

Neutral Citation No. - 2023:AHC:173335

A.F.R.

Court No. - 10

Case :- WRIT - C No. - 15412 of 2023

Petitioner :- Committee Of Management Intermediate College

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ashish Kumar Singh, Ajay Kumar Singh,
Tejas Singh

Counsel for Respondent :- C.S.C., Sankalp Narain

connected with

Case :- WRIT - C No. - 11662 of 2023

Petitioner :- Shiv Mohan Patel And 17 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Abhishek Kumar Saroj, Prabhakar Awasthi

Counsel for Respondent :- C.S.C., Hritudhwaj Pratap Sahi,
Samarath Singh, Sankalp Narain

and

Case :- WRIT - C No. - 21573 of 2023

Petitioner :- C/M Of Intermediate College And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Hritudhwaj Pratap Sahi, Sankalp Narain

Counsel for Respondent :- C.S.C, Ajay Kumar Singh, Ashish
Kumar Singh, Tejas Singh

Hon'ble Kshitij Shailendra, J.

1. These three writ petitions were heard at length on 24.08.2023 and since no time was left to dictate the judgment, the matters were placed today for summing up of the arguments of both the sides and also for dictation of the judgment. Today also the matters have been heard for about two hours.

The Challenge

2. Writ C No. 15412 of 2023 has been filed by the Committee of Management Intermediate College, Babusarai, District Bhadohi challenging the order dated 16.12.2022 whereby the Assistant Registrar, Firms, Societies and Chits, Varanasi has declared 29 members of the General Body as valid under section 4-B of the Societies Registration Act, 1860. The same order has been assailed by certain members by filing Writ C No. 11662 of 2023. The third writ petition No. 21573 of 2023 has been filed by the Committee of Management, which has been elected pursuant to the elections held on 01.06.2023 and the first order under challenge is dated 02.06.2023, whereby the Joint Director of Education, Bhadohi has summoned the record of the District Inspector of Schools, Bhadohi on the ground that two rival sets of elections have been asserted by the parties and, therefore, as per section 16 A (7) of the U.P. Intermediate Education Act, 1921, the District Inspector of Schools should send the entire record of rival elections with specific report so that the matter may be decided as per Government Order dated 19.12.2000. Another order under challenge is dated 02.06.2023, whereby the District Inspector of Schools, Bhadohi has referred the matter to Regional Level Committee, in furtherance of order dated 02.06.2023 passed by the Joint Director of Education.

Case and Contention of Petitioners of Writ C Nos. 15412 of 2023 & 11662 of 2023

3. The submissions of Shri Ajay Kumar Singh, learned counsel appearing for the petitioners in Writ C No. 15412 of 2023 and Shri Prabhakar Awasthi, learned counsel appearing for petitioners in Writ C No. 11662 of 2023 are almost common and it has vehemently been argued by both of them that the Society was established in 1967 and in the Institution, which is run by the

Society, one Daya Prasad Baranwal remained elected Manager from 1973 till 1992 and, after his death, his son, namely, Anil Kumar Baranwal became Manager in 1992 and he remained as such till 2014.

4. The case of the petitioners is that one Shri Ram Rekha Shastri, who happened to be Principal of the Institution, was going to retire on 30.06.2014 and, just before his retirement, he manipulated certain things and submitted a list of 29 members before the Assistant Registrar for the purposes of its registration. The said list, according to the petitioners, is fabricated and also the letter dated 25.03.2014 along with which it was submitted. It has been vehemently argued that on the letter dated 25.03.2014, signatures of Anil Kumar Baranwal were fabricated and even his forged affidavit dated 29.05.2014 was submitted before the Assistant Registrar, which matter was complained of by the petitioners before the Joint Director of Education with supporting material and also before the Assistant Registrar and though the Joint Director of Education called upon Ram Rekha Shastri to answer the issues raised, the said matter is still pending and has not been settled. It is further contended that the petitioners' Committee enrolled certain members in the month of June, 2014, exact number being 74 at some places and 79 at some other places.

