

(2011) 03 AHC CK 0423

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61714 of 2008

Tejpal Singh and Others

APPELLANT

Vs

Joint Director of Education and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A

Citation : (2011) 7 ADJ 70

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

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—The Petitioner Nos. 1 and 2 claiming themselves to be the life members of the society and the Petitioner Nos. 3 and 4 who are applicants for life membership, but whose induction has been rejected under the impugned order, have come up before this Court questioning the correctness of the order passed by the Respondent No. 1 dated 8.8.2008 and the order dated 1st October, 2005 which essentially relates to the rejection of the claim of 72 members to participate in the elections of the Committee of Management of Janta Inter College, Baseda Khurd, District Bijnor.

2. The background in which the dispute has arisen is that the last undisputed elections were held on 23.2.2000 in which one Meghraj Singh was elected as the President and Niranjana Singh was elected as the Manager. The said elections were recognised and the signatures were accordingly attested by the District Inspector of Schools. The tenure of the Committee of Management was three years. A proposal was made for extending the tenure to five years on 20th January, 2002 which came to be approved by the competent authority under the provisions of Section 16-A of the U.P. Intermediate Education Act, 1921 on 28.11.2002. The term of three years came to an end on 22nd February, 2003 but the Committee elected in the year 2000 continued on the presumption that the amendment brought about in the tenure of the scheme of administration would

apply to the then existing Committee of Management as well.

3. The District Inspector of Schools on 4th August, 2003 passed an order that the amendment which has been carried out would apply prospectively in relation to the new Committee of Management that would be elected after the expiry of the earlier term which was three years and consequently the same would not apply to the existing Committee of Management. This order of the District Inspector of Schools was challenged by the then Committee in Writ Petition No. 51480 of 2003 in which an interim order was passed.

4. During this period, that is after the expiry of three years of the tenure of the then Committee an agenda was circulated on 14th June, 2003 on which a resolution was passed on 28.6.2003 by the Committee of Management to enroll fresh members. It appears that on account of the intervention of the order of the District Inspector of Schools on 4.8.2003 as noted above the matter remained pending and ultimately on 15th December, 2003 a resolution was passed for inducting new members and for depositing the amount of membership fee in a new Account to be opened in the name of the institution. Pursuant to this decision the Committee is stated to have notified an announcement inviting applications for enrollment of fresh members against which 72 persons are alleged to have applied alongwith the Bank Drafts for being enrolled as members of the General Body.

5. The writ petition which was filed by the then committee challenging the order of the District Inspector of Schools dated 4.8.2003 was allowed on 2nd April, 2004. The Respondent No. 4 Dinesh Rana appears to have filed an appeal against the same being Special Appeal No. 502 of 2004 but no interim orders were passed therein. Consequently, the issue relating to the amendment being applicable to the existing committee went in favour of the then Committee of Management and the tenure of the Committee of Management stood extended to five years. The special appeal was dismissed as infructuous on 4th September, 2006.

6. It appears that after the judgment dated 2nd April, 2004, the District Inspector of Schools passed an order on 6.11.2004 accepting the enrollment of 71 members. Aggrieved against the said order the Respondent No. 4 appears to have filed an appeal before the Joint Director of Education. The Joint Director of Education passed an order on 1st October, 2005 that since the special appeal was pending (which came to be dismissed as infructuous on 4.9.2006) the new 72 members enrolled would stand excluded as they had been enrolled during the extended period of the Committee of Management. Close on heels, an alleged election dated 4.1.2006 was set up in which the Respondent No. 4 claimed himself to have been elected as the Manager.

7. Aggrieved by the order of the Joint Director of Education dated 1st October, 2005 the Petitioner Nos. 1 and 2 who are the existing life members of the society and whose status is not disputed filed Writ Petition No. 41829 of 2006. The said

writ petition was ultimately disposed of on 24th September, 2007 with a direction to the Regional Level Committee headed by the Joint Director of Education to go into the objections filed by the Petitioners against the order dated 1.10.2005 as also against the validity of the elections claimed to have been held on 4.1.2006 by the Respondent No. 4.

8. This order of the High Court dated 24.9.2007 was placed before the Joint Director of Education who now under the impugned order dated 8.8.2008 has discarded the enrollment of 72 members as claimed by the Petitioners being in violation of the provisions of scheme of administration and further held the elections of the Respondent No. 4 to be valid. However, while disposing of the claim with regard to the list of members the Joint Director of Education has observed that the inclusion of 72 members can be again considered by the present committee of management for returning their membership fee.

