

Court No. - 10

Case :- WRIT - C No. - 15218 of 2023

Petitioner :- Nadeem Iftekhhar And 12 Others

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

Counsel for Petitioner :- Prabhakar Awasthi, Saurabh Tripathi

Counsel for Respondent :- C.S.C., Gulrez Khan, Javed Husain Khan

Hon'ble Kshitij Shailendra, J.

1. Heard Sri Prabhakar Awasthi, learned counsel for the petitioners, learned Standing Counsel for the State-respondents and Sri Gulrez Khan, learned counsel for the contesting respondent no.5 and perused the record.

2. This Court passed the following on 15.09.2023:-

"1. One of the contentions raised by Shri Prabhakar Awasthi, learned counsel for the petitioners is that while this Court in the previous round of litigation covered by Writ C No.19366 of 2022 (Nadeem Iftekhhar And 15 Others v. State of U.P. And 4 Others) directed the Joint Director of Education, XIIth Region, Moradabad to refer the matter to the Regional Level Committee to take a decision on the petitioners' representation dated 27.05.2022 after affording opportunity of hearing to the parties, according to Shri Awasthi, all the notices were issued by the Joint Director of Education which have been referred at first page in the order impugned dated 24.01.2023 and at no point of time, the matter was referred to the Regional Level Committee and matter was placed for the first time before the Regional Level Committee on 24.01.2023, which was not even the date fixed for hearing.

2. The submission is that in absence of the reference made by the Joint Director of Education and for want of providing opportunity of hearing by the Regional Level Committee, the order impugned is in teeth of the directions issued by this Court in the order dated 22.08.2022 passed in Writ C No.19366 of 2022 (Nadeem Iftekhhar And 15 Others v. State of U.P. And 4 Others). Apart from the aforesaid, certain discrepancies with regard to holding of elections by certain members of the Committee have also been pointed out.

3. Shri Gulrez Khan, learned counsel for the respondent no.5 submits that Joint Director of Education, being head of the Regional Level Committee, if he issued notices, the same cannot be termed as illegal and, even otherwise, since the matter has already been decided by the Regional Level Committee pursuant to the directions issued by this Court in the order dated 22.08.2022 which also makes it clear that it was also left open for either of the parties to seek remedy by filing civil suit, as observed by the Division Bench of this Court in the judgment dated 25.05.2015 passed in Special Appeal No.307 of 2015

(Prem Prakash And 3 Others v. State of U.P. And 4 Others), the writ petition is not maintainable and the petitioners may avail remedies as left open.

4. Prima facie, the Court is of the view that in case, the order impugned has been passed committing violation of principles of natural justice or is contrary to the directions issued by this Court on 22.08.2022, it may become non est subject to the satisfaction of the Court.

5. To examine the nature of proceedings held, production of original record is necessary.

6. The respondent no.2 i.e. the Regional Level Committee is directed to produce original record of the entire proceedings pursuant to order dated 22.08.2022 through learned Standing Counsel on the next date.

7. Put up this case on 06.10.2023 as fresh."

2. Today, learned Standing Counsel has produced original record of proceedings.

3. The arguments of Sri Awasthi have already been noted in the previous order, as quoted above.

4. Today also, arguments on the same lines have been advanced and it has been argued that the earlier order dated 22.08.2022 passed in the litigation inter se parties in Writ-C No.19366 of 2022 has not been complied with by the said respondent and neither reference was made by the Joint Director of Education to the Regional Level Committee nor were the parties provided any opportunity of hearing.

5. Further argument on the discrepancy with regard to the membership has been raised by referring to different observations, like 44 members, 18 members, 39 members, 54 members and 28 members.

6. In so far as the question of opportunity of hearing is concerned, Sri Gulrez Khan, learned counsel for the respondent no.5 has argued that the petitioners never raised any dispute with regard to competence of the Joint Director of Education to proceed with the matter. The original record was perused by both the learned counsel on the direction of the Court and it was found that on different dates fixed in the matter, may be by the Joint Director of Education, all the three members of the Regional Level Committee made their signatures. On the same pages, signatures of both the rival claimants are found. Therefore, to infer that the Regional Level Committee did not sit on any date, does not stand reflected.

7. Although, Sri Awasthi has argued that normally signatures of

other members are obtained later on after the Joint Director Education himself does everything but no such opinion can be formed by this Court in absence of any material before it. However, the Court finds that the impugned order has been passed on 24.01.2023 which was not the date of hearing fixed nor does the impugned order reflect as such. The proceedings dated 24.01.2023 noted on a register have also been produced. The said proceedings run in around 4-5 pages and the same have been signed by the Joint Director of Education, 12th Region, Moradabad, Deputy Director of Education (Madhyamik), 12th Region, Moradabad and District Inspector of Schools, Amroha.

8. There being no signature of the rival claimants on the said proceedings, Sri I.P. Srivastava, learned Additional Chief Standing Counsel, submits that it is not the requirement that in the minutes of meeting held by the Regional Level Committee, the presence and signatures of the rival parties are also necessary.

9. After perusal of the original record and the observations recorded in the order impugned, I find that though constitution of Regional Level Committee stands substantiated and even in the Government Order dated 19.12.2000 making of reference is not the necessity, the requirement under the Government Order is that the Committee would be constituted.

10. It is not the matter to be understood like making of reference under Section 25(1) of the Societies Registration Act.

11. Nevertheless, the parties have to be heard by the Regional Level Committee and actual hearing has to take place apart from exchange of documents.

12. In the present case, the entire record shows that though the parties appeared before the Regional Level Committee, except exchange of documents, no other observation has been recorded either in the order impugned or in any of the notices issued by the Joint Director of Education. The Court does not find any fault on the part of the Joint Director of Education in issuing notice to the parties because the purpose of issuance of notice is to secure presence of the parties. It is not the case that the Regional Level Committee did not sit on any date, rather record reflects contrary situation.

13. Nevertheless, actual hearing having not been conducted by the Regional Level Committee and in the meeting dated 24.01.2023 a decision has been taken and there being no observation that the

parties were heard, except noting their presence on the dates of hearing, I find that the matter has been decided without actually hearing the parties although, this Court had already directed the Regional Level Committee to afford opportunity of hearing to the parties.

14. In the aforesaid facts and circumstances of the case, calling for affidavits would further delay the disposal of the matter and it is a fit case where post decisional hearing would serve the purpose in furtherance of the earlier order passed by this Court.

15. Without interfering with the order impugned in the present case, the writ petition is **disposed of** in the following terms:-

(i) The contesting parties shall appear before the Joint Director of Education **on 20.11.2023** along with a certified copy of this order.

(ii) The Joint Director of Education, noting the presence of both the parties, shall fix a single date for hearing of the matter **in the month of November, 2023 itself**.

(iii) On the said date of hearing, all the members of the Regional Level Committee shall sit together and shall afford personal hearing of both the parties.

(iv) The documents filed by both the parties have already been exchanged and no party shall be allowed to file any document or representation or evidence etc.

(v) Sufficient personal hearing to be concluded on a single date.

(vi) Fresh order shall be passed on any subsequent date **but not later than 31.12.2023** and copies of the order shall be served by registered post upon the rival parties.

(vii) The order impugned in the present writ petition shall remain subject to the fresh order to be passed by the Regional Level Committee.

16. The original record produced by the learned Standing Counsel is hereby returned to be remitted back to the Joint Director of Education.

Order Date :- 13.10.2023
AKShukla/-