

Court No. - 46

Case :- SPECIAL APPEAL No. - 663 of 2023

Appellant :- C/M Intermediate College

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

Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh,Tejas Singh

Counsel for Respondent :- C.S.C.,Hritudhwaj Pratap Sahi

connected with

Case :- SPECIAL APPEAL No. - 664 of 2023

Appellant :- C/M Intermediate College, Babusarai, Through Its Manager Ganesh Ji Baranwal

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh,Tejas Singh

Counsel for Respondent :- C.S.C.,Hritudhwaj Pratap Sahi,Sankalp Narain

connected with

Case :- SPECIAL APPEAL No. - 659 of 2023

Appellant :- Shiv Mohan Patel And 17 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Prabhakar Awasthi

Counsel for Respondent :- C.S.C.,Hritudhwaj Pratap Sahi

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Syed Aftab Husain Rizvi,J.

1. These three appeals are directed against the judgment of learned Single Judge dated 28.08.2023, passed in Writ Petition nos.15412 of 2023, 11662 of 2023 & 21573 of 2023. Learned Single Judge has dismissed Writ Petition Nos.15412 of 2023 and 11662 of 2023 with the liberty granted to the petitioners, therein to approach the Civil Court, for necessary declaration of their rights. Writ Petition No.21573 of 2023 is allowed and the order passed by Joint Director of Education, Bhadohi as well as the order of District Inspector of Schools, Bhadohi dated 02.06.2023 are quashed.

2. Before referring to the judgment of learned Single Judge, a brief background of the controversy would be necessary. There exists a society known as Uchchattar Madhyamik Vidyalaya, Bhadohi (hereinafter referred as the Society) Baba Sarai, District- Sant Ravidas Nagar, Bhadohi. The Society is registered under the Society Registration Act, 1860 with Registration No.1122/1965-66 dated 08.12.1966. The Society is regulated by its bye-laws. The Society has established an educational institution known as Intermediate College Baba Sarai, District- Bhadohi (hereinafter referred to as the Institution). The Institution is recognized and governed by the provisions of U.P. Intermediate Education Act, 1921. It is also receiving aid from the State Government up to the High School Level. The Intermediate classes in the Institution are being run on self finance basis. The Institution is being run by its Committee of Management constituted in accordance with its approved scheme of administration. The tenure of the Committee of Management of Society and the Institution is five years. It is admitted that the General Body of the Institution and the Society is common. Last election of the Committee of Management of Institution was held on 12.06.2009. In that election, Anil Kumar Baranwal was elected as its Manager, where Yogesh Chandra Mishra was elected as the President. This election was recognized by the District Inspector of Schools on 20.06.2009. It transpires that the election of the year 2009, was conducted on the basis of list of General Body, consisting of 41 members. 12 office-bearers were elected in this election.

3. The five year term of Committee of Management, elected in 2009, was coming to an end in 2014. Process of fresh election was initiated with appointment of an observer by the District Inspector of Schools, Bhadohi on 21.05.2014. 29 members were shown to constitute the General Body of Society and the Institution. A rival claim was however set up by Anil Kumar Baranwal, who asserted that the General Body consisted of 68 members and that elections be held on the strength of 68 members. The District Inspector of Schools cancelled his previous order dated 21.05.2014, vide a subsequent order on 18.06.2014, on account of the dispute raised. A Writ Petition No.33694 of 2014, was filed by 10 out of the 12 outgoing elected office-

bearers challenging the claim set up by Sri Barnawal of General Body of 68 members. Yogesh Chandra Mishra, who was the President of the outgoing Committee of Management, was petitioner no.1 in the Writ Petition No.33694 of 2014. The writ petition was disposed of vide following directions:-

“By the instant petition, the petitioners have challenged the order dated 18th June, 2014, passed by the District Inspector of Schools, Sant Ravidas Nagar, Bhadohi (here-in-after referred to as 'DIOS'), by which he has canceled the permission to hold elections of the Committee of Management of Intermediate College, Babu Sarai, Sant Ravidas Nagar, Bhadohi (here-in-after referred to 'Institution'), earlier granted on 21st May, 2014, and has required the petitioners to provide a list of undisputed members of the society (Uchchattar Madhyamik Vidyalaya Babu Sarai Committee, district Sant Ravidas Nagar (Bhadohi) which runs the institution) from the office of Assistant Registrar, Firms, Societies & Chits, Varanasi.

