

Committee of Management and ors. Vs. District Inspector of Schools and ors.

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Court : Allahabad

Decided On : Feb-08-2001

Reported in : (2001)2UPLBEC1314

Judge : Pradeep Kant, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 1504 (M/S) of 2000

Appellant : Committee of Management and ors.

Respondent : District Inspector of Schools and ors.

Advocate for Def. : D.L.P. Mishra, Adv. and ;Pt. S. Chandra, C.S.C.

Advocate for Pet/Ap. : S.P. Shukla, Adv.

Disposition : Petition dismissed

Judgement :

Pradeep Kant, J.

1. This petition has been filed by the alleged Committee of Management, Sukhnadan Prasad Panday Sarvajanic Intermediate College, alongwith D.P. Insan

and Mata Din Mishra, who claim themselves to be the President and the Manger of the Institution. The prayer in the writ petition is for quashing the order dated 26.5.2000 contained in Annexure 1 to the writ petition and also for issue a writ of mandamus commanding the respondents to restrain the opposite parties from interfering in the working of the petitioners 2 and 3 as President and the Manager of the Institution.

2. Ram Kripal Pandey has been arrayed as respondent No. 5 who claims himself to be the validly elected President of the Committee of the Management of the college. Sri S.P. Shukla, learned Counsel for the petitioner and the learned Counsel Sri L.P. Mishra, for respondents raised very lengthy arguments in support of their respective claims denying the right of the other party to manage the affairs of the institution. Both the parties have claimed that they are legally elected President and Manager, as such the respective Committee be allowed to act as Manager and the President.

3. In the present writ petition the controversy revolves around the order dated 26th May, 2000 passed by the District Inspector of School by means of which he has stayed his earlier order date 1 2nd May, 2000 which is contained as Annexure- 2 to the writ petition. By means of order dated 2nd May, 2000 a request has been made to Zila Basic Shiksha Adhikari, Pratapgarh by the Zila Shiksha Adhikari, Pratapgarh that in view of the fact that the elections of the Committee of Management under the supervision of the observer sent by the District Inspector of Schools has been held on 20.2.2000 and in pursuance of that election the signatures of Mata Din Mishra have been attested and verified, the order of single operation which was continuing till then should be recalled by the Zila Basic Shiksha Adhikari, who has passed the said order.

4. It is not disputed that in pursuance to the said request no order was passed by the Zila Basic Shiksha Adhikari revoking the order of single operation of accounts which was passed on 1st December, 1998. In any case the effect of the said order has been taken to mean that the petitioners are the President and the Manager of the Committee of Management, therefore, they were allowed to function as such.

5. It is established beyond doubt that there are two set of rival claimants who are claiming the right to manage the affairs of the institution on the basis of different elections which were said to have taken place on different dates. The institution was registered under the Societies Registration Act and was granted temporary recognition upto the Junior High School. The permanent recognition was given in the year 1982. The grant in aid was made available since 1982 upto Junior High School and in the year 1990 recognition was given for High School but no grant has been given. Likewise in the year 1995 recognition has been given upto Intermediate but no grant in aid was given.

6. In the year 1985 Ram Kripal Pandey was the President of the Institution and this position continued for pretty amount of time but when the controversy arose then it was said that Mata Din Mishra has resigned from the office of the Manager on 20th October, 1997. It was thereafter that allegations and counter allegations were made by both the parties. Mata Din Mishra alleged that he never resigned and that Smt. Mayawati Devi was never elected as Manager whereas on the other hand Ram Kripal Pandey asserted and reasserted that Mata Din Mishra has resigned and thereafter Mayawati Devi was elected as Manager. It is also not disputed that the signatures of Mayawati Devi were attested by on Basic Shiksha Adhikari 28.9.1999. The challenged has been made by Sri S.P. Shukla that in the year 1997 the Basic Shiksha Adhikari was not competent to verify the signatures of the Manager as the institution was raised upto Intermediate standard and he was not authorised to attest and verify the signatures. On recognition of the signatures by the Basic Shiksha Adhikari of Smt. Maya Wati Devi a notice has been sent to Matadin Mishra by the Registrar claiming upon him to produce the relevant documents to indicate as to whether he is the Manager of the Institution or not.

