

(2012) 05 AHC CK 0219

In the Allahabad High Court

Case No : Special Appeal No's. - 984 and 1005 of 2012

Vijay Pratap Singh And Another

APPELLANT

Vs

DIOS And Others
Harish Chandra Nath Vs C/M
Panchayat Inter College And Others

RESPONDENT

Date of Decision : 24-05-2012

Acts Referred:

Societies Registration Act, 1860 — Section 25(2)

Citation : (2012) 6 ADJ 321

Hon'ble Judges : Yatindra Singh, J;Tahir, J

Bench : Division Bench

Advocate : Alok Mishra in Special Appeal No. - 984 of 2012 and Ripu Daman, Gulrez Khan, J.H. Khan and W.H. Khan in Special Appeal No. - 1005 of 2012, for the Appellant; I.R. Singh in Special Appeal No. - 984 of 2012 and C.S.C., Abhishek Kr. Singh and I.R. Singh in Special Appeal No. - 1005 of 2012, for the Respondent

Final Decision : Disposed Off

Judgement

1. Our court is flooded with the disputes relating to the committees of management of educational institutions. It permeates the registered societies as well, as only the registered societies can run the educational institutions. This judgement explores the ways of reducing this kind of litigation.THE FACTS

There is a society by the name of Panchayat Higher Secondary School Gaura, Mehnagar, Azamgarh (the Society). It was registered under the Societies Registration Act, 1860 (the Society Registration Act) on 15.12.1952.

2. At present, the Society runs an educational institutional by the name of Panchayat Inter College, Gaura, Mehnagar, Azamgarh (the College). It imparts education up to 12th class and is recognised under the Intermediate Education Act, 1921 (the Act).

3. The Society functioned peacefully for the first 30 years and the last undisputed

election was held on 25.7.1981. In this election, Sri Suryavansh Puri (Sri Puri) and Sri Phunnan Singh (the contesting respondent) were elected as the Manager and the President of the committee of management of the College. However, the peace did not last, Sri Puri and the contesting respondent fell out with each other.

4. It is said that the contesting respondent was removed as the President as well as from the membership of the Society on 17.1.1982 and in his place Sri Brahmdeo Rai, the then Vice President, was elected as the President on 6.2.1982. The dispute in the membership of the Society as well as in the committee of management of the College started since then.

5. Two rival elections were held on 13.1.1991. The contesting respondent and Sri Puri npyj claim that they were elected in these elections as the Manager of the College. However, the signature of the contesting respondent was attested by the District Inspector of Schools, Azamgarh (the DIOS) on 2.4.1993.

6. Sri Puri filed writ petition no. 1154 of 1993 against the order of the DIOS dated 2.4.1993 recognising the election of the contesting respondent. However, the writ petition was ultimately dismissed as infructuous on 22.9.2001 and no further proceeding was taken against it.

7. During pendency of the aforesaid writ petition, two rival elections were again held on 9.1.1994 in which the contesting respondent and Sri Puri claim to have been elected as Manager of the Committee of management of the College. The elections were referred to the Deputy Director of Education, Azamgarh (the DDE) by the DIOS for adjudication.

8. During pendency of the aforesaid dispute before the DDE, the DIOS appointed authorised controller on 15/17.2.1994. He is still continuing.

9. The DDE by his order dated 7.10.1994 approved the elections of Sri Puri and held that the contesting respondent was removed as member of the Society.

10. The contesting respondent challenged the aforesaid order by means of writ petition no. 34971 of 1994. However, this writ petition was also dismissed as infructuous on 9.10.2001.

11. During pendency of the aforesaid period, the Societies Registration Act was amended and provision for periodical renewal of the societies was inserted. The registration of the Society was renewed up to 1995 and thereafter, it was not renewed; it became an unregistered Society.

12. Sri Puri died on 24.7.2003 and at present one group in the Society is represented by the contesting respondent and the other group is represented by Sri Vijay Pratap Singh (the Appellant).