The contention of learned counsel for the petitioners is that the last election of the committee of management of the Institution was held on 12th June, 2009. The term of the committee, as per the Scheme of Administration, is five years and one month, which expires on 11th July, 2014. It has been submitted that after a proper meeting of the committee, a letter was served on the DIOS on 1st May, 2009 under the joint signature of the president (petitioner no.1) and the manager (respondent no.4) of the committee for granting permission to advertise the election programme in an approved newspaper having wide circulation. It has been submitted that pursuant to the above application, the DIOS granted permission for publication of the election programme vide order dated 21st May, 2014 and, pursuant thereto, the election programme was advertised on 24th May, 2014. It has been submitted that a list of 29 members of the society was forwarded to the DIOS for participating in the election. Later, the respondent no.4, who was the then manager of the Institution, became apprehensive about his fate in the election, as a result, he approached the DIOS claiming that he had not signed the request letter dated 1st May, 2014 and that the list of 29 members was not correct. He, in fact, submitted his own list of 68 members. On objections of the respondent no.4, the DIOS passed the impugned order dated 18th June, 2014, which has stalled the election process.

It has been submitted by the learned counsel for the petitioners that once the election process was notified, the DIOS had no jurisdiction to enter into an enquiry with regards to the constitution of the electoral college. The power of the DIOS to enter into the validity of the election is only after the election is reported to him and in case of a dispute, the DIOS is required to refer the matter to the Joint Director of Education for

examining the dispute at the level of a Regional Level Committee. It has been submitted that since the DIOS has exercised power, which was not vested in him, either under the Scheme of Administration or under the provisions of the Intermediate Education Act, the order is without jurisdiction and, accordingly, deserves to be quashed.

Sri G.K. Singh further submitted, which submission does not find support from the pleadings, that the direction of the DIOS for supply of a list of members of the society maintained by the Assistant Registrar was not of any consequence, inasmuch as, at the time when renewal of the registration of the society was obtained, there was no requirement by law to submit list of members of the general body as the law, as it stood then, only required the list of office bearers of the society to be furnished. It has thus been submitted that the impugned order deserves to be set aside.

Sri Rahul Agarwal, who has appeared on behalf of respondent no.4, submits that even if the Court takes the view that the DIOS had no jurisdiction to enter into the validity of the electoral college after the election programme was notified, but, it would not be in the interest of justice to interfere with the order of the DIOS, at this stage, inasmuch as, the order dated 18th June, 2014 must have become known to all the members and since election programme fixes a date of election as 6th July, 2014, the election result would be vitiated by non-participation of large number of members or, at least, by such members who may have got information that the election has been postponed. Sri Rahul Agarwal further submits that as the respondent no.4 had not signed the application, which was given before the DIOS for holding the election, a fraud can be said to have been played on the DIOS and, as such, the DIOS would have a right to recall its earlier order so as to re-examine the matter.

Having considered the rival submissions of learned counsel for the parties, this Court is of the view that no useful purpose would be served by interfering with the order dated 18th June, 2014 and letting the election programme, as earlier notified, to be proceeded with, because, as pointed out by Sri Rahul Agarwal, it would be too late to get the election process completed, as per the earlier schedule, when already substantial time has elapsed from the date of its postponement. Further, there is a serious possibility that there may not be complete participation of the members in the election, because of the short period now left for holding the elections. This Court is, therefore, of the view that the interest of justice would be served if the Joint Director of Education is directed to either himself or through an officer appointed by him determine the electoral college of the institution, in accordance with law after giving opportunity to the parties concerned as also after inviting objections through publication in the newspaper having wide circulation in the locality and, thereafter, hold the elections.

This writ petition is, therefore, disposed of with a direction to the Joint Director of Education, Vindhyachal Region, Mirzapur (respondent no.2), to determine the electoral college of the Institution, either himself or through an officer appointed by him for the said purpose, after inviting objections through publication in newspaper having wide circulation, and in accordance with law. Thereafter he shall appoint an observer for the purpose of holding the election, who will conduct the elections in accordance with law. The aforesaid exercise should, preferably, be completed within a period of three months from the date of production of a certified copy of this order before respondent no.2.”

