, they could do so because of the gravity of law in the preparation of electoral rolls. Therefore, in view of the gravity of the dispute even a person who contested the election was permitted to challenge the election and this was followed by this Court in the case of Ram Chander Sharma (1982 RajLR 426) (supra). In this case, Ram Chander Sharma (petitioner) has also contested in the election and this Court, after relying upon the judgment of the Bar Council of Bar Council of Delhi and Others Vs. Surjeet Singh and Others, held that the petitioner can challenge the election and he cannot be estopped from challenging the election on account of this conduct. Here in this case, the suit was filed prior to the election challenging the election and when serious questions are involved and

when particularly, even the trial Court granted injunction, the appellate Court clearly held that one of the plaintiffs has shown his awareness by filing the suit, it cannot be said that because of the conduct of the one of the plaintiffs they cannot maintain the suit or cannot be granted relief of injunction, if they are entitled.

16. In view of the above legal position, it is to be seen what is the grievance of the plaintiff and whether the plaintiff has got a strong prima facie case and balance of convenience with irreparable injury in favour of the plaintiff for entitlement of interim order of injunction.

17. The learned counsel for the petitioners submitted that as per the order dated 19-5-2001 which was passed u/s 10(1) of the Rajasthan Non-Government Educational Institution Act, 1989 (for short "the Act of 1989"), the Government has a power to take over the management of the managing committee of any recognised institution when the managing committee of any recognised institution neglected to perform any of the duties or failed to manage the institution properly or it becomes necessary in the public interest to take over the management and, thereafter, the State Government can appoint the administrator to exercise power to control and to run institution. Therefore, according to the learned counsel for the petitioner no power is vested in the State Government to appoint the Administrator over the society under the Act of 1989.

18. To examine the scheme of the Act of 1989, it will be relevant to quote the definitions of "institution", "management" or "managing committee". "non-Government educational institute" given in Section 2 and Sections 9, 10, 11 and 41 of the above Act, which read as under :

"(1) "institution" includes all movable and immovable properties pertaining to an educational institution.

(o) "management" or "managing committee", in relation to any institution, means the committee of management constituted u/s 9 and includes the Secretary or any other person, by whatever names designated, vested with the authority to manage and conduct the affairs of the institution.

(p) "non-Government educational institution" means any college, school, training institute or any other Institution, by whatever name designated, established and run with the object of imparting education or preparing or training students for obtaining any certificate, degree, diploma or any academic distinction recognised by the State or Central Government or functioning for the educational, cultural or physical development of the people in the State and which is neither owned nor managed by the State or Central Government or by any University or local authority or other authority owned or controlled by the State or Central Government.

9. Constitution of a managing committee-- (1) there shall be constituted a

managing committee for every recognised institution.

(2) The managing committee of every recognised institution shall elect a Secretary from amongst its members. An employee of the institution shall neither be the Secretary nor the treasurer.

(3) The Secretary will perform such functions and exercise such rights as may be prescribed.

10. Powers of the State Government to take over management-- (1) Notwithstanding anything contained in any law for the time being in force, whenever it appears to the State Government that the managing committee of any recognised Institution has neglected to perform any of the duties assigned to it by or under this Act or the rules made thereunder or has failed to manage the institution properly and that it has become necessary in the public interest to take over the management of such institution, it may, after giving to such managing committee a reasonable opportunity of showing cause against the proposed action, take over such management and appoint an administrator to exercise control over the assets of the institution and to run the institution for such period as the State Government may from time to time fix.

(2) Where, before the expiry of the period fixed under Sub-section (1), the State Government is of the opinion that it is not necessary to continue the managing of the institution by an Administrator, such management shall be restored to the managing committee.

11. Administration and management of properties of institution.-- The Secretary of the Managing Committee or any person duly authorised by the managing committee in this behalf by a resolution shall, on behalf of the managing committee, manage and administer the properties of a recognised institution.

