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Court : Allahabad

Decided On : Dec-08-2004

Reported in : 2005(1)ESC69; (2005)1UPLBEC166

Judge : V.K. Shukla, J.

Acts : Uttar Pradesh Intermediate Education Act, 1921; Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salary to Teachers and other Employees) Act, 1971

Appeal No. : Civil Misc. Writ Petition No. 46491 of 2003

Appellant : Ashok Kumar Sharma and anr.

Respondent : District Inspector of Schools and anr.

Advocate for Def. : Ashok Khare, ;P.K. Rai, ;Vikas Budhwar, Advs. and ;C.S.C.

Advocate for Pet/Ap. : Ajit Kumar, ;Manu Saxena and ;Mohit Kumar, Advs.

Judgement :

V.K. Shukla, J.

1. Brief background of the case, giving rise to instant writ petitions is that in the district of Gautambudh Nagar, there is a society which runs an institution known as Chaudhary Laxmi Narain Inter College, Mandi, Shyamnagar, District Gautambudh

Nagar. The said institution is duly recognized under the provisions as contained under U.P. Intermediate Education Act, 1921, and the provisions of U.P. High Schools and Intermediate Colleges (Payment of Salary to Teachers and other Employees) Act, 1971 are fully applicable to the said institution. Petitioners submit that election of the Committee of Management of the said institution was held on 30.9.1990, wherein Vishnu Dutta Sharma was elected as Manager and Thakur Singh Rawat as President. The said election was approved by the District Inspector of Schools on 6.10.1990. Said order was recalled by District Inspector of Schools on 16.10.1990. Against this order, Vishnu Dutta Sharma represented the matter before Deputy Director of Education, who issued an order dated 15.1.1993, appointing Prabandh Sanchalak and holding fresh election within three months. Thereafter, Deputy Director of Education withdrew order dated 15.1.1993 by means of order dated 11.6.1993, Ved Prakash Sharma challenged the same in Writ Petition No. 25035 of 1993. Ramesh Kumar Chaudhary filed Writ Petition No. 28290 of 1993 for compliance of order dated 11.6.1993. Thereafter, Deputy Director of Education revived the order of appointment of Prabandh Sanchalak, which has also been subject matter of challenge in Writ Petition No. 34955 of 1994. All the three writ petitions were finally decided on 26.9.1995 and election of petitioner's Committee of Management was held to be valid. Against the said order Special Appeal No. 962 of 1995 had been preferred, which too was dismissed on 30.6.1996 by mentioning that dispute in question had become infructuous, as fresh elections had been held, and it was left open to the appellants to challenge the same as was permissible under law. Prior to decision in Special Appeal elections had been held on 16.6.1996, and the same was accorded approval on 27.6.1996. The said election was subject matter of challenge in suit No. 680 of 1996 filed by the brother of Ramesh Kukmar Chaudhary In the said suit an application for ad-interim injunction was moved, but no injunction was granted. Again fresh elections arc claimed to be held on 26.7.1998, wherein Ved Pakash was elected as President and Ashok Kumar Sharing was elected as Manager. The said election was approved by the District Inspector of Schools on 31.8.1998. Thereafter resolution was passed for extending the term of the Committee of Management and the said resolution was duly accepted by the Joint Director of Education of extending he term of the Committee of Management from 3 to 5 years by means