4. The Joint Director of Education, constituted a three-member Committee to decide the electoral college of the Institution. This Committee substantially accepted the claim of Anil Kumar Baranwal and determined the electoral college to consist of 74 members, list whereof was enclosed along with the order dated 29.05.2015. It is worth noticing that out of these 74 members, 52 members had been enrolled by Anil Kumar Baranwal in the month of June, 2014. The outgoing President along with eight others then filed Writ Petition No.36602 of 2015 challenging the list of members determined vide order dated 29.05.2015. The Writ Court declined to interfere with the holding of elections on the strength of 74 members. The aggrieved persons, however, were granted liberty to approach the Regional Level Committee, which was to pass appropriate orders as per law. The order passed by the Writ Court on 06.07.2015 came to be challenged in Special Appeal No.477 of 2015. No interference was made in the special appeal and the direction to relegate the aggrieved persons to Regional Level Committee, was reiterated. Elections were thus held on the strength of 74 members and the objection raised against it, was rejected by the Regional Level Committee on 09.10.2015.

5. The order of Regional Level Committee was then challenged in Writ Petition No.60481 of 2015. The Writ Court noticed that nine members including Yogesh Chandra Mishra were the undisputed members of the General Body and that the term of the outgoing Committee of Management was coming to an end on 11.06.2014. Process of conducting fresh elections was initiated in a meeting of Committee of Management held on 27.04.2014. The District Inspector of Schools had permitted the President/ Manager to

notify the election programme in two newspapers and also nominated an observer. The Writ Court noticed the argument that claim of fresh induction of members by Anil Kumar Baranwal between 20th June, 2014 to 27th June, 2014, was much after the term of previous Committee had expired on 11.06.2014. It was also noticed that under the scheme, it was only the Committee of Management, which could enroll new members which had never been done. Learned Single Judge, ultimately, allowed the writ petition on 18.11.2015 and quashed the order passed by the Regional Level Committee on 8/9th October, 2015. A fresh decision was directed to be taken within six weeks. The Regional Level Committee reiterated its earlier decision vide order dated 20th May, 2016, pursuant to which a consequential order was passed by the District Inspector of Schools on 02.06.2015, recognizing the office-bearers elected on the list of 74 members of General Body. This order was stayed in Writ Petition No.24802 of 2016. A Special Appeal No.790 of 2016, was preferred against the interim order passed in Writ Petition No.24802 of 2016 dated 22.11.2016. The special appeal was disposed of vide following orders:-

“Heard Mr. Ashok Khare, learned Senior Counsel, assisted by Mr. Anand Mani Tripathi, learned counsel for the appellant, Mr. Ramanand Pandey, learned Standing Counsel for respondent nos.1 to 4 and Mr. G.K. Singh, learned Senior Counsel, assisted by Mr. H.P. Sahi, learned counsel for respondent nos.5 to 13.

This special appeal is directed against an interlocutory order dated 22.11.2016 passed in Writ-C No.24802 of 2016. By this order, learned Single Judge has passed the following interim relief:

"Until further orders of this Court, effect and operation of the order dated 20.5.2016 passed by the Regional Level Committee as well as the order dated 2.6.2015, passed by the District Inspector of Schools shall be kept in abeyance. The payment of salary to the teachers and employees of the institution shall be released in the interregnum by way of single operation."

By virtue of this order, learned Senior Counsel appearing for the appellant submits, the Committee of Management which has been functioning since 2nd June, 2015, has now been restrained. There appear to be a dispute in respect of the election that was conducted, allowing the disputed 52 new members, who were enrolled on 26/27.6.2014, to participate in the said election.

Considering the nature of controversy involved in the present appeal, a suggestion for disposal of the appeal and the writ petition was made to the learned counsel for the parties, to which they have agreed and consented for following order:

"The District Magistrate or the Additional District Magistrate, Sant Ravidas Nagar (Bhadohi) authorized by him (District Magistrate), shall conduct fresh election of the Committee of Management of the Intermediate College, Babu Sarai, within a period of 60 days from today, in accordance with the Scheme of Administration. He shall decide the question whether the disputed 52 new members are entitled to continue as members and could be allowed to participate in the election. He shall thereafter proceed to conduct elections on the basis of the electoral roll finalized by him. The aggrieved party, if any, shall have a right to challenge the said order, but under any circumstance, as agreed by learned counsel for the parties, elections shall not be stayed. The appellant-Committee of Management, till elections are conducted and charge is handed over to the newly elected body, shall continue to function as the Committee of Management, but shall not take any major/policy decision or to make any appointment in the Institution."

The special appeal and the writ petition, accordingly, stand disposed of.