9. Sri Anjani Kumar Mishra learned Counsel for the Petitioners submits that no appeal lay against the order of the District Inspector of Schools dated 6.11.2004 whereby he had accepted the membership of 72 members and which had not even been challenged before the appropriate forum. He further submits that the results of the elections claimed to have been held on 4.1.2006 would stand materially affected on account of the non-participation of the 72 members. It is further submitted that the order of the Joint Director of Education dated 1.10.2005 was without jurisdiction and the Joint Director of Education had no authority to reject the membership of these 72 members on the alleged ground of the pendency of the special appeal which was allegedly dismissed as infructuous on 4.9.2006. This aspect of the matter has also been not correctly appreciated by the Regional Level Committee, hence, the impugned order is vitiated.

10. Sri Mishra further submits that the finding that the gap of time between the issuance of the agenda and holding of the meeting by the committee of management for enrolling the members which is alleged to be short by three days does not invalidate the resolutions of enrollment which was done by the committee of management. According to him this was a mere irregularity and it cannot be said to be an illegality so as to vitiate the enrollment of the members.

11. He further contends that the finding that the agenda did not bear the signatures of the Principal of the institution is also erroneous, inasmuch as, the Principal of the institution is only an Ex-officio member of the Committee of Management and he is otherwise nowhere concerned with the enrollment of membership or passing of the resolution for including new members.

12. Sri Mishra further points out that merely because the issue of enrollment a fresh membership was taken up as an additional item on the agenda, the same cannot be said to be illegal or otherwise erroneous so as to conclude that the enrollment was invalid. The submission therefore is that the findings in the impugned order are vitiated and both the orders dated 1.2.2005 and 8.8.2008

deserve to be quashed.

13. Replying to the aforesaid submissions, Sri N.L. Pandey learned Counsel for the Respondent Nos. 3 and 4 submits that in view of the decision of the Regional Level Committee 47 members out of 72 have accepted the return of the membership fee and therefore only 25 members remain who have not even approached this Court. Apart from this, only two members out of those who have been excluded have challenged the action including the new elections and as such no writ petition would be maintainable on their behalf in view of the Division Bench judgment in the case of Committee of Management, Arya Kanya Pathshala Inter College Vs. State of U.P. and Others, . He has further relied on the decision in the case of Mansa Yadav and Others Vs. State of U.P. and Others, to contend that the writ petition should be dismissed as not maintainable. He further submits that the findings recorded in the impugned order clearly reflect that the enrollment took place in violation of the provisions contained in the scheme of administration for convening a meeting of enrolling members and further the said enrollment is not transparent, hence the order passed by the Joint Director of Education, does not suffer from any infirmity.

14. In rejoinder Sri Mishra submits that apart from all these facts the impugned order dated 8.8.2008 has been passed by the Joint Director of Education himself without placing it before the Regional Level Committee as per the directions of this Court dated 24.9.2007 and hence the order deserves to be set aside.

15. The issue as to whether the 47 members who have allegedly taken back their money through Money Orders stands judicially interposed intervened by the interim order passed in this writ petition on 2.12.2008 which is to the following effect:

Hon"ble Vineet Saran, J.

Learned Standing Counsel has accepted notice for Respondent Nos. 1 and 2.

Issue notice to Respondent Nos. 3 and 4 fixing a date immediately after six weeks. Steps to be taken within a week.

All the Respondents may file counter-affidavit by the next date.

Considering the fact that the Respondent No. 4 has already taken over as Manager of the institution in terms of the order dated 8.8.2008, the question of permitting him to continue shall be considered only after exchange of affidavits. However, in view of the fact that 72 fresh members had been inducted as Life Member of the General Body in the year 2003 which list was duly approved by the District Inspector of Schools on 6.11.2004, it is directed that the question of their membership shall not be determined now by the new Committee of Management and that part of the order whereby direction has been issued that the question of their membership shall be considered by the new Committee of Management, shall remain stayed.

Dated 2.12.2008"

The alleged return of the said amount or acceptance would therefore have hardly any relevance as the interim order was operating.