of communication dated 10.2.1999. While petitioners had been discharging their duties, order dated 29.7.1999 had been passed directing single operation of the account. This order had been subject matter of challenge in Writ Petition No. 32277 of 1999, and this Court on presentation of writ petition stayed the operation of the order. Joint Director of Education on 1.10.1999 addressed a letter to the District Inspector of Schools, Gautambudh Nagar that the dispute which had been referred by him for making reference under Section 16-A(7) of the Act was not legally maintainable, and further there was nothing to reflect that the Committee of Management of the institution had become time barred. Dispute in respect to illegal appointment had been going on, in the meantime District Inspector of Schools vide its order dated 20.11.1999 declared election of petitioner and appointments made to be invalid. Joint Director of Education also passed order dated 29.2.2000, deciding election dispute ex parte. All these actions were subject matter of-challenge, before this Court, and Bunch of writ petitions were finally decided on 7.4.2000 [judgment reported in 2000(2) E.S.C. 1077, Vijay Kumar v. District Inspector of Schools]. Pursuant to said judgment Joint Director of Education passed order dated 19.7.2000. Said order was again subject matter of challenge in Civil Misc. Writ Petition No. 41102 of 2000, wherein on 13.9.2000 interim order was passed with the condition that Authorised Controller be appointed in the institution. Pursuant to this order Authorized Controller had been appointed and discharging duties and functions of the Committee of Management. The said order was quashed by this Court on 8.8.2003, and matter had been remitted back for fresh adjudication in between, petitioners claim fresh elections being held on 25.7.2003 and for according recognition to the said elections, Writ Petition 46491 of 2003 has been filed before this Court. Joint Director of Education has re-decided the matter by order impugned dated 20.11.2003 disapproving the election dated 25.7.2003 and determining the electoral college, on the basis of which fresh elections are to be held.

2. To this counter-affidavit, rejoinder affidavit has been filed, an therein statement of fact mentioned in the counter-affidavit has been sought to be rebutted and that of writ petition has been reiterated.

3. After counter and rejoinder affidavits have been exchanged, matter has been taken up for final disposal with the consent of the parties.

4. Sri Ajit Kumar, learned Counsel appearing for petitioner, contended with vehemence that in the present case closed chapter has been sought to be reopened and the impact of earlier proceedings has not at all been adverted to, and documentary evidence filed on behalf of petitioners has been completely overlooked, as such order in question is liable to be quashed. Sri Ashok Khare, Senior Advocate assisted by Sri P.K. Rai, Advocate, on the other hand, has contended with vehemence that the order passed by the Joint Director of Education is well reasoned order, and as far as electoral college is concerned, same is the essence of the valid election and here in the present case there is no infirmity, whatsoever, in the decision making process, and the decision itself, as such order impugned is valid and no interference is warranted.

5. On the basis of arguments advanced and pleadings available on record and from perusal of the impugned order, factual position which is emerging is to the effect that earlier inter se dispute traveled up to this Court in shape of Writ Petition Nos. 25035 of 1993, 28290 of 1993 and 3497 of 1994, and all the three writ petitions were heard and finally decided by judgment dated 26.9.1995. In the operative portion of the judgment following observations were made, which are quoted below:

'Considering the facts and circumstances brought on record and my conclusions indicate hereinabovc, writ petitions are disposed of finally with the direction to the 'Deputy Director of Education of the Region concerned as well as the District Inspector of Schools to treat the order dated 6.10.1990 granting recognition to the Committee of Management elected on 30.9.1990 to be legally effective and act accordingly leaving it open to Sri Ramesh Kumar Chaudhary to get his grievance in the matter of grant of recognition to a Committee of Management claimed to have been elected on 7.9.1993 redressed approaching he Deputy Director of Education of the Region concerned by means of a representation which shall be heard and disposed of finally by the Deputy Director of Education as expeditiously as possible after affording opportunity of hearing to the affected parties.

The Deputy Director of Education of the Region concerned and the District Inspector of Schools are further directed to ensue that the Laxmi Narain Intermediate College, Mandi, Shyamnagar, Bulandshahr, is run and managed by the Committee of Management recognized by the District Inspector of Schools on 10.9.1993 as indicated by the District Inspector of Schools in the counter-affidavit filed on his behalf so long as the said order is not set aside or annuled in accordance with law.

The parties are, however, directed to bear their own costs.'