13. The Appellant was not a member of the Society in the year 1981, when the last undisputed election was held. He claims to have become a member of the Society, sometimes around 1995.

14. The Appellant filed an application before the Assistant Registrar, Firms, Chits and Societies, Azamgarh (the Assistant Registrar) alongwith a list of 45 members for renewal of the Society. The Society was renewed on 28.5.2009 with retrospective effect from the date it had become an unregistered society.

15. The Appellant held elections of the committee of management of the College on 13.9.2009. It was by the 45 members whose list was supplied by the Appellant to the Assistant Registrar. In this election, the Appellant was elected as the Manager. This was also approved by the DIOS on 15.9.2009.

16. The aforesaid list of 45 members is disputed by the contesting respondent. According to the contesting respondent;

? Initially there were 46 members in the Society. Out of these forty-six members, twenty-six members have expired. Twenty members are still alive and are members of the Society;

? Sri Kamla Singh is one of those 20 members.

17. The contesting respondent and Sri Kamla Singh filed WPs 63828 and 67924 of 2009 against the order of the DIOS dated 15.9.2009 approving the elections held on 13.9.2009. The aforesaid writ petitions were disposed of on 19.10.2010 with a direction that the dispute be referred to the Regional Level Committee (the RLC), Azamgarh.

18. The RLC Azamgarh set aside the election held on 13.9.2009 and appointed Sri Harish Chandra Nath (Sri Nath) as the authorised controller. He was to finalise the list of members and hold fresh election within two months.

19. Sri Nath finalised the list and held elections on 24.7.2011. These elections were also approved by the DIOS on 25.7.2011.

20. The contesting respondent filed writ petition no. 48693 of 2011 against the aforesaid order of the DIOS. It was allowed on 9.9.2011 and order dated 25.7.2011 approving the election held on 24.7.2011 was set aside. The court ordered that another authorised controller be appointed to the College, who would determine the electoral college and conduct fresh election.

21. Sri Vivekanand Maurya (Shri Maurya) was appointed as authorised controller. He determined the list of membership on 11.4.2012 and held the elections on 29.4.2012. In these elections, the Appellant was again elected as Manager of the College. These elections were also approved on 30.4.2012 by Sri Nath, who was the DIOS at that time.

22. The contesting respondent filed writ petition no. 21978 of 2012 against the aforesaid orders of the authorised controller dated 11.4.2012 finalising the membership list and the order of the DIOS dated 30.4.2012 approving the election held on 29.4.2012. It was allowed on 7.5.2012.

23. While allowing the writ petition, the single Judge has,

? Set aside the orders dated 11.4.2012 finalising the membership list of the society and the order dated 30.4.2012 recognising the election of the committee of a management of the college held on 29.4.2012;

? Directed the Secretary, Secondary Education, Government of UP to hold enquiry against the conduct of Sri Maurya the authorised controller who finalised the membership list on 11.4.2012 and held the election on 29.4.2012 as well as Sri Nath who approved the election.

24. Aggrieved by the aforesaid order of the single Judge, the Appellant has filed special appeal no. 984 of 2012 and Sri Nath has filed special appeal no. 1005 of 2012.

POINTS FOR DETERMINATION

25. We have heard Sri RK Ojha and Sri Alok Misra counsel for the Appellant; Sri WH Khan and Sri Gulrez Khan counsel for Sri Nath; the standing counsel for the State of UP and its officials; and Sri MD Singh Shekhar and Sri IR Singh counsel for the contesting respondent. The following points arise for determination:

- (i) Whether the order dated 11.4.2012 finalising the membership list on 11.4.2012 and election held on its basis on 29.4.2012 are in accordance with law;
- (ii) Whether the contesting respondent is a member of the Society;
- (iii) Whether direction of holding enquiry against the conduct of Sri Nath is valid.

