
(2013) 05 AHC CK 0188

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 5712 of 2012

Committee of
Management Vaidik
Kanya Inter College
and Another

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: May 10, 2013

Hon'ble Judges: B.Amit Sthalekar, J

Final Decision: Allowed

Judgement

B. Amit Sthalekar, J.

This writ petition has been filed by the petitioners seeking quashing of the order dated 10.1.2012 passed by the District Inspector of Schools (in short "DIOS"), order dated 12.1.2012 passed by the Joint Director of Education and the letter dated 13.1.2012 passed by Sri Pooran Singh, taking over charge as the Authorised Controller.

There is an Intermediate College known as The Vaidik Kanya Inter College Dadri, District Gautam Budh Nagar (hereinafter referred to as the College) which is managed by a registered society under the name and title of Vaidik Kanya Pathshala Sabha, Dadri, Gautam Budh Nagar. The said Institution is governed by the Intermediate Education Act, 1921 and the Payment of Salaries Act, 1971. According to the petitioners election of the Committee of Management of the Inter College was held on 16.10.2003 which was duly approved by the DIOS on 29.5.2004. The signature of the petitioner no.2, Jatan Lal Garg was duly attested by the DIOS. According to the petitioners as per para 7 of the Scheme of Administration the term of the Committee of Management was three years and the said term expired on 18.11.2007. Elections of the Committee of Management were held on 18.11.2007 which was duly approved by the DIOS by his order dated 24.5.2008. Thereafter in the General Body meeting the term of the Committee of Management was

extended from three years to five years by way of amendment in para 7 of the Scheme of Administration. The proposed amendment was submitted before the DIOS, respondent no.3 on 1.4.2007. The respondent no.3, DIOS forwarded the proposal to the Joint Director of Education, First Region, Meerut, respondent no.2. The Joint Director of Education by his letter dated 16.3.2008 sought some information from the petitioner and in reply thereof the petitioner wrote a letter to the respondent no.2 on 22.5.2011 answering all the queries raised by the Joint Director. The aforesaid letter of the petitioner is stated to have been received by the clerk in the office of the respondent no.2 on 31.5.2011 itself.

According to the petitioners by a Government Order issued by the State Government, the term of the Committee of Management of the Institution was extended from three years to five years in terms of the proposal sent by the petitioners. However, the petitioners were in some doubt as to whether the proposal had actually been accepted by the Government or not and so the petitioners wrote a letter to the Joint Director of Education, Meerut on 8.7.2010 a copy of which was also served on the respondent no.3, DIOS. When no reply was received the petitioner again wrote a letter to the DIOS through registered post dated 11.11.2010. It was also pointed out therein that the earlier election had been held on 8.11.2007 which was approved by the DIOS on 24.5.2008 and therefore a request was made in the letter dated 11.11.2010 to appoint an election observer so that fresh elections may be held. On 7.3.2011, the petitioner again moved an application before the respondent no.2, Joint Director of Education and the respondent no.3, DIOS. A copy of the same was also sent to the Director of Education, U.P. Lucknow requesting for clarification as to whether the proposal for amendment of the term of the Committee of Management from three years to five years had been accepted or not and that if the term of the Committee of Management was still three years, then in that case steps for initiating the procedure of election may be taken. Another letter was sent to the respondent no.3 on 24.3.2011 giving a reference of all the previous letters sent by the petitioners. The said letter was received in the office of respondent no.3 on 24.3.2011 itself. Another reminder was sent on 20.4.2011 and 27.4.2011 with a request that the petitioners may be permitted to hold elections of the Committee of Management. Since the term of the Committee of Management was going to expire and no response was being received to its letters from the DIOS or the Joint Director of Education, the Committee of Management issued the agenda for holding the meeting regarding elections of officebearers of the Committee of Management and in pursuance thereof a meeting of the General Body was held on 5.8.2011 and in its Resolution no.2 it was resolved that the election of the Committee of Management be held in the month of October, 2011. A communication letter to that effect was sent by the petitioner to the DIOS on 10.8.2011 with a request to appoint an Election Officer/Observer for holding elections to the Committee of Management. The DIOS in response, sent a communication letter dated 7.10.2011 whereby one Sri Santosh Kumar Singh was appointed as Election Officer, however, when the petitioner no.2 approached Sri Santosh Kumar Singh he was informed by him that the said Santosh Kumar Singh was on bed rest and would not be able to

