

Ravindra Kumar Saxena and anr. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Aug-09-2004

Reported in : (2004)3UPLBEC3007

Judge : Arun Tandon, J.

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

Appeal No. : Civil Misc. Writ Petition No. 6367 of 2004

Appellant : Ravindra Kumar Saxena and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : Radhey Shyam, Adv. and ;S.C.

Advocate for Pet/Ap. : P.C. Sharma, Adv.

Disposition : Writ petition dismissed

Judgement :

Arun Tandon, J.

1. Heard Sri P.C. Sharma, learned Counsel for the petitioners, Sri Radheshyam, learned Counsel for the respondent No. 4 and learned Standing Counsel for the respondent Nos. 1 to 3.

2. Petitioners, who are two in number have filed this writ petition for quashing the order passed by the District Inspector of Schools, Badaun dated 14th November, 2003 whereby in compliance of the decision taken by the Regional Level Committee in seizing elections held on 1st November, 2003, he has recognized the elections of the Committee of Management which has taken place on 28th September, 2003.

3. On behalf of the petitioner, it is contended that the last elections of Committee of Management had taken place on 30th September, 1990. In the said elections respondent No. 4, namely Sri Yogendra Pal Sharma was elected as the Manager. The said elections were disapproved by the Deputy Director of Education, by means of the order dated 30th September, 1991. Against the said order of the Deputy Director of Education respondent No. 4, Sri Yogendra Pal Sharma, filed a writ petition before this Court being Civil Misc. Writ Petition No. 30099 of 1991 (Committee of Management, Vigyanand Ram Narain Vadic Inter College and Anr. v. Deputy Director of Education and Ors.). This Court granted interim order in favour of the petitioners of the said writ petition (respondent No. 4 in the present writ petition). As a result whereof the elected Committee of Management dated 30.9.1990 continued to manage the institution.

4. It is not in dispute that the aforesaid writ petition is still pending before this Court and the interim order granted in favour of the petitioners (respondent No. 4 of the present writ petition), in the aforesaid writ petition continues to operate. In the meantime the Committee of Management which was in effective control of the institution held fresh elections on 21st September, 2003. In the said elections Sri Yogendra Pal Sharma, respondent No. 4 has again elected as the Manager of the Committee of Management. Further in the aforesaid elections petitioners had also filed their nomination forms for the post of members of the Committee of Management. The petitioners contested the said elections and were admittedly defeated. Against the said elections the petitioners raised objections before the District Inspector of Schools as well as the Joint Director of Education stating therein that outgoing Committee of Management, which was elected on 30.9.1990 had no jurisdiction to hold fresh elections in the year November, 2003 inasmuch as under the provisions of the scheme of the administration as are applicable to the

institution, the term of the elected Committee of Management is only three years and the newly elected Committee of Management was elected after the expiry of three years and one month period.

5. On behalf of the petitioners reliance has been placed upon the Division Bench judgments of this Court reported in (1993) 1 UPLBEC 344, Ram Kripal Singh and Anr. v. Committee of Management, Uchchttar Madhyamik Vidyalaya, Newarhiy, District Jaunpur and Ors. and 1995 Allahabad Civil Judgment 132, M.M.I. Inter College, Nehtour, Bijnor v. Deputy Director of Education, 10th Circle, Moradabad and Ors., in support of the contention that once the term of the Committee of Management has expired it is mandatory under the scheme of the administration that the fresh elections may be held by the Authorized Controller to be appointed by the Joint Director of Education only.

6. On behalf of the respondents it is contended that since the petitioners had participated in the elections held by the Committee of Management, even if there is any violation of the mandatory conditions of the scheme of administration, the petitioners at least cannot raise grievance with regard to the said mandatory requirement. It has further been submitted that since the elections under challenge in the writ petition pertain to a private body, the present writ petition is not the proper remedy. The petitioners may be asked either to raise their grievance before the Prescribed Authority or they may be required to file a civil suit.

7. It is not in dispute between the parties that the Committee of Management, which held fresh elections, has in effective control of the institution in view of interim order passed by this Court, which continues even today.

8. The only question which remains is as to whether after the expiry of the term of three years one month, under Clause 8 of the scheme of the administration, fresh elections could have been held by the said Committee of Management. From the judgments of this Court, which are relied upon by the learned Counsel for the petitioners, it is clear that under the provisions of Clause 8 of the scheme of administration are mandatory nature and it has been declared as proposition of law that the outgoing Committee of Management cannot hold any fresh elections after expiry of the term including the grace period, if any. However, it is also a law

that even mandatory requirement can be waived by a party in whose favour such provisions has been made.

9. Reference have been made upon the judgments of Hon'ble Supreme Court reported in AIR 1964 Supreme Court 1300, AIR 1971 Supreme Court 2213, AIR 1975 Supreme Court 2065, AIR 1975 Supreme Court 67, AIR 1988 Supreme Curt 293 and AIR 1991 Supreme Court 1055.

10. Since admittedly the petitioners have participated in the elections, which were undertaken by the Committee of Management on 28th September, 2003, they had waived a right of questioning election which were held by the Committee of Management the term of which had expired. After having taken their chance to contest the election and having lost the petitioners cannot be permitted to take a somersault and to take an objection with regard to the competence of the Committee to hold the elections. Petitioner, has no equity in his affair to approach this Court under Article 226 of the [Constitution of India](#) for challenging the competency of the outgoing Committee of Management to hold fresh elections in such a fact situation.

11. In the circumstances, this Court refuses to exercise the jurisdiction under Article 226 of the [Constitution of India](#) in favour of the petitioners. The present writ petition is, accordingly, dismissed. No order as to cost.