A copy of this order be placed in Writ-C No.24802 of 2016."

6. The District Magistrate in terms of the above direction passed an order on 13.02.2017, recognizing 74 members as valid members of the General Body of the Institution. 52 out of the these 74 members were inducted by Anil Kumar Baranwal between 20th June, 2014 to 27th June, 2014. The elections held on the strength of 74 members was recognized on 03.04.2017. A writ petition came to be filed before this Court challenging the election of 2017. The petition is entertained after noticing the issues that arose for consideration. The term of the Committee elected in the year 2017 came to an end and consequently an order of single operation was passed. Writ Petition No.16556 of 2022, was then filed wherein a direction was issued to conduct fresh election. Operative portion of the order of the Writ Court reads as under:-

"Now the Court is coming to the electoral college, which is required to hold the election. Earlier Division Bench has given right to aggrieved party to file objection against the list so finalized by District Magistrate, but not to wait the decision upon objection, if any filed. It is not in dispute that last election was held upon the electoral college finalized by District Magistrate vide order dated 13.02.2017, which is under challenge in Writ-C No.

29385 of 2017 having no interim order. Therefore, considering the mandate of Division Bench, this Court further directs respondent no. 4 to hold fresh election within two months from the date of production of certified copy of this order alongwith electoral college either duly approved by respondent no. 7 or electoral college earlier finalized by District Magistrate vide order dated 13.02.2017. In all eventuality election shall take place within two months from the date of production of certified copy of this order.

With the aforesaid observations, this writ petition is disposed of.”

7. Yet another Writ Petition No.28466 of 2022, came to be filed in which a direction was issued to the Assistant Registrar Firms, Societies and Chits, Varanasi to conclude the proceedings, relating to finalization of list of members of General Body of the Society. Pursuant to such order passed, the Assistant Registrar Firms, Societies and Chits has passed the order dated 16.12.2022, holding that fresh elections of the Society be got conducted from the list of 29 members jointly submitted by Yogesh Chandra Mishra, President and Anil Kumar Baranwal, Manager. The list of 29 members has been held to be the list of members in terms of Section 4B of the Society Registration Act. It is this order of Assistant Registrar Firms, Societies and Chits dated 16.12.2022, which has been challenged by five persons in Original Suit No.319 of 2022, which is pending. Yet another Writ Petition No.3997 of 2023 came to be filed by Yogesh Chandra Mishra and 15 others, raising a grievance with regard to the election of Committee of Management recognized on 20.09.2022. Direction was issued to the District Inspector of Schools, Sant Ravidas Nagar, to conduct elections in terms of the direction issued by this Court on 25.05.2022 in Writ Petition No.16556 of 2022. It is in the above backdrop that elections have been held, pursuant to order passed by the Assistant Registrar Firms, Societies and Chits, holding the electoral body to consist of 29 members. Committee of Management has been constituted for the Society and also the Institution. Order dated 16.12.2022, passed by the Assistant Registrar Firms, Societies and Chits, declaring 29 members to constitute the General Body of Society, has been challenged in Writ Petition No.15412 of 2023. Order of Assistant Registrar dated 16.12.2022 is also challenged in Writ Petition No.11662 of 2023. Writ Petition No.21573 of 2023 has been filed by the Committee of Management

elected on the strength of 29 members, challenging the order passed by the Joint Director of Education, summoning the records of the District Inspector of Schools for appropriate adjudication in terms of Section 16A(7) of the U.P. Intermediate Education Act. Order dated 02.06.2023, passed by the District Inspector of Schools, Bhadohi, referring the matter to Regional Level Committee, is also challenged in the said writ petition. Learned Single Judge after elaborate consideration of the respective submissions has affirmed the order passed by the Assistant Registrar Firms, Societies and Chits, holding the General Body of Society to consist of 29 members. The aggrieved persons, however, have been left to avail the remedy of approaching Civil Court. The order passed by the Joint Director of Education has also been quashed. Aggrieved by the judgment dated 28.08.2023, the appeals have been preferred before this Court.

8. We have heard Sri Ashok Khare assisted by Sri Ajay Kumar Singh, learned counsel for the appellants in Special Appeal No.663 of 2023 and 664 of 2023, whereas Sri Prabhakar Awasthi has been heard in support of Special Appeal No.659 of 2023. Sri G.K. Singh, learned Senior Counsel assisted by Sri H.P. Shahi and Sri Sankalp Narain have been heard on behalf of the respondent in these appeals.