7. Before the Registrar, Mata Din Mishra clamed that the election have taken place on 29th June, 1998 in which he was elected as Manager and Shanbhu Singh was elected as President. During pendency of the proceedings before the Registrar, which were being conducted by the Assistant Registrar, a Writ Petition No. 35319 (MS) of 1998 was filed by Mata Din Mishra in the Allahabad Bench of the High Court disputing the powers of Assistant Registrar to proceed and entertain the said dispute and to decide the same.

8. The learned Single Judge of the High Court passed an interim order staying the proceedings on 3.11.1998 pending before the Assistant Registrar. However, it is not known as to whether the aforesaid order was communicated to the Assistant Registrar or not but the final order was passed by the Assistant Registrar recognizing the Committee, on 3.11.1998 and also recognizing Mayawati Devi as Manager consequent to the resignation of Mata Din Mishra. It has also been held that no elections have taken place in the year 1998 as claimed by Mata Din Mishra.

9. After the final orders were passed by the Registrar another writ petition bearing No. 37786 (MS) of 1998 was again filed in which this order of the Assistant Registrar was also challenged. The aforesaid two-writ petition came up for hearing before the learned Single Judge together on 28.9.1999. Relying upon the averments made in the counter affidavit as no rejoinder affidavit was filed by the petitioner to that writ petition, the Court observed that the term of the Committee of Management elected on 8th May, 1997 has not come to an end, as such there was no occasion to hold election as claimed by Mata Din Mishra, the learned Single Judge recorded finding that the petitioner has no prima facie case and therefore, the technical argument of the petitioner regarding jurisdiction of the Assistant Registrar, would not be of any avail to them. The learned Single Judge, however, also provided that the petitioner will be at liberty to initiate such other proceedings for getting his right declared from the Civil Court. With these observation both the writ petitions were disposed.

10. Two special appeals were filed against the said orders and the Division Bench of Allahabad High Court dismissed the appeals finding no illegality in the order passed by the learned Single Judge. The appellate order indicates that it was admitted to both the sides that the election of the Committee of Management was held on 16th May, 1994. According to respondent namely Mayawati Devi a fresh election was held on 21st May, 1997 which has wrongly been mentioned as 8th May, 1997 in the order, in which Mata Din Mishra was elected as Manager who tendered his resignation on 20.10.1997 and thereafter Mayawati Devi was elected as Manager of the Committee of Management of the Society. According to the appellants no election was held on 8.5.1997 and in fact the election was held on

28.6.1998 in which Mata Din Mishra was elected as Manger and he is continuing as such and he never resigned from the said office.

11. The Division Bench came to the conclusion that the question raised in these appeals were basically the questions of fact, which cannot be entertained in proceedings under Article 226 of the Constitution and reiterated the view taken by the learned Single Judge that the appellant may seek remedy by instituting a civil suit which will be decided without being influenced in any manner with any observations made either in the impugned judgment and order of the learned Single Judge or the judgment passed in appeal.

12. It was thereafter that the Regular suit No. 558 of 2000 was filed by the petitioners against Smt. Mayawati Devi, Ram Kripal Pandey and Dhani Ram Goswami, Principal of the college, a copy of the plaint filed by the petitioner has been brought on record as Annexure C.A.-10 to the counter-affidavit. In this suit the fact that Mata Din Mishra has not resigned and it was a concocted story of the defendants, has been specifically pleaded. The filing of two writ petitions referred to above has also been mentioned therein. The petitioner who were the plaintiffs in that suit has laid the very claim for managing the affairs of the institution on the ground that the alleged elections were held in the year 1996 in which petitioner No. 2 was elected as Manager of the Committee of Management of the Institution and on the expiry of the said term of the Committee, a fresh election was held on 20.2.2000 in presence of the observer sent by the District Inspector of Schools in which Mata Din Mishra was elected as Manager and D.P. Insan was elected as President. It has also been pleaded that the signatures of Mata Din Mishra were verified and attested by the District Inspector of Schools but the defendants to the suit namely Ram Kripal. Mayawati Devi and Dhani Ram Goshwami by wrongly asserting themselves to be the Manager/President continuously are trying to interfere with the affairs of the institution and undue influence is being exercised upon opposite party No. 3 the Principal of the Institution. The prayer in the said suit is for grant of a decree of declaration that the plaintiffs of the suit Mata Din Mishra be declared as Manager of the institution and D.P. Insan be declared as the President of the Committee of the Institution after holding that the election which has taken place on 20th February, 2000 are legally held elections and they

are in effective control of the affairs of the institution.

