

Neutral Citation No. - 2024:AHC:135567

A.F.R.
RESERVED ON 13.3.2024
DELIVERED ON 23.8.2024

Court No. - 1

Case :- WRIT - C No. - 25324 of 2023

Petitioner :- C/M Shri Shanker Inter College And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Rahul Sahai, Saumitra Anand

Counsel for Respondent :- C.S.C., Namit Srivastava, Parul Srivastava, Prabhakar Awasthi

Hon'ble Salil Kumar Rai, J.

1. Shri Saumitra Anand, Advocate, representing the petitioners, Standing Counsel representing respondent Nos. 1 to 4 and Shri Prabhakar Awasthi, Advocate, representing respondent No. 5 were heard on 13.3.2024 when the judgement in the case was reserved.

2. Shri Shanker Vidyalaya Shiksha Samiti, Palso, District-Mathura (hereinafter referred to as, 'Society') is a Society registered under the Societies Registration Act, 1860 (hereinafter referred to as, 'Act, 1860') and runs Shri Shanker Inter College, Palso, Mathura (hereinafter referred to as, 'Institution'), which is a recognized Institution as defined under the Uttar Pradesh Intermediate Education Act, 1921 (hereinafter referred to as, 'Act, 1921') and is governed by the Act and Regulations made thereunder. The Institution is also within the grant-in-aid list of the State Government and is also governed by The Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (hereinafter referred to as, 'Act, 1971').

3. A joint reading of the bye-laws of the Society and the Scheme of Administration of the Institution shows that the Committee of Management of the Institution is elected by the members of the general body of the Society from amongst themselves. The office bearers of the Committee of Management

of the Institution are elected by the elected members of the Committee of Management from amongst themselves. The term of the Committee of Management is five years and Clause 7 of the Scheme of Administration provides that the elections of the Committee of Management of the Institution and its office bearers are to be held one month before the term of the existing Committee of Management expires. The Scheme of Administration further provides that in case the elections of the Committee of Management and its office bearers are not held within the time prescribed, the Regional Joint Director of Education may, on the recommendations of the District Inspector of Schools (hereinafter referred to as, 'D.I.O.S. '), appoint an Authorized Controller in the Institution and the Authorized Controller shall, as soon as possible, hold the elections of the Committee of Management. Clause 22 of the Scheme of Administration, under the heading Emergency Provisions, empowers the State Government to appoint, on the recommendations of either the Society or the Director of Secondary Education, an Administrator in the Institution and on the appointment of such Administrator, the Committee of Management of the Institution shall stand suspended. Clause 22 further provides that the Administrator can dissolve the Committee of Management of the Institution and remove its office bearers. Clause 22 (7) and (8) provide that the State Government can any time remove the Administrator appointed by it or appoint another Administrator and in case the Administrator is removed or his term expires and no successor to such Administrator is appointed, the Committee of Management shall stand restored.

4. The dispute in the present petition relates to the elections of the Committee of Management of the Institution and the genesis of the dispute is in the rival elections set up in 2003.

5. At this stage, it would be relevant to note that the dispute between the petitioner No. 2 and respondent No. 5 is also regarding the valid list of members of the general body of the Society. The petitioner No. 2 claims that the list of 67 members of

the general body submitted by him before the relevant authority is the valid list while the respondent No. 5 claims that the list submitted by him containing 126 members is the valid list of members of the general body. The different lists submitted by the parties do not contain the name of the other party, i.e., the list submitted by respondent No. 5 does not contain the name of petitioner No. 2 and the list submitted by petitioner No. 2 does not contain the name of respondent No. 5. In other words, the petitioner denies that respondent No. 5 is a member of the general body of the Society and similarly the respondent No. 5 also denies that petitioner No. 2 is a member of the general body of the Society.