41. Courts not to grant injunction.-- Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law for the time being in force, no Court shall grant any temporary injunction or make any interim order restraining any proceedings which are being or about to be taken under this Act."

19. From the above provisions, the institution has been defined in Clause (1) of Section 2 of the Act of 1989 which says that it includes movable and immovable properties pertaining to an educational institution, but what is (sic) the institution has not been defined, whereas definition provided under Clause (o) of Section 2 of the Act of 1989 provides that committee of management constituted u/s 9 and it also includes Secretary or any other person vested with the authority to manage and conduct the affairs of the Institution. Therefore, management or managing committee can only be constituted u/s 9 of the Act of 1989. Clause (p) of Section 2 of the Act of 1989 defines the Non-Government educational institution and which means college, school, training institution etc. which are recognised by the State or the Central Government for the functioning of educational, culture or physical development of the people in the State which is

neither owned nor managed by the State or Central Government or by any University or local authority or other authority owned or controlled by the State or Central Government.

20. Section 3 of the Act of 1989 reads as under: .

"3. Recognition of institution.-- (1) Except in the case of institution affiliated to a University or recognised or to be recognised by the Board, the Competent Authority may, on an application made to it in the prescribed form and manner, recognise a non-Government education Institution or fulfilment of such terms and conditions as may be prescribed :

Provided that no institution shall be recognised unless it is registered under the Rajasthan Societies Registration Act, 1958.

(2) Every application for recognition of an institution shall be entertained and considered by the Competent Authority and the decision thereon shall be communicated to the applicant within a period of six months from the date of the receipt of the application and, where recognition is refused, the reasons therefore shall also be communicated to the applicant within the said period."

As per proviso to Section 3 of the Act of 1989. It is clear that all the institutions are required to be registered under the Act of 1958 to make them eligible for recognition by the State Government.

21. On the basis of the above definitions and the provisions of law, the learned counsel for the petitioners submitted that the society is a different and separate entity and it can have its registration under the Act of 1958. The managing committee is a separate body and it is constituted u/s 9 of the Act of 1989. It is not necessary that the managing committee constituted u/s 9 of the Act of 1989 must be parent body and the registered society nor it is necessary that the parent body of the society only should be the managing committee for the institution, meaning thereby, according to the learned counsel for the petitioners, the society may have several aims and objects and one of the aims and objects may be to run college, school or training institution as provided in the definition under Clause (p) of Section 2 of the Act of 1989 and the society may have several other committees other than managing committee for running school as provided u/s 9 of the Act of 1989 and may have to discharge several other functions. Section 10 of the Act of 1989 only empowers for taking over of the management of the managing committee constituted u/s 9 and not of the society. The appointment of the administrator can be to exercise control over the assets of the institution to run the institution including the movable and immovable properties pertaining to the educational institution and can be under control and management of the Administrator. There is no provision under the Act of 1989 to take over management of the society and appoint administrator over the society and to give power to the administrator to run the society.

22. The learned counsel for the non-petitioner submitted that it is clear from the

order dated 19-5-2001 of the State Government that the State Government appointed the administrator for the society itself and put his emphasis on the words used in the order dated 19-5-2001 which read as under:

(Vernacular matter omitted--Ed.)

23. According to the learned counsel for the non-petitioner, in this order there is a specific mention of appointing S.D.M., Gulabpura as Administrator and it is also mentioned that for this "sanstha", which, according to the learned counsel for the non-petitioner, is a society. The Administrator was appointed for three months and the Administrator taken over charge of the society. Therefore, it is clear that the State Government appointed Administrator for the society itself and not for the managing committee and further submitted that when, as per the proviso to Section 3 of the Act of 1989, there is total prohibition of recognition against the institutions which are not registered under the Act of 1958, then it is clear that only a registered society under the Act of 1958 can get the recognition then u/s 10 of the Act of 1989, the management of the society can be taken over and the Administrator can be appointed and the Administrator can discharge the functions u/s 10 for the society.