5. From perusal of the record, I find that on numerous occasions, the dispute regarding valid membership has engaged attention of this Court. At one stage, the District Inspector of Schools granted permission to Yogesh Chandra Mishra to hold elections but later on, by order dated 18.06.2014, the said order was recalled by the District Inspector of Schools. Consequently, Writ C No. 33694 of 2014 (Yogesh Chandra Mishra and 9 others vs State

of U.P. and 3 others) was filed, which was disposed of by order dated 04.07.2014 directing the Joint Director of Education to determine the electoral college of the Institution, either himself or through an officer appointed by him.

6. It is contended that the District Inspector of Schools, by order dated 29.05.2015, determined the valid electoral college finding 74 members as valid for the purposes of holding elections and the list was finalized. Yogesh Chandra Mishra and 9 others challenged the said decision by filing Writ C No. 36602 of 2015 (Yogesh Chandra Mishra and 8 others vs State of U.P. and 4 others), which was disposed of by order dated 06.07.2015, whereby the parties were left at liberty to approach the Regional Level Committee for redressal of their grievances. Special Appeal No. 477 of 2015 (Yogesh Chandra Mishra and 8 others vs State of U.P. and 4 others) filed against the said order dated 06.07.2015 was also disposed of by the Division Bench by order dated 27.07.2015, whereby the Regional Level Committee was directed to conclude the proceedings within one month.

7. It is further contended that in pursuance of the aforesaid orders, the Regional Level Committee decided the dispute by an order dated 09.10.2015 attaching finality to the list of 74 members. Against the order dated 09.10.2015, Yogesh Chandra Mishra and 8 others filed Writ C No. 60481 of 2015, which was allowed, in part, by order dated 18.11.2015 setting aside the order of Regional Level Committee and the Committee was directed to pass a fresh order in accordance with law.

8. The case of the petitioners is that the Regional Level Committee again decided the matter in their favour on 20.05.2016, which was again assailed by Yogesh Chandra Mishra and 8 others

by filing Writ C No. 24802 of 2016, in which an interim order was passed by this Court on 22.11.2016 staying the effect and operation of the decision of Regional Level Committee until further orders and payment of salary to the teachers and employees of the Institution was directed to be made by way of single hand operation of accounts. The interim order dated 22.11.2016 was assailed before the Special Appellate Bench by filing Special Appeal No. 790 of 2016 (C/M Intermediate College, Babu Sarai vs State of U.P. and 12 others), which was disposed of by order dated 15.12.2016 with a direction to the District Magistrate or Additional District Magistrate to conduct fresh elections of the Committee of Management. A direction was also issued to the effect that these officers shall decide the question as to whether the disputed 52 new members are entitled to continue as members and could be allowed to participate in the elections. The elections were not stayed by the Division Bench and the appellant-Committee of Management, i.e. petitioners of Writ C No.15412 of 2023, were allowed to function till newly elected body takes charge. Writ C No. 24802 of 2016 was also disposed of by the Division Bench.

9. It is further contended that pursuant to the order of Special Appellate Bench, the District Magistrate passed a detailed order dated 13.02.2017 again holding 74 members as valid on the basis of proceedings relied upon by the petitioners in relation to different dates of June, 2014, particularly, the proceedings of meeting dated 28.06.2014, in which the bank drafts of the members were allegedly placed and were accepted by the concerned Committee. It is further contended that pursuant to the order dated 13.02.2017, the petitioners Committee of Management held elections on 19.03.2017, which were approved and the signatures of Anil Kumar Baranwal were also attested on 20.03.2017. The said elections and

attestation of the signatures have been challenged by the contesting-respondent by filing Writ C No. 29385 of 2017, which is pending and there is no interim order therein.

