

Murlidhar Yadav and ors Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Mar-25-2011

Judge : A.P. Sahi, J

Acts : U.P. Intermediate Education Act, 1921. - Section 16-A (7); Societies Registration Act in Misc. Case No.39 of 1987 - Section 25; Constitution of India. - Article 226

Appeal No. : Civil Misc. Writ Petition No.65661 of 2008; Civil Misc. Writ Petition No.6427 of 2009; Civil Misc. Writ Petition No.33850 of 2010; Civil Misc. Writ Petition No.7793 of 2011

Appellant : Murlidhar Yadav and ors

Respondent : State of U.P. and Others

Judgement :

1. These four writ petitions relate to the dispute of the electoral College and the election of the office-bearers of the Committee of Management of Sri Yadvesh Inter College, Nauperwa, District Jaunpur, which is an institution governed and recognized under the provisions of the U.P. Intermediate Education Act, 1921. The institution is managed through a Scheme of Administration which makes a provision for the election of the Committee of Management.

2. The background of the dispute begins with the previous history relating to the elections of the Committee of Management.

3. Sri Murlidhar Yadav the petitioner in the first two writ petitions was elected as the Manager in the year 1995 on the strength of an electoral College of 207 Members. He claimed re-elections on 6.9.1998 with 70 Members as the term then was 3 years. A rival claim with regard to the said election was set up by one Sri Ajay Yadav on the strength of a 255 member electoral College, who was recognized by the educational authority as a Manager. This recognition was challenged in Writ Petition No.6243 of 2000 and the Director of Education was called upon to decide the matter.

4. The Director of Education found Sri Ajay Yadav to have been validly recognized vide order dated 28.7.2000 which was again assailed by Sri Murlidhar Yadav in Writ Petition No.34164 of 2000.

5. The said writ petition was allowed on 7.9.2001 and the matter was remitted back for being decided by the authorities. On remand, the elections of Sri Murlidhar Yadav were held to be valid and were accordingly recognized by the Joint Director of Education on 4.10.2001. Accordingly, the elections dated 6.9.1998 was held to be valid. Sri Murlidhar Yadav thereafter held fresh elections on 4.10.2001 and the papers were sent for recognition to the Regional Level Committee which was recognized on 7.12.2001 and the signatures of Sri Murlidhar Yadav were attested vide order dated 11.1.2002.

6. Since the term is 3 years, Sri Murlidhar Yadav claimed fresh elections on 4.10.2004 and a rival claim was set up by Sri Vinod Kumar Yadav. The papers with regard to the said elections remained pending approval and ultimately the Regional Level Committee decided the dispute holding that the elections as set up by the petitioner Murlidhar Yadav were invalid as the officebearers elected are related to each other, particularly Murlidhar Yadav and Sant Lal Yadav are father and son respectively and, therefore, the Scheme of Administration has been violated. It was further held that the then Committee did not undertake any drive to enrol fresh members hence the elections set up by Sri Murlidhar Yadav could not be accepted. Simultaneously, it was held that the claim of Sri Vinod Kumar Yadav was invalid as the entire meeting convened for holding of such elections was not in accordance with the Scheme of Administration and that he has no right to get any

such meeting convened and, therefore, the said elections cannot be accepted. It was further held that the membership of 255 Members as set up by Sri Vinod Kumar Yadav was not acceptable in view of the earlier decision dated 7.9.2001 in Writ Petition No.34164 of 2000. Accordingly, the Regional Level Committee appointed the Finance & Accounts Officer in the office of the District Inspector of Schools as Prabandh Sanchalak with a direction to hold fresh elections through a valid electoral College within 3 months.

7. At this juncture, it would be relevant to mention that Sri Murlidhar Yadav had also lodged an F.I.R. against Sri Ajay Kumar Yadav and Buddhi Ram Yadav about the fabrication of 255 members and a criminal case No.4806 of 2005 was registered before the Chief Judicial Magistrate, Jaunpur. In the said criminal case, Sri Ajay Kumar Yadav, who was the main accused, is stated to have been acquitted vide judgment dated 28.5.2007.