24. After considering the above arguments, I am unable to accept this submission of the learned counsel for the non-petitioner. Proviso to Section 3 only provides that no institution shall be recognised unless it is registered under the Act of 1958. Therefore, this is only a requirement for having the recognition of an institution which must be registered under the Act of 1958, whereas Section 9 provides for constitution of managing committee for every recognised institution but for this Section 9, there may not have any requirement for constitution of managing committee for any recognised institution. Section 9 of the Act of 1989 provides that there shall be constituted a managing committee for every recognised institution. This means that Section 9 pre-supposes two bodies, one is institution and another is managing committee. Sub-section (2) of Section 9 further provides that the managing committee of every recognised institution shall elect a Secretary from amongst its members. This language also shows that the Secretary is to be elected for the managing committee of every recognised institution. Therefore, thereafter under Sub-section (3) of Section 9 it is provided that the Secretary will perform such functions and exercise such rights as may be prescribed. A total reading of Section 9 makes it clear that the managing committee is required to be constituted for every recognised institution and recognition can be obtained by a society registered under the Act of 1958 and whether there is any provision for having Secretary for the society or not. The managing committee constituted u/s 9 shall have a Secretary.

25. Section 11 of the Act of 1989 provides that the Secretary of the managing committee or any person duly authorised by the managing committee in this behalf by a resolution shall, on behalf of the managing committee, manage and administer the properties and of a recognised institution. Therefore, this Secretary, elected under subsection (2) of Section 9, is empowered to manage

and administer properties of a recognised institution. The properties if read with definition of "Institution" given in Section 2(1) it makes clear that it is only property pertaining to and related to educational institution and not of the entire society having other properties for other purpose.

26. In view of the above provisions of law, the State Government is empowered to see the working of the managing committee of any recognised institution and when it is found that the managing committee has neglected to perform any of the duties assigned to it by or under this Act or the Rules made thereunder or has failed to manage the institution properly, then the management can be taken over and Administrator can be appointed. The Act of 1989 has nothing to do with the activities which have no relation with the education and if the Act is read as a whole, there is no reason for having any provision for controlling and managing all the societies which are recognised u/s 3 of the Act of 1989 and, while dealing with the matters in relation to achieving their objects under the Constitution other than the education, no purpose can be achieved by having any provision for management of the societies registered under the Act of 1958. If the contention of the learned counsel for the non-petitioner is accepted that if society manages its all other activities but managing committee failed to manage educational institutions, the society will still have to face appointment of Administrator.

27. Again, the order dated 19-5-2001 is seen. In the subject it is clearly mentioned as under :

(Vernacular matter omitted...Ed.)

The above subject shows that the order was issued with respect to appointing Administrator for the school, managed by Shri Gandhi Shikshan Samiti, Gulabpura (Vernacular matter omitted...Ed.) The mere using word "Sanstha" while passing the order u/s 10(1) of the Act of 1989, at various places is required to be read with the subject and the provision of law under which the order was passed and it cannot be presumed that the Government had an intention to hold the election of the society itself and particularly when Section 10 of the Act of 1989 provides provision of taking over management and appointment of the Administrator in case of failure of managing committee to perform the duties then, because of any mismanagement by the committee, it cannot be presumed that the management of the society can be taken over by the Administrator even when the society is functioning within their powers and there may be even cases when the registered society may have been the body raising grievance against the managing committee upon which the State Government might have taken the action under Section.

28. A matter came up before this Court by way of a writ petition filed by Ravindra Kumar Sabu against the State of Rajasthan and others wherein the anxiety of the petitioner was that three educational Institutions run by Maheshwari Samaj be managed by validly constituted managing committee,

upon which this Court delivered a judgment on 23-9-1993 reported in Ravindra Kumar Sabu Vs. The State of Rajasthan and Others, This Court considered the above provisions of law, namely Section 9, definitions given in Section 2 of the Act of 1989 and also considered Rule 23 of the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc.) Rules, 1993 which were framed u/s 43 of the Act of 1989. The relevant portion of Rule 23(1) may be quoted here which reads as under :

"23(1) There shall be constituted a Managing Committee for every recognised institution in the manner prescribed as under."