16. The resolution relating to the enrollment of members was passed during the period when the tenure of the earlier Committee was subsisting in view of the fact that the writ petition filed by the Committee had been allowed on 2nd April, 2004. The members had been enrolled on 15th December, 2003. The District Inspector of Schools passed an order on 6th November, 2004. The Joint Director of Education intervened and passed orders on 1st October, 2005 that in view of the pendency of the special appeal which was dismissed as infructuous on 4.9.2006, the 72 members deserve to be excluded, the said order is also under challenge herein on the ground that the order was without jurisdiction as no appeal lay before the Joint Director of Education. The said order was also challenged in Writ Petition No. 41829 of 2006. The said issue was relegated to be decided by the Regional Level Committee as a fresh elections had intervened on 4th January 2006.

17. The aforesaid issue as to whether the order dated 1st October, 2005 was valid or not was therefore left open to challenge and a prayer has been made in the present writ petition for quashing of the same as well. The Joint Director of Education does not sit in appeal against the decision of enrollment of members to the electoral college. There is neither any provision under the statutes or under the Scheme of Administration. Sri Mishra is therefore right in raising a challenge to the same.

18. The order dated 8.8.2008 proceeds to decide this issue of membership as issue No. 1. The reason given is that the meeting of the Committee of Management was held for the said enrollment on a notice of only five days whereas the scheme requires a period of eight days. The said objection in the opinion of the Court does not hold water, inasmuch as, the reduction in the period would only amount to an irregularity and not an illegality so as to invalidate the meeting itself.

19. The second ground taken by the Regional Joint Director of Education is that the agenda does not contain the signatures of the Principal. The scheme of administration nowhere requires the Principal to sign the agenda and there is no such provision indicated in the impugned order, as such, the second objection also is unsustainable.

20. The third objection taken is that the issue relating to enrollment of members was taken up as an additional issue which creates a doubt as the issue ought not to have been taken as an additional item and should have formed part of the main agenda. The aforesaid objection also does not appeal to reason, inasmuch as, merely because the issue was taken as an additional issue on the agenda on the date of the meeting cannot invalidate the deliberations so long it is not proved that the meeting was not actually held.

21. It is alleged that four members had not signed in the agenda of the meeting in which the said members were approved and that the drafts are dated 30.12.2003 and 31.12.2003 which does not reflect transparency. The aforesaid conclusion drawn by the Joint Director of Education is also erroneous, inasmuch as, merely because the drafts were prepared on two days, the same do not become doubtful. The issue relating to membership, therefore has not been decided in correct perspective and the order of the District Inspector of Schools dated 6.11.2004 has not been appreciated while passing the impugned order.

22. The issue relating to the challenge being raised by members is being objected by Sri N.L. Pandey learned Counsel for the Respondents. He relies on the judgment of Committee of Management, Arya Kanya Pathshala Inter College, Bulandshahr v. State of U.P. and Ors. (supra) and the other decisions referred to hereinabove.

23. It is evident from a perusal of the Division Bench judgment where in Paragraph 12 it has been indicated that such an issue would depend upon the facts of each case. There Lordships have also approved of the same in Paragraph 11 by placing reliance on Paragraphs 23 to 26 of the judgment in the case of Ratan Kumar Solanki v. State of U.P. 2010 (1) ADJ 262. In Paragraph 24 of the case of Ratan Kumar Solanki, it has been held that where a legal right of an individual is not affected then a writ would not be maintainable, but in a given case if it is found that the elections are invalid then the elections can be challenged by an individual member.

24. In the instant case the very issue of the electoral college was raised by the Petitioners and the orders passed were questioned by the Petitioners in a writ petition No. 41829 of 2006 which was disposed of with liberty to the Petitioners to raise the issue before the Regional Level Committee. The Regional Level Committee has now decided the matter under the impugned order and therefore the Petitioners have a right to maintain the petition in the aforesaid background. The Division Bench therefore in effect comes to the aid of the Petitioners.

25. Nonetheless it is evident that the earlier elections were held on 4th January, 2006 and the tenure of the said Committee is drawing to a close. In this background the impugned orders dated 8.8.2008 and 1.10.2005 in so far as they relate to the decision of 72 members are set aside. No useful purpose would be served by setting aside the elections of the Committee which had been elected on 4.1.2006 as it has outlived its tenure. It is however provided that in the event either fresh elections are held or have been held the same shall be open to challenge in the light of the observations made hereinabove and the question of the membership shall have to be decided again.

26. The writ petition is partly allowed.