6. In 2003 two rival claims were set up by the petitioner and respondent No. 5 claiming themselves to be the validly elected Manager of the Committee of Management of the Institution. Respondent No. 5 claimed that the elections of the Committee of Management of the Institution and its office bearers were held on 3.4.2003 in which he was elected as Manager while petitioner No. 2 claimed that the elections were held on 9.4.2003 in which petitioner No. 2 was elected as Manager. The respondent No. 5 and the petitioner submitted their claims before the D.I.O.S. for attestation of their signatures as Manager. As rival claims were set up, the dispute was referred to the Regional Level Committee which, vide its order dated 26.8.2003, recognized the elections dated 9.4.2003 set up by petitioner No. 2 and consequently the D.I.O.S. vide his order dated 30.8.2003 attested the signatures of petitioner No. 2 as the Manager. The orders dated 26.8.2003 and 30.8.2003 were challenged by respondent No. 5 through Writ Petition No. 44781 of 2003, which was allowed by this Court vide its order dated 8.11.2005. By its order dated 8.11.2005, the Court remanded back the matter to the Regional Level Committee for a fresh decision on merits and also directed that till any decision is taken by the Regional Level Committee, status quo with regard to the management of the Institution as existing on the date of the order shall continue. The Regional Level Committee reconsidered

the matter and vide its order dated 30.5.2006 again accepted the claim of the petitioner. The order dated 30.5.2006 passed by the Regional Level Committee was again challenged by the respondent No. 5 through Writ-C No. 42354 of 2006. In Writ-C No. 42354 of 2006, this Court vide its order dated 7.8.2006 stayed the operation of the order dated 30.5.2006 passed by the Regional Level Committee and further directed that a person appointed by the Regional Joint Director of Education, Agra shall manage the affairs of the Institution.

7. Meanwhile, elections to elect the governing body of the Society and its office bearers was also held and the petitioner No. 2 was elected as the Secretary/Manager of the governing body of the Society. The Deputy Registrar, Firms, Societies and Chits, District-Mathura vide his order dated 25.4.2006 registered the list of elected office bearers of the Society. The order dated 25.4.2006 was challenged by respondent No. 5 through Writ-C No. 24940 of 2006. Writ-C No. 24940 of 2006 was dismissed by this Court vide order dated 5.5.2006 on ground of availability of alternative remedy of filing a civil suit. Consequently, Original Suit No. 781 of 2006 was instituted by respondent No. 5 for a decree declaring the order dated 25.4.2006 to be null and void and also for a decree declaring that the list of 67 members claimed by petitioner No. 2 to be the valid list of members of the general body of the Society was not a valid list of members.

8. In 2012, Writ-C No. 21161 of 2012 was filed in this Court seeking a writ of mandamus commanding the authorities to hold the elections of the Committee of Management of the Institution. With the consent of the counsel for the parties the petition was disposed of by order dated 8.5.2012. In its order dated 8.5.2012, the Court directed that the Sub-Divisional Magistrate of the area where the Institution was situated shall determine the electoral college on the parameters of Section 15 of the Act, 1860 and thereafter in exercise of authority vested under Section 25(2) of the Act, 1860 the Assistant Registrar shall hold the elections of the Committee of Management within next two months and

thereafter the Committee of Management so elected shall be handed over charge. On the same date, vide its order dated 8.5.2012, this Court dismissed Writ-C No. 42354 of 2006 as infructuous on the ground that the tenure of the Committee of Management of the Institution had come to an end. Relevant extracts from the order dated 8.5.2012 passed in Writ-C No. 21161 of 2012 and Writ-C No. 42354 of 2006 are reproduced below :-

Writ-C No. 21161 of 2012

“Parties to the dispute have agreed that in order to settle the dispute, no reliance would be placed on the order of the Assistant Registrar passed on earlier occasion, and both the parties to the dispute have requested that the Sub-Divisional Magistrate of the area concerned, wherein the institution in question is situated be asked to hold the elections of the Committee of Management. The parties have also agreed that writ petition No.42354 of 2006 be decided together, by dismissing the same as having rendered infructuous, as tenure of the Committee of Management, dispute of which is involved therein, has run out, and membership issue is to be decided afresh without being influenced by earlier proceedings.

Consequently, writ petition No.42354 of 2006 is dismissed as infructuous by a separate order of the date, and writ petition 21161 of 2012 is disposed of with direction that Sub-Divisional Magistrate of the area concerned where institution in question is situated, shall determine the electoral college on the parameters of Section 15 of the Societies Registration Act, 1860 and thereafter on the strength of electoral college so determined in exercise of authority vested under Section 25 (2) of the said Act elections of the Committee of Management shall be held by the Assistant Registrar, Firms, Societies and Chits, within next two months from the date of receipt of a certified copy of this order, and thereafter the Committee of Management so elected shall be handed over charge.”