This also provides that every recognised institution, there must be a managing committee. In the above case of Ravindra Kumar Sabu, there was a contention that the elected officer-bearers of the society are the authorised persons to manage and conduct the affairs of the educational institution as confidence has been reposed in them by the electorate and, therefore, request was made that education committee of Shri Maheshwari Samaj should be treated as managing committee of the educational institution. This Court held that the so-called new educational committee constituted by Shri Maheshwari Samaj cannot be a managing committee under the Act/Rules as it is not constituted in the manner as provided in the Rules and, further held that the managing committee can now be constituted only as prescribed in Rule 23. No managing committee can now be constituted in violation to the statutory provisions especially when the members of the committee and its functionaries are required to perform statutory duties and their violation may warrant imposition of penalty under the Act.

29. Therefore in view of the above decisions cited by the learned counsel for the petitioners. I am fully convinced that the registered society and managing committee as provided under Sections 9 and 10 will be different and election of the committee is required to be held as per the provisions of the Act of 1989 and the Rules framed thereunder.

30. Again look at the facts shows that the election notification was issued by the Administrator of non-petitioner No. 3 Society for holding election of the Society itself, namely, Shri Gandhi Shikshan Samiti, Gulabpura. This notification was issued on 16-7-2001, for which the plaintiff-petitioners sought relief of injunction that the non-petitioners be restrained from holding election in pursuance of the above election notification dated 16-7-2001. According to the learned counsel for the petitioners, it is clear from the material available on record that as per the provisions of Section 10(1) of the Act of 1989, the Administrator can be appointed by the State Government for the managing committee and not for the society then all the actions of the Administrator in relation to the society are without jurisdiction. According to the learned counsel for the petitioners when the order dated 19-5-2001 cannot be accepted as appointment of Administrator over the society then the Administrator had no Jurisdiction to issue notification for election and hold the election. The learned counsel for the petitioners further

vehemently submitted that when the action itself is without jurisdiction, the subsequent holding of election will not make it within jurisdiction.

31. The learned counsel for the non-petitioner vehemently submitted that the Administrator was appointed on 19-5-2001 and it was understood by all the parties that the Administrator was appointed for the society and, acting upon the above order dated 19-5-2001, the Administrator took the charge of the society itself and necessary notice was issued on 11-6-2001 and, after about one month, election notice was issued by the Administrator. According to the learned counsel for the non-petitioner, the plaintiff-petitioners did not even challenge the order dated 19-5-2001 nor they have challenged the action of the Administrator of taking over the charge from 19-5-2001 till filing of the present suit which was filed in the month of August, 2001. According to the learned counsel for the non-petitioner when the basic order is not challenged, the plaintiff-petitioners have no right to challenge the subsequent order and also submitted that when the orders of the State Government dated 19-5-2001 is not under challenge, its legality cannot be looked into. And to see under what circumstances the above order was passed by the State, the State was necessary party which is not made in the suit. Taking over the charge by the Administrator is not under challenge, then mere function or part of the function of the Administrator cannot be challenged.

