

(2009) 08 AHC CK 0305**Allahabad High Court****Case No:** None

Committee of Management,
Janta Inter College and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT**Date of Decision:** Aug. 21, 2009**Citation:** (2010) 3 AWC 3117**Hon'ble Judges:** Tarun Agarwala, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Tarun Agarwala, J.

Heard the learned Counsel for the parties.

2. The petitioner No. 1 in Writ Petition No. 18745 of 2009 is the Committee of Management and the petitioner No. 2, namely, Sri Ram Dulare Chaudhary is the Manager and alleges to be the valid Committee of Management. The respondent No. 4 is Lalman Chaudhary who is the Ex-Manager of the Committee of Management and Sri Ram Ujagir, respondent No. 5 is a life member of the society. The petitioners have challenged the order dated 22.12.2008/1.1.2009, by which, the Regional Committee has held that the election of 2006 was a void election and, accordingly appointed an authorised controller in the institution. An interim order dated 10.4.2009 was passed in this writ petition staying the operation of the impugned order, as a result of which, the Committee of Management continues to function in the institution. Before deciding this petition, it is necessary to dwell into the previous litigation and also decide the previous litigation which are still pending since it will have a bearing on the ultimate result of this petition.

3. It transpires that the election was held on 13.8.2000, in which, the petitioner No. 2 was elected as the Manager. The respondent Nos. 4 and 5 filed Writ Petition No. 36958 of 2000 alleging that the election of 13.8.2000, in which, the petitioner was

alleged to have been elected as the Manager, was a fake election and that the said respondent Nos. 4 and 5 were validly elected, and therefore, the said writ petition was filed for a writ of mandamus commanding the District Inspector of Schools to refer the dispute to the Joint Director of Education and further prayed that the signature of the elected Manager should not be recognised. It was alleged that an election had taken place on 15.6.1997, which was conducted by an Observer appointed by the District Inspector of Schools, in which, the petitioner's Committee of Management was elected. Subsequently, the Joint Director of Education appointed an authorised controller, by an order dated 1.10.1999, for a period of six months on the ground that the election of 1997 was contrary to the Scheme of Administration. A Writ Petition No. 46470 of 1999 was filed. An interim order dated 4.11.1999 was granted staying the order appointing the authorised controller. This writ petition was subsequently dismissed in default and has not been restored till date. It is submitted that since the appointment of the authorised controller was for the period of six months, the writ petition had, in any case, become infructuous. However, the respondent Nos. 4 and 5 in their Writ Petition No. 36958 of 2000 contended that an agenda was circulated by the Committee of Management for holding the election on 18.6.2000, on which date, neither the Manager nor the President appeared, and therefore, the members of the General Body decided to hold the election after appointing respondent No. 5, as the Chairman of the meeting, and it is alleged, that fresh election took place and the minutes were forwarded to the District Inspector of Schools on 29.6.2000. Consequently, it was prayed that the dispute be referred to the Joint Director. An interim order dated 22.8.2000 was passed directing that any attestation made by the District Inspector of Schools pursuant to the election held would be subject to further orders passed by the Court. This interim order continued till 31.1.2006, on which date, the writ petition was dismissed for the want of prosecution and eventually, the writ petition was restored on 16.5.2006. Prior to the restoration of the writ petition, the Committee of Management resolved to hold the election since the term of three years was coming to an end pursuant to which, the District Inspector of Schools, by its order dated 23.6.2006, appointed an election officer to conduct the election. Subsequently, the elections were held on 20.8.2006, in which, the petitioner was elected as the Manager.

4. The respondent No. 4 filed Writ Petition No. 31709 of 2007 praying for a writ of mandamus commanding the Regional Committee to decide his objection dated 11.12.2006 filed against the fake election which is alleged to have been held on 20.8.2006. No interim order was passed in this writ petition. Subsequently, another Writ Petition No. 25309 of 2008 was filed by the respondent No. 5 seeking the same relief which had been made in Writ Petition No. 31709 of 2007. This petition was dismissed for want of prosecution on 18.2.2009.

5. Notwithstanding the pendency of the writ petition filed by respondent No. 4 for the quashing of the election of 20.8.2006, it transpires that the respondent Nos. 4

and 5 filed an application before the District Inspector of Schools as well as before the Joint Director of Education alleging that the election of 20.8.2006 was a void election, in view of the interim order dated 20.10.2003, passed in Writ Petition No. 47539 of 2003 which order was still operating. It was alleged that the attestation of signature of the Manager was stayed, and therefore, fresh election could not have been conducted by the said Manager. On this application, the Regional Committee passed an order dated 22.12.2008/1.1.2009 holding that the election of 2006 was a void election and, consequently appointed an authorised controller, which order has been challenged in Writ Petition No. 18745 of 2009.

6. The petitioners have also filed Writ Petition No. 3874 of 2008 praying for the quashing of the order of the District Inspector of Schools dated 26.9.2007, by which, he had passed an order for single operation of the account. No interim order has been passed in this writ petition.