1st POINT: MEMBERSHIP LIST AND ELECTION-ILLEGAL

Society and Committee of Management of college

26. An educational institution can only be run by a society registered under the Society Registration Act. A registered society can have many objects; it can have objects other than running an educational institution; or it can also run more than one educational institution.

27. A registered society is necessary to run an educational institution but a smaller body namely, a committee of management is elected to look after day to day affairs of an educational institution.

28. The educational institutions are governed by different statutes according to level of education imparted by them. A committee of management of an educational institution is elected by the members of that society but some conditions (regarding term of the such committee or its members) are imposed by the statutes. These conditions may be different in different statutes governing the institution.

29. A committee of management of a society may be different than committee of management of an educational institution and there can be different committees of management governing different educational institutions run by a society but generally;

? The President and Secretary of the society are the president and manager of the committees of management of the educational institutions run by that society;

? The elections are held only at one time and same team is there for the educational institution except for some extra members of the committee of management of the college stipulated by the statutes.

Determination of Membership And Election-Illegal

30. The Society was registered in the year 1952. It continued peacefully for the next 30 years. The last undisputed elections were held in the year 1981. The membership at that time was not disputed. Out of these members-those still alive -are members of the Society, unless they have been removed.

31. According to the contesting respondent,

? There were 46 members. Out of these members, 26 members have died and 20 are still alive;

? The forty five persons said to be members by the Appellant are not the original members but were enrolled around the year 1995. Or, in other words after 1982, when dispute arose in the Society.

32. According to the Appellant, only one member, namely the contesting respondent, was removed. In view of this, the rest of them are members of the Society. However, the Appellant could not point out a single person in his list of 45 members, who was a member of the Society in the year 1981: this creates doubt regarding validity of membership list produced by the Appellant.

33. In the circumstances of the case, the relevant factors for determining the members of the Society were,

(i) Who, among the initial members, were still alive. They would be members of the Society;

(ii) Whether any one of the aforesaid members was lawfully expelled. According to the Appellant, only one member, namely the contesting respondent, was expelled. The rest would be members of the Society;

(iii) Whether any new member was enrolled in accordance with the by-laws, rules, and regulation of the Society or not.

34. The order of the authorised controller dated 11.4.2012 neither considers the aforesaid factors nor decides these issues. In view of this, the order of the single Judge setting aside the order dated 11.4.2012 and the election dated 29.4.2012 conducted on this list cannot be faulted.

2nd POINT: MEMBERSHIP OF CONTESTING RESPONDENT

SHOULD BE DETERMINED

35. The counsel for the Appellant submit that:

? The contesting respondent was removed from the committee of management by the resolution dated 17.1.1982 and in his place Sri Brahmdeo Rai was appointed the President;

? The expulsion of the contesting respondent was approved by the order of the DDE dated 7.10.1994 and the WP 34971 of 1994 against the same was dismissed;

? The contesting respondent is neither a member of the Society nor can file the writ petition.

36. It is correct that expulsion of the contesting respondent was upheld by the DDE on 7.10.1994 and his writ petition no. 34971 of 1994 was dismissed on 22.9.2001. However, it was dismissed as infructuous and not on merits.

37. The rival groups had held elections on 13.1.1991 and the contesting respondent claimed that he was elected as the Manager. His election was approved by the DIOS on 2.4.1993. Sri Puri was claiming to have been elected as the Manager by the rival group. He had challenged the order dated 13.1.1991 by WP 1154 of 1993. This writ petition was also dismissed on 22.9.2001 as infructuous.

38. There are two separate orders; one recognising the contesting respondent as Manager of the committee of management (meaning accepting his membership) and the other upholding his expulsion. Against both of these orders, writ petitions have been dismissed. However, they were not dismissed on merits but as infructuous.

39. The contesting respondent is contesting throughout and is claiming that he was never expelled. Considering the circumstances of the case, it can not be said that the question regarding membership of the contesting respondent has become final.