32. There is substance in the submission of the learned counsel for the non-petitioner. A bare perusal of the copy of the plaint it is clear that the plaintiffs filed the suit seeking only relief that decree be passed against the defendants for permanent injunction that the defendants should not hold election in pursuance of the notification dated 16-7-2001. The State Government is not a party in the suit despite the fact that the order was issued by the Special Secretary (Education) of the Government of Rajasthan appointing Administrator. In the plaint, the plaintiffs have only submitted that defendant No. 2 issued notification dated 16-7-2001 for election which was received by the plaintiffs on 17-7-2001 and this notification is with respect to the election of executive body of Shri Gandhi Shikshan Samiti, Gulabpura and, according to the plaint allegations, by order dated 19-5-2001 it was only ordered by the State to hold election of the managing committee and not for holding election of Shri Gandhi Shikshan Samiti, Gulabpura itself. Thereafter, it is stated in the plaint that, after receipt of this election notification, the plaintiffs tried to contact with the Administrator and Election Officer but there was no proper reply from them, therefore, the suit was filed. In the entire plaint. It is nowhere said that the appointment of the Administrator for the society is illegal or that the State has not appointed Administrator over society. The plaintiff nowhere challenged the order dated 19-5-2001 of the State Government nor challenged the action of taking over charge by the Administrator. The plaintiffs also filed the suit belatedly, that too, challenging only part of the action of the Administrator which is also with respect to the holding of election only. Therefore, it appears that even the plaintiffs have no objection with respect to the working of the Administrator for the society except holding of election of the society by the Administrator.

33. In view of the above facts, now it is to be seen whether in these circumstances, the plaintiff are entitled for any relief for interim injunction.

34. So far as the submission made before this Court that the State Government can appoint. Administrator for taking over the management of the managing committee constituted u/s 9 is concerned, the submission of the learned counsel for the petitioners is having force and is accepted and it is also true that u/s 10(1) of the Act of 1989, the Administrator can be appointed for the managing committee constituted u/s 9 and not for the parent society registered under the Act of 1958 and there appears to be no provision for appointing Administrator over the society by the State Government under the Act of 1989 and the plaintiffs has right to file the suit despite the fact that one of the plaintiffs contested the election and, if the plaintiffs prove other facts, they will be entitled for the relief of injunction or other directions.

35. When the plaintiffs have not chosen to challenge the order of appointment dated 19-5-2001 and taking over of the charge as an Administrator of the society by the administrator and administrator continuing so for a long period of one month in the knowledge of the plaintiffs, there is no justification for grant of injunction against the part of working of the Administrator. Admittedly, when the Administrator has taken over the charge of the society and he conducted the election then as per the views of the members of the society will be elected. It is a matter only with respect to the fact that who is holding election only. There is no other allegation of any mala fide or unfairness or deprivation of any of the members of the society or with respect to the preparation of " voters" list or it will affect the result of election etc. then merely because the election was conducted by the Administrator who took over charge on the basis of above order of the State Government, there cannot be any reason for granting any relief of injunction prohibitory or mandatory in favour of the plaintiffs. It is true that except the ground of holding of election by the Administrator as Administrator of society is under challenge and there is no allegation which may have effect over the result of the election in their plaint. I do not find any justification in interfering with the election or its result of the non-petitioner No. 3 -- Society because of the reason that there is no allegation of unfairness (sic) election and in the facts of this case of accepting the Administrator of the society by the plaintiffs for a long period, the plaintiffs are estopped from challenging the election even when there may be chances of conducting the election by the person under wrong impression of authority to hold election.

36. The learned counsel for the petitioners also submitted that there will be irreparable injury to the petitioners as the petitioner is a vigilant person, approached the Court" of law and do not want to suffer an illegal action. Even the first appellate Court held that the petitioner is vigilant and filed the suit for protecting his rights due to the violation of his rights. The learned counsel for the non-petitioner submitted that the plaintiffs are two persons and one was elected in the election held by the Administrator and against this there are large number

of persons of the society who have not challenged the action and the consequences of passing an interim order may result serious consequences against the students of the educational institution and its staff and the working of the society will be adversely affected. According to the learned counsel for the non-petitioner, the petitioners failed to prove by irreparable injury and the balances of convenience in their favour.

