

(2011) 03 AHC CK 0385

Allahabad High Court

Case No: Special Appeal No. 1857 of 2010

Vinesh Jain

APPELLANT

Vs

Committee of Management and
Others

RESPONDENT

Date of Decision: March 15, 2011

Citation: (2011) 3 ADJ 744

Hon'ble Judges: Ashok Srivastava, J; Amitava Lala, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Ashok Srivastava, J.

This special appeal has been directed against the judgment and order passed by the learned single Judge on 29.10.2010 in Civil Misc. Writ Petition No. 62266 of 2010, Committee of Management and Ors. v. District Inspector of Schools, Muzaffar Nagar. The learned single Judge has allowed the writ petition and directed the Joint Director (Education) concerned to appoint an authorized controller to manage the affairs of the institution and to direct him to hold election under his supervision.

2. The case of the opposite parties-Petitioners is that there is a Society in the name and style of Jain School Committee (Registered), Muzaffar Nagar (for short the Society) which is duly registered and it runs various educational institutions, including Jain Inter College (Boys), Muzaffar Nagar (for short the institution). The last election of the Committee of Management of the institution was held in the year 2007 and its term expired on 11.6.2010. Therefore, Mr. Vinod Jain, Manager of the Committee of Management, in pursuance of government order dated 21.11.2008 started the process of election to constitute the next Committee of Management and for the purpose he sent a letter to the Secretary of the Society to provide him list of the members of the parent Society. As per government order dated 26.12.83 the Scheme of Administration of the institution was amended and the amended provisions were applicable to the institution concerned. The Secretary of the Society

did not take cognizance of the request made to him by the Manager, Sri Vinod Jain and as a consequence no election could be held in time to constitute the new Committee of Management. Therefore on 25/26.8.2010 the District Inspector of Schools, Muzaffar Nagar passed an order of single operation as the term of the existing Committee of Management had expired. As per Article 7 of the Scheme of Administration it was the duty of the Regional Deputy Director of Education, Saharanpur to appoint an authorized controller (Prabandh Sanchalak) to hold the election of new Committee of Management. In the instant case no such exercise was undertaken by the authority concerned and the District Inspector of Schools, Muzaffar Nagar in utter contravention of the Scheme of Administration committed gross illegality and permitted the Society to constitute a new Committee of Management in collusion with private Respondents of the writ petition. On the instance of these private Respondents, in a hurried manner, the election was conducted only on paper. Violating prescribed procedure and norms the election was shown to be held and the result of the said election was declared on 18.9.2010 though, the date for formal declaration of the result of the election was fixed as 26.9.2010. So much so, the District Inspector of Schools concerned was so interested in favour of the above mentioned private Respondents that he passed the impugned order on 24.9.2010, a date earlier to the date fixed for declaration of the result of the election. The opposite parties/Petitioners had lodged their protest before and after the alleged election but no action was taken on the part of the authorities concerned and on 24.9.2010 the District Inspector of Schools, Muzaffar Nagar recognized the illegal election and invited the Manager for attestation of his signature. Feeling aggrieved by the illegal action and inaction on the part of educational authorities the opposite parties-Petitioners filed the writ in this Court. 3. Counter-affidavit was filed on behalf of the Respondents to the writ petition, who had justified the election as well as the approval of the same. It has been stated in the counter-affidavit that the term of the Committee of Management of the Institution had expired on 11.6.2010 and a new committee was to be constituted. It has been admitted that there is a Jain School Committee (Registered), Muzaffar Nagar which runs several educational institutions including Jain Inter College (Boys), Muzaffar Nagar and the Society has got its own Bye-laws. As per Clause 8 of it there will be a separate Committee of Management for every institution run by the Society and responsibility of conducting the election of the Committees of Management is given to the Executive Committee of the Society. It has been stressed that it is well within the powers of the Society and it is the duty of the Executive committee of the Society to execute in time the process of election. In exercise of this process the Society sent a letter to the District Inspector of Schools on 25.7.2010 requesting it for permission to hold the election and the said permission was granted by the authority vide its letter dated 26.7.2010. In the same letter the District Inspector of Schools appointed one Dr. Chandra Singh as Election Officer and Arvind Kumar as the Observer. After following due procedure the election was held and since there was no contest the result was declared on the date of withdrawal which was

18.9.2010 and it was communicated to the District Inspector of Schools, who accorded his approval vide his letter dated 24.9.2010. It has also been mentioned in the counter-affidavit that Clause 5(v), 5 (vi) and 9(v) were cancelled by the Deputy director of Education, Meerut Region vide its order dated 15.1.1985 and thus it was left to the Society to hold election of the Management Committee of the Institution. In this background it has been asserted in the counter-affidavit that the election of the Management Committee of the institution was lawful and the order impugned is legal in the eyes of law.

4. In their rejoinder-affidavit the Petitioners have stated that it is true that Clauses 5(v), 5(vii) and 9(v) were cancelled but Clause 7 was not cancelled and even today this provision is intact and is applicable in the case of the institution.

We have heard the submissions of the learned Counsel for the parties and perused the records.

