

**(2008) 11 AHC CK 0158**

**Allahabad High Court**

**Case No:** None

Rohit Chauhan and Others

APPELLANT

Vs

U.P. State Government and  
Others

RESPONDENT

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**Date of Decision:** Nov. 20, 2008

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1
- Specific Relief Act, 1963 - Section 41(h)

**Citation:** (2009) 2 AWC 1425

**Hon'ble Judges:** Tarun Agarwala, J

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

Tarun Agarwala, J.

Heard Sri M.K. Gupta, assisted by Sri Nitin Sharma, the learned Counsel for the petitioners, Sri Ashok Mehta, the learned Counsel for respondent Nos. 5 to 12 and the learned standing counsel for respondent Nos. 1 to 4 who is a mute spectator in the entire proceedings.

2. The petitioners are the plaintiffs, who applied for membership of the General Body of the institution under the scheme of administration framed under the U.P. Intermediate Education Act. The Committee of Management by its resolution dated 18.11.2006, accepted the proposal of inducting new members, namely, the petitioners, and directed the treasurer to accept the amount on or before the next meeting of the Committee of Management. It has come on record that the treasurer deposited the amount on 1.3.12.2006. The Committee of Management next met on 2.1.2007, on which date, 20 members of the Committee of Management ratified the earlier resolution of 18.11.2006 and the petitioners became members of the General Body of the Educational Institution. It transpires that the election process started

w.e.f. 27.11.2007 to elect new office bearers of the Committee of Management. It transpires that trouble started when respondents No. 5 to 11 apparently made a complaint before the District Inspector of Schools, Meerut, (hereinafter referred to as D. I.O.S., who is alleged to have passed an ex parte order holding that the petitioners were not eligible to become members of the General Body of the Educational Institution on the ground that the acceptance of the membership fee was in violation of Clause 7 of the Scheme of Administration. The D.I.O.S. vide its order dated 19.12.2007 held that the induction of the petitioners as members was invalid. This order of D.I.O.S. was apparently passed after the election process had been initiated.

3. On the basis of this order, the petitioners became ineligible to participate in the election process and accordingly instituted a suit for declaration and for injunction praying that the order of the D.I.O.S. dated 19.12.2007 was a void order and further prayed for injunction restraining the respondents from interfering in the right of the petitioners to participate in the election, being valid members of the General Body of the Institution. Alongwith the suit, an application for temporary injunction was also filed under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure. The contesting respondents No. 3 to 12 were not parties to the suit but were made parties on an application for impleadment made by them. The contesting respondents filed their objections and the trial court, after hearing all the parties, issued a temporary injunction permitting the petitioners to participate in the election which was subject to the result of the suit. The contesting respondents, being aggrieved by the grant of injunction, filed an appeal under Order XLIII, Rule 1(r) of the C.P.C., which was allowed and the injunction granted by the trial court was set aside. The plaintiffs, being aggrieved by the order of the lower appellate court, have filed the present writ petition.

4. The lower appellate court held that the suit was barred by Section 41(h) of the Specific Relief Act, since the petitioners had filed a representation before the Joint Director of Education against the order of D.I.O.S. Further, the lower appellate court found that the D.I.O.S. had jurisdiction to adjudicate upon the matter u/s 16A(7) of the Intermediate Education Act. The lower appellate court further found that the deposit of the membership fee made on 13.12.2006 was not in accordance with the provision of the Clause 7 of the Scheme of Administration and such irregularities was fatal to the membership of the petitioners and consequently the membership of the petitioners was invalid and therefore, the petitioners had no right to participate in the election. The lower appellate court also relied upon an affidavit of the President of the Committee of Management who submitted that no such meeting of the Committee of Management took place on 18.11.2006 or on 2.1.2007. The lower appellate court also took into consideration the affidavit of four persons who submitted that they had neither applied for membership nor had deposited any amount.

5. The bone of contention is the interpretation of Clause 7 of the Scheme of Administration. The question as to whether the said provision is mandatory or directory and whether the said provision provides a forum before the D.I.O.S. for adjudication of a dispute with regard to the grant of membership to a person are all questions to be adjudicated by the trial court in the suit and any comment on this aspect of the matter at this stage would prejudice the trial court in giving its finding, but this much is clear, that the petitioners were inducted as members by a resolution of the Committee of Management dated 18.11.2006. Admittedly, the amount was deposited on 13.12.2006 and the resolution of 18.11.2006 was ratified by the C.O.M. on 2.1.2007. At the present moment, prima facie it appears that the petitioners became members of the General Body of the Institution.