Order date :- 8.5.2012”

Writ-C No. 42354 of 2006

“Present writ petition has been filed by Jagdish Prasad Jain, claiming himself Manager of Sri Shankar Inter College, Palson, Mathura, questioning the validity of decision dated 30.05.2006, wherein Regional Committee had proceeded to accord approval to the elections dated 09.03.2003 and refused to accord approval to the elections dated 03.04.2003. On presentation of writ petition, an interim order had been passed, and at present, this

is accepted position that tenure of the said Committee of Management has come to an end, rendering the present writ petition as infructuous.

Consequently, present writ petition is dismissed as infructuous.

Order date :- 8.5.2012”.

9. In compliance of the order dated 8.5.2012 passed by this Court in Writ-C No. 21161 of 2012, the Deputy District Magistrate passed an order dated 8.3.2013 determining the electoral college of the Society in which he accepted the list of 67 members submitted by the petitioner and rejected the list of 126 members submitted by respondent No. 5. The order dated 8.3.2013 passed by the Deputy District Magistrate was challenged by respondent No. 5 through Writ-C No. 23300 of 2013 which was dismissed by this Court vide its order dated 26.4.2013. In its order dated 26.4.2013 this Court noted that respondent No. 5 had already instituted Original Suit No. 781 of 2008 challenging the order dated 25.4.2006 passed by the concerned Registrar recognizing the elections of the petitioner as the Manager of the governing body of the Society and, therefore, the respondent had the remedy to also challenge in the pending suit the determination of the electoral college by the Deputy District Magistrate. The relevant extract of the order dated 26.4.2013 passed by this Court dismissing Writ-C No. 23300 of 2013 is reproduced below :-

“From paragraphs 15 and 16 of the present writ petition it is apparently clear that the petitioner has already filed Civil Suit No. 781 of 2008 in terms of the order passed by the High Court dated 05.05.2006 in Writ Petition No. 24940 of 2006, wherein the issue of membership and right of Devendra Singh to be a member of the society are under consideration.

Under the order impugned the Prescribed Authority has determined the electoral college for the purposes of holding the elections of the society as well as of the Committee of Management of the institution. Petitioners are not satisfied.

In my opinion the petitioners are at liberty to seek such further relief in the pending suit against the determination of the electoral college, as may be necessary.

It goes without saying that the order passed under

the Societies Registration Act be it by the Assistant Registrar or the Prescribed Authority, are always subject to the orders to be passed in the civil suit. If the petitioner makes appropriate application it shall be considered at the earliest possible by the Civil Court.

Writ petition is dismissed with the observations made.”

10. Consequently, the respondent No. 5 amended his plaint instituting Original Suit No. 781 of 2008 seeking further relief to declare that the order dated 8.3.2013 passed by the Deputy District Magistrate, Mathura was null and void and further the list of 67 members submitted by petitioner No. 2 and accepted by the Deputy District Magistrate in his order dated 8.3.2013 was not a valid list of the members of the general body of the Society. It has been stated in the writ petition, and the said fact has not been denied in the counter affidavit, that Original Suit No. 781 of 2008 was dismissed by the trial court for want of prosecution vide order dated 7.9.2021 and no restoration application has been filed for recalling the order dated 7.9.2021 and for restoring the suit to its original number.

11. In the meantime, as a consequence of the order dated 8.3.2013 passed by the Deputy District Magistrate, proceedings to elect the governing body of the Society were started. A letter dated 19.8.2013 was sent by the Deputy District Magistrate, Mathura to Deputy Registrar, Firms, Societies and Chits, Agra annexing the attested photo copy of the list of members. On the receipt of the said list the Deputy Registrar passed an order dated 28.1.2019 for holding the elections under Section 25(2) of the Act, 1860. The order dated 28.1.2019 was again challenged by respondent No. 5 in this Court through Writ-C No. 14869 of 2019 in which this Court vide its order dated 29.4.2019 has sought information as to whether any list of members finalized under Section 4-B of the Act, 1860 was available with the Registrar of the Societies. Writ-C No. 14869 of 2019 is still pending before this Court.