7. In the light of the aforesaid factual position, Sri N.L. Pandey, the learned Counsel for the respondent Nos. 4 and 5 submits that his Writ Petition No. 36958 of 2000 still survives and should be decided.

8. Upon considering the matter, the Court, finds that the alleged election conducted by the respondent Nos. 4 and 5 lacked necessary details and material. Such an election conducted by the members of the general body cannot be recognised and it appears that a sham dispute was created by the respondent No. 4, since at an earlier point of time in the year 1994, he was the Manager of the Institution.

9. Consequently, the Court is of the opinion, that a mandamus could not be issued to the authority to refer the alleged election of the respondent No. 4 to the Regional Committee. In any case, the period had expired and there is no allegation being brought on record that the respondent No. 4 was elected again in a fresh election held in the year 2003. Consequently, this Court is of the opinion that the Writ Petition No. 36958 of 2000 filed by the respondent Nos. 4 and 5 has become infructuous and is dismissed as such.

10. With regard to Writ Petition No. 47539 of 2003, the said writ petition has been filed by the Committee of Management through its Ex-Manager Lalman challenging the resolution of the Regional Committee dated 26.8.2003 approving the election of the petitioners as well as the order dated 30.8.2003 passed by the District Inspector of Schools attesting the signatures of the Manager. In my opinion, this petition is not maintainable since there is nothing on record to indicate that the petitioner No. 1 was a valid Committee of Management which was elected in an election conducted in the year 2003 or that the petitioner No. 2 was elected as the Manager.

11. This Court also finds that the petitioners had no locus standi to file the present writ petition. In Committee of Management, Kisan Shiksha Sadan, Banksahi, district Basti Anr. v. Assistant Registrar, Firms, Societies Chits, Gorakhpur Region, Gorakhpur and Anr. 1995 UPLBEC 1242 and in Dr. P.P. Rastogi and Others Vs.

Meerut University and Another, and in Committee of Management, Sri Kachcha Baba inter College, Varanasi and Ors. v. Regional Committee, Pancham Mandal, Varanasi and Ors. 2007 (7) ADJ 414 : 2008 (5) AWC 4334 and in Writ Petition No. 3328 of 2008, Committee of Management and Anr. v. Regional Education Committee, Meerut Region, Meerut and Ors. decided on 4.8.2008, and in Writ Petition No. 40861 of 2007, Vagish Chandra Sharma and Anr. v. State of U.P. and Ors. decided on 12.8.2009, it has been held that a writ petition at the instance of a member of the Committee of Management or at the instance of a life member was not maintainable.

12. In the present case, the Court does not find any iota of evidence that in the election held in the year 2003, respondent Nos. 4 and 5 were elected. Respondent No. 4, who is the petitioner No. 2 in Writ Petition No. 47539 of 2003 could at best, be held to be a member of the society and the writ petition is not maintainable, at his instance, challenging the election which has been recognised by the Regional Level Committee on 26.8.2008 nor can he challenge the attestation of the District Inspector of Schools by an order dated 30.8.2003. Consequently, the said Writ Petition No. 47539 of 2003 is dismissed as not maintainable.

13. In view of the aforesaid, this Court is of the opinion that the impugned order dated 27.12.2008/ 1.1.2009, passed by the Regional Committee holding that the election of 2006 was a void election since an interim order dated 22.10.2003 was operating no longer survives. In any case, the interim order dated 22.10.2003 did not restrain the Committee of Management to hold a fresh election upon its term coming to an end. There was no embargo upon the Committee of Management to hold a fresh election. Consequently, the Committee of Management was competent to hold a fresh election which is alleged to have been held on 20.8.2006 and the said election 2006 cannot be held to be void only on the strength that an interim order was passed. The order of the Regional Committee dated 26.3.2003 had not been stayed, and therefore, the said Committee of Management was allowed to continue and function and was competent to hold fresh election as per the Scheme of Administration upon its term coming to an end.

14. In view of the aforesaid, the order dated 22.12.2008/1.1.2009, passed by the Regional Committee in Writ Petition No. 18745 of 2009 cannot be sustained and is quashed. The writ petition is allowed.

15. This Court finds that the election held on 20.8.2006 has not been affirmed as yet by an authority under the Intermediate Education Act. An objection has been filed by the respondent No. 4 dated 11.12.2006 which is still pending. This Court, further finds that the term of the Committee of Management is three years which is extendable for another three months under the Scheme of Administration. Consequently, Writ Petition No. 31709 of 2007 filed by the respondent No. 4 through its alleged Committee of Management, even though, this writ petition is not maintainable, however, is being disposed of with a direction to the authority

concerned to decide the objection of the respondent No. 4 while approving or disapproving the election of the petitioners held on 20.8.2006 within two weeks from the date of the production of a certified copy of this order. In the event, the election of 20.8.2006 is approved by the authority, the petitioners will issue the electoral agenda immediately within a week and hold the election under an Observer appointed by the District Inspector of Schools, Basti.

16. In view of the aforesaid, Writ Petition No. 3874 of 2008 does not survive and is dismissed.