

Court No. - 10

Case :- WRIT - C No. - 30518 of 2023

Petitioner :- Sri Ganga Prasad Gautam

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Pradeep Kumar Singh, Kushagra Vaibhav Singh

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

Srivastava, Prabhakar Awasthi, Sanjay Singh

with

Case :- WRIT - C No. - 26319 of 2023

Petitioner :- Committee Of Management Shri H.P. Singh Krishi Inter College

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Prabhakar Awasthi, Namit Srivastava

Counsel for Respondent :- C.S.C., Shruti Malviya

Hon'ble Kshitij Shailendra, J.

1. In Writ-C No.30518 of 2023 I have heard Sri P.K. Singh, learned counsel for the petitioner, learned Standing Counsel for the respondents no.1 to 4 and Sri Namit Srivastava along with Sri Prabhakar Awasthi, learned counsel for the respondents no.5 and 6 and in Writ-C No.26319 of 2023 I have heard Sri Namit Srivastava, learned counsel for the petitioner, and learned Standing Counsel for the respondents no.1 to 8. Ms. Shruti Malviya has filed a caveat on behalf of one Sri Ganga Prasad Gautam, who has not been arrayed as respondent in Writ-C No.26319 of 2023 but is the petitioner in Writ-C No.30518 of 2023.

2. Writ-C No.26319 of 2023 has been filed challenging the order of single hand operation dated 03.06.2023.

3. A supplementary affidavit has been filed in Writ-C No.26319 of 2023 which is taken on record.

4. Sri Namit Srivastava submits that, after filing of Writ-C No.26319 of 2023, an order dated 21.07.2023 has been issued by the District Inspector of Schools by which the signatures of Manish Kumar Gautam as Manager of the concerned Committee have been conditionally attested by observing that in case any concealment of fact stands revealed, the said order would automatically stand nullified. It is this order dated 21.07.2023

which has been challenged in Writ-C No.30518 of 2023.

5. Another prayer made in Writ-C No.26319 of 20243 is for a direction commanding the respondents not to interfere in the working of the petitioner Committee of Management and also for quashing of an inquiry report dated 28.06.2021.

6. In respect of the inquiry report, it is contended that in view of a subsequent report dated 27.07.2023 submitted by a Two Member Committee, the allegations levelled against Manish Kumar Gautam have been found to be not substantiated.

7. The Court will take into consideration the said aspects while finalizing this judgment.

8. Writ-C No.30518 of 2023 has been filed with a grievance that though certain recommendations for appointment of Authorized Controller were issued, in the meantime, the respondents have held elections and on the basis thereof the signatures of respondent no.6 have been attested by order dated 21.07.2023 impugned in Writ-C No.30518 of 2023, which amounts to review of the previous recommendations.

9. This Court, after hearing the learned counsel for the parties, passed following order on 16.10.2023:-

"1. Heard Sri P.K. Singh, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and Sri Namit Srivastava, learned counsel for the respondents no.5 and 6.

2. Sri Namit Srivastava has raised a preliminary objection regarding locus of the petitioner to maintain this petition.

3. Sri P.K. Singh, learned counsel submits that, admittedly, term of the elections held in 2018 expired in August, 2022 and there being various orders passed directing single hand operation of the accounts on the one hand, and recommending appointment of Authorized Controller in the Institution on the other hand, the subsequently appointed officer, particularly, District Inspector of Schools has accorded approval to the elections held by the respondent no.6 on 28.05.2023 by the order impugned dated 21.07.2023, although such elections were held under the supervision of one Sri Radhey Krishna, Advocate and not under the supervision of any authority.

4. He further submits that when the petitioner requested for holding of elections, his request has been turned down in June, 2023 by taking aid of recommendations to appoint Authorized Controller.

5. Sri Namit Srivastava, learned counsel submits that another writ petition, namely, Writ-C No.26319 of 2023 is also pending before this Court and this matter may be heard along with that petition.