13. Another Regular Suit No. 624 of 2000 has also been filed by the petitioners against the same very respondents challenging the order of the Assistant Registrar dated 3.11.1998 as per observations made by the High Court in the writ petition filed by the petitioner. A copy of the plaint of the said suit has also been brought on record. In this suit a proper has again been made for grant of declaration to the effect that plaintiff Mata Din Mishra and Shambhu Prasad be declared as Manager and President of the Committee of Management in pursuance of the election held on 28th June, 1998 and that the election said to have been held on 8th May, 1997 be declared as nidi and void. Further prayer of permanent injunction has also been made for restraining the defendants to the suit namely Sri Ram Kripal Pandey, Mayawati Devi, the alleged Committee of Management and Dhani Ram Goswami from interfering illegally in the affairs of the institution. An application for temporary injunction under Order XXXIX, Rules 1 and 2, CPC was also filed in the said suit in which temporary injunction was granted in favour of the plaintiffs namely the petitioners on 12th May, 2000 by the learned Civil Judge, Sadar, Pratapgarh restraining the defendants to the suit namely the present respondents from interfering in the affairs of the institution.

14. A miscellaneous appeal has been filed against the said order of granting temporary injunction on 29th May, 2000. The Appellate Court has stayed the operation of the injunction order passed on the temporary injunction application of the petitioners and its operation was stayed.

15. The learned Counsel for the petitioner Sri S.P. Shukla submits that he has no information about the stay of temporary injunction order by the Appellate Court, as his client has not received and information about the said order. The stay order passed by the Appellate Court is on record, which indicates that while admitting the appeal the operation of the order passed by the learned trial Court granting temporary injunction in favour of the petitioner has been stayed.

16. It is no doubt true that the controversy involved in the present writ petition relates to the educational institution where the proper functioning by duly elected persons should be the prime concern of the Court. It has been noticed that the

allegations have been made, which are said to be supported by various documents that political interference and extraneous considerations were in the way of the District Educational Authorities when the question of recognizing a particular Committee of Management had come before them. This situation cannot be appreciated. In the instant case the allegations and counter allegations have been levelled stating therein that it is because of the political influence that such orders have been passed which on the one hand some times have in seated one of the party and some time they have in seated the either party, A care has to be taken by the District Educational Authorities while discharging their functions that they should not be biased and influenced by the political parties or persons, may be the Minister, Member of Legislative Assembly or any other political person. The handing over of administration of the college to a person or authority who otherwise is not a rightful claimant or competent to manage the affairs of the institution not only creates an atmosphere which is not congenial for the betterment of the students for providing quality teaching but it also creates discontentment, indiscipline and chaos in the college.

17. I do not intend to enter into this controversy in the writ petition as I am not entertaining the writ petition on merits because of the tendency of the civil suits. It is, however appropriate to observe that the political personalities including the Ministers should restrain themselves from interfering with the affairs of the temple of learning namely the educational institutions.

18. The District Inspector of Schools and Basic Shiksha Adhikari in this case have acted erratically as they have not hesitated in granting recognition to one person or the other as they had seen the situation. Such actions have compelled the parties to indulge in series of litigation. The interest of the institution has obviously suffered and it is not known as to in what manner the institution is continuing and under whose supervision and control the institution is managing its day to day affairs.

19. So far the petitioners are concerned they approached the High Court at Allahabad against the proceedings which were pending before the Registrar and Assistant Registrar at that time when the Assistant Registrar has given them an

opportunity to indicate as to whether the petitioner Mata Din Mishra was duly elected Manager or not in view of the fact that the signatures of Smt. Mayawati Devi were attested during the tenure of subsistence of the Committee of Management by the Basic Shiksha Adhikari. The first writ petition was filed challenging the jurisdiction of the Assistant Registrar to decide this controversy and the second writ petition was filed against the final order of the Assistant Registrar dated 3rd November, 1998. The two writ petitions, therefore, involve the same very question as to whether Matadin Mishra was duly elected Manager or not or Smt. Mayawati Devi has been elected as Manager. The writ petitions with all these allegations were rejected on the ground that prima facie no substantive case is made out for interference under Article 226 of the Constitution and in special appeal it was observed that the matter relates basically to the questions of fact which cannot be adjudicated in proceedings under Article 226 of the Constitution. The Special appeal was dismissed with the liberty being given to the parties to file civil suit for adjudicating their rights. The observations made in the judgments were of no consequence.

