

Court No. - 1

Case :- SPECIAL APPEAL No. - 525 of 2023

Appellant :- Prabandh Samiti Kisan Jr. High School, Sitapur Thru.
General Body Member Deshraj Verma And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Addl. Finance Govt. Of U.P.
Lko. And Others

Counsel for Appellant :- Sharad Pathak

Counsel for Respondent :- C.S.C., Anil Kumar Maurya

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

1. Sri Pt. S. Chandra, Advocate has put in appearance on behalf of the opposite party No. 4, by filing his *vakalatnama*, which is taken on record.

2. This intra-court appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules 1952 has questioned the legality of judgment/order dated 06.11.2023 passed in Writ-C No. 9729 of 2023, whereby while dismissing the writ petition filed by the appellants, the matter for adjudication of disputed questions of fact and law was relegated to the Civil Court.

3. We have heard Sri Sharad Pathak, learned counsel for the appellants at length and Pt. S. Chandra, learned counsel, who has appeared on behalf of the opposite party No. 4.

4. Briefly stated, the facts of the case are that the appellants herein claim to be the delegates of the Sugarcane Society, which is the general body, which has established an educational institution operated through a Committee of Management elected from its Members. The Membership of the Society and the constitution of the Committee of Management for managing the educational institution are relegated as per the bye-laws of the Society which are not in dispute. The dispute, however, revolves around the constitution of the Committee of

Management from amongst the delegates.

5. It appears that the list of delegates has not been revised from time to time for the purposes of constituting a Committee of Management, therefore, dispute as regards the membership of the Society has surfaced. In the year 2003, when one Nirbhay Kumar Maurya laid his claim for being elected as the Manager, he submitted a list of 75 members, according to which the claim for being elected as Manager was put forth. This list of members or the claim of being elected as Manager was put to notice by the Deputy Registrar vide notice dated 17.12.2003 and later on the claim having been given up by Sri Nirbhay Kumar Maurya, the matter was brought to its logical conclusion vide order dated 12.10.2004.

6. According to Sri Sharad Pathak, once the aforesaid list of 75 members was not acted upon by the Deputy Registrar, the same was of no avail in the year 2023. The Deputy Registrar in his order dated 26.9.2023 again adhered to the same list for the purposes of inviting objections from the affected parties and the objections raised in response thereto have been paid no attention.

7. It appears that some objections were filed by the appellants before the Deputy Registrar, but the same have remained unconsidered. The appellants as against the final list of members issued on 16.10.2023 comprising of the same very list, approached this court by means of Writ-C No. 9729 of 2023, which has come to be rejected by means of the impugned order. The sum and substance of the controversy at hand is as to whether the membership decided by means of the order dated 16.10.2023 is valid as per the bye-laws of the Society or not?

8. The membership of a person in a Society is to be governed as per the bye-laws of the Society. Claim of a person to be a Member is a statutory right, fortified under the bye-laws, thus, the Writ Court has rightly kept the hands off to enter into any such dispute, for it would have been going into disputed questions of fact and law. The ultimate effect of issuance of the final list for the purposes of election, may effect the rights of the delegates, who claim an equal right of participation in the election process. They may have a grievance against the issuance of such a list, but the fact remains that their right of participation to constitute a Committee of Management is equally a statutory right. Right to form an Association is a fundamental right embodied and protected under Article 19 of the Constitution of India, however, to constitute a committee of Management or to run the affairs of the Society as per the bye-laws, cannot be taken at par with a fundamental right, thus, the Writ Court has rightly declined to enter into any such factual dispute, leaving it open to the aggrieved party to avail the remedy, open under law. For this purpose, the Writ Court has placed reliance upon a Division Bench judgments in the case of **Committee of Management Maharana Pratap Vidyalaya Prabhand Samiti v. State of U.P. & ors.**, reported in **2013 (10) ADJ 532**, and **Basant Prasad Srivastava v. State of U.P. & ors.** reported in **AIR 1994 All. 112**, which clearly lay down that a writ in the matter of election disputes of the Committee of Management may only be entertained under Article 226 of the Constitution of India in extraordinary circumstances. The extraordinary circumstances in common parlance would only mean, where there is violation of a fundamental right, which in the present case is none. The dispute as regards the statutory rights involving factual and legal issues, however, is not ruled out, but for the redressal of any such grievance the appropriate

remedy being available to the aggrieved person must be availed of. Thus, the principal of law in the light of the Supreme Court judgment in the case of **N.P. Ponnuswami v. Returning Officer, AIR 1952 SC 64**, as has been imported by the learned Single Judge, for the purposes of relegating the matter to the appropriate court, in our considered view, does not suffer from any illegality.

9. Sri Sharad Pathak, learned counsel for the appellants, at this stage has stated that in the instant case, if the affairs of an educational institution and its Management are allowed to be usurped by an unauthorized Committee, any unforeseen consequence in the nature of even amending the bye-laws is imminent and in a situation where the matter is relegated to the appropriate forum, some protection to that extent may be provided for.

10. We make it clear that the election held in pursuance of the order dated 16.10.2023, if any, is bound to be examined in the light of the bye-laws, applicable on the relevant date. We make it clear that the bye-laws of the Society in the meantime shall remain intact, provided the appellants avail the remedy open to them under law, within a period of 15 days from today.

11. The special appeal is accordingly **disposed of**.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 20.11.2023/A.Nigam