37. In the matter of club, society and organisation, the irreparable injury is to be looked into not only to the cases of injury to the person challenging the action of the above organisation but is to be seen liberally, in case when one person is deprived of his right to exercise voting right or contest the election or proves that there is mismanagement of the above body by capturing it by few members depriving minority or denying the right to the even majority by unlawful means then that is a harm to the Institution itself and that may be the duty of the vigilant person to protect the institution. Normally, in the matter relating to the administration of club and society, the person filing the petition may not have personal injury affecting his pecuniary right but it may have affected his voice in the management and working of the body. In democratic way of working of body, voice of one may have effect to give a direction to the entire body. The presence of one may also be much important within the body to achieve the aims and objects of the body. Therefore, the irreparable injury is required to be seen in the light of the above reasonings. At the same time one may spoil the entire healthy and peaceful atmosphere of the club or organization, therefore, there is heavy duty past upon the Court to curb false and frivolous litigation in the matter of club and particularly in the management of educational Institution as held by the Hon"ble Apex Court. But here in this case, when there is no allegation of illegality in the election (except the authority of the person holding election) and there is no allegation of deprivation of the plaintiffs from contesting the election and when there is no allegation that by holding election in pursuance of the notification dated 16-7-2001, the person will be elected who otherwise would not have been elected then there is no justification for Interfering in the dispute of election by passing any interim order. There appears to be no balance of convenience in favour of the plaintiffs and it appears that the balance of convenience lies in favour of holding election in pursuance of the notification dated 16-7-2001.

38. Before parting with, I would like to deal with some objections raised by the learned counsel for the non-petitioner which were raised after the arguments on merit. The learned counsel for the non-petitioner submitted that this Court should not exercise jurisdiction u/s 115, CPC because of the fact that the order under challenge was passed by the first appellate Court is without jurisdiction and there is no occasion of failure of justice to the petitioners and they will not suffer irreparable injury.

39. It is true that the scope to entertain the petition u/s 115, CPC is required to be exercised only when the petitioners' case falls within the four corners of the

provisions of Section 115. CPC. Here in this case, a; reasoned order was passed by the trial Court granting the injunction, The detailed reasons were given by the trial Court for holding prima facie case in favour of the plaintiffs and the trial Court also held that the election which is being conducted is not as per the law. The trial Court relied upon the judgment of this Court delivered in Ravindra Sabu (supra) and also other judgments. The trial Court also considered the provisions of Section 10(1) of the Act of 1989 and also Rules framed thereunder and, therefore, granted the injunction order. The appellate Court in para No. 10 of the order held that whether the State Government has power or not, whether the education department has power or not, can be challenged in the High Court and the Civil Court has jurisdiction only to see that whether the election is being conducted as per the Government Order or not, is itself sufficient ground for interference by this Court as the first appellate Court under wrong impression of its lack of jurisdiction held that the power of the State Government and even the education department cannot be looked into by the civil Court and it can be looked into only by the High Court. This is clear case of failure of exercise of jurisdiction under wrong impression of law. In addition to above, the first appellate Court misunderstood the order of the trial Court wherein the trial Court held that the action of the Administrator is in violation to the Rule 23 and the action is contrary to the law, hence it is ultra vires and the first appellate Court held that it can be so declared only by the High Court. Therefore, it appears that the first appellate Court committed illegality in exercise of its jurisdiction. In addition to above, the first appellate Court failed to consider the reasonings given by the trial Court before reversing finding of the prima facie case. Therefore, this was not a case wherein the present revision petition should have been dismissed only on the ground that it is not a case in which this Court cannot interfere with while exercising powers u/s 115, CPC.

40. The learned counsel for the petitioners also pointed out that the non-petitioners are submitting that the process of the election cannot be postponed and interfered with by the Court of law, whereas the first appellate Court, by order dated 14-8-2001, illegally permitted the change of dates for election, The above fact will not be of much importance in view of the fact that it has been held that the petitioners are not entitled for any Interim relief and have not been denied relief on the ground that the election has taken place.

41. Though it was a matter arising out of Interim order by the trial Court, the arguments were advanced by both the counsel on merit of the case at length, therefore, the detailed order was required to be given but it will not affect the case of the parties. The parties will be free to put their case before the trial Court in the trial.

42. In view of the above discussion, the revision petition of the petitioner is dismissed.