10. It has also come on record that the petitioners-Committee of Management held another elections on 17.04.2022, which were disapproved by the District Inspector of Schools on 26.04.2022 and, thereafter, an order of single hand operation was passed on 11.05.2022. By that time, the term of the elections of 2017 was admittedly over. The petitioners challenged the aforesaid elections dated 17.04.2022 and orders dated 26.04.2022 and 11.05.2022 by filing Writ C No. 16556 of 2022 (C/M of Intermediate College vs State of U.P. and 6 others), which was disposed of by order dated 25.07.2022 with the following operative portion:-

*“Now the Court is coming to the electoral college, which is required to hold the election. Earlier Division Bench has given right to aggrieved party to file objection against the list so finalized by District Magistrate, but not to wait the decision upon objection, if any filed. It is not in dispute that last election was held upon the electoral college finalized by District Magistrate vide order dated 13.02.2017, which is under challenge in Writ-C No. 29385 of 2017 having no interim order. **Therefore, considering the mandate of Division Bench, this Court further directs respondent no. 4 to hold fresh election within two months from the date of production of certified copy of this order alongwith electoral college either duly approved by respondent no. 7 or electoral college earlier finalized by District Magistrate vide order dated 13.02.2017. In all eventuality election shall take place within two months from the date of production of certified copy of this order.**”*

11. It is clear from the aforesaid order that taking into consideration the mandate of the Division Bench, the co-ordinate Bench directed the District Inspector of Schools to hold fresh elections within two months along with determination of electoral college, either duly approved by the respondent No. 7 of the writ petition or the electoral college or earlier finalized by the District Magistrate by order dated 13.02.2017.

12. In the order dated 25.07.2022, the co-ordinate Bench also recorded that as per the Scheme of Administration, the term of Committee of Management is five years and one month, which is undisputedly over, therefore, outgoing Committee of Management cannot be permitted to hold fresh elections and it is only the District Inspector of Schools or Authorized Controller, appointed by him, who is empowered to hold fresh elections as per law.

13. In the meantime, respondents filed Writ C No. 28466 of 2022 (Yogesh Chandra Mishra and 15 others vs State of U.P. and 5 others) seeking a direction from this Court that finality be attached to list of 29 members of General Body, however this Court, while disposing of the writ petition on 26.09.2022, observed that the proceedings under section 4-B of the Societies Registration Act, 1860 for registration of list of members were pending before the Assistant Registrar, therefore, a direction was issued to the Assistant Registrar to decide the said proceedings.

14. It is contended by learned counsel for the petitioners that regarding forgery and fabrication committed by Shri Ram Rekha Shastri in the year 2014 when list of 29 members was fraudulently finalized, the proceedings were pending before the Assistant Registrar and the petitioners had requested the Assistant Registrar to nullify the said fabricated proceedings but till today, the same

have not been finalized and, in the meantime, by order dated 29.12.2022, finality has been attached to the very list of 29 members relied upon by the respondents.

15. It has also come on record that the petitioners held elections on 18.09.2022 pursuant to some direction issued by the District Inspector of Schools. Even approval was granted by the District Inspector of Schools to such elections on 20.09.2022. The said elections were assailed by Yogesh Chandra Mishra and 15 others by filing Writ C No. 3997 of 2023, which was allowed by this Court by order dated 15.03.2023 taking note of the previous order dated 25.07.2022 passed in Writ C No. 16556 of 2022 and the approval granted by the District Inspector of Schools to the elections held by the petitioners was set aside. **The District Inspector of Schools was directed to ensure faithful compliance of the order dated 25.07.2022 passed in Writ C No. 16556 of 2022.**

16. Even thereafter, two sets of elections were held, one by the petitioners on 23.05.2023 and other by the contesting respondents on 01.06.2023. Reference has also been made to the proceedings of a civil suit being Original Suit No. 319 of 2022 (Nirbhay Kumar and others vs Assistant Registrar and others) filed by certain members against the Assistant Registrar and few others, in which District Inspector of Schools has taken a stand in his written statement that 74 members were valid.