12. It has been stated in the writ petition that the elections to elect the governing body of the Society and its office bearers were

held under Section 25(2) of the Act, 1860 on 19.5.2019 in which the petitioner No. 2 was elected as Manager/Secretary of the governing body of the Society. The list of elected office bearers of the Society submitted by petitioner No. 2 as a consequence of the elections held on 19.5.2019 has been registered by the Deputy Registrar, Firms, Societies and Chits, District-Agra vide his order dated 6.1.2022 and a certificate dated 25.11.2021 has been issued at the instance of petitioner No. 2 renewing the registration of the Society for a period of five years w.e.f. 13.7.2020. It has been stated in the writ petition that the order dated 6.1.2022 passed by the Deputy Registrar has been challenged in this Court through Writ-C No. 14288 of 2022 by an individual claiming himself to be a life member of the governing body of the Society and the said writ petition is pending in this Court, but no interim order has been passed in the same.

13. In the meantime, elections to constitute the Committee of Management of the Institution and also to elect its office bearers were also held by petitioner No. 2 on 2.1.2022 in which the petitioner No. 2 was elected as manager. The necessary documents regarding elections were submitted by petitioner No. 2 before the D.I.O.S, Mathura for getting his signatures attested as Manager. The D.I.O.S. vide his order dated 28.2.2022 attested the signatures of the petitioner as Manager of the Committee of Management subject to final decision in Writ-C No. 14869 of 2019.

14. Aggrieved by the order dated 28.2.2022 passed by the D.I.O.S., Mathura, the respondent No. 5 filed a representation dated 27.4.2022 before the Regional Level Committee pleading that the elections held on 2.1.2022 as claimed by petitioner No. 2 were contrary to the orders dated 8.5.2012 passed in Writ-C No. 21161 of 2012 and in Writ-C No. 42354 of 2006 and the elections of the Committee of Management of the Institution could have been held only by the Authorized Controller who was appointed as a consequence of the interim order dated 7.8.2006 passed by this Court in Writ-C No. 42354 of 2006 and was managing the affairs of the Institution even after dismissal of the writ petition by this

Court vide its order dated 8.5.2012. The representation filed by respondent No. 5 was not decided by the Regional Level Committee, therefore, the respondent No. 5 filed Writ-C No. **30199 of 2022** complaining against the delay by the Regional Level Committee in deciding his representation and this Court vide its order dated 31.10.2022 directed the Regional Level Committee, Agra Region, District-Agra to pass appropriate orders on the representation of respondent No. 5. It was clarified in the order dated 31.10.2022 that this Court had not expressed any opinion either regarding the jurisdiction of the Regional Level Committee to entertain the representation of the petitioner or regarding the merits of the claim made by the petitioner which had to be decided by the Regional Level Committee.

15. The Regional Level Committee by its order dated 3.6.2023 decided the representation of respondent No. 5 and set aside the order dated 28.2.2022 passed by the D.I.O.S. whereby the D.I.O.S had attested the signatures of petitioner No. 2. In its order dated 3.6.2023, the Regional Level Committee has derecognized the elections dated 2.1.2022 and has also rejected the claim of the petitioner on the basis of the aforesaid elections. In its order dated 3.6.2023, the Regional Level Committee has rejected the elections dated 2.1.2022 on the ground that the elections were contrary to law because they were held by a Committee of Management whose term had expired, and an Authorized Controller had been appointed and was functioning in the Institution and, also because the elections were not held in accordance with the order dated 8.5.2012 passed by this Court in Writ Petition No. 21161 of 2012. The Regional Level Committee has reasoned that in accordance with the order dated 8.5.2012, the elections were to be held by the Assistant Registrar. In its order dated 3.6.2013, the Regional Level Committee has also taken note of different correspondences by the Assistant Registrar which indicate that no list of members of the society has been registered under Section 4-B of the Act, 1860 and that no list of 67 members of the Society was appended to the order dated

8.3.2023 passed by the Sub-Divisional Magistrate.

16. Consequential order dated 17.6.2023 has been passed by the D.I.O.S., Mathura directing that the Authorized Controller previously appointed in the Institution shall manage the affairs of the Institution.