8. The Prabandh Sanchalak so appointed proceeded to hold elections and for that the Prabandh Sanchalak issued notices calling upon the parties to provide the list of the Members for deciding the electoral College. The Authorized Controller was changed and the Basic Shiksha Adhikari was appointed as Authorized Controller but ultimately one Sri Samar Bahadur Singh, a Deputy Inspector of Sanskrit Pathshala, was appointed as Authorized Controller on 2.8.2008. The Authorized Controller issued a list of 105 Members on which objections were invited. Sri Murlidhar Yadav set up a claim that there were only 33 Members.

9. The provisional list contains the name of 36 old Members and 62 names were included from a list of 92 Members allegedly presented by Sri Vinod Kumar Yadav stated to be some alleged list of the year 1969. The contention of Sri Murlidhar Yadav is that the Authorized Controller in connivance with rank strangers including Sri Vinod Kumar Yadav finalized the list on 9.12.2008 and declared an election program. Objections were filed but the Authorized Controller insisted on proceeding with the elections as a result whereof Writ Petition No.65661 of 2008 was filed by Sri Murlidhar Yadav with a prayer to quash the election program dated 9.12.2008 with a further prayer to hold the election after deciding the objection relating to the membership list. The said writ petition is the first writ petition herein.

No interim orders were passed and a direction was issued to implead Shiv Nath Yadav, who claimed himself to be the newly elected Manager of the institution.

10. During the pendency of the said writ petition, the elections that were held by the Authorized Controller on 16.12.2008 came to be recognized by the District Inspector of Schools on 27.12.2008 that was again challenged by Sri Murlidhar Yadav in Writ Petition No.6427 of 2009. The writ petition was entertained in which Affidavits have been exchanged but no interim orders have been passed therein.

11. In between one Dharam Raj Yadav claiming to have filed a representation on 2.1.2009 against the said elections as held by the Authorized Controller also filed Writ Petition No.63471 of 2009 which was disposed of by this Court on 30.11.2009 with a direction to the Joint Director of Education, Varanasi, to decide his representation within a specified time. The Joint Director of Education has proceeded to decide the dispute vide order dated 18.5.2010 holding that the objections filed by Dharam Raj Yadav were valid and that the elections held in the year 2008 by the Prabandh Sanchalak were invalid being in violation of the Scheme of Administration. A further direction was issued to the Prabandh Sanchalak to hold fresh elections in the light of the directions contained in the earlier order of the Regional Level Committee dated 5.10.2007. Sri Shiv Nath Yadav, who is alleged to have been elected in the year 2008, has filed Writ Petition No.33850 of 2010, assailing the order dated 18.5.2010 of the Joint Director of Education. This Court entertained the petition and passed a limited interim order on 12.7.2010 directing that fresh elections pursuant to the impugned order shall not be held.

12. The Prabandh Sanchalak appears to have proceeded to hold fresh elections of the Committee of Management. These elections were purportedly held in pursuance of the order dated 18.5.2010 by one Sri Bhasker Mishra alleging himself to be the Prabandh Sanchalak of the institution and who was the Deputy Inspector of Sanskrit Pathshalas. This appears to have been done during the pendency of this entire litigation in June 2010. The elections were allegedly held on 16.6.2010 in which Sant Lal Yadav claims himself to have been elected as Manager. These papers were forwarded to the District Inspector of Schools and a

letter was written by the Joint Director of Education on 5.8.2010 to take action thereon. Another order was issued by the Joint Director of Education changing the Prabandh Sanchalak on 9.9.2010 and ultimately the signature of Prabandh Sanchalak was attested on 28.9.2010. Sri Shiv Nath Yadav, who claimed that he is the validly elected Manager, filed Writ Petition No.63958 which was dismissed on 26.10.2010 and a Special Appeal was filed against the same which was disposed of.

13. It is alleged that the Joint Director of Education continued to pressurise the District Inspector of Schools, who issued a D.O. letter on 21.12.2010; copy whereof is Annexure-14 to the Writ Petition No.7793 of 2011 calling upon the District Inspector of Schools to attest the signatures of Sant Lal Yadav. Accordingly, the District Inspector of Schools passed an order on 20.1.2011 attesting the signatures of Respondent No.5 Sant Lal Yadav, which has been assailed by Shiv Nath in Writ Petition No.7793 of 2011.

