

(1998) 09 AHC CK 0081

Allahabad High Court

Case No: C.M.W.P. No. 18795 of 1998

Gautam Shiksha Samiti and
another

APPELLANT

Vs

Joint Director of Education,
Gorakhpur and others

RESPONDENT

Date of Decision: Sept. 15, 1998

Acts Referred:

- Constitution of India, 1950 - Article 226
- Societies Registration Act, 1860 - Section 12
- Uttar Pradesh Intermediate Education Act, 1921 - Section 16(A), 16A(7)

Citation: (1999) 1 AWC 704

Hon'ble Judges: O.P. Garg, J

Bench: Single Bench

Advocate: T.N. Tiwari, for the Appellant;

Final Decision: Dismissed

Judgement

O.P. Garg, J.

There is an Intermediate College, situate at Pipara, Ramdhar, Salempur, in district Deoria, with the name of Gautam Inter College, which is duly recognised by the Board of High School and Intermediate Education and is governed by the rules and regulations framed under the U. P. Intermediate Education Act, 1921 (hereinafter referred to as "the Act"). The said college is run and managed by a Committee of Management, which is elected according to the terms and provisions of the scheme of administration. The parent society under the aegis of which the college is run, is known as Gautam Shiksha Samiti, which is a body registered under the Societies Registration Act.

2. In the present petition, under Article 226 of the Constitution of India, a dispute has been raised about the constitution and election of the new Committee of

Management. Last undisputed elections of the Committee of Management were held on 9.12.1990. Subsequently, a dispute arose between the two rival Committees of Management. Viswanath Misra, present respondent No. 4 asserted that the Committee of Management of which he was the Manager, was elected in the elections held on 4.7.1993 while another body of persons headed by Radhey Shyam Shukla claimed that a new Committee of Management came into being in pursuance of the election held on 24.10.1993. It appears that Vishwanath Misra was recognised to act as Manager and consequently, Radhey Shyam Shukla filed Civil Misc. Writ Petition No. 28105 of 1995. The said writ petition was disposed of by this Court by order dated 28.9.1995 whereby it was directed that the Deputy Director of Education (for short "D.D.E.") shall decide the dispute with reference to the provisions of Section 16A (7) of the Act. After taking into consideration the respective submissions of the rival contesting parties and the documents placed by them, the D.D.E. by order dated 23.5.1996 held that neither of the elections, as set up by Vishwanath Misra on the one hand, and Radhey Shyam Shukla, on the other, were held according to the scheme of administration and none of the Committees could be recognised as they were illegally constituted. He, therefore, appointed a Prabandh Sanchalak with the direction that fresh elections shall be held within a period of three months. This order of the D.D.E. came to be challenged in Civil Misc. Writ Petition No. 19406 of 1996 filed by Vishwanath Misra, the present respondent No. 4 and in Civil Misc. Writ Petition No. 30479 of 1996, filed by Narvadeshwar Misra, Joint Secretary of the society. Civil Misc. Writ Petition No. 19406 of 1996 was dismissed as not pressed on 18.9.1996 while Civil Misc. Writ Petition No. 30479 of 1996 was disposed of on 20.9.1996 with the direction that the election process shall be initiated/commenced within a month.

3. Ultimately, Daya Shankar Singh, Vice Principal, Government Inter College, respondent No. 3 who was at the relevant point of time performing the duty of Prabandh Sanchalak, held elections on the basis of the list of the members of the General Body supplied by the Assistant Registrar through letter dated 3.1.1998. In that election, Vishwanath son of Ram Narain respondent No. 4 was elected as Manager, besides other office bearers. The Authorised Controller submitted a report dated 16.1.1998. Annexure-7 to the writ petition, to the District Inspector of Schools (for short "D.I.O.S.") and thereafter, on 19.5.1998, signatures of Vishwanath-respondent No. 4 were attested and in this manner, the Committee of Management of which Sri Vishwanath Misra, son of late Ram Narain is the Manager came to be constituted and recognised in pursuance of the elections held on 16.1.1998.

4. The petitioner No. 2, Anand Narain Misra, who claims himself to be the Manager of Gautam Shiksha Samiti has filed the present writ petition for the reliefs that the elections held on 16.1.1998 as well as report of the Prabandh Sanchalak of the same date. Annexure-7 to the writ petition, be quashed and that D.I.O.S. be directed not to attest the signatures of respondent No. 4 on the basis of the elections of 16.1.1998

till objections against the elections filed by the petitioners are decided by the D.I.O.S. The alternative prayer was also made that the D.I.O.S. be directed to hold fresh elections.