17. In sum and substance, the submission of learned counsel for the petitioners in Writ C Nos. 15412 of 2023 and 11662 of 2023 is that at every stage of proceedings, list of 74 members has been found to be valid and, therefore, any claim made by respondents on the basis of 29 members has no legs to stand on. It has further been argued that the only finding recorded by the Assistant Registrar is

that since the list of 29 members was submitted under the joint signatures of Yogesh Chandra Mishra in the capacity of President and Anil Kumar Baranwal in the capacity of Manager, the same is entitled to be approved as per section 4-B of the Societies Registration Act, 1860. It has further been argued that though certain infirmities have been recorded in relation to the proceedings relied upon by the petitioners in connection with the submission of bank drafts etc. and non-production of original records, identical findings have been recorded against the respondents also that there was no record produced in relation to enrollment of 29 members and that a register was prepared afresh and was placed before the Deputy Registrar, showing enrollment of 29 members. The entire thrust is on the aspect that the proceedings placed on the basis of fabrication and forgery, in which Ram Rekha Shastri was instrumental, have been given a seal of approval, which could not be done, particularly when the proceedings in relation to the said fabrication have not yet been finally decided.

18. It has further been argued that even the respondents do not stick to their stand and some times they press list of 29 members, but before the Deputy Registrar when the said enrollment was opposed, the respondents came up with the stand that out of 29 members only 22 members are valid and list of such 22 valid members be registered. The submission ,therefore, is that the operative portion of the order impugned is contrary to the observations recorded in the body of the order and, hence, the same is liable to be set aside. It has been additionally argued by Shri Prabhakar Awasthi that his clients were not provided any opportunity in the matter before passing the order impugned dated 16.12.2022 and that the determination is in teeth of section 4-B of the Societies Registration Act, 1860.

19. On the point that any Administrative Officer exercising quasi judicial powers or administrative power must record a cogent and valid reasoning while passing an order, and on the point of power of this Court to judicially review any such order, learned counsel for the petitioners has placed reliance upon the following authorities:

- (i) ***Central Industrial Security Force and others vs Abrar Ali***, reported in 2017 (4) SCC 507;
- (ii) ***Krishna Rice and Dal Mill and another vs Food Commissioner/Food Secretary and others***, reported in 2002 (3) AWC 2466;
- (iii) ***The Secretary and Curator, Victoria Memorial Hall vs Howrah Ganatantrik Nagrik Samity and others***, reported in AIR 2010 SC 1285;
- (iv) ***Union of India and others vs P. Gunasekaran***, reported in 2015 (2) SCC 610;
- (v) ***S. Sreesanth vs Board of Control for Cricket in India and others***, reported in 2019 (4) SCC 660.

Case and Contention of Contesting Respondents

20. On the other hand, Shri G.K. Singh, learned Senior Advocate assisted by Shri Sankalp Narain, learned counsel for the contesting respondents, in opposition to both the writ petitions, has argued that any stand taken by the petitioners in support of enrollment of additional members over and above 29 members is contrary to the registered bye-laws of the Society. He has referred to clauses 3 and 6 of the bye-laws, which provide that for the purpose of membership, Bank Drafts of Rs. 11,000/- and 5100/- depending upon the categories of members, would be obtained in the name of the Manager and as per clause 6-E, such drafts shall be

placed in the meeting of the Committee of Management and, once the same are accepted and approved and substantiated by the General Body, it is only thereafter that the concerned applicants can be enrolled as members. He has also referred to clause 9 of the bye-laws, which says that the term of the Committee of Management elected is five years, but the term of every office bearer elected shall remain valid until his successor takes charge. By placing reliance upon the aforesaid bye-laws, the order of District Magistrate dated 13.02.2017 has been referred to, which is based upon the stand taken by the petitioners in relation to the enrollment of some members in the meeting dated 28.06.2014.

