

(2013) 02 AHC CK 0166

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7755 of 2013

Sundar Singh

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Citation : (2013) 02 AHC CK 0166

Hon'ble Judges : Arun Tandon, J

Final Decision : Disposed Of

Judgement

Arun Tandon, J.

Petitioner before this Court seeks quashing of the order of the Regional Level Committee dated 08.01.2013 whereby it has proceeded to approve the elections of the Committee of Management held on 26.02.2011.

Facts in short leading to the present petition are as follows :

Elections of the Committee of Management of Sarvodaya Shiksha Prasar Samiti, Dilari, District Moradabad, which is an aided and recognized Intermediate College, were due in the year 2011. The petitioner approached this Court by means of Civil Misc. Writ Petition No. 6083 of 2011 raising a grievance that the respondent authorities are proceeding to hold fresh elections without finalizing the electoral college. The writ petition was disposed of vide order dated 04.02.2011 permitting the petitioner to represent his grievance before the Regional Joint Director of Education. Accordingly the petitioner filed objections and the Regional Joint Director of Education required the District Inspector of Schools to get the elections held.

In the said elections, which took place on 26.02.2011, the petitioner also participated and contested the elections for the office of member of the Committee of Management but lost. The petitioner raised his objections with regard to the inclusion of 25 members in the electoral college and accordingly

challenged the elections resulting in an order of the Regional Level Committee dated 02.08.2011 whereby the elections were disapproved on the ground that no material could be produced for establishing the legality or otherwise inclusion of 25 members who were permitted to participate in the elections. Other grounds were also mentioned in support of the order including the ground that the list of members of the general body had not been published 11 months prior to the elections.

This order of the Regional Level Committee was challenged by the elected office bearers by means of Civil Misc. Writ Petition No. 52463 of 2011. The writ petition was allowed vide judgment and order dated 09.11.2011. The order of the Regional Level Committee was set aside. The Regional Level Committee was directed to examine the legality of the elections so held. It was specifically observed that the Regional Level Committee shall record its specific findings on three issues as noticed in the order of the High Court.

This order was again subjected to challenge by the elected office bearers by means of Civil Misc. Writ Petition No. 18876 of 2012. The High Court vide order dated 02.05.2012 allowed the writ petition and quashed the order of the Regional Level Committee dated 01.03.2012 again and amongst other recorded that there was a certificate which establish that these persons were valid members of the Society which contains the details of their membership. Further the factum of participation of these 25 members enrolled in the elections of 2001 and 2006 has been ignored. It was also recorded that the elections of the year 2001 and 2006 were duly approved by the authority concerned. The Court further recorded that the District Inspector of Schools had appointed Naththu as the Observer and the District Inspector of Schools himself was the Election Officer. It was noticed that in the elections held the present petitioner had participated but had lost. All these aspects have not been taken into consideration while passing the order. Accordingly, the order was set aside and the Regional Level Committee was directed to reconsider the matter in light of the observations made.

The Regional Level Committee under the order impugned has approved the elections. It has however recorded that the original records pertaining to the enrollment of these 25 members in the year 1996 have not been produced. However, it has gone on to hold that these 25 members had participated in the elections of the year 2001 and 2006 which elections were approved and in these elections petitioner had also participated. It has been recorded that there are some technical defects but reelections will cost a lot of money and wastage of time.

Challenging the order so passed, counsel for the petitioner Shri P.N.Saxena, Senior Advocate assisted by Shri R.S.Mishra, Advocate submits that under the order of the High Court dated 09.11.2011 the Regional Level Committee was required to examine the legality of the elections on three points including the issue as to whether the valid members have participated in the elections. He,

therefore, submits that it was but necessary for the Regional Level Committee to examine as to whether the elections have been held from amongst valid members of the general body or not which issue in itself required a finding on the enrollment of these 25 members being valid or not.

Mere participation in the elections in the year 2001 and 2006 will not induce legality to the admission of these 25 members which was otherwise illegal. He therefore, submits that in the facts of the case, the order of the Regional Level Committee is illegal. He further submits that the Regional Level Committee has held that the elections have been held by the Manager which is a technical error but in fact it virtually amounts to elections being held by an unauthorized persons. Therefore, such elections have not been recognized.

Counsel for the respondent Shri P.K.Upadhyaya submits that the petitioner is one single member, he had contested the elections in the year 2001 and 2006 without protest. He again contested the elections of the year 2011 having lost, he now turns around to challenge the electoral college. He further points out that the Regional Level Committee has rightly come to a conclusion that even if original records of the year 1996 have not been produced but the participation of these 25 members in the elections of the year 2001 and 2006, which elections have been approved, go a long way to establish that they are valid members. With regard to the finding of the elections being held elections by the Manager, he points out that the finding is a deliberate misstatement of fact. It was established from the earlier order of the High Court dated 09.11.2011 passed in Civil Misc. Writ Petition No. 52462 of 2011 and dated 02.05.2012, referred to above, that the elections were held by the Election Officer appointed and in the presence of the Observer appointed. He therefore, submits that in the facts of the case, no interference is called for.

I have heard learned counsel for the parties and have gone through the records of the present writ petition.

It is no doubt true that the original records pertaining to the enrollment of 25 persons as member of the general body in the year 1996 has not been produced before the Regional Level Committee but at the same time it is not in dispute that these persons had participated in the elections of 2001 and 2006 in which elections, the petitioner had participated and was also a candidate. Both these elections have been approved by the competent authority. No plea of unauthorized participation of these 25 members was ever raised. This Court, therefore, finds that the Regional Level Committee has rightly recorded that participation of these 25 members in the third elections held in the year 2011 cannot be objected to the petitioner. The members cannot be held to be rank outsiders within the scope of power conferred upon the Regional Level Committee under Government Order dated 28.12.2000.

This Court made a pointed query from the counsel for the petitioner as to by how many votes the petitioner actually lost the elections of the office for which he had

submitted his nomination in the elections of year 2011, counsel for the petitioner could not answer the query. If the margin of defeat is more than 25 votes, the petitioner cannot derive any benefit inasmuch as even if the votes of these 25 members are excluded, the petitioner shall still be defeated.

Be that it may, in my opinion the issues raised are factual in nature and at the instance of only one member. There is hardly any scope for this Court to interfere.

So far as the holding of elections by the Manager is concerned, counsel for the respondent appears to be justified in contending that from the order passed by the High Court dated 09.11.2011 and dated 02.05.2012 in earlier petitions referred to above, it is established that elections have been held by the appointed election officer in presence of the Observer.

For the reasons recorded herein above, this Court finds no good ground to interfere with the order impugned.

Writ petition is dismissed.

Liberty is granted to the petitioner to file a civil suit.