40. The single Judge has sent the matter to the SDM concerned to decide the electoral college (list of members) of the Society. While deciding the same, he will also decide the validity of the resolution dated 17.1.1982 regarding alleged expulsion of the contesting respondent. The consideration should be done without being influenced by the orders of the DIOS dated 2.4.1993, or of the DDE dated 7.10.1994, or the fact that the writ petitions against these orders were dismissed.

41. In order to determine the members of the Society, the SDM should publish a tentative list of members, invite objections, and decide them by a speaking order. In this tentative list name of the contesting respondent as well as those persons who were members of the Society on 25.7.1981 and are still alive will be included. It is for the others to prove that they were validity expelled. The elections shall be held after this determination.

42. The validity of the election may be considered by the RLC Allahabad as directed by the single Judge.

3rd POINT: INQUIRY BE HELD

43. The counsel for Sri Nath submits that:

? The electoral roll dated 11.4.2012 was not finalised by Sri Nath but was finalised by Sri Maurya;

? Sri Maurya also conducted the election. Sri Nath merely approved the election held by Sri Maurya;

? There is no justification for ordering any inquiry against Shri Nath.

44. The single Judge has not expressed any final opinion on the conduct of Sri Nath; merely the matter has been sent before the Secretary, Secondary Education, Government of UP, Lucknow to hold an enquiry on his conduct: whether any action will be taken against him or not, will depend on this inquiry. There is no justification to interfere with the order. However, the inquiry may be conducted without being influenced by any observation made in the impugned order of the single Judge or in this order.

A CLARIFICATION

45. We have ordered for deciding the membership list of the Society and holding election of the committee of management of the College according to the bye-laws of the committee of management of the College.

46. The SDM concerned is not required to hold election of the Committee of management of the Society. However, if the SDM holds the list of members of the Society to be different than the list of the 45 members supplied by the Appellant, then it would be open to the valid members to request the Assistant Registrar to hold elections of the committee of management of the Society u/s 25(2) of the Society Registration Act, or to take action permissible under the law.

SOME SUGGESTIONS

47. The Society Registration Act governs a society; the Intermediate Education Act governs an educational institution imparting education up to High School or Intermediate classes; the Basic Education Act governs educational institutions imparting education up to 8th class: they also provide (or impliedly carved out by the courts) authorities to determine the disputes in their committee of management.

48. The authorities determining the dispute in the committees of management are different and there is lack of coordination: this causes conflict of orders. It may be good idea to reconsider the statutes and provide a mechanism for coordinating them.

49. Amongst the other alternatives, the consideration may be for,

- ? Providing the same term in all committees of management;
- ? Same office bearers in all committees of management except the ex-officio members or holding of elections on same day;
- ? One mechanism for deciding the disputes in the committees of management.

CONCLUSIONS

50. Our conclusions are as follows: (a) The members of a society running an educational institution are entitled to vote and elect committee of management of the College in accordance with the bye-laws of that educational institution;

(b) The electoral college (list of members) determined on 11.4.2012 and election held on its basis on 29.4.2012 are illegal;

(c) The SDM concerned of the area may finalise the electoral college (list of members of the Society). In order to do that he may publish a tentative list, invite objections, and decide them by speaking order;

(d) In the tentative list the name of the contesting respondent as well as all the surviving members from the list of members at the time of election dated 25.7.1981 will be included. It is for the persons claiming that they are not members to prove their case.

(e) The question of expulsion of the contesting respondent will be decided by the SDM concerned while finalising the membership list, without being influenced by the order of the DIOS dated 2.4.1993 or the order of the DDE dated 7.10.1994 or the fact that writ petitions against these orders have been dismissed;

(f) The elections of committee of management of the College will be held after finalising the list. The validity of the election may be seen by RLC Allahabad as directed by the single Judge.

With the aforesaid observations, the appeals are disposed off.