14. Sri R.M. Vishwakarma, learned counsel has appeared for Murlidhar Yadav in the first two writ petitions and Sri P.N. Saxena, learned Senior Counsel for Respondent No.5 Dharam Raj Yadav in Writ Petition 33850 of 2010 and for Sant Lal Yadav Respondent Nos. 4 and 5 in Writ Petition No.7793 of 2011. Learned Standing Counsel has been heard on behalf of the State Authorities.

15. The petitioner and the contesting respondent have exchanged Affidavits and have advanced their submissions accordingly. In spite of time having been granted to the learned Standing Counsel, no counter-affidavit has been filed in any of the writ petitions on behalf of the State. Sri Murlidhar Yadav has moved an Impleadment Application in Writ Petition No.33850 of 2010 which has been allowed and he has been directed to be impleaded as Respondent No.6 in Writ Petition No.33850 of 2010. Learned Standing Counsel has also advanced his submissions and he contends that the matter be disposed of finally.

16. From a perusal of the narration of facts as recorded herein above, the dispute centers round the validity of the electoral College of the General Body entitled to participate in the elections. The said dispute has been raised by Murlidhar Yadav in Writ Petition No.65661 of 2008. The Authorized Controller, who had been

directed to get the elections held under the orders of the Regional Level Committee dated 5.10.2007 proceeded to invite Sri Vinod Kumar Yadav to submit his list who was obviously not the recognized person entitled to submit any such list. The reason for this was simple. Sri Vinod Kumar Yadav had set up his elections through the list of 255 members who had not been accepted under the orders dated 7.12.2001. Needless to mention that these 255 members were the same on whose strength Ajay Yadav had claimed his election of 1998 that was rejected by order dated 7.12.2001. Thus, the said list of 255 members either set up by Ajay Yadav or by Vinod Kumar Yadav had no legs to stand.

17. Sri Vinod Kumar Yadav, who was invited by the Authorized Controller to give his list, this time furnished a list of 92 members claiming that such a list was available in the office of Assistant Registrar, Firms, Societies & Chits, and it related to the year 1969. The Authorized Controller combined the list of 36 members as set up by Sri Murlidhar Yadav and that of Vinod Kumar Yadav of 92 members and after sorting out the dead persons, declared a tentative list of 105 Members on 4.11.2008.

18. Sri Murlidhar Yadav filed his objections on 11.11.2008 to the said list of 105 Members taking a clear stand that an addition of 69 members of the year 1969 was unacceptable inasmuch as it was he, namely Murlidhar Yadav, who was the Manager since 1974 and he had never been entrusted or handed over any such list as claimed by Vinod Kumar Yadav, by the then Manager Laxmi Shanker Yadav or Ram Khelawan Yadav. The objection further recited that the earlier Manager Ram Lakhani Yadav had handed over the registered list of Board of Trustees out whom, there were only 5 Members and 4 out of them were already dead. No other member of the Board of Trustees was enrolled as claimed by Vinod Kumar Yadav and, therefore, the said list of 69 members, which was being added was illegal as it was a forged list. To substantiate his submissions, Sri Murlidhar Yadav further stated in his objection that proceedings had been undertaken under Section 25 of the Societies Registration Act in Misc. Case No.39 of 1987 which was ultimately dismissed in default where also no such objection or list of 69 members had ever been reflected by either of the parties. He had further raised a clear plea that one Girdhari Yadav had claimed himself to be the Manager in the year 1996 which was

also rejected by the Assistant Registrar on 24.7.1996 where also no such list of 69 members had ever been set up. In essence the objection was that in the proceedings whenever a dispute arose relating to the Society, no such list had ever been reflected and therefore this list which has tendered by Vinod Kumar Yadav was forged and fabricated.

19. The Authorized Controller proceeded to prepare a final list under his orders dated 8.12.2008 after having noted the said objections, but without deciding the objection, specifically raised by Murlidhar Yadav. He simply relied upon certain lists that were despatched from the office of the Assistant Registrar for the year 1969-70, 1985-86, 2007-08. The Authorized Controller simply recorded his conclusions that since the list had been obtained from the Assistant Registrar, on a perusal thereof, the membership was being finalized. No reasons have been given in the order dated 8.12.2008 as to why the objections taken by Murlidhar Yadav were invalid. There is also no indication about the validity of the enrolment of those members, who are reflected in those lists including the list of 1969.

