

(2011) 05 AHC CK 0337

Allahabad High Court

Case No: Special Appeal No's. 664 737 of 2011

C/M Sri Yadvesh Inter College
and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 18, 2011

Citation: (2011) 8 ADJ 493 : (2011) 5 AWC 4861 : (2011) 2 UPLBEC 1463

Hon'ble Judges: R.K. Agrawal, J; Bharati Sapru, J

Bench: Division Bench

Advocate: Rajnish Kumar Srivastava and Gajendra Pratap, for the Appellant; C.S.C. and R.M. Vishwakarma, for the Respondent

Final Decision: Dismissed

Judgement

R.K. Agrawal, J.

Both these special appeals have been filed against the common judgment and order dated 24th March, 2011 passed by the learned single Judge whereby the learned single Judge has decided Civil Misc. Writ Petition Nos. 65661 of 2008, 6427 of 2009, 33850 of 2010 and 7793 of 2011. The learned single Judge has dismissed the Writ Petition No. 33850 of 2010 whereas he has allowed Writ Petition No. 7793 of 2011. The remaining writ petitions being Writ Petition Nos. 65661 of 2008 and 6427 of 2009 have been disposed of.

2. It may be mentioned here that Special Appeal No. 664 of 2011 has been filed against the order of the learned single Judge insofar as the Writ Petition No. 7793 of 2011 has been allowed whereas Special Appeal No. 737 of 2011 has been filed against the judgment and order passed by the learned single Judge insofar as the Writ Petition No. 33850 of 2010 has been dismissed.

As both the special appeals arises out of the common judgment and order dated 24th March, 2011 and the issues raised in the both the special appeals are common and involving similar question of facts and law with the consent of the learned

Counsel for the parties they have been heard together and are being decided by a common judgment.

3. Briefly stated the facts giving rise to the present appeals are as follows.

4. In the district of Jaunpur there is an Institution in the name and style of Sri Yadvesh Inter College situated at village Nauperva. (hereinafter referred to as the Institution). It is governed and recognized under the provisions of the U.P. Intermediate Education Act, 1921. It has an approved Scheme of Administration for running the Institution which also provides for the election of the Committee of Management. It is an aided Institution and is governed by the provisions of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971.

5. It appears that one Sri Murlidhar Yadav was elected as the Manager in the year 1995 on the strength of an electoral College of 207 Members. As the term then was 3 years he claimed re-elections on 6.9.1998 with 70 Members. 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. The election set up by Ajay Yadav as a Manager was recognized by the educational authorities. The recognition was challenged in Writ Petition No. 6243 of 2000 and the Director of Education was called upon to decide the matter, who vide order dated 28.7.2000 confirmed the election of Sri Ajay Yadav to be valid and recognized him as the Manager. This was again challenged by Sri Murlidhar Yadav in Writ Petition No. 34164 of 2000 which was allowed by this Court vide judgment and order dated 7.9.2001 and the matter was remitted back for being decided by the concerned authority. This time on remand, vide order dated 4.10.2001 the election of Sri Murlidhar Yadav was held to be valid and in accordance with law and was recognized by the Joint Director of Education. Thus, the election held by Sri Murlidhar Yadav on 6.9.1998 was recognized as a valid election. He, thereafter, held fresh election on 4.10.2001. The Regional Level Committee vide order dated 7.12.2001 recognized the said election and vide order dated 11.1.2002 the signatures of Sri Murlidhar Yadav as Manager was attested.

6. As the term was only for 3 years, Sri Murlidhar Yadav claimed to have held fresh elections in the year 2004. Sri Vinod Kumar Yadav set up a rival claim. The matter was referred to the Regional Level Committee which decided the dispute holding that the elections as set up by the Sri Murlidhar Yadav were invalid as the office-bearers elected were related to each other, particularly Murlidhar Yadav and Sant Lal Yadav are father and son respectively which violates the Scheme of Administration. The Regional Level Committee further held that the erstwhile Committee of Management did not undertake any drive to enrol fresh members hence the elections set up by Sri Murlidhar Yadav could not be accepted. It simultaneously 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 convene any such