function as Election Officer. This fact was brought to the knowledge of the DIOS by the petitioners vide letter dated 21.10.2011 with a request to appoint someone else as Election Officer. In response the DIOS by his letter dated 24.10.2011 appointed one Sri Mahendra Singh, Principal, Mihir Bhoj Intermediate College Dadri, District Gautam Budh Nagar as Election Officer.

In pursuance of the letter of the DIOS dated 24.10.2011, elections proceedings were initiated and the Election Officer on 19.10.2011 directed steps to be taken for holding the election. The election programme was duly published in the daily newspaper Dainik Jagran on 29.10.2011 and all the information in respect of the election was duly published by the Election Officer. The list of officebearers was duly published by the Election Officer on 30.10.2011. Objections were filed by some of the life members of the General Body to the extent that names of the some of the members have not been included in the list of officebearers whereupon the Election Officer called the petitioner to deposit the membership fee of such members and thereafter the treasurer of the Committee of Management submitted the photocopy of the Bank Account disclosing that the membership fee of the aforesaid persons had already been deposited in the month of October, 2006. Final list of members of the General Body was published and it was resolved that there is a total of 586 members of the General Body of the Society and thereafter the Election Officer proceed to hold the election for which 13.11.2011 was fixed as the date. The petitioner no.2 filed his nomination for the post of Manager, respondent no.4 whose names was at Serial No.210 in the voter list also filed his nomination for the post of Manager duly supported by one Sri Vinod Kumar Goyal whose name is at Serial No.328 of the voter list. Elections were held under the supervision of the Election Officer who thereafter submitted his report in the office of the DIOS on 1.12.2011 and the name of the elected officebearers of the Committee of Management was declared. In the election, the petitioner no.2 was elected as Manager of the Committee of Management. According to the petitioners the respondent no.4, Jag Bhushan Garg, who had also contested the elections for the post of Manager secured 231 votes whereas the petitioner no.2 secured 278 votes thus defeating the respondent no.4. Aggrieved by his defeat the respondent no.4 filed an objection before the Director of Education on 7.12.2011 which was forwarded to the respondent no.3, DIOS with a note that the said election programme may be cancelled.

On receipt of the complaint dated 7.12.2011, the DIOS issued notices to the petitioners as well as to the Election Officer on 17.12.2011, and 24.12.2011 was fixed as the date for hearing. On 24.12.2011 the next date was fixed as 29.12.2011, the petitioner no.2 submitted his reply before the DIOS on 4.1.2012 the approved Scheme of Administration was also filed before the DIOS. However, the DIOS by his order dated 20.1.2012 has recommended the appointment of Authorised Controller in the College in question for purposes of holding elections. The DIOS in the impugned order dated 10.1.2012 has held that the Committee of Management had ceased to function on 18.11.2010 on expiry of its term and as such the election of 13.11.2011 was derecognised and a direction was

issued for holding fresh elections. By the other impugned order dated 12.1.2012 the Joint Director of Education, First Region, Meerut, respondent no.2 has appointed one Sri Pooran Singh, Principal, Vaidik Inter College, Noida, Gautam Budh Nagar as the Authorised Controller with a further direction that he shall hold the elections in the Committee of Management in question within three months. The next impugned order dated 13.1.2012 has been passed by Sri Pooran Singh taking over charge on 13.1.2012 as the Authorised Controller.

I have heard Sri G.K. Singh, learned counsel for the petitioners and Sri S.P. Singh for the respondent no.4 and the learned Standing Counsel representing the respondents 1, 2 and 3. The respondent no.5 Authorised Controller/Pooran Singh has been deleted from the array of respondents on prayer of the petitioners by the order of the Court dated 6.1.2013.