20. It is on the basis of the said list that the elections were held and Shiv Nath Singh claims himself to be elected. It is these elections which were objected to, and the matter went up to the Joint Director of Education under the orders of this Court on the representation filed by Dharam Raj Yadav in Writ Petition No.63471 of 2009.

21. At this juncture, the argument of Sri Gajendra Pratap that the orders passed by the Joint Director of Education in pursuance of the directions dated 30.11.2009 are without jurisdiction deserve to be dealt with. Sri Gajendra Pratap submits that the order of this Court dated 30.11.2009 did not confer any jurisdiction on the Joint Director of Education and as a matter of fact he ought to have placed the matter before the Regional Level Committee and should not have decided the matter himself. He further submits that Murlidhar Yadav himself had filed Writ Petition No.6427 of 2009 in which no interim orders were passed and, therefore, the petition at the instance of Sri Dharam Raj Yadav was not even otherwise maintainable for the relief claimed for. The elections that are under challenge were allegedly held by the Authorized Controller and there was no rival election. Sri

Gajendra Pratap may be right in his submission that in the absence of any rival claim, there was no dispute which needed to be decided but in view of the Government Orders dated 19.12.2000 and 20.9.2008 whenever there is a dispute, the matter has to be decided by the Regional Level Committee through the Joint Director of Education as it's Chairman and not by the District Inspector of Schools. The District Inspector of Schools, therefore, would not be authorized to attest the signatures of any claimant unless the dispute raised is decided by the Regional Level Committee. In the instant case, the Joint Director of Education in compliance of the order of this Court has proceeded to decide the matter. The order of this Court is quoted herein below:-

Heard learned counsel for the parties. The only grievance of the petitioner is that his pending representation dated 2.1.2009 before the Joint Director of Education, Varanasi Mandal, Varanasi, respondent no.2 may be directed to be disposed of within a fixed time frame.

Considering the facts and circumstances of this case, this petition is disposed of with the direction to the respondent no.2 to decide the aforementioned representation expeditiously preferably within a period of two months from the date of production of certified copy of this order strictly in accordance with law after affording opportunity of hearing to the concerned parties.

It is made clear that this Court has not adjudicated the claim of the petitioner on merits.

Sd/- Hon. Vikram Nath, J

Dt. 30.11.2009

Needless to mention that Shiv Nath Yadav did not object to the matter being taken up by the Joint Director of Education and he participated in full before the Joint Director of Education by raising his submissions. He has nowhere objected to the jurisdiction of the Joint Director of Education to proceed to hear the matter. It is only after the decision has been rendered on 18.5.2010 by the Joint Director that this argument has been in the subsequent writ petition of 2011. There is no

explanation on behalf of the petitioner as to why this objection was not taken before the Regional Joint Director of Education or the absence of pleadings in Writ Petition No.33850 of 2010. The order dated 18.5.2010 is, therefore, only in compliance of the directions issued by this Court. The issue relating to jurisdiction, therefore, loses its significance as Shiv Nath Yadav himself has acquiesced to the same. The order cannot be said to be suffering from any patent lack of jurisdiction even otherwise inasmuch as the Government Orders dated 19.12.2000 and 20.9.2008 are executive instructions to aid the functioning of the statutory authority, namely the Joint Director of Education who is the authority enjoined to decide such a dispute under the provisions of Section 16-A (7) of the U.P. Intermediate Education Act, 1921.

The argument of Sri Gajendra Pratap that the order dated 18.5.2010 is without jurisdiction, therefore, is a plea worth rejection for the reasons aforesaid.

Coming back again to the merits of the dispute relating to the electoral College, the matter was decided by the Joint Director of Education and he has found that the list of 92 members as submitted by Shiv Nath Yadav is not acceptable for the reason that the said list bears the caption of Shri Yadvesh Vidya Mandir Madhyamik Vidyalaya, Nauperwa, Jaunpur. He disbelieves the list on the ground that the institution itself was not in existence in 1969 and was given recognition for the first time in 1973.