17. The order dated 3.6.2023 passed by the Regional Level Committee and the consequential order dated 17.6.2023 passed by the D.I.O.S., Mathura have been challenged in the present writ petition.

18. A counter affidavit has been filed by respondent No. 5 to support his contention that the list of 67 members of the Society claimed by petitioner No. 2 to be the valid list was a not a valid list of members and the election held on the basis of the aforesaid list was not a valid election. In his counter affidavit, the respondent no. 5 has annexed different documents showing correspondences between State officers, especially between the Deputy Registrar, Firms, Societies and Chits, District-Agra and the Regional Joint Director of Education, Agra Region, District-Agra, and also a letter to the respondent by the Deputy Registrar which reveal that the original copy of the list of 67 members claimed by petitioner No. 2 and declared as valid list by the Deputy District Magistrate in his order dated 8.3.2013 was not available in the office of the Deputy Registrar and no such list had been registered under Section 4-B of the Act, 1860. The letter states that no certified copy of list of members of the general body of the Society was supplied to the office of the Deputy Registrar alongwith the order dated 8.3.2013 passed by the Deputy District Magistrate. On the basis of the aforesaid correspondences it has been pleaded in the counter affidavit that the claim of the petitioner regarding the elections dated 2.1.2022 was false and the elections allegedly electing the petitioner as Manager of the Committee of Management of the Institution were not held on the list of members certified or accepted by the Deputy District Magistrate in his order dated 8.3.2013.

19. Challenging the order dated 3.6.2023 passed by the Regional Level Committee and the consequential order dated 17.6.2023 passed by the D.I.O.S., Mathura, the counsel for the petitioner has argued that the elections of the Committee of Management of the Institution and its office bearers can not be challenged by a sole member therefore the representation of respondent No. 5 was not maintainable. It was argued that for the aforesaid reason the order dated 3.6.2023 passed by the Regional Level Committee is without jurisdiction. It was further argued that the appointment of Authorized Controller came to an end after the order dated 8.5.2012 passed by the Court dismissing Writ-C No. 42354 of 2006 and consequently the Committee of Management of the Institution elected in 2003 and recognized by order dated 30.5.2006 stood revived and the said Committee was empowered to hold and conduct the elections and the Authorized Controller could not have held the elections. It was argued that the Regional Level Committee has erred in rejecting the elections on the ground that they were held by a Committee of Management whose term had expired. It was argued that challenge by respondent No. 5 to the order dated 8.3.2013 passed by the Deputy District Magistrate had been rejected by this Court and Original Suit No. 781 of 2008 challenging the order dated 8.3.2013 has also been dismissed for non-prosecution. It was argued that the order dated 8.3.2013 passed by the Deputy District Magistrate has not been stayed by any court and, therefore, the elections on the basis of the list accepted by the Deputy District Magistrate can not be set aside or rejected. It was argued that the list of members of the general body of the Society accepted by the Deputy District Magistrate vide his order dated 8.3.2013 was not required to be registered under Section 4-B of the Act, 1860 and could not have been so registered as on the relevant date Section 4-B was not incorporated in the Act, 1860. It was argued that in its order dated 3.6.2023, the Regional Level Committee has misread the order dated 8.5.2012 passed in Writ Petition No. 21161 of 2012 while concluding that the elections set

up by the petitioner was not held in accordance with the aforesaid order. It was argued that for the aforesaid reasons, the order dated 3.6.2023 passed by the Regional Level Committee rejecting the elections dated 2.1.2022 on the ground that the term of the Committee of Management of the Institution which held the elections had expired and elections were not held in accordance with the order dated 8.5.2012 passed in Writ-C No. 21161 of 2012 is contrary to law. It was argued that the order dated 3.6.2003 passed by the Regional Level Committee and the consequential order dated 17.6.2023 passed by the D.I.O.S., Mathura are liable to be quashed. In support of his contention, the counsel for the petitioner has relied upon the following judgements of this Court :-