21. A copy of counter affidavit filed in the aforesaid pending Writ C No. 29385 of 2017 (Yogesh Chandra Mishra and 9 others vs State of U.P. through Principal Secretary, Secondary Education, Govt. of U.P. Lucknow) has also been placed before the Court which is taken on record. The said counter affidavit was filed on behalf of the petitioners of Writ C No. 15412 of 2023, in paragraph No. 56 whereof, reliance was placed by the petitioners on the minutes of meeting dated 28.06.2014 and the rest stand taken by the other side was denied. The minutes of the said meeting dated 28.06.2014 have been annexed as Annexure No. SCA-6 to the supplementary counter affidavit filed in Writ C No. 15412 of 2023, which contain proceedings for granting approval to addition of new 47 members so as to carry the membership to the number 79.

22. It has further been argued by Shri G.K. Singh that the present writ petition has been filed by placing reliance upon the minutes of meeting dated 29.06.2014, which has been shown to have been jointly conducted by the members of the General Body, Committee of the Society and Committee of the College, in which

previous proceedings dated 20.05.2014 have been approved and by making reference of enrollement of certain new members, the meeting is shown to have been concluded. In this regard, reliance has been placed upon a judgment of Division Bench of this Court in the case of *Ajab Singh vs District Inspector of Schools, Meerut and others* reported in 1980 UPLBEC 308, in which this Court has held that if outsiders take part in the meeting, the meeting stands vitiated.

23. Shri G.K. Singh has, with reference to the stand of forgery pressed by the petitioners, also referred to an affidavit of Anil Kumar Baranwal forming part of Annexure No. SA-4 to the supplementary affidavit filed by the petitioners in Writ C No. 15412 of 2023, in paragraph No. 2 whereof, it has been deposed by Anil Kumar Baranwal that he had submitted a list of valid 79 members on 27.06.2014. Shri Singh, therefore, submits that on the date when Anil Kumar Baranwal claims to have submitted the list i.e. on 27.06.2014, neither meeting of 28.06.2014 nor of 29.06.2014 had taken place and, therefore, the entire stand of the petitioners is fallacious. He has also referred to various Bank Drafts as well as receipts of making deposit of membership fees and argued that that by an advertisement published in two newspapers, period in between 21.06.2014 and 27.06.2014 was specified for making deposit of membership fees and, during the said intervening period, the said Bank Drafts were issued and the same were deposited by the petitioners in an account, which was newly opened on 20.06.2014.

24. Certain discrepancies in the receipt numbers have also been pointed out in co-relation with the dates of issuance of receipts and Bank Drafts. The submission is that once, as per the petitioners

themselves, the meeting was held on 28.06.2014 and then on 29.06.2014, the submission of list by the petitioners on 27.06.2014, i.e. prior to holding of such meetings, was contrary to the bye-laws as the drafts were never placed before the Committee of Management and they were encashed by making deposit in a new bank account, which was opened on 20.06.2016. He has referred to dates of deposit of such Bank Drafts, i.e. 25.06.2014 and 27.06.2014 with few other interesting details of various Bills of 02.07.2014 describing credit of Rs. 5100/-, the same amount which is fixed as membership fees. He, therefore, submits that even if, any of the meetings held on 28.06.2014 or 29.06.2014 is taken to be a valid meeting, admittedly there were no Bank Drafts before the Committee in the said two meetings and, hence, any enrollment made contrary to the bye-laws, as already referred to herein-above, invalidates addition of members. Shri Singh further submits that paragraph 19 of the supplementary affidavit contains an admission of the petitioners of Writ C No. 15412 of 2023 to the effect that list of 74 members includes 26 names out of 29 given by the respondent Yogesh Chandra Mishra and there is a dispute regarding only three persons, namely, Ram Rekha Shastri and his two sons, namely, Suyash Pathak and Utkarsh Pathak. The submission, therefore, is that once before this Court, **after various rounds of litigations, challenging the determination of valid membership, factum of 26 members has been admitted, no objection can be raised regarding validity of the list of at least 26 members and the dispute with regard to addition of members has to be decided on the basis of the material placed, particularly various meetings held by the petitioners.**