meeting. The election set up by Sri Vinod Kumar Yadav was also not accepted. The membership of 255 Members as set up by Sri Vinod Kumar Yadav was also not accepted in view of the earlier decision dated 7.9.2001 passed in Writ Petition No. 34164 of 2000. The Regional Level Committee, therefore, appointed the Finance & Accounts Officer in the office of the District Inspector of Schools as Prabandh Sanchalak (Authorized Controller) with a direction to hold fresh elections through a valid electoral College within 3 months. The Authorized Controller, so appointed proceeded to hold election by issuing notice and calling upon the parties to provide the list of the Members for deciding the electoral College. In the meantime the Authorized Controller was changed and on 2.8.2008 one Sri Samar Bahadur Singh, Deputy Inspector of Sanskrit Pathshala, was appointed as Authorized Controller. 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. It may be mentioned here that the provisional list of 105 Members contained the name of 36 old Members and 62 names were included from a list of 92 Members furnished by Sri Vinod Kumar Yadav alleging that the list was of the year 1969. The Authorized Controller finalized the list on 9.12.2008 and declared the election programme. 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 programme dated 9.12.2008 with a further prayer to hold the election after deciding the objection relating to the membership list. No interim order was passed but a direction was issued to implead Sri Shiv Nath Yadav, who claimed himself to be the newly elected Manager of the institution.

7. The election which was held on 16.12.2008 by the Authorized Controller was recognized by the District Inspector of Schools on 27.12.2008. It was again challenged by Sri Murlidhar Yadav in Writ Petition No. 6427 of 2009 but no interim order has been passed therein. One Sri Dharam Raj Yadav approached this Court by filing Writ Petition No. 63471 of 2009 on the ground that he has filed a representation on 2.1.2009 before the Joint Director of Education, Varanasi and he prayed that the said representation be decided within a specified time. This Court vide order dated 30.11.2009 disposed of the writ petition with a direction to the Joint Director of Education, Varanasi, to decide his representation within a period of two months strictly in accordance with law after affording opportunity of hearing to the concerned parties. Pursuant to the order dated 30.11.2009 the Joint Director of Education vide order dated 18.5.2010 decided the representation holding that the objections filed by Sri Dharam Raj Yadav were valid and that the election held in the year 2008 by the Authorized Controller was invalid being in violation of the Scheme of Administration. A direction was issued to the Authorized Controller 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 election held 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, in which an interim order was passed on 12.7.2010 directing that fresh elections pursuant to the impugned order shall not be held.

8. The Authorized Controller appears to have proceeded to hold fresh election of the Committee of Management on 16.6.2010. The election was held by one Sri Bhasker Mishra, the Deputy Inspector of Sanskrit Pathshalas alleging himself to be the Authorized Controller. In the said election Sri Sant Lal Yadav claimed to be elected as Manager. The papers were forwarded to the District Inspector of Schools. The Joint Director of Education vide letter dated 5.8.2010 directed the District Inspector of Schools to take action thereon. It appears that on 9.9.2010 the Joint Director of Education changed the Authorized Controller whose signature was attested on 28.9.2010. Sri Shiv Nath Yadav, who claimed to be elected as Manager, filed Writ Petition No. 63958 of 2008 which was dismissed on 26.10.2010 and the Special Appeal was filed against the said judgment was disposed of. The Joint Director of Education vide D.O. Letter dated 21.12.2010 continued to pressurize the District Inspector of Schools to attest the signatures of Sant Lal Yadav as Manager of the Institution. Accordingly the District Inspector of Schools vide order dated 20.01.2011 attested the signatures of Sri Sant Lal Yadav as Manager. This order has been assailed by Sri Shiv Nath Yadav in Writ Petition No. 7793 of 2011.