- (A) Navin Kumar Singh Vs. D.I.O.S Budaun and Others 1997(1) AWC-76,**
- (B) Committee of Management, Shri Gandhi Inter College Vs. Deputy Director of Education, 1989 (87) ALJ-214,**
- (C) Committee of Management, Arya Kanya Inter College, Sikandra Rau, Aligarh Vs. Secretary, Arya Kanya Inter College, Sikandra Rau, Aligarh, 1998 (34) ALR 625,**
- (D) Committee of Management Sunehri Lal Bal Mukund Inter College and Others Vs. Regional Level Committee and Others, 2009 (8) ADJ 435,**
- (E) Amanullah Khan Vs. State of U.P. and Others 2009(2) ADJ 298; and**
- (F) Bhagwan Kaushik Vs. State of U.P. and Others 2006 (5) AWC 4997 ALL**

20. Rebutting the argument of the counsel for the petitioner, the counsel for respondent No. 5 has supported the order dated 3.6.2023 passed by the Regional Level Committee and the reasons given in the same. It was argued that no list of valid members of the general body of the Society has been registered by the concerned Registrar under Section 4-B of the Act, 1860 and, therefore, the elections held on 2.1.2022 were illegal and

have been rightly rejected by the Regional Level Committee. It was argued that an Authorized Controller was appointed in the Institution and was functioning as such on 2.1.2022 on which date there was no elected Committee of Management functioning or managing the affairs of the Institution. It was argued that, in accordance with Clause 7 of the Scheme of the Administration, the elections of the Committee of Management and its office bearers had to be held by the Authorized Controller. It was argued that the elections dated 2.1.2022 claimed by the petitioners were not held in accordance with the order dated 8.5.2012 passed by this Court in Writ-C No. 42354 of 2006 and for the aforesaid reasons, the order dated 3.6.2023, rejecting the elections set up by the petitioner, was according to law. It was further argued that the term of the Committee of Management allegedly elected on 9.4.2003 and initially recognized by the Regional Level Committee on 26.8.2003 had obviously expired by 2.1.2022 and, therefore, by virtue of Clause 7 of the Scheme of Administration the said Committee of Management was not authorized to hold the elections and the elections had to be held by the Authorized Controller. It was argued that for the aforesaid reasons, there is no illegality in the order dated 3.6.2023 and the petition lacks merit and is liable to be dismissed. In support of his contention the counsel for the respondent has relied on the judgement of this Court delivered in **Committee of Management, Gramin Vikas Inter College and Others Vs. State of U.P. and Others, 2011 (3) ESC 1859 (All)**.

21. I have considered the submissions of the counsel for the parties.

22. Clause 7 of the Scheme of Administration of the Institution provides that elections for constituting the Committee of Management of the Institution and to elect its office bearers are to be held one month before the term of the existing Committee of Management expires and in case elections are not held within the prescribed time the Regional Joint Director of Education, on the recommendations of the D.I.O.S., may appoint an Authorized

Controller who shall expeditiously hold the elections to constitute the Committee of Management and to elect its office bearers. Clause 7 of the Scheme of Administration only enables the Regional Joint Director of Education to appoint, on the recommendations of the D.I.O.S., an Authorized Controller in the Institution. It is not obligatory for the D.I.O.S. to recommend to the Joint Director for appointment of an Authorized Controller and it is also not obligatory for the Joint Director to appoint an Authorized Controller if such a recommendation is made by the D.I.O.S. However, if an Authorized Controller is appointed under Clause 7 of the Scheme of Administration, it is only he who would have the power to hold the elections of the Committee of Management of the Institution and its office bearers. An Authorized Controller not appointed under Clause 7, but otherwise, will not be empowered to hold the elections and any elections held by such an Authorized Controller would be in violation of the Scheme of Administration.

23. In the present case, the Authorized Controller was not appointed under Clause 7 of the Scheme of Administration. The appointment was not on the recommendations of the D.I.O.S. or for the reason that the elections of the Committee of Management and its office bearers had not been held within the time prescribed in the Scheme of Administration. The appointment of the Authorized Controller was a consequence of the interim order order dated 7.8.2006 passed by this Court in Writ-C No. 42354 of 2006. The appointment was only an interim arrangement which came to an end when Writ-C No. 42354 of 2006 was dismissed by this Court vide its order dated 8.5.2012, albeit on the ground that the petition had become infructuous. The appointment of an Authorized Controller as a consequence of an interim order passed by this Court would not metamorphose into an appointment under Clause 7 of the Scheme of Administration and empower him to hold elections excluding the elected Committee of Management merely because the Authorized Controller continued to function even after Writ-C No. 42354 of 2006 was dismissed vide order

dated 8.5.2012.