Case and Contention of Petitioners of Writ C No. 21573 of 2023

25. By Writ C No. 21573 of 2023, Committee of Management of the College elected pursuant to the elections dated 01.06.2023 has assailed the validity of orders dated 02.06.2023 and it has been argued that no body approached the Joint Director of Education and though, there were two sets of elections, in which on the one hand, one Ganeshji Baranwal claims to have been elected and on the other hand, Yogesh Chandra Mishra claims to have been elected, the elections relied upon by Ganeshji Baranwal were held contrary to the directions issued by the Writ Court in the order dated 15.03.2023 passed in Writ C No. 3997 of 2023 and also the order dated 25.07.2022 passed in Writ C No. 16556 of 2022, inasmuch as the ultimate direction of this Court was that elections have to be held by the District Inspector of Schools and not by outgoing Committee. Shri G.K. Singh has referred to the election proceedings, in which Yogesh Chandra Mishra is said to have been elected and the letter dated 01.06.2023 sent by the Observer appointed by the District Inspector of Schools has been shown to the Court, as Annexure No. 18 to the writ petition and it has been argued that the only valid elections, as per the directions of the Court, are dated 01.06.2023. Regarding validity of the orders impugned dated 02.06.2023, it has been submitted that the respondents appear to have moved some application before the District Inspector of Schools, a copy whereof was addressed to the Joint Director of Education as per paragraph No. 2 of the order passed by him and, by referring to the said endorsement, Joint Director of Education has himself summoned the record of the District Inspector of Schools for deciding the dispute as per the Government Order dated 19.12.2000, although the said Government Order does not contemplate any such reverse

procedure, rather the correct procedure is that once two sets of elections are produced or placed before the District Inspector of Schools, and he finds it genuinely necessary to refer the matter to the Joint Director of Education, it is the District Inspector of Schools, who shall make a reference.

26. Having heard the learned counsel for the parties in all the writ petitions, I find that the stand of the petitioners in Writ C Nos. 15412 of 2023 and 11662 of 2023 is based upon the alleged fabrication committed by Ram Rekha Shastri. There is no pleading in Writ C No. 11662 of 2023 regarding any such fabrication made by Ram Rekha Shastri. Neither Ram Rekha Shastri nor his two sons Suyash Pathak and Utkarsh Pathak are parties to any of the writ petitions. Moreover, the thrust is upon fabrication made and reported in the year 2014 and the submission is that the said proceedings have not yet been finalized.

27. The Court, in the present proceedings, is concerned with the validity of the order dated 16.12.2022 challenged in Writ C Nos. 15412 of 2023 and 11662 of 2023 and the orders dated 02.06.2023 challenged in Writ C No. 21573 of 2023. Considering the fact that the enrollment of new members pursuant to the submission of Bank Drafts in between 21.06.2023 and 27.06.2023 and submission of list before the Deputy Registrar on 27.06.2023 as per the affidavit filed by Anil Kumar Baranwal, by which time, admittedly, none of the meetings dated 28.06.2014 and 29.06.2014 had taken place, I find that the Bank Drafts were never placed before the Committee of Management and were deposited in Bank on 25.06.2014 and 27.06.2014. Even otherwise, the term of Committee of Management was already over on 11.06.2014 and continuance of the term of any office bearer as per the bye-laws

would not *ipso facto* mean that the Committee was functional. The contradictory stand taken by the petitioners in relation to the meetings dated 28.06.2014 and 29.06.2014 by making reference to various pleadings and record of the proceedings, persuades this Court to form an opinion that the petitioners have never stuck to their stand in relation to the fresh enrollment of members. Before the Court, there is no such proceedings to which any clear sanctity be attached insofar as fresh enrollement is concerned, and there may be some reservations with regard to enrollement of Ram Rekha Shastri and his two sons Suyash Pathak and Utkarsh Pathak and there may be some force in the stand taken by the petitioners that during the continuance of his principal-ship, Ram Rekha Shastri was not competent to become a member in the General Body of the Committee.

