
(2013) 11 AHC CK 0061

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7084 of 2011

Tej Pal Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Constitution of India, 1950 — Article 19(1)(c)

Citation : (2013) 10 ADJ 446 : (2014) 1 ESC 19 : (2014) 1 UPLBEC 126

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : N.C. Tripathi, for the Appellant; Rakesh Kumar Mishra, for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—This writ petition has been filed by three individuals out of whom petitioner No. 1 is reported to have died. The other two petitioners, namely, Pyare Lal and Onkar Singh, are the only surviving members of the General Body, who were called upon to function as an Ad-Interim-Committee under the orders of the Joint Director of Education and to proceed to enroll fresh members in order to constitute the Committee of Management. The aforesaid exercise was necessary, inasmuch as, in a dispute with regard to the constitution of the management, it finally came to be concluded that only five members of the General Body were alive, and in such a situation, unless the number of the members of General Body is increased, the Committee cannot be constituted which has to have at least 12 elected members and office bearers. It is in this background that the authorities proceeded to pass orders.

2. The Joint Director of Education vide order dated 17.12.2007, issued directions by placing a rider that the enrolment shall be made under the direct supervision of the District Inspector of Schools. This order dated 17.12.2007 was assailed by the petitioner - Pyare Lal in writ petition No. 11660 of 2008, and this Court passed the following order:

Heard Sri Ashok Khare, senior counsel for the petitioner and the Standing Counsel for respondents.

This writ petition has been filed by only five life members of the general body of Adarsh Krishak Inter College, Kira, District Rampur.

Counsel for the petitioner submits that undisputed facts are:

(a) that Prabandh Sanchalak had been appointed in the institution on 27.11.1999 as the committee of management had become time barred for holding fresh elections;

(b) that according to the scheme of administration, quorum required is 1/3rd of the existing members, which is as under:

On the basis of above, counsel for the petitioner contends that it is the existing members of the general body, who are empowered and entitled to induct new members in case of shortage of members in electing the committee of management.

It appears from the record that the DIOS, Rampur referred the matter to the Joint Director of Education, Moradabad for guidance as to what should be done in the circumstances as only five members of the general body are alive and committee of management of 12 members cannot be constituted in the circumstances. The Joint Director of Education by his letter dated 12.12.2007 directed the DIOS that aforesaid five members will enroll the members under direct supervision of the DIOS. It is this order which is impugned in the writ petition.

The petitioner is aggrieved with the rider imposed by the Joint Director of Education for enrolling the members under direct supervision of the DIOS.

It has been urged by the counsel for the petitioner that for the past nine years. Prabandh Sanchalak has been continuing in the institution and it is only to usurp the institution that such a direction has been issued by the Joint Director so that the petitioners who are the only life members, may succumb to the desires of the DIOS and Joint Director for enrolling new members of their choice.

The apprehension appears to be for fetched. However, it is not in dispute that it is the only five members who are alive, who can enroll new members which also appears to be a fact from the order impugned. Can the Joint Director impose such a condition for enrolment of new members under direct supervision of the DIOS.

Let a counter-affidavit be filed by the Standing Counsel within a period of three weeks. Rejoinder-affidavit may be filed within two weeks thereafter.

List after expiry of the aforesaid period.

Till next date of list, the DIOS will not take any exercise for enrolment of members under his supervision.

3. Thereafter the Joint Director of Education issued directions on 11th September, 2009 and 1st of October, 2009 to the District Inspector of Schools to proceed accordingly.

4. The petitioners who were the then surviving members and functioning as the Ad-Interim-Committee, issued an advertisement for enrolment of members reserving the right of the said Ad-Interim-Committee to reject or accept any request for enrolment. The Ad-Interim-Committee enrolled 12 members and then proceeded to seek a permission from the District Inspector of Schools to hold elections accordingly.

5. The District Inspector of Schools instead assumed a jurisdiction which he otherwise did not possess and entertained bank drafts from 35 persons which was got deposited in the Account of the Institution and he ultimately passed an order on the representation of such persons accepting them to be members vide impugned order dated 14.12.2010 which has been assailed in the present writ petition by the Ad-Interim-Committee and the surviving members.