5. It is admitted position that the earlier election was held in the year 2007 and the Committee of Management came into existence on 12.6.2007. The term of the Committee of Management expired on 11.6.2010. Fact-wise, it is also admitted that no permission was sought by the erstwhile Committee of Management to hold election. Therefore, keeping in view the provisions as contained in the Scheme of Administration, the earlier Committee of Management could not be permitted to continue after one month computed from 11.6.2010 and it was not competent for it to hold election for the next term. In the meanwhile by order dated 25.8.2010 the District Inspector of Schools, Muzaffar Nagar had passed an order of single operation regarding payment of salary to the teachers and other employees of the institution.

The case of the Appellant is that it is the duty of the Society to conduct the election of all the institutions coming under its umbrella including the institution in question. Our attention has been drawn towards Clause 8 of the Memorandum (as revised in the year 2010-11) of Jain School Committee, Muzaffar Nagar. In this Clause it has been mentioned that there shall be a separate Management Committee for every educational institution and each committee shall be elected as per Scheme of Administration which shall be passed by the general committee and Department of Education. It has further been mentioned in this Clause that the responsibility of conducting the election of all Management Committees shall lie on the Executive committee with due intimation to concerned department of education and each committee shall manage its college/institution in liaison with the Department of Education. In the light of these facts it has been argued by learned Counsel for the Appellant that keeping in view this Clause the Society was fully competent and empowered to hold the election in respect of the institution with permission of the Department of Education.

6. This contention has been rebutted from the side of the contesting Respondents by saying that the amended Clause 7 was not cancelled by the Deputy Director of Education, Meerut vide his letter dated 15.1.1985 as is evident by CA-III of the counter-affidavit. Therefore, it was mandatory that the election be held under the supervision and guidance of the Prabandh Sanchalak to be appointed by the educational authorities. From the perusal of Clause 7 it is evident that the term of a Committee of Management will be three years and after the expiry of three years its term could be extended for a month but only in exceptional circumstances. Thereafter no extension is possible and if no new elected committee has come into existence or due to any reason no new elected committee takes over charge of the management it will be the duty of the Regional Deputy Director of Education to appoint an authorized controller/Prabandh Sanchalak who will have full powers to manage the affairs for the institution and it will also be his duty to hold at the earliest possible fresh election for the Committee of Management. It has been mentioned in the said Clause that if there are more than one Committee of Management claiming to be the real one, the dispute shall be decided by the Deputy Director of Education whose decision shall be final.

7. In the instant case apparently there are no rival committees. The dispute is regarding the validity of the election held by the Society. In the instant case it has not been disputed that the letter dated 26.12.08 was sent to the Manager of Jain Inter College, Muzaffar Nagar, being Patrank Samanya/2/17064-66/83-84 by the Deputy Director of Education, Region-1, Meerut. This letter was sent in reference to certain amendments of Clauses of Intermediate Education Amendment Act, 1980 (Act No. 1 of 1981). From perusal of this letter it is evident that Clause 7 was added to the Scheme of Administration of the said institution and in it, it was provided that after a lapse of three years and one month the term of the previous Committee of Management shall come to an end for all purposes and in the event of non-availability or non-functioning of a new Committee of Management, it will be the duty of the Regional Deputy Director of Education to appoint an authorized controller/Prabandh Sanchalak for the institution. In the instant case the said Clause came into operation in the month of July, 2010. Therefore, it was the duty of the educational authority to appoint a Prabandh Sanchalak which, it appears, was not done. It should be mentioned here that on 25/26.8.2010 the District Inspector of Schools, Muzaffar Nagar had passed an order in which he had mentioned that since there was no Committee of Management for the institution he was ordering for single operation so that the salaries of the teachers and other employees of the institution may be drawn. A perusal of the said letter indicates that intimation was also sent to the Joint Director of Education, Saharanpur for necessary action, despite no action was taken on the part of the educational authorities concerned. The amended Clause 7 of the Scheme of Administration clearly overruled, partly, Clause 8 of the Memorandum of Jain School Committee, Muzaffar Nagar and therefore, the power and responsibility of conducting the election of the institution had ceased to

exist with the Society.

8. In these circumstances acceptance of the proposal sent to the District Inspector of Schools, Muzaffar Nagar by the Society was totally illegal. The District Inspector of Schools should have known that it was beyond the jurisdiction and powers of the Society to hold an election for constitution of a new Committee of Management for the institution, in view of amended provisions as contained in Clause 7, but he has permitted the Society to conduct the election which was totally illegal. The conduct of the District Inspector of Schools in the matter appears to be suspicious, keeping in view the fact that the declaration of the election was scheduled for 26.9.2010 but it was declared on 18.9.2010 and in a hurried manner the District Inspector of Schools recognized and approved the said election on 24.9.2010, a couple of days earlier to 26.9.2010. The conduct of the District Inspector of Schools has also been objectionable as earlier he had ordered an inquiry in the matter of the institution in respect of the election and later on without giving any notice or opportunity to hear the members on whose instance the enquiry was initiated, withdrew his previous order and allowed the Society to conduct the election which should have been conducted by the Prabandh Sanchalak.

9. On the basis of the above discussions we are of the view that when the learned single Judge has quashed and set aside the impugned order dated 24.9.2010 and directed the Deputy Director of Education, Saharanpur to appoint an authorized controller to manage the affairs of the institution and to hold the election under his supervision for constituting a new Committee of Management, he has committed no error. Therefore, there is no force in this special appeal and it is dismissed.

10. There shall be no order as to costs.