24. An anomalous situation may develop if the proposition that the Committee of Management whose term had expired can not hold the elections to constitute a fresh Committee of Management and the elections can be held only by an Authorized Controller, is accepted. The State authorities may not appoint any Authorized Controller in the Institution, as it is not obligatory on them to appoint an Authorized Controller even after the term of the Committee of Management has expired, therefore, no elections to constitute a fresh Committee of Management will ever be held in the said Institution. For the said reason, the Committee of Management whose term has expired is not prohibited from holding elections to constitute a fresh Committee of Management if no Authorized Controller has been appointed under clause 7 of the Scheme of Administration.

25. In view of the aforesaid, the Authorized Controller functioning in the Institution was not empowered to hold the elections, and the elections held by the petitioners on 2.1.2022 can not be invalidated merely on the ground that the term of the Committee of Management which held the elections, had expired. For the said reasons, the opinion of the Regional Level Committee that the elections held on 2.1.2022 can not be recognized because they were held by a Committee of Management whose term had expired is contrary to law.

26. The opinion of the Regional Level Committee that the elections of the Committee of Management of the Institution had to be held by the Assistant Registrar in accordance with the orders of the Court is also not correct. A reading of the order dated 8.5.2012 passed by this Court in Writ-C No. 21161 of 2012 shows that it refers to Section 25(2) of the Act, 1860. The elections of a Committee of Management of an Institution governed by Act, 1921 are not held by the Assistant Registrar under Section 25(2) of the Act, 1860 and any such elections would be contrary to the Scheme of Administration and illegal. The order of the Court can

not be read as suggesting an illegality. The order of the Court has to be interpreted and read as directing the Assistant Registrar to hold the elections of the governing body of the Society and not of the Committee of Management of the Institution.

27. A reading of the order dated 3.6.2023 shows that the Regional Level Committee has rejected the elections dated 2.1.2022 also on the ground that the list of members of the general body of the Society which was also the electoral college for the elections dated 2.1.2022 had not been registered under Section 4-B of the Act, 1860. The said opinion is also not in accordance with law for reasons given subsequently.

28. Section 4-B(3) of the Act, 1860 requires that the list of members of the general body of the Society filed with the Registrar shall be signed by two office bearers and two executive members of the Society. Section 4-B was incorporated in Act 1860 through the Societies Registration (Uttar Pradesh Amendment) Act, 2011. The Amendment Act, 2011 does not itself specify the date from which it shall come in operation. The Amendment Act received the assent of the President on September 28, 2013 and was published in the Uttar Pradesh Gazette on 9th October, 2013. In view of Section 5(b) of the Uttar Pradesh General Clauses Act, 1904 the Amendment Act came in operation on the date it was published in Official Gazette, i.e., on 9th October, 2013. The list of 67 members claimed by petitioner No. 2 to be the valid list of members of the General Body of the Society and on which the elections dated 2.1.2022 were held was accepted by the Deputy District Magistrate vide his order dated 8.3.2013, i.e., before Section 4-B came in operation. In view of Section 4-B(3), the list could have been filed for registration under Section 4-B after the elections were held. The elections to elect the governing body of the Society were held on 19.5.2019 under Section 25(2) of the Act, 1860 and the list of elected office bearers of the Society, which included the petitioner No. 2 as Manager, was registered on 6.1.2022. The list of 67 members of the General Body of the Society as certified by order dated 8.3.2013 of the Deputy District

Magistrate, could have been submitted before the concerned Registrar for registration under Section 4-B of the Act, 1860 after fulfilling the requirement of Section 4-B(3) and thus after 6.1.2022. The elections to constitute the Committee of Management of the Institution and also to elect its office bearers were held on 2.1.2022. Further, under Section 4-B (1) and (2) of the Act, 1860 the list of members of the general body of the Society is to be filed with the Registrar either at the time of registration of the Society or at the time of renewal of the Society or when there is any change in the list of members on account of induction, removal, registration or death of any member, the modified list shall be filed with the Registrar within one month from the date of change. It is not the case of respondent No. 5 or the Regional Level Committee that the situation in the present case was covered either by Section 4-B(1) or Section 4-B(2) of the Act, 1860. Apparently, the elections can not be rejected on the ground that the list of members on which the elections were held was not registered under Section 4-B of the Act, 1860.