22. Accordingly, he holds that the list is doubtful and appears to have been manufactured. Assailing the aforesaid reason, Sri Gajendra Pratap submits that a mere caption will not invalidate the list inasmuch as the list was in relation to the General Body of then Society which was existing and if there is an incorrect recital of the name of the body, that by itself is not sufficient to disbelieve the same. Learned counsel, in the opinion of the Court, has been unable to explain that when the name of the Society is Shri Yadvesh Vidya Mandir then how could the list of the Society in the absence of existence of the institution, be captioned as Yadvesh Vidya Mandir Vidyalaya. In the absence of any explanation much less a cogent explanation, the finding of the Joint Director of Education which is based on a clear perusal of the document cannot be rejected as perverse.

23. The second reason given by the Joint Director of Education is that 92 Members, who have been projected by Vinod Kumar Yadav and are being relied on by Sri Shiv Nath Yadav is also not in accordance with the registered bye-laws of the parent Society.

24. The bye-laws of the Society according to the Joint Director contains a provision for only 5 founder trustees whereas 92 members have been shown to be the founder trustees which is against the bye-laws. This second reason also could not be explained by Sri Gajendra Pratap as to how the same is perverse. The Joint Director of Education, therefore, found that the aforesaid discrepancies were completely ignored by the Authorized Controller while finalizing the list of 8.12.2008 and hence the election was held on the basis of an incorrect electoral College without deciding the objections in correct perspective.

25. One of the other reasons given by the Joint Director of Education for not accepting the elections of Shiv Nath Yadav is that the Regional Level Committee on 5.10.2007 had further directed that after the elections are held, the District Inspector of Schools shall send the papers to the Regional Level Committee for approval, but the District Inspector of Schools instead of doing so himself recognized the said election which was contrary to the orders of the Regional Level Committee. Resultantly it was found that the elections have not been held in terms of the directions contained in the order dated 5.10.2007 and is contrary to the Scheme of Administration and, therefore, fresh elections deserve to be held by the Authorized Controller in terms of the order dated 8.12.2008. In the opinion of the Court, the order of the Joint Director of Education dated 18.5.2010 for the reasons aforesaid does not suffer from any infirmity and none of the findings could be successfully assailed before this Court. The order dated 18.5.2010, therefore, deserves to be upheld.

26. Sri Gajendra Pratap in order to buttress his submissions further contended that Murlidhar Yadav himself has admitted the list of 255 members in the proceedings initiated at his instance through an F.I.R. in which Ajay Yadav along with others were accused. The said criminal case ended up in acquittal on 20.5.2007. A copy of the said judgment has been brought on record. Having perused the same, the

Court finds that the judgment records that Murlidhar Yadav had turned hostile and what he stated was that he does not know as to who had forged the signatures on the list which was subject matter of investigation by the Police. The aforesaid statement as recorded in the judgment, in my opinion, does not amount to an admission relating to the validity of any members, who are now being claimed to be the valid members in the list of 92 persons presently in dispute. There is no admission accepting any fact relating to the validity or otherwise the enrolment of such members. It appears that the criminal case was sought to be compromised and the only convenient way was that Murlidhar Yadav himself turned hostile. His simple denial as to he did not know who had forged the signature would not amount to any admission on his part about the validity of the list which is being contested through out before the educational authorities.

27. In view of the aforesaid conclusions in the event Shiv Nath Yadav and his faction are aggrieved by the issue relating to membership, then they can seek an appropriate declaration by filing a Civil Suit and not in the proceedings under Article 226 of the Constitution of India.

28. Coming to the fresh elections that have been held pending the interim order of this Court dated 12.7.2010 in Writ Petition No.33850 of 2010, needless to mention that the interim order clearly directed that the elections of the Committee pursuant to the order dated 18.5.2010 shall not be held unless they have already been held.

29. For this, the facts narrated in Writ Petition No.7793 of 2011, deserve to be looked into. Sri Shiv Nath Yadav raised an objection on 11.6.2010 to the notice issued by the Authorized Controller dated 5.6.2010 for holding of elections. This notice was issued by one Bhasker Mishra claiming himself to be the Authorized Controller in the said capacity. It was also alleged that he was unauthorized and on the application moved, the District Magistrate passed an order on 16.6.2010 calling upon the District Inspector of Schools to inquire into the said complaint. It is alleged that the elections were held on 16.6.2010.

