

(1976) 03 AHC CK 0020

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 1366 of 1972

Prabandha Samiti, T.J.P. Arya
Kannya Inter College, Etawah
and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: March 25, 1976

Acts Referred:

- Uttar Pradesh Intermediate Education Act, 1921 - Section 16A(1), 16A(2), 16A(3), 16A(4), 16A(5)

Citation: AIR 1976 All 488

Hon'ble Judges: K.B. Asthana, C.J; J.M.L. Sinha, J

Bench: Division Bench

Advocate: V.C. Misra, for the Appellant; K.M. Sinha, K.C. Saxena and H.S. Nigam and H.N. Sharma, S.C., for the Respondent

Final Decision: Allowed

Judgement

J.M.L. Sinha, J.

The petitioner in this case is an educational institution for teaching girls for the High School and Intermediate examinations of the Intermediate Education Board of U. P. The institution is managed under a Scheme of Administration framed u/s 16-A of the Intermediate Education Act, 1921 (hereinafter to be called the Act). Paragraph 20 of that Scheme, translated in English, is as follows.

EMERGENCY PROVISION:

(1) When the State Government is of the opinion that circumstances have arisen which have rendered it impossible to properly carry on the administration of the institution in the normal manner, it may appoint an administrator-

Provided that no such administrator shall be appointed except;

(a) on the recommendation of the committee, or

(b) on the recommendation of the Director of Education after allowing the President an opportunity to submit a written explanation against the said recommendation.

(2) Upon such appointment being made the committee and all its office bearers shall stand suspended and all their powers and functions shall vest in the administrator except that the administrator shall not have the authority to take loan for or on behalf of the society/ institution or to transfer any Immovable property thereof. (The remaining Sub-paragraphs of para. 20 are not material)."

2. Purporting to act under the aforesaid paragraph the State Government (hereafter called respondent No. 1) issued a notice on 31st August, 1971, to the President of the Committee of Management of the institution to show cause why, for the reasons stated therein, the Government should not appoint an administrator. On 13th September, 1971, the President sent his reply. By an order dated 20th December, 1971, however, the Government appointed the District Inspector of Schools (hereafter called respondent No. 2) to be the administrator, who took over charge of the institution on 23rd December, 1971. The petition challenges the appointment of the administrator on the ground, inter alia, that para. 20 of the Scheme of Administration of the institution, under which the respondent No. 1 acted to appoint respondent No. 2 to be the administrator, is ultra vires of the Act, and, therefore, non-existent. Some other grounds have also been stated in the writ petition, but since they were not pressed, it is not necessary to refer to them.

3. The petition first came up for hearing before a learned single Judge of this Court, who found that there was some conflict of views on the point in issue in two decisions of this Court viz., [Adarsh Kanya Uchchattar Madhyamik Vidyalaya, Kanpur Vs. The State of Uttar Pradesh and Others](#), decided by B. N. Lokur, J., and Writ Petition No. 3273 of 1970: D. A. V. Inter College Board, Meerut v. State of U. P., (decided by C D. Parekh, J., on 10-12-1970) (All). In the former case B. N. Lokur, J., held that para. 20 of the Scheme of the Administration (which is identical to para. 20 of the Scheme of Administration in the instant case) was ultra vires and outside the scope of Section 16-A of the Intermediate Education Act. In the latter case C. D. Parekh, J., held that Section 16-D of the Intermediate Education Act did not apply to casts where there was dispute regarding the persons constituting the managing committee, and in such cases an order appointing an administrator could be passed under para. 31 (which corresponds with para. 20) of the Scheme of Administration. Obviously, if paragraph 31 of the Scheme of Administration is ultra vires of the Act, the State Government could not act or appoint an administrator thereunder. In view of this conflict, the learned Single Judge referred the case to a larger Bench, and it is thus that the case has come up before us.

4. In view of the contentions raised before us, the only question for consideration is whether paragraph 20 of the Scheme of Administration of the petitioner institution

is repugnant to the Act and could not be acted upon by the Government to appoint an administrator of the petitioner institution.

5. Section 16-A of the Act enjoins that there shall be a Scheme of Administration for every institution. It further requires that the Scheme of Administration shall, amongst other matters, provide for the constitution of a committee of management vested with the authority to manage and conduct the affairs of the institution. Sub-section (6) of Section 16-A, which deserves particular notice, reads as under:--

"Every recognised institution shall be managed in accordance with the Scheme of Administration framed under and in accordance with Sub-section (1) to Sub-section (5) of Sections 16-B and 16-C."

