



A.F.R.

In Chamber

Case :- WRIT - C No. - 38789 of 2016

Petitioner :- C/M Sankatha Prasad Inter College
And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Vijay Kumar
Singh, Jai Singh Yadav

Counsel for Respondent :- C.S.C., Nanhe Lal
Tripathi, Prabhakar Awasthi

Hon'ble Siddhartha Varma, J.

In this writ petition, the order dated 25.7.2016 passed by the Regional Level Committee, Allahabad, has been challenged. The events which fall within a narrow compass culminating in the impugned order would be essential for the adjudication of this case.

There is a registered society by the name of Sankatha Prasad Shiksha Sadan Prabandh Samiti Mawai Ganeshpur, Fatehpur. The society also runs an Intermediate College which is recognized under the Intermediate Education Act, 1921. As per law, the society has its bye-laws and the Intermediate College has its Scheme Of Administration. A perusal of the bye-laws and the Scheme of Administration shows that enrolment of members is done only for the general body of the society and those very

members are the members of the general body of the Intermediate College. The general body of the society elects its members for its Committee of Management and, thereafter, the latter functions for the society as also the Intermediate College.

On 5.12.2010, when an election was held one Sri Jai Bahadur Singh was elected as president and Sri Shattrughan Lal Vishwakarma was elected as the Manager. The elected body which was elected by the Election dated 5.12.2010, on 27.12.2011 claimed that on the enrolment of 9 life members and 11 Ordinary members vide resolution of the general body dated 5.12.2010, the General Body of the Society now had 28 members. The Committee which was elected on 5.12.2010 also came up with an election dated 1.12.2013 on the basis of those 28 members. This election was approved by the Assistant Registrar on 19.12.2013 on the basis of which, the list of office bearers was registered by the Assistant Registrar under Section 4 of the Societies Registration Act on 2.3.2015.

However, when knowledge dawned on the other members regarding the addition of members to the general body, they filed their complaints before the Assistant Registrar and when the Assistant

Registrar on 2.3.2015 had ultimately registered the list of office bearers, the Petitioners filed a writ petition being Writ Petition No. 20789 of 2015 which was allowed on 28.4.2015. The order dated 2.3.2015 passed by the Assistant Registrar was set aside and the Assistant Registrar, by the High Court's order, was directed to finalize the list of the General Body of the Society in accordance with law and after affording an opportunity of hearing to all the stake holders.

The Assistant Registrar, thereafter, on 14.8.2015 passed an order holding that the election dated 1.12.2013 was invalid and finalized a list of 14 members who according to him were there in the General Body of the Society. However, the Assistant Registrar was of the view that Election was to be held under Section 25 (2) of the Societies Registration Act, 1860. Thereafter, the District Inspector of Schools, upon the resolution of the dispute regarding membership, granted permission dated 26.8.2015 to the institution to hold the election of the Committee of management. However, the president of the society on the very next day i.e. 27.8.2015 requested the District Inspector of Schools to get the Election of the Society also held. Thereupon on 28.8.2015, the

District Inspector of Schools appointed one Sri Ramendra Singh, the member of the Government Kanya Uchchattar Madhyamik vidyalaya Chakki, Fatehpur as the Election Officer. The Election Officer, thereafter, finalized the Election programme and published the same in two newspapers, namely, Dainik Jagran and Amar Ujala. Observers etc. were appointed and the election of the committee of management of the Society as also of the college was held on 12.9.2015. On 14.9.2015, the observer submitted his report to the District Inspector of Schools and on 16.9.2015, the District Inspector of Schools approved the Election and also attested the signature of the petitioner no. 2 as the manager.

Aggrieved by the order of the Assistant Registrar dated 14.8.2015, the respondent no. 5 filed a writ petition being Writ Petition No. 50262 of 2015. This writ petition, however, came to be dismissed on 8.9.2015 as the Election was already notified for 12.9.2015. A Special Appeal being Special Appeal No. 742 of 2015 was filed against the order of the High Court dated 8.9.2015 which was also disposed of on 30.10.2015. However, upon the Election results being declared, the respondent no. 5 again filed a writ petition being Writ Petition No. 68194 of 2015 whereby four orders were

challenged.

- I. The order dated 14.8.2015 passed by the Assistant Registrar finalizing the Electoral Roll of 14 members.
- II. The Election dated 12.9.2015 of the Committee of Management of the Society.
- III. The Election dated 12.9.2015 of the Committee of Management of the Institution.
- IV. The order dated 16.9.2015 of the District Inspector of Schools which had approved the Election dated 12.9.2012.