Sri G.K. Singh, learned counsel for the petitioner submitted that the elections were duly attested on 18.11.2007 in terms of the provisions of the Scheme of Administration and the same was also approved by the DIOS on 24.5.2008. In the meantime, a proposal was sent by the petitioner for amending the Scheme of Administration thereby amending the tenure of the Committee of Management from three years to five years but since nothing was heard from the Director of Education or from the Joint Director of Education, respondent no.2 or from the DIOS, respondent no.3 despite several letters written to that effect to confirm as to whether the proposed amendment had been accepted or not, the petitioners proceeded to hold the election in 2011.

Learned counsel for the petitioner further submitted that assuming the term of the Committee of Management to be three years, the election was held on 13.11.2011 on the approval of the DIOS dated 24.10.2011 and it was held under the supervision of Sri Mahendra Singh, Principal of Mihir Bhoj Intermediate College Dadri, District Gautam Budh Nagar who had been appointed as Election Officer by the DIOS by his letter dated 24.10.2011. The election programme was also duly published in the news paper Dainik Jagran by the Election Officer on 29.10.2011 and therefore, all the parties including the respondent no.4 had due notice of the election programme. No objections were raised by the respondent no.4 with regard to the validity of the election except by some members who had been left out from the voter list which was subsequently resolved when the bank account was submitted to the Election Officer by the treasurer of the Committee of Management showing that the entire membership due had been paid in 2006 itself. The respondent no.4 participated in the election without demur. In the aforesaid election the petitioner no.2 was elected as the Manager of the Committee of Management securing 278 votes as against 231 votes secured by the respondent no.4. Thus, it was only when the respondent no.4 had been defeated in the election that he made complaints to the Director of Education on 7.12.2011. Sri G.K. Singh further submitted that the order of the DIOS is absolutely illegal and arbitrary and based on reasons which are contrary to the material on record.

Rebutting the averments made in the writ petition, a counter affidavit has been filed on behalf of the respondent no.4 as well as by the learned Standing Counsel on behalf of the respondent nos. 1 and 2.

Sri S.P. Singh representing the respondent no.4 submitted that the term of the Committee of Management which was elected on 18.11.2007 stood expired on 17.11.2010 in terms of para 7 of the Scheme of Administration and therefore the said Committee of Management could not have held the election under its aegis and as such the entire election held on 13.11.2011 was ab initio void. Elaborating the point of Sri S.P. Singh further submitted that the term of the Committee of Management having expired on 17.11.2010, the petitioners had no right to pass a resolution dated 5.8.2011 for holding the election in question and therefore the said resolution was also non est in law. He further referred to the averments in para 14 of the counter affidavit of the respondent no.4, wherein, it has been stated that no proper publication of the election programme was made nor was sufficient time given for raising objections to the voter list, no date was fixed for finalization of the list nor was the final list published. He further alleged that the appointment of Sri Mahendra Singh as Election Officer also void as his wife Smt. Kamlesh Devi was working as Assistant Teacher in the same College.

Sri S.P. Singh further referred to para 19 of his counter affidavit, wherein, it has been alleged that the Scheme of Administration had been amended several times as in the year 1983 and as per the amended Scheme of Administration the term of the Committee of Management was three years and one month after which the term of the Committee of Management comes to an end. In support of his submission he has filed AnnexureCA1 which is a letter dated 18.11.2011 which refers to the amended Scheme of Administration running into 14 pages which was stated to have been communicated from the Joint Director of Education First Region, Meerut to the respondent no.4 Sri Jag Bhushan Garg.

The averments in the counter affidavit of respondent no.4 have however been rebutted by the petitioner in his rejoinder affidavit. It has been stated that the Scheme of Administration filed by the respondent no.4, filed as Annexure3 to his counter affidavit dated 6.12.1983 appears to be a forged document inasmuch as the said Scheme of Administration runs into only five pages whereas in the letter of the Joint Director of Education filed as AnnexureCA1, it is clearly mentioned that he is forwarding a photocopy of the Scheme of Administration which runs into 14 pages and therefore it is submitted by Sri G.K. Singh that the alleged Scheme of Administration filed as AnnexureCA3 is a forged and fabricated document and wholly nonreliable and cannot be taken into consideration at all.