5. Counter and rejoinder-affidavits have been exchanged. Heard Sri T. N. Tewari, learned counsel for the petitioners. Sri Narsingh Dixit, learned counsel for the respondent No. 4, and learned standing counsel on behalf of the respondent Nos. 1 and 2.

6. To begin with, it may be mentioned that it is common case of the parties that except for the newly constituted Committee of Management, (in pursuance of the election dated 16.1.1998). of which Vishwanath Misra-respondent No. 4 has been elected as Manager, no other Committee of Management has come into being. Sri Anand Narain Misra petitioner No. 2 has come to file this petition not as Manager of some rival Committee of Management of the institution, but as the Manager of Gautam Shiksha Samiti, a registered society. It is also an admitted fact that Gautam Shiksha Samiti was the parent body under the aegis of which Gautam Inter College was being run and managed. The main contention of the learned counsel for the petitioners is that, as would be apparent from the report of the Prabandh Sanchatak dated 16.1.1998 and the subsequent reports and orders of the D.I.O.S., members and the office-bearers of the new Committee of Management of the institution were elected by the members of Sita Ram Yugal Sarkar Mandir Trust (for short, "Sita Ram Trust"), which has nothing to do either with Gautam Shiksha Samiti or with the institution, in question, and in effect, therefore, the new Committee of Management has come to be constituted by a totally alien body. In substance, the submission of the learned counsel for the petitioners is that the new Committee of Management is the product of a stranger society and therefore, the election of the Committee of Management has not been held in accordance with the scheme of administration. It was also urged that in the scheme of administration, the parent society has been mentioned as Gautam Shiksha Samiti and not Sita Ram Trust. A copious reference was made to the various observations made by the D.D.E. who had passed the order dated 23.5.1996 in pursuance of which a Prabandh Sanchalak came to be appointed. It was pointed out that the D.D.E. has come to the conclusion that Sita Ram Trust has nothing to do with the election of the Committee of Management of the institution. According to Sri T. N. Tewari, unless the scheme of administration as framed u/s 16A of the Act, was amended, with the approval of the D.D.E., no new society could be substituted in place of Gautam Shiksha Samiti.

7. The above submissions have been repelled by Sri Nar Singh Dixit learned counsel for the contesting respondent No. 4. He pointed out that at the moment and for that matter, prior to the holding of the elections of the Committee of Management on 16.1.1998, the identity of Gautam Shiksha Samiti had merged into Sita Ram Trust and in support of his submission, he placed reliance on the order of the Assistant Registrar dated 28.6.1993, a copy of which is Annexure-C.A. 1. This order clearly

indicates that Gautam Uchchatar Madhyamik Vidyalaya and Gautam Rishi Sanskrit Mahavidyalaya were merged together by adopting a resolution by 3/5th of the majority of the members and both these bodies came to be merged in Sita Ram Trust. In this manner, the existence of Gautam Shiksha Samiti came to an end as it came within the sweep of Sita Ram Trust. In the said order, it has also been mentioned that the entire movable and immovable properties of the aforesaid two bodies shall vest in Sita Ram Trust. Learned counsel for the petitioners urged that the merger of one society into another is against the provisions of the Societies Registration Act, 1980 (hereinafter referred to as "the 1980 Act") and in any case, the properties of the institution could not be transferred to and vested in Sita Ram Trust in view of the provisions of the U. P. Educational Institutions (Prevention of Dissipation of Assets) Act, 1974 (Act No. III of 1975) (hereinafter referred to as the Act No. III of 1975). I have given thoughtful consideration to the matter and find that the petitioners have not challenged the merger of the society--Gautam Shiksha Society in the present petition and in any case, the controversy raised by learned counsel for the petitioners with regard to the merger of the society is beyond the scope and the object of the present petition. Section 12 of the 1980 Act makes a provision to enable the societies to alter, extend or abridge their purposes. For ready reference, the provisions of Section 12 of 1980 Act are quoted below :

"12. Societies enabled to alter, extend or abridge their purposes.--Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend or abridge such purpose to or for other purposes, within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in written or printed report, and may convene a special meeting for the consideration thereof according to the regulation of the society :

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting."