6. Special appeal filed against the order came to be dismissed on 30.7.1996 with the observation that the challenges raised in writ petitions and Special Appeal had been rendered infructuous and without going into the meris of the fresh elections, it was directed that the appellants might challenge the validity of the fresh election in accordance with law. Original suit No. 680 of 1996 had been filed by brother of Ramesh Kumar Chaudhary, Mahesh Kumar and Ors. v. Sri Ram Sharma and others, and therein Ashok Kumar Sharma and Ramesh Kumar Chaudhary both were impleaded and arrayed as respondents. Further it was also mentioned that the suit was being filed in representative capacity. Said suit had been dismissed for want of prosecution and the term of the Managing Committee elected continued. Fresh elections have been held by petitioners on 26.7.1998 and the said elections have been approved by District Inspector of Schools on 3.8.1998. Thereafter fresh elections have been claimed by contesting respondent on 11.12.1998. Said elections were refused to be recognized by District Inspector of Schools, by means of letter dated 20.11.1998, 30.11.1998 and 16.1.1999 respectively, and subsequently, said elections arc alleged to have been approved on 22.11.1999, and it has been contended that signature had also been attested. Approval, which had been accorded, has been quashed by this Court and the matter has been remitted back. After matter had been remitted back, fresh adjudication has been done on 19.7.2000, against which Writ Petition No. 41102 of 2000 had been filed, wherein interim order has been passed directing appoint-ment of Prabandh Sanchalak and since then Prabandh Sanchalak is running and managing the affairs of the0 institution. During continuance of interim order, petitioners claim to have held fresh elections on 20.7.2003. As far as fresh

elections are concerned, when rightly or wrongly, under the interim order of this Court, Prabandh Sanchalak had been continuing, then the Managing Committee had no authority to hold elections. Thus, elections dated 20.7.2003 has been rightly disapproved. Once election has been disapproved and even otherwise if the term of the Committee of Management has come to an end, then whenever fresh elections are to be held, the same has to be held through the agency of the Prabandh Sanchalak, and no one else could have been authorized to hold the election. This view has been taken in the Full Bench Judgment of this Court (Five Judges) in the case of Committee of Management v. Deputy Director of Education and others in Civil Misc. Writ Petition No. 35267 of 1992, decided on October 15, 2004 (Reported in'(2005) 1 UPLBEC 85). The next question is as to whether the Electoral College, which has been determined in the present case by the Joint Director of Education, is a rightful exercise or perverse exercise carried ou| by the Joint Director of Education. Detailed representation has been filed by the petitioner pursuant to the direction issued by this Court, copy of which has 'been annexed along with the writ petition, and therein details of enrollment of members had been filed, but the tenor of the order passed by the Joint Director of Education shows that he has proceeded on the presumption that the very existence of petitioners was illegal. He has not at all adverted to the material, which had been placed by petitioners in respect to deposit of amount and other materials pertaining to membership, and has proceeded to declare the membership of incumbents as illegal. The Joint Director of Education has not at a!l adverted to this aspect of the matter that in the past matter had travelled up to this Court, and this Court had made certain observations m writ petition and in Special Appeal, though writ petition and Special Appeal were dismissed as infructuous, but at no point of time, it has been mentioned that it be treated as disposed of without any adjudication on merit, as has been done in the case of Dharm Dutta and Ors. v. Union of India, reported in 2004(1) SCC 712, heavily relied upon respondents. Joint Director of Education has not at all considered the impact of the earlier proceedings, filing of suit and dismissal of the same, and in most arbitrary manner has proceeded to decide the dispute. The decision making process and the decision itself is faulty on the face of it.

7. Consequently, Writ Petition No. 56156 of 2003 succeeds and is allowed. The impugned order dated 20.11.2003 is hereby quashed and set aside, and the other Writ Petition No. 46491 of 2003 stands rendered infructuous, and is dismissed as such. Joint Director of Education is directed to decide the dispute afresh, by means of reasoned and speaking order, within next three months, after providing opportunity to one of he representatives of petitioner and to one of the representatives of respondents.

8. No order as to costs.

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