The learned Standing Counsel referring to the counter affidavit filed on behalf of the State respondents has also stated that as per the Scheme of Administration the term of officebearers of the Committee of Management was only three years and one month and on the expiry of the said period it would be presumed that the Committee had ceased to function and therefore the same Committee could not have held the election on

13.11.2011.

I have considered the rival submissions of the learned counsels and perused the documents on record. The Scheme of Administration of the College has been filed as Annexure 20 to the writ petition and paragraph 7 thereof, clearly mentions that the term of the officebearers of the Committee would be three years and it further provides that each officebearer shall hold office only till such time as a new officebearer is not elected in his place (page 87 of the writ petition). From a reading of para 7 of the Scheme of Administration it becomes clear that although the term of the officebearers of the Committee of Management has been prescribed as three years there is no mention therein whatsoever that on the expiry of the said term the Committee would cease to exist.

Sri G.K. Singh, learned counsel for the petitioner has in this regard referred to several judgments of this Court which may be taken up one by one.

In the Division Bench case reported in 1982 UPLBEC 648, Anjuman Islah Muslim Rajut Khasar C Bar Dildar Nagar, District Ghazipur and another Vs. District Inspector of Schools and another, it would be interesting to note that the term of officebearers in the Scheme of Administration of the college before the Division Bench was similar to that in the present case. Paras 3, 4, 5 and 6 of the said judgment are being reproduced and read as under.

"3. it is not disputed that the institution is governed by a duly approved scheme of administration. Clause 5 of the scheme gives the constitution of the committee of management. The committee shall have 15 members. The committee has three categories of members, namely, (a) officebearers, (b) ex officio members, and (c) ordinary members. There are five office bearers and three ex officio members. In addition, seven are ordinary members. Clause 7 of the scheme provides:

"The term of officiobearers and members other than ex officio members shall be three years from the date they are chosen provided that the term of every office bearer shall be deemed to have continued till his successor is chosen."

4. Clause 9 (iv) of the scheme gives the quorum at five members or onethird of the total number of the then members, which ever is greater. If the meeting is adjourned for want of quorum, it shall be held after half an hour after the time fixed for the commencement of the meeting. It appears that the elections were held in 1974. The term of the elected members came to an end after three years, i.e., in 1977, the ex officio members by virtue of clause 7, however, continued to remain in office and constitute membership of the committee of management till their successors were chosen. The scheme does not provide for any specific term for the ex officio members. It provides that the principal and two teachers shall in accordance with Section 16A (I) of the Intermediate Education Act, 1921 constitute the ex officio members.

5. It is not disputed that the office bearers continued to constitute the committee of management and so did the ex officio members.

6. There is no provision in the scheme of management providing for the resolution or extinction of the committee of management on the expiry of the three year period of the ordinary members, or in any other contingency. The scheme thus contemplates that the committee of management will be a continuously existing body with at least ex officio and office bearers as its members. The existence of the office bearers depends upon fresh elections. If and when fresh elections are held and successor office bearers come into existence then on the happening of that extent their term of previous office bearers come to an end. The Committee of Management itself never comes to an end."

In 1984 UPLBEC 166, Gauri Shankar Rai and others Vs. Dr. Ram Lakhan Pandey, DIOS Balia and others a Division Bench of this Court has held that under the Scheme of Administration of the College, the term of the Committee of Management does not automatically come to an end on the expiry of three years. It extends till a new Committee of Management is duly elected. Para 14 of the said judgment reads as follows:

"14. Learned counsel for the respondents also submitted that this petition has become infructuous because three years term of the committee of Management elected on 13.2.1979 has come to an end. We cannot agree. Under the scheme of administration of the College the term of the Committee of Management does not automatically come to an end on the expiry of three years. It extends till a new Committee of Management is duly elected."