9. After exchange of the affidavits, all the writ petitions were heard together and decided by the learned single Judge by the impugned judgment and order. Before the learned single Judge the order of the Joint Director of Education was assailed as having been passed without jurisdiction on the ground that the matter relating to the dispute of the election of the Committee of Management ought to have been decided by the Regional Level Committee and not by the Joint Direction of Education and further as the election in which Sri Shiv Nath has been elected as Manager having been recognized by the District Inspector of Schools till such time the Regional Level Committee decides the matter he is entitled to continue. On behalf of Sri Sant Lal Yadav it was stated before the learned single Judge that the election held on 16th June, 2010 was validly held by the Authorized Controller and his signatures having been attested, he is entitled to continue. The learned single Judge on the basis of the material available on record had held that the Joint Director of Education was well within his jurisdiction to decide the matter pursuant to the direction given by this Court vide order dated 30.11.2009 in the writ petition preferred by Sri Dharam Raj Yadav being Writ Petition No. 63471 of 2009. However, as no objection regarding his jurisdiction was ever raised before the authority and submitted to his jurisdiction to decide the matter the learned single Judge further held that the order passed by the Joint Director of Education did not suffer from any legal infirmity and the findings recorded by him cannot be said to be perverse so as to interfered with by this Court in writ jurisdiction. So far as election held on 16th June, 2010 is concerned, the learned single Judge came to the conclusion that the said election was only held on papers just to get over the interim order dated 12th

July, 2010 passed by this Court in Writ Petition No. 33850 of 2010 and further from the material on record it is established that the Joint Director of Education pressurized the District Inspector of Schools to attest the signatures of Sri Sant Lal Yadav and the District Inspector of Schools succumbed under pressure and attested the signatures on 20th January, 2010. The learned Single Judge, therefore, directed the Regional Level Committee to ensure that the Authorized Controller is appointed in the Institution and he shall proceed to hold fresh election 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 three months.

10. We have heard Sri Gajendra Pratap learned Senior Advocate assisted by Sri R.K. Srivastava, learned Counsel appearing for the Appellants, learned standing counsel who represents the State-Respondents and Sri P.N. Saxena, learned Senior Advocate assisted by Sri R.M. Vishwakarma, learned Counsel appearing on behalf of the contesting Respondents.

11. Sri Gajendra Pratap, learned Senior Counsel submitted that the order dated 18.5.2010 passed by the Joint Director of Education is without jurisdiction as the matter ought to have been placed before the Regional Level Committee which alone is competent to decide the dispute regarding rival election of the committee of Management of a recognized Institution. According to him, in view of the Government Order dated 19.12.2000 and 20.9.2008 whenever there is a dispute the matter has to be decided by the Regional Level Committee of which the Joint Director of Education is the Chairman and not by the Joint Director of Education alone. He further submitted that as there has been a dispute in the election of the Committee of Management of the Institution, the order of the District Inspector of Schools dated 27.12.2008 attesting the signatures of Sri Shiv Nath Yadav stands till the dispute raised is decided by the Regional Level Committee. In support of his aforesaid submissions, he has relied upon the following decisions:

1 [Committee of Management of Ganga Khand Inter College and Another Vs. Regional Joint Director of Education and Others](#), ;

2 Committee of Management v. Regional Joint Director of Education and Anr. Special Appeal No. 1394 of 2004;

3 Gauri Shankar Saraogi and Anr. v. Sharda Prasad Dwivedi and Anr. 2010 (7) ADJ 589;

4 Swarup Singh and Anr. v. Union of India and Anr. JT 2010 (13) SC 69.

12. Sri P.N. Saxena, learned Senior Counsel submitted that the order passed by the Joint Director of Education cannot be said to be without jurisdiction as he had decided the matter pursuant to the direction given by this Court vide judgment and order dated 30.11.2009 passed in Writ Petition No. 63471 of 2009. He relied upon a decision of this Court in Committee of Management, Adarsh Bharti Inter College,