20. So far the proceedings before the Civil Court are concerned it is not being disputed by the learned Counsel for the petitioner that Regular Suit No. 624 of 2000 was filed in pursuance of the observations made by the High Court but that matter according to him relates to the election of the society and namely the parent society and therefore, the filing of that suit cannot be a bar for entertaining the writ petition where the rights of the petitioners to manage the affairs of the institution as being duly elected Manager of the committee of management is concerned. A perusal of the plaint and particularly relief clause in the suit leaves no room of doubt that a specific prayer has been made seeking a declaratory decree that the petitioner Matadin Mishra be declared as Manager of the institution and Shambhu Prasad Singh be declared as Adhyaksha of the institution in pursuance to the elections held in the year 1998 and the election of 1997 should be declared as illegal as it is not an election in the eye of law. Further prayer was made for grant of permanent injunction against those persons who were interfering from managing the affairs of the institution. Not only this a temporary injunction was also prayed against the present respondents and the learned trial Court has restrained them from interfering by its order dated 12th May, 2000. But the

operation of the said order has again been stayed in Miscellaneous appeal vide order dated 29.5.2000.

21. In this view of the matter it cannot be said that the said suit relates to the election of the parent society and it has nothing to do with the status of the Manager or the President or the Committee of Management. It is clear that the parent society or the office bearers of the parent society do not manage the affairs of the college which affairs are managed by a duly elected committee of Management of which election is to be held in accordance with the scheme of administration. The prayer thus made in the aforesaid suit embraces in itself a declaration with respect to status of the petitioner as well as the respondents.

22. So far the second suit namely regular Suit No. 558 of 2000 is concerned against seeks the same relief of declaration with respect to status of the petitioner on the basis of election held on 20th February, 2000. Of course in this case no relief for injunction has been asked for against the respondents but Smt. Mayawati Devi and Dhani Ram have also been added as defendant in addition to Ram Kripal who were the present respondents in the present writ petition. Since the specific case of the petitioner before the Civil Court in the two suits is that they are duly elected Manager and President in pursuance of the election of the year 1998 and 2000 and the prayer has also been made for restraining the present respondents or defendants from interfering with the affairs of the institution in one suit the whole issue regarding the validity of the elections and the right to hold the office of the Manager and the President is pending before the Civil Court.

23. So far the contention of the learned Counsel for the petitioner that two suits are different in as much as one relates to the election of the parent society and the other deals with the election dated 26th February, 2000 but it does not challenge the order passed in the present writ petition namely the order dated 26th May, 2000 passed by the District Inspector of Schools is of no consequence. The basic or original cause of action which has given rise to all these disputes is the validity of the elections one claimed by the petitioner and the other claimed by the respondents. It is to be found by the Civil Court as to which of the two persons have been elected in duly held elections. Once the said fact is determined the

subsequent orders passed by the District Inspector of Schools and the Basic Shiksha Adhikari, which have been passed on various considerations including the orders passed in the writ petition would be of no consequence.

24. The argument of the learned Counsel for the petitioner is that since the District Inspector of Schools has not been made a party in, the Civil Suit and it is an individual claim which has been put forward against the defendants of the suit, as such the present writ petition cannot be dismissed on the ground of tendency of the Civil Proceedings or on the ground that two writ petitions filed at Allahabad have been dismissed, is also to be rejected on the ground that the basic question for determination is the question regarding managing the affairs of the institution. It is no more in dispute that every injunction involves declaration. The title of the plaintiff has to be seen while granting injunction or declaration. The petitioners are claiming rights on the basis of certain elections and the respondents are also claiming rights on the basis of other elections. Such disputed question of fact can only be decided under the provisions of the Intermediate Education Act or of if a forum is there then the dispute can be decided either by that Forum or under the Societies Registration Act or by means of approaching the Civil Court. Such disputed question of facts cannot be decided in the writ petition. The petitioners having once approached the High Court and their petitions having been dismissed and thereafter they having approached the Civil Court may be in pursuance of the observations made by the High Court or having based their claim on the basis of election of the year 1998 and 2000, it is no more open for the petitioners to claim substantially the relief in the present writ petition.