6. Regarding locus, Sri P.K. Singh submits that the petitioner has been Ex-Principal and Ex-Manager of the Institution and claims to contest elections but the same has been restrained.
7. Prima facie, I find that the orders recommending appointment of Authorized Controller having been in existence and having not been taken into consideration while passing the order impugned dated 21.07.2023 and the petitioner having been treated differently by taking aid of the said orders and the term of the committee having lapsed prima facie in August, 2022, unless sanctity is attached to the elections set up by the respondent no.6 on 28.05.2023, the order impugned would amount to reviewing or setting aside the decision to appoint Authorized Controller in the Institution.
8. Put up this case as fresh along with Writ-C No.26319 of 2023 on 26.10.2023.
9. In the meantime, State shall come up with specific instructions as to under what authority the elections dated 28.05.2023 were held. The instructions shall also reveal as what happened to the recommendations made regarding appointment of Authorized Controller.
10. On the next date, the case shall be taken up in the first round.
11. The second prayer made in the writ petition shall be considered after the State satisfies the Court regarding validity of elections held on 28.05.2023."
10. Learned Standing Counsel has come up with specific instructions that though recommendations were made earlier for appointment of Authorized Controller, signatures of respondent no.6 have been attested on 21.07.2023 which is according to law. The instructions further reveal that no Observer was sent by the District Inspector of Schools in relation to the elections to be held by the respondent no.6 and the said elections were conducted by one Radhey Krishna, Advocate, Election Officer.
11. Various submissions have been made by Sri P.K. Singh by referring to various documents appended to the writ petition and it has been argued that once the Committee appointed pursuant to the elections held in 2018 became defunct/ time barred, the respondents have no authority to hold elections.
12. In this regard, learned counsel for the respondent no.6 has referred to Bye-laws, particularly, Clause 7 thereof, which reads as follows:-

"7- सदस्यों का कार्यकाल :- पदेन सदस्यों से भिन्न तमिति के सदस्यों के कार्यकाल उनके चुने जाने के दिनांक से 4 साल का होगा । नई प्रबन्ध समिति का चुनाव उसके कार्यकाल समाप्ति की एक माह के भीतर ही सम्पन्न करा लिया

जायेगा। नई समिति एक माह के अन्दर कार्यभार ग्रहण कर लेगी किन्तु विशेष परिस्थितियों में मण्डली शिक्षा उप निदेशक को उक्त अवधि में आवश्यकतानुसार वृद्धि करने का अधिकार होगा"

13. By relaying upon the aforesaid clause, it has been argued that though the term was four years and next body was to be elected within one month, under some special circumstances, the Regional Director of Education would be competent to grant extension of the said term. It has, therefore, been argued that once the Joint Director of Education has issued an order dated 18.07.2023 observing that since the election proceedings had commenced prior to certain recommendations for appointment of Authorized Controller, there is no justification for recommending appointment of Authorized Controller. The said order has been annexed along with the supplementary affidavit which also speaks that in relation to the elections held by the respondent no.6, even the Joint Director of Education had directed the District Inspector of Schools to examine the same in the light of Scheme of Administration as well as the registered list of office bearers.

14. During the course of arguments, locus of the petitioner to maintain Writ-C No.30158 of 2023 has also been challenged and it has been argued by the respondents that membership of the petitioner Sri Ganga Prasad Gautam was cancelled in the year 2018 and challenging the said cancellation, Writ-C No.36618 of 2018 has been filed by Sri Gautam which is pending without there being any interim order. It has been argued that the petitioner has no locus to challenge the election of the general body unless and until he has some standing in the general body.

15. Sri P.K. Singh, learned counsel for the petitioner of Writ-C No.30158 of 2023 has placed before this Court a copy of the letter dated 08.09.2023 issued by the Additional Director of Education (Madhyamik) to the Manager, i.e. the respondent no.6, asking him to submit certain replies and also mentioning the consequences in the event no response is made.

16. Having heard the learned counsel for the parties, I find that once the petitioner's membership has been cancelled in 2018, subject to his rights to get an order of this Court in Writ-C No.36618 of 2018 or otherwise, any direct or indirect challenge made to the election of the respondent no.5/6 Committee would not sustain.

17. At the same time, considering the nature of the order dated

18.07.2023 relied upon by the respondents and also latest communication dated 08.09.2023, issued by the Joint Director of Education and Additional Director of Education (Madhyamik), respectively, whose role has been defined in Clause-7 of the Scheme of Administration itself, as pressed by the respondents, **necessary consequences from the said two orders shall follow in due course of time and once the proceedings have already been initiated, the same would reach to their logical end, after providing opportunity of hearing to the respondents no.5 and 6.**

18. In view of the above discussion, both the writ petitions are **disposed of** and the consequences shall be subject to orders to be passed by the authorities in furtherance of letters dated 18.07.2023 and 08.09.2023.

Order Date :- 26.10.2023

AKShukla/-