On 14.1.2016, the High Court did not enter into the merits of the impugned orders. However, it granted liberty to the petitioners of the Writ Petition No. 68194 of 2015 to approach the Regional Level Committee. The operative portion of the order dated 4.1.2016 is being reproduced here as under:-

“Accordingly, without going into the merits of the impugned orders as well as the election proceedings, this writ petition is disposed of with liberty to the petitioners to approach the Regional Level Committee and in which event, the Regional Level Committee shall decide the objections preferred by the petitioners, **in accordance with law (emphasis added)**, after due notice and opportunity of hearing to all affected parties. The aforesaid exercise be carried out by the Regional Level Committee, expeditiously and preferably within a period of next six months from the date the objection were preferred before it. The impugned order dated 16.9.2015 as well as the election proceedings

shall abide by the decision taken by the Regional Level Committee.”

When the Regional Level Committee passed an order on 25.7.2016 (order impugned in the writ petition), the instant writ petition was filed. The order impugned was to the following effect:-

- i. The Election of the Committee of Management held on 12.9.2015 was held to be invalid.
- ii. A direction was given to the Assistant Registrar Firms, Societies and Chits, Allahabad, to review his order dated 14.8.2015 whereby he had found that only 14 members were the actual members of the General Body. This exercise had to be completed by the Assistant Registrar within a period of three months of the passing of the impugned order dated 25.7.2016.
- iii. A direction was also given to the District Inspector of Schools to get the Election of the Committee of Management of the Institution held on the basis of the list of members which was to be finalized by the Assistant Registrar.
- iv. The accounts of the institution were in the mean time to be operated by the District

Basic Siksha Adhikari, Fatehpur, singly.

Learned counsel for the petitioner while assailing the order dated 25.7.2016 passed by the Regional Level Committee has made the following submissions:-

(i)The Joint Director of Education/ the Regional Level Committee and the Assistant Registrar Firms, Societies and Chits, Allahabad perform their functions in their own spheres. The two Acts which govern their functioning are two different legislations. The Joint Director of Education/ Regional Level Committee draw their powers from the U.P. Intermediate Education Act, 1921, read with the Government Order dated 19.12.2000. The Joint Director of Education was required to decide a dispute in regard to a Committee of Management of an Intermediate College governed by the provisions of the Intermediate Education Act. By means of the Government Order dated 19.12.2000 it was provided that the dispute pertaining to the Committee of Management of an Intermediate College would be decided by the Regional Level Committee. In effect, therefore, he submitted that the Regional Level Committee was required to

decide a dispute pertaining to a Committee of Management of an Institution governed by the Intermediate Education Act, 1921. While deciding the question of election of Committee of Management, however, the Regional Level Committee incidentally could have gone into the validity of the Electoral Roll which was used for holding the Election. However, he submits that if by virtue of the bye-laws of the society and the Scheme of Administration of an Intermediate College, the Committee of Management of the Society and the Intermediate College (run by the society) are one and the same then the Assistant Registrar who exercises his powers under the Societies Registration Act, 1860, alone could deal with the list of the General Body of the Society under Section 4-B of the Societies Registration Act. He submits that whenever a dispute with regard to the list of the General Body of a society is raised then under Section 4-B of the Societies Registration Act, 1860, the dispute pertaining to the said list was required to be decided by the Assistant Registrar under the provisions of the Section 4-B of the Societies Registration Act, 1860. Learned counsel to

bolster his submission has relied upon **2018 (11) ADJ 586 (T.P. Singh (En. No. 2473), Senior Advocate vs. Registrar/Assistant Registrar, Firms Societies & Chits, Teliyarganj and others)**).

Learned counsel further submitted that a dispute under Section 4-B of the Societies Registration Act could not be appealed against. However, if the Prescribed Authority under Section 25 of the Societies Registration Act had to decide any dispute then he could also have incidentally looked into the electoral roll also.