This Court in 2007 (8) ADJ 417, Committee of Management Ratanmauni Jain Girls Inter College Vs. State of U.P. and others, has held in paras 8 and 9 of the judgment, which read as follows:

"8. This Court in the case of Anjuman Ishlah Muslim Rajput KhasarCBar, Dildar Nagar, District Ghazipur v. District Inspector of Schools, Ghazipur and another 1982 UPLBEC 648, has taken the view that there is no provision in the scheme of administration providing for the dissolution or extinction of the committee of management on the expiry of the three years" tenure of the ordinary members, or in any other contingency. The scheme thus contemplates that the committee of management will be a continuously existing body with at least exofficio and office bearers as its members. The existence of the office bearers depends upon fresh elections. If and when fresh elections are held and successors office bearers come into existence then on the happening of that event their term of the previous office bearers come to an end, and the committee of management itself never comes to an end. Relevant paragraphs 3, 4, 5 and 6 of the aforesaid judgment are quoted below:

"3. it is not disputed that the institution is governed by a duly approved scheme of administration. Clause 5 of the scheme gives the constitution of the committee of

management. The committee shall have 15 members. The committee has three categories of members, namely, (a) officebearers, (b) exofficio members and (C) Scheme of Administration ordinary members. There are five office bearers and three exofficio members. In addition seven are ordinary members. Clause 7 of the scheme provides:

"The term of officebearers and members other than ex officio members shall be three years from the date they are chosen provided that the term of every office bearer shall be deemed to have continued till his successor is chosen."

4. Clause 9 (iv) of the scheme gives quorum at five members or one third of the total number of then members, whichever is greater. If the meeting is adjourned for want of quorum, it shall be held after half an hour after the time fixed from the commencement of the meeting. It appears that the elections were held in 1974, the term of the elected members came to an end after three years, i.e. in 1977. The exofficio members by virtue of clause 7, however, continued to retain the office and constitute membership of the committee of management till their successors were chosen. The scheme does not provide for any specific term for the exofficio members. It provides that the principal and two teachers shall in accordance with Section 16A (I) of the Intermediate Education Act, 1921 constitute the exofficio members.

5. It is not disputed that the office bearers continued to constitute the committee of management and so did the exofficio members.

6. There is no provision in the scheme of administration providing for the dissolution or extinction of the committee of management on the expiry of the three years period of the ordinary members, or in any other contingency. The scheme thus contemplates that the committee of management will be a continuous existing body with at least exofficio and office bearers as its members. The existence of the office bearers depends upon fresh elections. If and when fresh elections are held and successors office bearers come into existence then on the happening of that event their term of the previous office bearers comes to an end. The committee of management itself never comes to an end."

9. Thereafter this particular judgment has been followed in another Division Bench judgment of this Court in the case of Gauri Shankar Rai and others v. Dr. Ram Laxman Pandey, District Inspector of Schools, Ballia and others, 1984 UPLBEC 166. In the said case, Division Bench has held that under the scheme of administration of the College the term of the Committee of management does not automatically come to an end on the expiry of three years. It extends till a new Committee of Management is duly elected. Paragraph 14 of the judgment being relevant is quoted below:

"14. Learned counsel for the respondents also submitted that this petition has become infructuous because three year term of the Committee of Management elected on 13.2.1979 has come to an end. We cannot agree under the scheme of administration of the College the term of the Committee of Management does not automatically come to an

end on the expiry of three years. It extends till a new Committee of Management is duly elected."

Sri S.P. Singh, learned counsel for the respondents, on the other hand, referred to the Division Bench judgment of this Court in the case of Sri Rajpati, Manager, Committee of Management, Dr. Lohia Inter College Sagarpur Banwai Vs. Regional Committee, through its Chairman/Joint Director of Education, Vindhyachal Mandal, Mirzapur and another reported in 2007 (4) AWC 3445. A perusal of the said judgment would reveal that in that case the Scheme of Administration of the College itself provided that the tenure of the elected Committee of Management was three years and one month with a further stipulation that upon the expiry of the aforesaid period in the event a new Committee does not take over charge the earlier Committee would become defunct and its tenure would come to an end. Thus in the light of the specific provisions contained in the Scheme of Administration of the College in the case of Sri Rajpati (supra) the Division of this Court has held that the election held by the existing Committee of Management after expiry of the term would not be valid.