6. The contention of Sri N.C. Tripathi is that the said exercise by the District Inspector of Schools was clearly in violation of Article 19(1)(c) of the Constitution of India and noticing the said arguments advanced the following interim order was passed on 7.2.2011:

Heard Sri N.C. Tripathi learned counsel for the petitioners and Sri R.K. Misra for the Caveator Surendra Pal Singh who claims himself to be representing five members who had been allegedly enrolled and which is the subject-matter of dispute.

Sri Tripathi submits that the order impugned is in the teeth of the order passed by this Court on 28.2.2008 in Writ Petition No. 11660 of 2008 and is also in breach of the directions of the Joint Director of Education dated 11.9.2009 and 1.10.2009. He submits that the inclusion of members and the letter of the District Inspector of Schools dated 9.8.2010 are both contrary to law. He submits that the District Inspector of Schools had no authority to direct enrollment of members as it violates Article 19(1)(c) of the Constitution of India. He relies upon the decision of the Apex Court in the case of Smt. Damyanti Naranga v. Union of India and others, AIR 1971 SC 966, wherein it is contended that the object to enroll members for the purpose of the Society can be best looked into by the existing members of the Society and not at the instance and direction of the District Inspector of Schools. He further relies upon the decision of the Division Bench of this Court in the case of Ranbir Singh v. DIOS, Jalaun and others, 2000 38 ALR 431, wherein the dispute relating to enrollment of members by the Prabandh Sanchalak had arisen. This issue has been also dealt with in a division bench reference answered in the case of Yashoda Raj Kumari Kunjil v. State of U.P. and others, 2010(9) ADJ 361. He therefore contends that the procedure adopted by the District Inspector of Schools to accept 35 more persons as members is beyond his power and his entire exercise is without

jurisdiction.

Learned counsel for the Caveator contends that the Joint Director of Education had modified his order after the interim order passed by this Court therefore the petitioner cannot resist the enrollment of members who are prepared to offer themselves for the betterment of the Society.

Prima facie the contention raised on behalf of the petitioners appears to be correct.

Until further orders of this Court the operation of the order dated 14.12.2010 shall remain stayed.

Learned counsel for the Caveator in case he wants to move an impleadment application alongwith Counter-affidavit he can do so by the date fixed.

Learned standing counsel may file counter-affidavit on behalf of respondent Nos. 1 to 3.

Issue notice to respondent Nos. 4 to 8 calling upon them to file their response within 3 weeks.

The matter shall be listed after three weeks alongwith records of Writ Petition No. 11660 of 2008.

7. Sri Anand Mohan Pandey has appeared on behalf of those persons who were directly enrolled and treated to be members who are 35 in number by the District Inspector of Schools and he contends that as per Clause 9 of the Scheme of Administration, if the Committee of Management refuses to enroll any person as a member then the decision of the General Body shall be final and an appeal shall lie to the District Inspector of Schools against any such decisions. He therefore submits that in exercise of such appellate powers, the District Inspector of Schools had the authority to accept the 35 persons as members which cannot be faulted with as they have deposited their amount in accordance with the procedure prescribed under the scheme of administration. He therefore contends that keeping in view the democratic principles under which such elections are to be held under the scheme of administration, the denial by the petitioners to enroll the 35 persons is an arbitrary exercise of powers which the Ad-Interim-Committee does not possess, and accordingly, the District Inspector of Schools was justified in ruling in favour of such persons. He therefore contends that the impugned order does not call for any interference and the election of the Committee of Management should be allowed to be held on the strength of the newly enrolled 35 members as well alongwith 12 members who have been accepted by the petitioner - committee and as referred to in the impugned order. I have also heard the learned Standing counsel for the State.

8. At the very outset it is appropriate to point out that the contesting opposite parties have not assailed the impugned order and as a matter of fact they do not appear to have any objection to the enrolment of the 12 members by the

petitioners. Their only contention is that the inclusion of 35 members by the District Inspector of Schools is justified and the impugned order is in accordance with the scheme of administration.

9. I have perused the provisions of the scheme of administration and Clause 9 provides that any person as described therein who is not less than 21 years of age can apply for membership on the deposit of a bank draft in the manner provided therein. The application will be considered by the Management and in the event the management refuses to enroll any person as a member, the same shall be referred to the General Body for a reconsideration. If the General Body accepts such a request then such a person will be treated to have been enrolled from the date of the deposit of the bank draft.