Kalwa, Aligarh and Anr. v. State of U.P. and Ors. (2010) 2 UPLBEC 1257. He further submitted that in the Government Order dated 19.12.2000 the State Government had constituted a Regional Level Committee under the Chairmanship of the Joint Director of Education with the Regional Deputy Director of Education and the District Inspector of Schools as members to decide the issue relating to the attestation of signature of the Manager, the election dispute amongst other things. However, the said Government Order was superseded vide order dated 20.9.2008 wherein it has been provided that instead of the Regional Level Committee, the signature of the Manager shall be attested by the District Inspector of Schools within two weeks and if the District Inspector of Schools feels any legal difficulty then the matter has to be referred to the Regional Level Committee which shall decide the matter within a month. According to him as in the present case the District Inspector of Schools had attested the signatures of the Sri Shiv Nath Yadav on 27.12.2008 the matter relating to attestation of the signature to be decided by the Regional Level Committee did not arise and the only remedy available is to approach the higher authorities. According to him as the Regional Joint Director of Education exercises supervisory control over all the educational authorities within his jurisdiction, this Court had rightly passed the order dated 30th November, 2009 by which a direction was issued to the Joint Director of Education to decide the representation filed by Sri Dharam Raj Yadav after affording an opportunity of hearing to the concerned parties. The Joint Director of Education had rightly decided the representation filed by Sri Dharam Raj Yadav and has set aside the election dated 16.12.2008 and consequent attestation of signatures of Sri Shiv Nath Yadav on 27.12.2008. He further submitted that the learned single Judge has rightly held that the order dated 18.5.2010 passed by the Joint Director of Education does not suffer from any legal infirmity and the question of relegating the matter to the Regional Level Committee does not arise. He further submitted that Sri Shiv Nath Yadav being rank outsider and not being member of the General Body has no legal right to challenge the election held on 16.6.2010 and the attestation of the signatures of Sri Shiv Lal Yadav on 20.1.2011. He, therefore, submitted that the impugned order passed by the learned single Judge, insofar as it sets aside the election held on 16.6.2010 and attestation of signatures made vide order dated 20.1.2011 be suitably modified.

13. We have given our thoughtful consideration to the various pleas raised by the learned Counsel for the parties.

14. In the present case the dispute is relating to the election held on 16.12.2008 in which Sri Shiv Nath was elected as Manager who had been recognized by the District Inspector of Schools on 27.12.2008 and the election held on 16.6.2010 in which Sri Shiv Lal Yadav claims to have been elected Manager and recognized on 20.1.2011.

15. Taking up the objection raised by Sri Gajendra Pratap, learned Senior Counsel that the Joint Director of Education had no jurisdiction to decide the matter relating to the election held on 16.12.2008 we are of the considered opinion that the said election was recognized by the District Inspector of Schools vide order dated 27.12.2008. At that point of time it appears that no dispute was raised before the District Inspector of Schools regarding validity of the election held on 16.12.2008. It is no doubt true that the State Government vide order dated 19th December, 2000 constituted a Regional Level Committee under the Chairmanship of Regional Joint Director of Education with the Regional Deputy Director of Education and District Inspector of Schools as members to decide the question of attesting the signatures of Manager and election dispute, but that Government Order had been superseded by the State Government vide Government Order dated 20th October, 2008 and instead of the Regional Level Committee to decide the issue of attestation of signatures of the Manager and election disputes, the District Inspector of Schools had been conferred with the power to attest the signature of Manager where there is no legal difficulty and only in case there is some legal difficulty the matter is to be referred by him to the Regional Level Committee. We are of the considered opinion that the Regional Level Committee gets the power to decide the dispute relating to election of the Committee of Manager including office bearers and recognition of Manager only when the matter is referred by the District Inspector of Schools and once the District Inspector of Schools has attested the signature of the Manager and recognized the person to be the Manager he becomes *functus officio* to refer the matter to the Regional Level Committee even if the dispute has been raised subsequently. In such a situation the only remedy available to the person aggrieved is to approach the higher authorities which in the present case, undoubtedly, is the Regional Joint Director of Education and, this Court, therefore, was perfectly justified while passing the order dated 30.11.2009 directing the Joint Director of Education to decide the matter after affording an opportunity of hearing to the parties concerned.

16. In the case of Committee of Management of Ganga Khand Inter College, Khera Dayal Nagar, Aligarh (*supra*) the learned single Judge has held that the order passed by this Court in a writ petition cannot confer a jurisdiction upon the Regional Joint Director of Education who is not possessing the jurisdiction. He is only required to decide the controversy in accordance with law and if he had no jurisdiction then he ought to have passed order for the matter being placed before the Regional Level Committee. The aforesaid decision of the learned single Judge has been affirmed in Special Appeal No. 1394 of 2004 decided on 26.10.2004.