Under the aforesaid provision, amalgamation of a society either wholly or partially with any other society is possible if 3/5th of the members present at a meeting convened by the governing body have adopted such proposal. The order of the Registrar dated 28.6.1993, Annexure-C.A. 1, clearly indicates that the proposal for amalgamation of the two bodies, mentioned above, in Sita Ram Trust was passed. The amalgamation has been recognised by the competent authority under the 1980 Act. As regards the plea of the applicability of Act No. III of 1975. It may be pointed

out that the said Act came to be enacted to provide for measures to prevent the dissipation of assets of educational institutions. In the instant case, by the merger of Gautam Shiksha Samiti into Sita Ram Trust, the assets of Gautam Inter College are not, in any manner, dissipated instead they stand transferred to the parent society, i.e., Sita Ram Trust.

8. After the amalgamation or merger of Gautam Shiksha Samiti into Sita Ram Trust, there is no society which survives with the name of Gautam Shiksha Samiti. It is true that in the scheme of administration governing the institution, which is separate from and independent of the by laws of the society, the name of Gautam Shiksha Samiti has been mentioned and the members of the general body of the said Samiti were required to elect the members and office-bearers of the Committee of Management of the institution. It is also correct that no amendment in the scheme of administration has taken place. The logical conclusion which follows from the amalgamation of Gautam Shiksha Samiti in Sita Ram Trust would be that the latter has come to be substituted in place of former. It would have been desirable if a formal amendment in the scheme of administration had taken place consequent upon the happening of the subsequent event, i.e., merger of the parent society into Sita Ram Trust, But omission to do so is not going to affect the election of the Committee of Management, in any manner. Since Gautam Shiksha Samiti is no longer in existence as it has lost its identity, the question of electing the Committee of Management by the members of Gautam Shiksha Samiti, a defunct or non-existent body, did not arise. After all, the Committee of Management had to be constituted by holding periodical elections. Now, which body will hold the elections, would be the moot point. The defunct body obviously cannot elect the new Committee of Management, Therefore, the existing body, in which the earlier parent body has merged, would be the only body, which is competent to hold the elections of the Committee of Management and it was in this backdrop of facts and legal position that the general body of Sita Ram Trust came to participate in the elections of the members and the office-bearers of the Committee of Management of the institution. From the material available on record. It is beyond the pale of challenge that Sita Ram Trust is the body under the aegis of which Gautam Inter College is being run and managed.

9. Reference to the earlier decision dated 23.5.1996 of the D.D.E. on the point is wide off the mark. He was not competent person to decide whether Sita Ram Trust was or was not parent body to constitute the new Committee of Management. The limited jurisdiction of the D.D.E. pertained to the question of recognition of a Committee of Management on the administrative side and to record a finding on a reference u/s 16A (7) of the Act as to which of the rival Committees of Management was in actual control of the affairs of the institution. The D.D.E. is not expected to decide the dispute about the existence or otherwise of the parent body or society. The proper forum to decide such a dispute is either the Registrar or the Prescribed Authority appointed under the provisions of 1980 Act.

10. A complaint appears to have been made to the Joint Director of Education in the matter after the elections had been held on 16.1.1998 to constitute the new Committee of Management. The Joint Director of Education, on the administrative side, called for the report of the D.I.O.S. who submitted detailed report dated 16.3.1998. copy of which is Annexure-C.A. 4. In that report, it has been clearly mentioned that Sita Ram Trust is the new body of the society, general body of which elected the members and the office-bearers of the new Committee of Management. The complaint to challenge the election of respondent No. 4 was found to be false and frivolous. The Joint Director by his order dated 28.4.1998. copy of which is Annexure-C.A. 5 directed the D.I.O.S. to take necessary action in the matter according to law and ultimately by order dated 19th May, 1998. passed by the D.I.O.S., copy of which is Annexure-C.A, 6, newly elected Committee of Management, of which respondent No. 4 is the Manager, was recognised. The respondent No. 4 is undoubtedly fully saddled in the office of Manager of the Committee of Management of the institution.

11. There is yet another aspect of the matter. The petitioner No. 2 has no locus standi to challenge the election held on 16.1.1998. He claims himself to be the Manager of the Gautam Shiksha Samiti, which, as said above, is a non-existent body. A body, which has no existence, cannot have its Manager. With the cessation of the body, the managership also comes to an end. Therefore, the petitioners have no legal right to challenge the elections of the Committee of Management, of which respondent No. 4 has been elected as Manager.

12. In conclusion, the writ petition turns out to be wholly devoid of any merit and substance and is accordingly dismissed without any order as to costs.