6. On the language used in Subsection (6) of Section 16-A it is clear that the Scheme of Administration must be under and in accordance with Sub-section (1) to Sub-section (5) of that section and Section 16-B and Section 16-C. In other words, the Scheme of Administration cannot provide for anything which falls outside the scope of the aforesaid provisions of the Act.

7. Sub-section (1) of Section 16-A makes it imperative that there shall be a Scheme of Administration for every institution and that the Scheme must carry provision for the constitution of the committee of the management. Sub-section (2) only states that no member of a committee of management shall attend any meeting of the committee nor shall exercise his right of vote whenever a charge concerning his personal conduct is under discussion. Sub-section (3) states that the Scheme of Administration shall describe the powers, duties and functions of the Headmaster/Principal -and of the committee of management in relation to the institution. Sub-section (4) lays down that where more than one recognised institution is maintained by a body or authority, there shall be a separate committee of management for each institution, unless otherwise provided in the regulations. Sub-section (5) lays down that the Scheme of Administration of every institution shall be subject to the approval of the Director of Education and that no amendments to or change in that Scheme shall be made at any time without the prior approval of the Director. It will thus appear that none of the clauses of Section 16-A of the Act provides for the replacement of a committee of management by an administrator.

8. Section 16-B only lays down the period within which the Scheme of Administration must be submitted for the approval of the Director of Education. It also provides for the extension of that period and for the action to be taken by the Director of Education in the event of the institution not submitting any Scheme of Administration. Section 16-C provides for the approval of the Scheme of Administration by the Director of Education and for any alteration or modification being suggested by the Director in that Scheme. It will thus appear that neither Section 16-B nor Section 16-C refers to a committee of management being replaced

by an administrator, particularly in cases where a Scheme of Administration has been submitted and approved by the Director.

9. It, therefore, becomes obvious that para. 20 of the Scheme of Administration, which is impugned in this case, travels beyond the scope of Sub-section (1) to Sub-section (5) of Section 16-A and Sections 16-B and 16-C. It thus violates the mandate contained in Sub-section (6) of Section 16-A, inasmuch as it is not under and in accordance with the aforesaid provisions.

9-A. The legislature presumably restricted the scope of the Scheme of Administration by enacting Sub-section (6) because it provided an elaborate procedure in Section 16-D of the Act for remedying the mismanagement in any educational institution. Sub-section (1) of Section 16-D empowers the Director of Education to get an institution inspected from time to time. Sub-section (2) thereof vests an authority in the Director of Education to ask the management of an institution to remove any defect of deficiency found on inspection or otherwise. Sub-section (3) states that if the management fails to comply with any direction issued by the Director, the latter can refer the case to the Board for withdrawal of recognition or may recommend to the State Government to proceed against the institution under Sub-section (4), which in its turn provides for an authorised controller being appointed and for the institution being run in accordance with the directions of the authorised controller.

Sub-section (5) provides that when the management or any person having any function of management does not comply with or refuses to carry out any direction given by the authorised controller, the latter may, with the previous approval of the State Government, take over the management of the institution for such period as the Government may fix (other Sub-sections of Section 16-D are not material here). Now, since the legislature itself provided in the Act this elaborate procedure for dealing with the mismanagement in any educational institution, the Scheme of Administration, which is framed by a subsidiary body cannot in the absence of express powers in that regard provide for an alternative procedure for the same purpose which is wholly different from that contained in Section 16-D and even more stringent than that procedure, as would appear on a perusal of Section 16-D, the Committee of management does not cease to function till all other methods specified therein for dealing with the management are exhausted. As opposed to this, paragraph 20 of the Scheme of Administration straightway empowers the Government to take over the management of the institution.

10. We, have, therefore, no doubt in our mind that paragraph 20 of the Scheme of Administration is inconsistent and repugnant to the Act. It is accordingly to be treated as non-existent and outside the scope of Section 16-A.

11. This petition is accordingly allowed and paragraph 20 of the Scheme of the petitioner institution is quashed, together with the order dated 20th December,

1971, passed by the respondent No. 1 appointing the respondent No. 2 to be the administrator of the institution. No order is, however, made as to costs.