9. We have heard learned counsel for the parties at length and have perused the materials on record. Factual background in which the controversy came to be raised before the learned Single Judge has already been noticed above. It remains undisputed that the General Body of the Society and the Institution is common. Dispute appears to have arisen between two factions, emanating from the Managing Committee elected in the year 2009. Apparently, 10 office-bearers led by President formed one faction, whereas the other faction was led by outgoing Manager Anil Kumar Baranwal. No dispute is shown to exist in respect of the Committee of Management of Institution elected on 12.06.2009. It is also undisputed that the term of the elected Committee was five years and was to expire on 11.06.2014. The process of fresh election was also started and the District Inspector of Schools granted permission to hold fresh elections vide his

order dated 21.05.2014. It is at this stage that a rival claim was put forth by Anil Kumar Baranwal relying upon 52 new members enrolled between 21.06.2014 to 27.06.2014. The core issue raised, therefore is with regard to the legality of induction of 52 members by Anil Kumar Baranwal between 21.06.2014 to 27.06.2014.

10. Bye-laws of the parent Society are admitted. Clause 3 states that apart from ex-facio member, the General Body shall elect 12 members to constitute the Committee of Management of Society. The process of election would start three months prior to the expiry of the term of outgoing Committee. Clause 3 of the bye-law is reproduced hereinafter:-

“3. पदेन सदस्यों को छोड़कर 12 सदस्यों का निर्वाचन सामान्य समिति अपने सदस्यों में से करेंगी। निर्वाचन बैलेट प्रथा द्वारा होगा प्रबन्ध समिति अपने कार्यकाल समाप्ति के 3 माह पूर्व विद्यालीय सामान्य सदस्यों की सूची प्रकाशित करेंगी। किसी व्यक्ति के आपत्ति प्रमाण पत्र प्रस्तुत करने पर प्रस्तुत सूची में अध्यक्ष द्वारा संशोधन किया जायेगा सूची प्रकाशित होने के एक माह पश्चात योग्य सदस्यों को सूचित किया जायेगा कि जो सदस्य प्रबन्ध समिति के निर्वाचन में भाग लेना चाहते हैं वे निश्चित तिथि तक नामांकन पत्र प्रस्तुत करें।”

11. Clause 7 provides that the last meeting of the Managing Committee would be held a week prior to the expiry of its term. Clause 9 specifies the term of the Committee of Management and also of its office bearers. Clause 7 and 9 of bye-laws are also reproduced hereinafter:-

“7. पदस्थ प्रबन्ध समिति की अन्तिम बैठक कार्य काल समाप्त होने के एक सप्ताह पूर्व लिखित सूचना देकर बुलाया जायगा और नवीन पदाधिकारी का चुनाव किया जायेगा।

9. सदस्यों का कार्य काल:- पदाधिकारियों एवं पदेन सदस्यों से निम्न सदस्यों का कार्यकाल उनके चुने जाने के दिनों से पाँच वर्ष का होगा किन्तु प्रतिबंध यह है कि प्रत्येक पदाधिकारी का कार्यकाल उसके उत्तराधिकारी चुने जाने तक समझा जायगा।”

12. The bye-laws further provide that for a meeting of General Body to be convened at least five days notice would have to be given to the members. An urgent meeting, however, could be convened on a notice of two days. Notice is required to be sent to the members on their address by post. The bye-laws stipulate that a person could become member of the Society on deposit of Rs.5100 by bank draft whereas upon deposit of Rs.11000, a

person could become the patron. The manner in which such induction of member could be held, has been specified in the bye-laws, which is reproduced hereinafter:-

“इ. संरक्षक अथवा साधारण सभा के सदस्यता हेतु दिया गया बैंक ड्राफ्ट प्रबंधक समिति में रखेगा और उसे स्वीकार होने के पश्चात साधारण सभा द्वारा भी उसकी पुष्टि होने के उपरान्त ही वह व्यक्ति संस्था का संरक्षक/परिवारिक अथवा साधारण सभा का सदस्य बना पायेगा।”

13. The provisions of the bye-laws, referred to above, insofar as it relates to induction of a new member of the Society is concerned, is not in issue. A plain reading of the bye-laws would reveal that a prospective member would furnish bank draft for availing membership of the Society, which would be placed before the Managing Committee by the Manager. After such request is accepted by the Managing Committee, the request for membership would be placed before the General Body and only thereafter the applicant seeking membership would be inducted as the member of the Society.