29. The list of 67 members of the General Body of the Society as produced by the petitioner was accepted by the Deputy District Magistrate vide his order dated 8.3.2013. The fact that the list produced by petitioner No. 2 was accepted by the Deputy District Magistrate is also admitted by respondent No. 5 as would be evident from his conduct in instituting Writ-C No. 23300 of 2013 challenging the order dated 8.3.2013. The respondent No. 5 also amended his plaint in Original Suit No. 781 of 2006 praying for a declaration that the order dated 8.3.2013 passed by the Deputy District Magistrate was null and void and the list of 67 members of the General Body submitted by petitioner No. 2 and accepted by the Deputy District Magistrate was not a valid list of members of the General Body. It is also evident from the letter dated 19.8.2013 of the Deputy District Magistrate addressed to the Deputy Registrar that an attested copy of the list of 67 members of the General Body of the Society was sent by the Deputy District Magistrate to the Deputy Registrar. It was on the basis of the said

list that elections of the governing body of the Society were held and the said elections were recognized by the Registrar and the list of elected office bearers was registered vide order dated 6.1.2022. The order dated 6.1.2022 has been challenged in Writ-C No. 14288 of 2022 which is still pending and no interim order has been passed in the said writ petition. In case the said list is not on record and not at present either in the office of the Deputy District Magistrate or in the office of the Registrar, Firms, Societies and Chits, the contents of the said list can be decided only on evidence to be led by the interested parties in any litigation instituted for the said purpose before the appropriate court of fact. The fact that the list was accepted by the Deputy District Magistrate vide his order dated 8.3.2013 can not be denied. The Regional Level Committee could not have rejected the claim of the petitioner on the ground that the said list was not available in the office of the Registrar and had not been supplied to the Regional Level Committee.

30. While deciding any dispute regarding elections of the Committee of Management, the Regional Level Committee only, *prima facie*, decides the validity of the elections. While exercising its power under Section 16-A(7), the Regional Level Committee only enquires as to whether the parties claiming elections of the Committee of Management or its office bearers are not rank trespassers trying to take over the Committee of Management. The Regional Level Committee does not decide the validity of the elections as a court. The order of the Regional Level Committee is not final and is subject to orders passed by a court. In the present case, the petitioners claim to have been elected in the elections dated 9.4.2003, which was accepted by the then education authorities vide their different orders referred in the earlier paragraphs of the judgement. The said orders were challenged in this Court but have not been set aside. The General Body of the Society elects the Committee of Management of the Institution. The elections of the governing body of the Society by the same General Body which participated in the elections dated 2.1.2022

has been acknowledged and recognized by the Deputy Registrar vide his order dated 6.1.2022. The writ petition challenging the order dated 6.1.2022 passed by the Deputy Registrar is still pending and no interim orders have been passed in the said writ petition. The claim of the petitioners regarding the elections dated 2.1.2022 was, prima facie, established and could not have been rejected by the Regional Level Committee.

31. For the aforesaid reasons, the order dated 3.6.2023 passed by the Regional Level Committee rejecting the elections dated 2.1.2022 set up by the petitioner is contrary to law.

32. In light of the reasons given above, and because I have considered the order passed by the Regional Level Committee on merits, I have not considered the submission of the counsel for the petitioner regarding maintainability of the representation submitted by respondent No. 5 before the Regional Level Committee as the same is not required.

33. For the aforesaid reasons, the order dated 3.6.2023 passed by the Regional Level Committee and the consequential order dated 17.6.2023 passed by the D.I.O.S., Mathura are contrary to law and are liable to be quashed and are hereby quashed. The order dated 28.2.2022 passed by the D.I.O.S., Mathura is restored.

34. The D.I.O.S. is directed to ensure that petitioner No. 2 as Manager of the Committee of Management of the Institution is handed over the charge of the Institution within fifteen days from today.

35. With the aforesaid directions, the writ petition is ***allowed***.

36. Let this order be communicated to the District Inspector of Schools, Mathura by the Registrar (Compliance) within one week from today.

Order Date :- 23.08.2024

Anurag/-