10. Similarly, if the General Body does not accept the request for enrolment then the bank draft shall be returned back to the applicant and against such a decision an appeal would be available to the aggrieved person before the District Inspector of Schools within a month.

11. The aforesaid scheme therefore leaves no room for doubt that the power to enroll vests with the Committee of Management and the General Body with a provision for appeal against such a decision to the District Inspector of Schools. It is settled principle of law that a forum of appeal is a substantive right and is a creature of the instrument under which such a provision is made. In the instant case, an appeal can only lie against a decision of the General Body and not otherwise.

12. In the instant case the acceptance of membership has to be by the Ad-Interim-Committee as per the previous orders that have been referred to in the impugned order. Thus, it is the Ad-Interim-Committee which had the power to enroll members and consequently, while doing so, it reserved the right as provided under Clause 9 of the Scheme to either accept or reject the request for enrolment. The peculiarity is that in the Institution, there is no General Body in existence at all. Consequently, in the opinion of the Court, no appeal would be available as there is no General Body which is capable of taking any decision against any opinion expressed by the Ad-Interim-Committee. In the aforesaid peculiar background, the insistence of the learned counsel for the respondents to invoke Clause 9 therefore cannot be made workable and the provisions of Clause 9 of the Scheme of Administration would not be attracted at all.

13. The Ad-Interim-Committee was empowered to enroll the members and it has accepted 12 persons as members the same having not been challenged and on the other hand being accepted by the Joint Director of Education, the said 12 members would be entitled to be treated as members of General Body.

14. So far as the 35 members that have been enrolled through the District Inspector of Schools, the same is also in teeth of the interim direction of this Court dated 28.2.2008 as quoted hereinabove.

15. Apart from this, the issue relating to enrolment of members was considered by this Court while passing the interim order dated 7.2.2011. The three decisions that have been referred to in the said order, clearly indicate that a society running an Institution cannot be compelled to enroll members against its choice. The right to freedom of association, therefore, has been spelt out in all the three decisions, and consequently in view of the law laid down as referred to in the aforesaid three decisions in case of Smt. Damyanti Narang (supra), Ranbir Singh (supra) and Yashoda Raj Kumari Kunjil (supra), the District Inspector of Schools clearly travelled beyond his authority in imposing 35 members on the petitioners against their wishes. This was clearly an infringement of the right possessed by the petitioners and their authority to enroll members for the purpose of constituting the Committee of Management. The order impugned dated 14.12.2010 to the aforesaid extent cannot be sustained.

16. The District Inspector of Schools does not represent either the committee of management or the General Body. He therefore cannot be presumed to have the right to express the general will of the members of the management or the general body and enroll members. This would exclusively fall within the powers of the said bodies. The power conferred on the District Inspector of Schools to decide an appeal does not reflect a power to directly enroll members. The authority to hear an appeal is no authority to exercise the right of freedom to associate. No such right can be read to exist to be enforceable by the appellate authority on its own. There cannot be read a waiver, abandonment or delegation of fundamental right to associate by the management or general body in favour of the District Inspector of Schools. He cannot take over such rights and assume an authority he does not possess. This power cannot be invoked in the name of general democratic principles as it would amount to allowing the creation of an electorate against the freedom of choice to be exercised exclusively by those who have established and are running the institution. It is only they who can associate the persons of their choice to participate in the constitution of the Committee of Management. The individuals also cannot therefore assert such a right through the District Inspector of Schools for the same reasons. What cannot be permitted directly cannot also be permitted indirectly. A contrary view would impinge the rights of the petitioners to enroll members and their freedom to associate individuals against their choice.

17. Consequently, the writ petition is allowed. The order dated 14.12.2010 so far as it accepts the 35 members enrolled by the District Inspector of Schools is hereby quashed. The 12 members that have been enrolled by the petitioners together with the surviving petitioners would be entitled to constitute the General Body for the purpose of holding elections.

18. It would be relevant to point out that the petitioner - committee had attempted to hold an election during the pendency of this writ petition and had forwarded papers to the District Inspector of Schools for recognition and having not succeeded in getting a recognition filed writ petition No. 43004 of 2011. In

the circumstances aforesaid, this writ petition is allowed without prejudice to the rights of the petitioners in writ petition No. 43004 of 2011 or any fresh elections that may be held by the petitioners as per the previous orders within three months from today.