Therefore, the learned counsel for the petitioner submits that the Regional Level Committee which functioned as per the Government Order dated 19.12.2000 could not have looked into the order passed by the Registrar dated 14.8.2015 and also could not have directed the Registrar to review his order. Since the learned counsel for the petitioner relied upon the provisions of the Government Order dated 19.12.2000, the same is being reproduced here as under:-

“शासन स्तर पर निरन्तर यह शिकायते प्राप्त हो रहीं है कि माध्यमिक शिक्षा अधिनियम, 1921 एवं वेतन वितरण अधिनियम, 1971 द्वारा प्राप्त अधिकारों का कतिपय अधिकारियों द्वारा दुरुपयोग किया जा रहा है, इसलिए

मण्डलीय संयुक्त शिक्षा निदेशक की अध्यक्षता में एक समिति का गठन किया जाता है जिसमें मण्डलीय उप शिक्षा निदेशक तथा सम्बन्धित जनपद के जिला विद्यालय निरीक्षक सदस्य होंगे। यह समिति निम्नलिखित प्रकरणों पर विचार करेगी।

1. प्रबन्धकों के हस्ताक्षर प्रमाणित करना।
2. वेतन वितरण अधिनियम के अन्तर्गत साधिकार नियंत्रक की नियुक्ति।
3. समस्त प्रकार के प्रबन्धकीय विवाद।
4. शिक्षकों के वरिष्ठता सम्बन्धी विवाद।
5. वेतन अनुमन्यता से सम्बन्धित समस्त प्रकरण न्यायालयी प्रकरणों को छोड़कर।

यह समिति उक्त प्रकरणों का परीक्षण करने के उपरान्त अपनी संस्तुति उस अधिकार को प्रस्तुत करेगी, जो अधिनियमों के अन्तर्गत इन कार्यों को करने के लिए अधिकृत है। इस समिति की माह में दो बार नियमित रूप से बैठकें आयोजित होंगी। न्यायालयी प्रकरणों पर उक्त समिति अपनी संस्तुति शिक्षा निदेशक को प्रेषित करेगी, जिनकी आख्या एवं संस्तुति प्राप्त होने पर शासन द्वारा कार्यवाही हेतु निर्देश दिया जाएगा।”

(ii) Learned counsel for the petitioner further submitted that the Regional Level Committee could not have sat in appeal over the order of the Assistant Registrar. He submitted that the order of the Assistant Registrar, having not been challenged, had attained finality and the Regional Level Committee could not have directed that Assistant Registrar to review his order dated 14.8.2015. In this regard, learned counsel for the petitioner relied upon a judgement of this Court reported in **1988 UPLBEC 732 (Committee of Management of Hindu Inter College, Kosi Kalan vs. Regional Deputy Director of Education,**

Agra Region, Agra and Others.

(iii) Learned counsel for the petitioner further submitted that simply because the Court had directed the parties to approach the Regional Level Committee it did not mean that it had bestowed the Regional Level Committee with the power to arrogate to itself a jurisdiction which it did not have. In this regard, learned counsel for the petitioner relied upon **1993 ACJ 1293 (Udit Narain Kshetriya High School Padrauna Deoria through its Secy. Sri Ram Pratap Narain Singh and Other v. District Magistrate, Deoria and 2005 (7) SCC 791 (Harshad Chiman Lal Modi v. DLF Universal Ltd. And another)**. He submitted that the Regional Level Committee had to decide the matter in accordance with law and if the law did not permit it to decide the issue as was raised before it then it ought to have kept its hands away.

(iv) Learned counsel for the petitioner further submitted that the High Court had by its order only directed the Regional Level Committee to decide the dispute in accordance with law. It had not bestowed any jurisdiction on the Regional Level Committee.

(v) Learned counsel for the petitioner further submitted that even on merits the order of the Assistant Registrar dated 14.8.2015 could not be interfered with as it had interpreted resolution dated 5.12.2010 by which resolution no members had been enrolled but a resolution was there that in future they would be enrolled. He submitted that after the enrolment of the new members there was also no fresh resolution accepting the fresh members as regular members. In this regard, learned counsel for the petitioner relied upon **2011 (29) LCD 272 (C/M, Sarvodaya Post Graduate College vs. State of U.P. And Others)**.

(vi) Learned counsel had also submitted that when the Election of the Society alone had to be looked into then it mattered little that it was the District Inspector of Schools who monitored the Elections.