17. In the case of Gauri Shankar Saraogi (*supra*) the learned single Judge has held that where the question of jurisdiction goes to the very root of the matter, the plea of jurisdiction even if it has not been specifically raised in the court below, can always be permitted to be raised in appeal/revision or even at any subsequent stage including that execution of the decree.

18. In the case of Sarup Singh (supra) the Hon"ble Supreme Court has held that if a particular Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such Court would be without jurisdiction and the same is non-est and void ab initio. The defect or jurisdiction strikes at the very root and authority of the Court to pass decree which cannot be cured by consent or waiver of the parties.

19. In the case of Committee of Management, Adarsh Bharti Inter College, Kalwa, Aligarh (supra) the learned single Judge has not laid down any principle of law but on the statement of the counsel for the Respondents has remitted the matter to the Joint Director of Education, Aligarh to be decide in accordance with the directions issued by this Court on 8th October, 2009 in Writ Petition No. 52168 of 2009.

20. As already mentioned, herein-before, in the present case in view of the Government Order dated 20th October, 2008 the Regional Level Committee ceased to have any jurisdiction to decide the election dispute of its own. The Regional Level Committee gets the power to decide the dispute relating to attestation of the signature of the Manager including recognition of Committee of Management only when the matter is referred by the District Inspector of Schools and not otherwise. Once the District Inspector of Schools has attested the signatures of the Manager and recognized the person to be the Manager he becomes functus officio to refer the matter to the Regional Level Committee. He does not possess any power to review as no such power has been conferred by the Statute. The only course open to the aggrieved person is to approach the higher authorities. Therefore, the decisions relied upon by Sri Gajendra Pratap have no application in the facts and circumstances of the present case. The order passed by the learned single Judge, on this aspect, therefore, does not suffer from any legal infirmity.

21. Coming to pleas raised by Sri P.N. Saxena, learned Senior Advocate appearing for the rival cliamant, we are of the considered opinion that the election held on 16.6.2010 in which Shiv Lal Yadav claimed to have been elected as Manager was, in fact, a fabricated election as no election was held at all as rightly held by the learned single Judge. As already mentioned herein before the learned single Judge has found that so called election was held by the alleged Authorized Controller in view of the order dated 18.5.2010 passed by the Joint Director of Education. The election was said to have been held on 16.6.2010. The papers were forwarded to the District Inspector of Schools for recognition and the Joint Director of Education vide letter dated 5th August, 2010 had asked the District Inspector of Schools to take action thereon. The Authorized Controller was changed on 19th September, 2010 and the signature of Authorized Controller was attested only on 28th September, 2010. The Joint Director of Education continued to pressurize the District Inspector of Schools by issuance of D.O. Letter dated 21.12.2010 wherein the District Inspector of Schools was directed to attest the signatures of Shiv Lal Yadav whose signature ultimately was attested by the District Inspector of Schools on 20.1.2011. It is not clear as to

when the election programme was notified, what was the mode adopted for holding the election, what was the procedure adopted for issuance of notice to the members inviting nomination etc. The entire process appears to have been completed hurriedly to get over the interim order dated 12.7.2010 passed by this Court in Civil Misc. Writ Petition No. 33850 of 2010 wherein the order dated 18.5.2010 passed by the Joint Director of Education has been challenged.

22. From the facts stated above, we have no hesitation in holding that the alleged election said to have been held on 16.6.2010 was not held at all and the learned single Judge had rightly held so.

23. The apprehension raised by Sri Gajendra Pratap that the order dated 5.10.2007 passed by the Regional Level Committee has been set aside by the Joint Director of Education while passing the order dated 18.5.2010 is wholly misplaced. The Joint Director of Education vide order dated 18.5.2010 had directed the election to be held in the light of the order dated 5.10.2007 passed by the Regional Level Committee.

24. In view of the forgoing discussions we do not find any merit in these appeals which are hereby dismissed.