25. The last argument which has been raised by the learned Counsel for the petitioner is regarding recall of the order dated 22nd May, 2000 by means of the order 26th May, 2000 without affording any opportunity to the petitioner, has been rebutted by the learned Counsel for the respondents on the ground that even if an opportunity is given to him the things would not have been changed and it would have been a useless exercise by the authorities for which no writ can be issued. In support of contention the learned Counsel for the respondent has relied upon the case reported in (2000) 7 SCC 529: 2000 (4) ESC 2457 (SC) : (2000) 3 UPLBEC 2234 (SC), Aligarh Muslim University and Ors. v. Mosoom All Khan. The reliance

has been placed on Paragraphs 19 to 34 of the said report.

26. So far the arguments of the learned Counsel for the respondents is concerned that non-giving of opportunity in this case has not prejudiced the case of the petitioner and that no useful purpose would be served in case such a writ is issued is extremely doubtful. However, the point to be noticed is that on 22nd May, 2000 recommendation was made by the District Inspector of Schools to annul the order of single operation dated 1st December, 1990. The order of single operation was later on annulled by means of order dated 3rd June, 2000. This order dated 3rd June, 2000 is not under challenge in any of the proceedings as stated by the learned Counsel for the parties.

27. The learned Counsel for the respondent in furtherance of his arguments that no opportunity was needed to be given to the petitioners while passing the order dated 26th May, 2000 submitted that the meeting on the basis of which the election is said to have been held on 20th February, 2000 was absolutely illegal in as much as in that meeting Smt. Mayawati Devi was recognized as Manager and therefore, Matadin Mishra for any reason whatsoever was having no authority to call for a meeting or to ask for an observer from the District Inspector of Schools. I am not required to answer these questions, as these matters have to be considered in the Regular suits, which are pending in the Civil Court.

28. It is true that normally an opportunity should be given by the District Inspector of Schools when the effect of the subsequent orders is to be recognize the signatures of the Manager which he has already attested but in the instant case I find that this order dated 26th May, 2000 has been passed in pursuance of the order passed in special appeal on 24th April, 2000. The order dated 22nd May, 2000 appears to have been passed as has been submitted by the learned Counsel for the respondents for want of communication of the order dated 24th April, 2000. Since in the writ petitions filed at Allahabad, the High Court has prima facie accepted the order passed by the Assistant Registrar dated 3rd November, 1998 which order has been affirmed in special appeals also, if the District Inspector of Schools has passed an order on 26th May, 2000 which is in consonance with the observations made in the order passed in special appeals no exception can be

taken. The order dated 26th May, 2000 simply conveys the orders passed by the High Court and as a consequence of which the order dated 22nd May, 2000 has been stayed. Since the orders passed by the High Court are to be complied with without any reservation, the District Inspector of Schools has passed the aforesaid order and for complying the order passed by the High Court it was not essential to afford opportunity to the petitioners.

29. For the reasons stated above namely the petitioners having approached the Civil Court in two Regular suits and writ petitions having been dismissed, where an observation has been made that the case involves disputed questions of fact which cannot be decided in proceedings under Article 226 of the Constitution and the order dated 26th May, 2000 having been passed as a result of dismissal of the special appeals by the High Court. I do not find it a fit case for interference under Article 226 of the Constitution. The petitioners may pursue their remedy which they have already availed with the Civil Court by raising such pleadings and adducing such evidence which they may deem proper and fit. The Civil Court while deciding the suit shall not be influenced by any observations made by me in this judgment on the merits by me in this judgment on the merits of the case.

30. Since the matter relates to the management of educational institution, and civil suits usually takes considerable time. I provide that the parties shall cooperate in to proceedings before the Civil Court and the two suits shall be decided expeditiously say within a period of six months from the date a certified copy of the order is produced before the Court concerned.

The writ petition is dismissed. Costs easy.