The counsel for the respondent no. 5, however, in reply, made the following submission. He had also submitted his written arguments:-

(I) The order dated 14.8.2015 could have been looked into by the Regional Level Committee as the order dated 4.1.2016 passed by this Court was passed on the basis of consent and,

therefore, a jurisdiction vested in the Regional Level Committee to look into the order dated 14.8.2015 which was passed by the Assistant Registrar. This was the order which was challenged in the writ petition being Writ Petition No. 68194 of 2015. When once the order of the Assistant Registrar Firms, Societies and Chits, Allahabad had come into existence and had not been interfered with by the Court and in fact when the Court had relegated the parties to approach the Regional Level Committee then the Regional Level Committee alone could have looked into the orders which were impugned in Writ Petition No. 68194 of 2015. The respondent no. 5 relied upon **2014 (4) ESC 2341 (Committee of Management, Public Inter College, Mandaripur, Bijnor vs. State of U.P. And Others)** to support his case.

(ii) Learned counsel for the respondent no. 5 further submitted that in view of the order passed on 30.10.2015 in Special Appeal No. 742 of 2015 and in view of the order dated 4.1.2016 passed in Writ Petition No. 68194 of 2015 the order passed by the Regional Level Committee on 25.7.2016 could not be

interfered with.

(iii) The respondent no. 5 had drawn the attention of the Court to the Resolution dated 5.12.2010 and had submitted that the Resolution dated 5.12.2010 very clearly had resolved to enrol fresh members. Learned counsel for the respondents read out the Resolution No. 3(2) dated 5.12.2010 and, therefore, the same is being reproduced here as under:-

“2. श्री शिव राम द्विवेदी ने प्रस्ताव रखा कि हमारी समिति में अधिकांश वयोवृद्ध एवं मात्र साक्षर सदस्य हैं इसलिए भविष्य में नव युवक शिक्षित एवं निर्विवादित सदस्य रखे जाने चाहिए सदर में प्रस्ताव का स्वागत करने हुए भविष्य में प्रस्ताव के अनुसार ही सदस्य बनाये जाने का निर्णय लिया।

अन्य कोई प्रस्ताव न जाने के कारण अध्यक्ष महोदय ने आज ही कार्यवाही के समापन की घोषणा की।”

(iii) He submits that “भविष्य में प्रस्ताव के अनुसार ही सदस्य बनाये जाने का निर्णय लिया” was such a statement in the Resolution which gave the General Body a power to enrol members then and there. Learned counsel for the respondent also drew the attention of the Court with regard to the method in which earlier members were enrolled and, therefore, submitted that the writ petition be dismissed.

Having heard the learned counsel for the petitioner and learned counsel for the respondent no. 5, this Court is of the view that the order dated 25.7.2016 cannot be sustained in the eyes of law. The Joint Director of Education/Regional Level Committee and the Assistant Registrar operated in different fields and under different enactments. The Regional Level Committee could have looked into a dispute, had it arisen between the Committee of Management of an Intermediate College governed by the provisions of the Intermediate Education. However, the Assistant Registrar could not have done so. The Assistant Registrar could have only looked into the register of members under Section 4B of the Societies Registration Act, 1860. If there was any dispute with regard to the management, then he could have referred the same to the Prescribed Authority under Section 25 of the Societies Registration Act. Furthermore, when the order dated 14.8.2015 was not challenged and, when by the order dated 4.1.2016 passed in Writ Petition No. 68194 of 2015 the Regional Level Committee was asked to look into the grievance of the petitioner of that writ petition in accordance with law then the Court had not bestowed the Regional Level Committee the jurisdiction to sit in appeal

over the order dated 14.8.2015 passed by the Assistant Registrar. The High Court had also not bestowed powers on the Regional Level Committee to the extent that it could have directed the Registrar to review his order dated 14.8.2015. When the writ petition did not adjudicate upon the order 14.8.2015 then the only irresistible conclusion was that the order dated 14.8.2015 had attained finality. Further, this Court is of the view that when the High Court by its order dated 14.1.2016 directed the parties to approach the Regional Level Committee then it had not bestowed any power on it and when the Regional Level Committee was adjudicating the matter it had to, in the first instance, see if it had any jurisdiction to look into the controversy as was placed before it. The Regional Level Committee had to decide the matter in accordance with law.

Further, on merit, I find that the Resolution dated 5.12.2010 was only to enroll members in the future. Still further, I am of the view that as per the bye-laws if any new member had to be enrolled the General Body was required to pass a resolution accepting those members. Since no meeting had taken place as per the resolution dated 5.12.2010 it has to be presumed that the members enrolled on 5.12.2010 were not in fact members under any

resolution.

In view of what has been observed above, the order 25.7.2016 passed by the Regional Level Committee Allahabad cannot be sustained and is set aside.

The writ petition is allowed.

Order Date :- 8.5.2020

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