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**(2011) 01 AHC CK 0309**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 5725 of 2011

Lakhan Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Jan. 31, 2011

**Citation:** (2011) 3 ADJ 567 : (2012) 4 AWC 3544

**Hon'ble Judges:** A.P. Sam, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

A.P. Sahi, J.

Heard Sri P.N. Saxena, learned Senior counsel for the Petitioner, Sri Ashok Khare, learned Senior Counsel for Respondent No. 5 and learned Standing Counsel for Respondent Nos. 1 to 3.

2. The challenge in this petition is to the order dated 15.1.2011 of the Regional Level Committee headed by the Joint Director of Education as Chairman whereby a decision has been given in compliance of the judgment dated 16.11.2010 in Writ Petition No. 67063 of 2010 holding that the elections of the Respondent No. 4 - Committee in which the Respondent No. 5 has been elected as Manager is valid.

3. Sri P.N. Saxena submits that essentially the dispute in relation to the aforesaid elections was with regard to the validity of the members and such a dispute had come up before this Court in Writ Petition No. 67063 of 2010. The said writ petition was disposed of on 16.11.2010 by making observations to the effect that the recognition to the elections that were scheduled to be held on 18.11.2010 should not be granted till the objections pertaining to the membership as raised by the Petitioner are not decided. A copy of the judgment has been filed as Annexure-16. The Regional Level Committee has now proceeded to decide the said dispute and Sri P.N. Saxena submits that the impugned order does not take any decision with regard to the objections of the membership and simply concludes that the decision,

earlier taken by the Deputy District Magistrate acting as Election Officer, is valid and, therefore, it does not require any further proof. The impugned order further recites that the Assistant Registrar, Firms, Societies & Chits, under the Societies Registration Act, 1860, is the competent authority to decide the issue of membership and the Deputy District Magistrate is an appellate authority and, therefore, in such a situation, if the Deputy District Magistrate himself has taken a decision, then in that view of the matter, no further decision is required to be taken by the Regional Level Committee. Sri Saxena submits that this approach of the Regional Level Committee is erroneous inasmuch as the Deputy District Magistrate was acting as an Election Officer appointed by the District Inspector of Schools to hold the elections and not as an Authority under the Societies Registration Act. It is in that capacity that he took a decision in relation to the membership on 4.11.2010 that was assailed by the Petitioner in Writ Petition No. 67063 of 2010.

4. Sri Ashok Khare, learned Senior Counsel for the Respondents, submits that as a matter of fact the District Inspector of Schools had already taken a decision on 5.8.2004 against which the Petitioner had filed a Writ Petition bearing No. 33049 of 2009 in which an interim order was initially passed but subsequently the same was dismissed in default holding that the writ petition appears to have become infructuous by passage of time in 2010. He, therefore, contends that the order of the District Inspector of Schools dated 5.8.2004 has become final and hence no error can be found with the impugned order.

5. Sri Khare further submits that under the garb of some authority, the Petitioner is illegally continuing to function as Manager inspite of the fact that tenure of the Committee of Management in which the Petitioner claims to have been elected, had expired long back on 29.8.2009. In such a situation, the Regional Level Committee has rightly taken a decision to recognize the elections held on 18.1.2010 on the basis of a valid electoral College.

6. Having heard learned Counsel for the parties, the order of the District Inspector of Schools dated 5.8.2004 on which reliance has been placed by the Respondent is a direction to the Petitioner himself to hold elections from amongst 84 approved members. It is this order, which was challenged and a stay order was granted. The dismissal of the said writ petition as infructuous, therefore, does not amount to any adjudication on the issue of membership and the same cannot be said to be final.

7. The Petitioner has been agitating this issue through out and thereafter a subsequent writ petition which was filed namely Writ Petition No. 67063 of 2010, supersedes the earlier litigation. The Deputy District Magistrate finalized an electoral College on 4.11.2010 which was challenged in the said writ petition and this Court made it open that objections shall be entertained against the same after the elections are held. The order dated 5.8.2004 at the best would have the same status as the order dated 4.11.2010, and the objections against the same were entertainable before the Regional Level Committee prior to the grant of recognition

as directed by this Court on 16.11.2010. In view of this, the dismissal of the Writ Petition as infructuous has no relevance to the controversy that has been raised by the Petitioner. The issue of membership has not been decided by the Regional Level Committee erroneously.

8. The Regional Level Committee has presumed the authority of the Deputy District Magistrate to be a final authority to adjudicate membership. This approach is absolutely erroneous inasmuch as no such dispute was raised before the Deputy District Magistrate under the 1860 Act or through any reference before the Assistant Registrar under the Societies Registration Act 1860. The Deputy District Magistrate was acting only as an Election Officer under the orders of the District Inspector of Schools. He was not exercising power under any provision of the 1860 Act. The exalted presumption raised in his favour by the Regional Level Committee has no foundation in law.

9. The Regional Level Committee, therefore, committed an error by conferring jurisdiction on the Deputy District Magistrate which runs contrary to the directions issued by this Court dated 16.11.2010. Apart from this, the impugned order simply records conclusions that too even on the basis of the earlier order of the Deputy District Magistrate dated 4.11.2010 without any reason in support thereof as to why the membership has been found to be valid or invalid. Accordingly, the writ petition is allowed and the impugned order dated 15.1.2010 is unsustainable and is hereby quashed.

10. The Regional Level Committee shall proceed to decide the dispute in terms of directions contained in the judgment dated 16.11.2011 and in the light of the observations made herein above within 6 weeks.

11. The objection raised on behalf of the Respondents about the continuance of the Petitioner shall also be looked into in accordance with the Scheme of Administration and the right of the Petitioner to continue to manage the affairs of the institution. This order is being passed in view of the fact that neither of the parties have filed the current existing approved Scheme of Administration.