28. As regards various submissions with regard to fabrication etc., I find that neither Deputy Registrar nor District Inspector of Schools nor District Magistrate nor Joint Director of Education nor Regional Level Committee has any competence to determine the factum of forgery as it is the sole prerogative of the civil court to examine it and record findings on the forgery aspects. This Court, in exercise of powers under Article 226 of the Constitution of India cannot record any finding as to whether signatures of anyone were genuinely made on any document or that the same were fabricated. There is already a civil suit being Original Suit No. 319 of 2022 said to be pending in relation to the dispute. Therefore, in view of the admission made by the petitioners in relation to 26 members as noted above, irrespective of the fact that findings recorded in the order impugned dated 16.12.2022 are contradictory in some respect, there appears to be no dispute at least regarding 26 members and enrollment of three members, i.e. Ram Rekha Shastri,

Suyash Pathak and Utkarsh Pathak may be invalid but in absence of three persons as parties to the proceedings no specific finding can be recorded in this regard.

29. Once, I find that meetings of 28.06.2014 and 29.06.2014 cannot attach sanctity and validity to the enrollment of members as per the bye-laws and as per the stand taken by the petitioners themselves, and that elections of 01.06.2023 were held by the District Inspector of Schools by appointing Observer in view of the two orders passed by this Court, one dated 15.03.2023 passed in Writ C No. 3997 of 2023 and other dated 25.07.2022 passed in Writ C No. 16556 of 2022, the order of Joint Director of Education dated 02.06.2023 is clearly unsustainable.

30. Regarding making of reference by the District Inspector of Schools by the order impugned dated 02.06.2023, it has been argued that once the District Inspector of Schools himself had held elections of the petitioners by appointing Observer as per directions issued by this Court, making a reference mechanically to Joint Director of Education or the Regional Level Committee is not according to law. Reliance in this regard has been placed on a judgment of Division Bench of this Court dated 06.07.2023 in Special Appeal Defective No. 335 of 2023 (C/M Dayanand Inter College and another vs State of U.P. and 5 others) on the point that reference cannot be made mechanically but can be made only when there is some genuine dispute.

31. Once, I find that the petitioners' elections dated 01.06.2023 have been held pursuant to the directions issued by this Court on two occasions while the order of Joint Director of Education dated 02.06.2023 is found to be without jurisdiction, the

reference made by the District Inspector of Schools also appears to be unjustified.

32. As regards determination of Electoral College by order impugned dated 16.12.2022, the petitioners may approach civil court as per section 9 of the Code of Civil Procedure, 1908 read with sections 31 and 34 of the Specific Relief Act, 1963 for determination of their rights, if any, as the entire case is based upon alleged fabrication and forgery in various documents and neither any administrative officer nor this Court can adjudicate such issue as it requires dealing with oral and documentary evidence and even expert opinion as per section 45 of the Evidence Act, if need arises.

33. Section 31 of the Specific Relief Act, 1963 may be invoked before the Civil Court when any instrument, void or voidable, if left outstanding, may cause serious injury to any person and, under such circumstances, the said instrument may be adjudged as void through a decree of the Civil Court. As per section 34 of the Specific Relief Act, any person claiming any declaration as to his character may obtain a decree from the Civil Court in that regard. In any such proceedings, external aid in the form of expert opinion under section 45 of the Indian Evidence Act, 1872 can always be taken by the Court. For a ready reference, Sections 31 and 34 of the Specific Relief Act, 1963 are being quoted herein-below:

“31. When cancellation may be ordered.- (1) Any person against whom a written instrument is, void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908, the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books of the fact of its cancellation.”

“34. Discretion of court as to declaration of status or right. -Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

Section 45 of the Indian Evidence Act, 1872 is quoted herein-below:

“45. Opinions of experts.- When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts.

Such persons are called experts.”

34. Writ C Nos. 15412 of 2023 and 11662 of 2023 are, accordingly, **dismissed** with the aforesaid liberty and Writ C No. 21573 of 2023 is **allowed**.

35. The orders dated 02.06.2023 passed by the Joint Director of Education, Bhadohi and the District Inspector of Schools, Bhadohi are hereby **quashed**.

Order Date :- 28.8.2023

Sazia