6. The question whether the petitioners were validly inducted as members of the institution is a question which also requires to be adjudicated by the trial court after evidence is led. The trial court will also adjudicate upon the interpretation of Clause 7 of the scheme of administration, but at the present moment, a prima facie case has been made out that the petitioners were inducted as members by the Committee of Management. The affidavit of one person to the effect that no such resolution took place is again a question of fact, especially when there is no affidavit from other members of the Committee of Management who had participated in the meeting of 18.11.2006 and 2.1.2007. Further, the Court finds that the dispute, if any, was required to be adjudicated before D.I.O.S. within one month. In the present case, the contesting respondents who are also members of the General Body of the institution raised this issue when the election process had started. It is settled law that such issues can only be raised after the election is held and such issue cannot be raised when the election process had started. The Supreme Court has consistently held that the election process should not be disturbed. A complaint was made by the respondents after the election process had started and based on that complaint, the D.I.O.S. issued an order dated 19.12.2007.

7. In my opinion, prima facie it appears that the D.I.O.S. could not have issued such an order once the election process had started and it was open for the parties to challenge the election before an appropriate forum on the ground that Invalid members had participated or contested the election after the election was over and the result had been declared. This Court finds that the provision of Section 41(h) of the Specific Relief Act does not come in the way for grant of an injunction. The mere fact that the petitioners had filed a representation before a higher authority does not prevent them from filing a suit and for applying for an injunction. Filing a representation is not an equally efficacious alternative remedy available. The representation is only a forum of the redressal of a grievance, but is not a statutory remedy. The effective remedy is one of filing a suit which the petitioners have done and consequently the application for grant of injunction is maintainable.

8. So far as the provision of Section 16A(7) of the U.P. Intermediate Education Act is concerned, the lower appellate court committed an error in holding that the D.I.O.S. has jurisdiction. A perusal of the said provision and Government order issued from time to time indicates that the power is with the Regional Committee which is headed by the Joint Director of Education and this power is to be exercised only after the election is held. The power cannot be exercised prior to holding of the election. Consequently, the said provision has no application to the present facts and circumstances of the case.

9. The question as stated earlier as to whether the deposit of the membership fee in violation of the provision of the scheme of administration is an irregularity or is a mandatory requirement for a valid membership is a question of fact which the trial court will adjudicate after evidence is led by the parties. This Court is not commenting on the correctness or otherwise of the membership granted to the petitioners by a resolution dated 18.11.2006, which was ratified on 2.1.2007. Prima facie, the petitioners became members of the institution and balance of convenience at the present moment lies in their favour to participate in the election. In so far as irreparable loss is concerned, if the petitioners are restrained from participating in the election, irreparable loss will be caused to them. On the other hand, no irreparable loss will be caused to the respondents if the petitioners are allowed to participate. If the respondents are aggrieved by the result of the election, the remedy is open to them to challenge the election in the appropriate forum. Denying the petitioners the right to participate and injuncting them would directly cause an irreparable loss which cannot be rectified after the election is held. Consequently, the Court finds that all the three ingredients for grant of a temporary injunction, namely, prima facie case, balance of convenience and irreparable loss, exists in favour of the petitioners.

10. In view of the aforesaid, the order of the lower appellate court dated 30.9.2008 is incorrect and cannot be sustained and is hereby quashed. The writ petition is allowed. The interim order issued by the trial court will continue to operate till the pendency of the suit. It is further directed that any finding or opinion expressed by the Court is only a tentative opinion and will not come in the way of the trial court while deciding the suit. It is further directed that in view of the fact and circumstances of the case, I also direct the trial court to decide the suit expeditiously preferably within one year from the date of the production of a certified copy of the order.

11. The issuance of a certified copy of this order will take some time. Consequently, the operative portion of the order will be transcribed today on the order sheet, which will be made available to the parties for appropriate action since it has been stated at bar that the election is going to be held on 23.11.2008. Consequently, if the parties apply for a certified copy of the operative portion of the order, it will be made available to the parties by 21.11.2008.