14. Moreover, term of the Committee of Management is five years. However, the office-bearers will continue till fresh elections are held to constitute the Managing Committee. This is so as a vacuum cannot exist for managing the affairs of the Society/ Institution.

15. In the facts of the case, it is noticed that the previous elections were held on 12th June, 2009 and the term of Committee of Management had expired on 11.06.2014. Process of fresh election had already commenced with appointment of an observer by the DIOS on 21st May, 2014. List of undisputed members of Society was also called for by the District Inspector of Schools from the Assistant Registrar Firms, Societies and Chits. It is at this stage that Anil Kumar Baranwal approached the District Inspector of Schools with the claim of 68 members of the General Body. Learned counsel for the parties have addressed the Court with regard to legality of such induction of members in June, 2014, particularly after the process of election had already commenced by the outgoing Committee of Management.

16. An advertisement is shown to have been issued in newspaper Pioneer by the Manager calling for fresh memberships to be granted by accepting

bank drafts between 21.06.2014 to 27.06.2014. 52 persons are alleged to have been inducted as members, who have submitted their bank drafts between 23.06.2014 to 27.06.2014. Appellant's case is that these bank drafts were accepted by the Managing Committee in its meeting on 28.06.2014. A somewhat inconsistent version of the appellants also is that the General Body approved the membership of these persons in its meeting held on 29.06.2014.

17. The respondents emphatically assert that the entire claim of induction of new members, after the outgoing committee had commenced the process of election, was engineered only to create a majority since the outgoing Manager Anil Kumar Baranwal had realised that he had lost faith of majority of the members of General Body. Page 466 to 499 of the paper book of special appeal contains documents, in respect of the claim of fresh membership granted to 52 persons. The records show that a fresh bank account was opened on 20th June, 2014, wherein various bank drafts were deposited between 25.06.2014 to 27.06.2014. The receipts to these new members, have been issued on various dates, even prior to deposit of the bank draft. The cashbook of the Society contained in Annexure- SA-13 to the supplementary affidavit filed by the appellants shows deposit of amount between 21.06.2014 to 24.06.2014. We are at a loss to understand as to how these bank drafts could have been deposited in a new bank account opened in the name of Society, when the membership itself had not been accepted by the Committee of Management or General Body of the Society, which was mandatory as per the bye-laws. Voluminous record appended to the special appeal goes to show that initially the appellants did not come up with any version of the acceptance of new members in the meeting of Committee of Management of 28th June, 2014. Rather the claim was put forth by the Manager in his individual capacity. Subsequently, a claim of the meeting of the Managing Committee dated 28.06.2014 was set up. Yet another departure was made by the appellants by coming up with a version of meeting of General Body on 29th June, 2014. A mutually inconsistent claim of Joint Meeting of Committee of Management as well as General Body was also put forth by the appellants later. The documents as have been placed

before the Court, raise a serious doubt with regard to induction of new members by the outgoing Manager Anil Kumar Baranwal in June, 2014. Even otherwise, we find absolutely no good reason to launch a new exercise for inducting additional members after the expiry of the term of Managing Committee on 11th June, 2014, particularly when the fresh process of election had already commenced. We find substance in the arguments set up by the respondents that the claim of fresh induction of members was a desperate move by the outgoing Manager to somehow regain hold over the Society, as he was doubtful of support being extended to him by the outgoing members of the Society.

18. It is in this backdrop that the learned Single Judge has found substance in the order of the Assistant Registrar dated 16.12.2022, as per which the claim of induction of fresh members by Anil Kumar Baranwal in June, 2014 has been disbelieved. Sri Ashok Khare, learned Senior Counsel for the appellant contends that the determination made by the District Magistrate on 13.02.2017 recognizing 74 persons as being the valid members of the General Body of the Society/ Institution has not been interfered with by this Court and, therefore, the findings contained in the order of the District Magistrate cannot be reversed by the Assistant Registrar. He further submits that there was no occasion for the Assistant Registrar to revisit the issue relating to determination of membership nor the fresh members inducted in June, 2014 could have been eliminated by the Assistant Registrar. It is further urged that the order of Assistant Registrar as affirmed by learned Single Judge in Writ Petition Nos.15412 of 2023 and 11662 of 2023, are clearly unsustainable.