30. The District Inspector of Schools on 25.6.2010 sent a communication to the District Magistrate that the Associate District Inspector of Schools, Jaunpur, Mr. Ram Chandra Singh, had received information from the Principal of the institution

that no such elections had been held in the institution and that no person had been given charge as Authorized Controller. It is alleged that the Joint Director of Education, who had passed the order dated 18.5.2010 was some how the other interested in installing the Committee of Sant Lal Yadav and, therefore, he pressurised the District Inspector of Schools to grant recognition to the said election dated 16.6.2010.

31. Sri Gajendra Pratap has relied on the letter dated 5.8.2010 for the same. On 9.9.2010, the Joint Director of Education passed an order for appointment of an Authorized Controller. This was challenged in Writ Petition being Writ Petition No.63598 of 2010 by Shiv Nath Yadav which was dismissed. The Joint Director of Education on 22.11.2010 again wrote a letter for taking action in relation to the elections dated 16.6.2010 The District Inspector of Schools informed him that certain directions have been sought from the Director of Education which are awaited. The Joint Director of Education again passed an order on 21.12.2010 calling upon the District Inspector of Schools to recognize the said elections in spite of having noted the information of the District Inspector of Schools that no such elections had been held in the institution. Ultimately, under the aforesaid directions of the Joint Director of Education, the District Inspector of Schools granted recognition on 20.1.2011.

32. Sri Gajendra Pratap submits that the said exercise undertaken by the Joint Director is also without jurisdiction inasmuch as once the District Inspector of Schools had reported that the elections had not been actually held or by an authorized person then the Joint Director ought to have been placed the matter before the Regional Level Committee and should not have proceeded to pressurise the District Inspector of Schools to recognize a forged elections set up through Bhasker Mishra.

33. Sri P.N. Saxena, learned Senior Counsel for respondent, however, contends that the elections were validly held and as a matter of fact Shiv Nath Yadav was making all efforts to some how the other retain his illegal elections which had already been set aside on 18.5.2010. He submits that Shiv Nath Yadav has absolutely no semblance of claim and once the order dated 18.5.2010 is found to

be valid then fresh elections had to be held and which had actually held on 16.6.2010.

34. Having heard Sri P.N. Saxena and Sri Gajendra Pratap, it is evident that the elections dated 16.6.2010 are a mere eyewash inasmuch as they seem to have been prepared as a consequence of the interim order passed in Writ Petition No.33850 of 2010.

35. There is nothing on record to indicate as to how those elections were conducted and as a matter of fact, it would be a futile exercise to relegate the said issue to the Regional Level Committee for deciding the validity thereof. The Authorized Controller and the Joint Director of Education should have taken care that once the writ petition had been filed and interim orders had been passed then there was no hurry to get the said elections recognized subsequently, that too even on the pestering of the Joint Director of Education. The action of the Joint Director of Education explains his anxiety to somehow get the elections of Sant Lal Yadav recognized which, in the opinion of the Court, was absolutely undesirable. In such a situation, the orders passed by the Joint Director of Education on 21.12.2010 and the consequential order of the District Inspector of Schools dated 20.1.2011 are unsustainable. For the reasons given herein above, the order dated 18.5.2010 passed by the joint Director of Education is upheld. It is further held that the membership of 92 members as set up by Vinod Kumar Yadav was rightly not accepted for the reasons given in the order of the Joint Director of Education dated 18.5.2010. In view of this finding, Writ Petition No.65661 of 2008 also stands automatically disposed of which relates to the membership issue. Writ Petition No.33850 of 2010 stands dismissed. The challenge in Writ Petition No.6427 of 2009 does not survive as the order dated 18.5.2010 has been upheld whereby the elections of Shiv Nath Yadav has been set aside. Accordingly, the Writ Petition No.6427 of 2009 stands disposed of.

36. Finally writ petition No.7793 of 2011 is allowed and the Regional Joint Director of Education is hereby directed to ensure that an Authorized Controller is appointed in the institution and the said Authorized Controller shall now proceed to hold fresh elections in the light of the order of the Regional Level Committee dated

5.10.2007 and the order dated 18.5.2010 passed by the Joint Director of Education within a period of 3 months from today.

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