In my opinion, the ratio of the Division Bench judgment in the case of Sri Rajpati (supra) being on its own facts would have no application to the facts and circumstances of the present case where there is no such stipulation that on the expiry of three years the Committee would cease to exist, and therefore, it must be held that the election held by the existing Committee of Management, i.e, the petitioners on 13.11.2011 cannot be said to be invalid on a mere assumption that the term of the Committee of Management had expired on the expiry of a period of three years and to that extent the finding of the DIOS in the impugned order dated 10.1.2012 must be held to be illegal.

The DIOS in his impugned order dated 10.1.2012 has recorded a further finding that the previous election was held from amongst 571 members whereas the present election has been held from amongst 584 members and thus 13 new members have been added but their particulars or their membership fee or resolution have not been submitted. He has also noted that persons at sl. no. 506, 507 had expired and new members have been added in their places. It has also been held by the DIOS that the election programme was notified on 29.10.2011 but the time for filing of objections was only upto 1.11.2011 and the date for nomination was fixed for 3.11.2011 and, therefore, it "appears" that the members did not have sufficient knowledge. In the list of members of the General Body the names of the members, their father's name and address had not been shown completely. The DIOS has also held that as per news paper publication the election was to be held on a five years basis for 5 office bearers and 6 members of the Committee of Management whereas the election was held assuming the term of the Committee of Management to be only 3 years and the election should have been held for 5 officebearers and 7 members.

So far as the list of members and want of sufficient knowledge to the members of the General Body is concerned, it is to be noted that no objection in this regard was raised by

the respondent no. 4. Instead the respondent no. 4 participated in the election and also submitted his nomination and it is only after he was defeated in the election for the post of Manager that he submitted his complaint on 7.12.2011 to the Director of Education. So far as the number of office bearers is concerned from a reading of the impugned order it will be seen that the DIOS as erred in his calculation inasmuch as according to para 5 of the Scheme of Administration the total number of members of the Committee of Management comprising of the office bearers including the exofficio members should not been less than 13 and maximum 15 members.

In the present case there were 5 office bearers and 6 other members, as noted above, by the DIOS himself but he has omitted to add the 3 exofficio members mentioned in paragraph 5 of the Scheme of Administration who are the Principal and 2 senior teachers. Thus the total office bearers would be 14 and, therefore, it is clearly seen that a wrong finding of fact has been recorded by the DIOS in the impugned order.

So far as the term of the Committee of Management being 3 years or 5 years, the finding recorded by the DIOS is contrary to the documentary evidence on record as well as the law settled by this Court. It is not disputed between the parties that the last election of the Committee of Management was held on 18.11.2007, which was approved by the DIOS on 24.5.2008 and, therefore, the next election ought to have been held within 3 years as per paragraph 7 of the Scheme of Administration and the petitioners therefore had rightly initiated the election programme by writing to the DIOS on 10.8.2011 requesting that an election officer may be appointed in terms of the resolution of the General Body held on 5.8.2011.

No doubt there was a proposal for amending the term of the Committee of Management from 3 years to 5 years but as already noted hereinabove in spite of several letters written by the petitioners from DIOS upto the Joint Director of Education as to whether any approval had been granted by the Director of Education accepting the proposal for amendment of the Scheme of Administration, no reply was sent either by the Director of Education or the Joint Director of Education respondent no. 2 or by the DIOS, respondent no. 3 to the petitioners and, therefore, the petitioners rightly proceeded to hold the election assuming the term of the Committee of Management to be 3 years as per the existing Scheme of Administration.

In this view of the matter, the respondent no. 4 having participated in the election without raising any objection at the time when the election programme had been initiated by the election officer, it was not open for him to have subsequently challenged the election through his complaint dated 7.12.2011 to the Director of Education.

In view of the above, the impugned order of the DIOS dated 10.1.2012 and the orders dated 12.1.2012 of the Joint Director of Education appointing Sri Pooran Singh as Authorised Controller to hold fresh election and the letter dated 13.1.2012 of Sri Pooran Singh taking over charge as Authorised Controller are wholly illegal and without

jurisdiction and are quashed.

The writ petition is allowed.

There shall not be no order as to cost.