19. We are not impressed by the arguments advanced by Sri Ashok Khare, inasmuch as the determination made by the District Magistrate in the year 2017, was for the purposes of holding of election then. A writ petition against such order has been entertained and is stated to be pending. The term of the previous election has already expired in 2022. Assistant Registrar Firms, Societies and Chits is, therefore, required to determine the list of members of Society under Section 4B of the Act of 1860. While doing so,

the Assistant Registrar would clearly be within the bounds of his jurisdiction in examining the provisions of the bye-laws, in order to determine the General Body of the Society. This is what exactly has been done by the Assistant Registrar. He has considered the applicable clauses of bye-laws and has clearly returned a finding that the procedure stipulated in the bye-laws for induction of new members, had not been followed. We have already referred to the applicable clauses contained in the bye-laws, which would go to show that the exercise undertaken by Sri Anil Kumar Baranwal to undertake new members after the term of the previous Committee had expired and process of fresh election had commenced was wholly uncalled for. In the facts of the case, it is otherwise found that the records in respect of induction of fresh members are not consistent with the procedure required to be followed for induction of new members. There are serious clouds on the genuineness of such exercise of fresh induction of members. The Assistant Registrar for valid reasons has discarded the claim of induction of fresh members. Learned Single Judge has, otherwise, left it open for any person aggrieved to approach the Civil Court for necessary declaration. In that view of the matter, we find no substance in the argument advanced by Sri Khare.

20. Having perused the records, we find substance in the conclusions drawn by learned Single Judge, as also by the Assistant Registrar Firms, Societies and Chits to discredit the appellants' claim of induction of 52 fresh members in June, 2014. Claim set up by the Committee of Management represented by Anil Kumar Baranwal, as also the petitioner's claim raised in Writ Petition No.11662 of 2023 (Shiv Mohan Patel and 17 others), the rejection of claim of 52 members by the Assistant Registrar, as also its affirmance by the learned Single Judge, therefore, calls for no interference. The special appeals to such extent are rejected.

21. Sri Ashok Khare, learned Senior Counsel for the appellants lastly submits that the claim of 29 members included names of Ram Rekha Shastri, who was the outgoing Principal of the Institution as well as his two sons, namely, Suyash Pathak and Utkarsh Pathak, who had never inducted

as members of the Society. It is also stated that the learned Single Judge has wrongly treated the claim of 26 members to be admitted, inasmuch as the list recognized persistently by the three-member Committee, as also the District Magistrate contained the names of 74 members. It is submitted that even if 52 new members enrolled in June, 2014 are to be excluded, yet the elections could have been conducted only on the strength of remaining 22 members and not otherwise. On this aspect, there is an agreement between the counsels, appearing for all three factions, namely, Sri G.K. Singh, learned Senior Counsel, representing the Committee of Management with Sri Yogesh Chandra Mishra as President, Sri Prabhakar Awasthi representing 17 members inducted in June, 2014 and Sri Ashok Khare representing the faction led by Anil Kumar Baranwal. It is agreed by the counsel for the aforesaid three factions that in case a fresh election is directed to be held on the strength of remaining 22 members, the dispute between the parties would be resolved for times to come. A quietus hopefully would be given to the dispute, if fresh election is held on the basis of consent expressed by all warring factions.

22. In view of the consent expressed by the rival factions, as also the fact that after eliminating the claim of 52 new members, the admitted members remaining would be 22 as per the three member Committee headed by District Inspector of Schools, as also the District Magistrate, Bhadohi. It would thus be appropriate to direct the authorities to conduct a fresh election to constitute the Committee of Management of the Society and the Institution. Sri G.K. Singh also states that out of 26 members (excluding Ram Rekha Shastri and his two sons) some of the persons have died and only 22 persons out of the admitted list of 29, survives as on date. In such view of the matter, we dispose of these three appeals with the consent of the counsel for the parties, by directing the District Magistrate, Sant Ravidas Nagar to depute an officer of the rank of Additional District Magistrate to supervise fresh election of the Society/ Institution to be held from the list of remaining 22 admitted members after eliminating 52 members allegedly enrolled by Anil Kumar Baranwal in June, 2014. Such election shall be concluded within a period of two months from the date of presentation of a

certified copy of this order. The arrangement presently in existence for managing the Society and the Institution shall continue till fresh elections are held and would abide by its outcome.

Order Date :- 23.11.2023

SP/-