

(2006) 07 AHC CK 0152

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 35717 of 2006

Committee of Management,
Adarsh Janta Uchchattar
Madhyamik Vidyalaya,
Shikohabad, District Firozabad
and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision: July 12, 2006

Acts Referred:

- Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974 - Section 5

Hon'ble Judges: Rakesh Tiwari, J

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard learned Counsel for the parties and perused the record.

2. The petitioners have prayed for a writ of certainly quashing the order dated 1.5.2006 (Annexure 19 to the writ petition) passed by the Joint Director of Education/President, Regional Level Committee, Agra (respondent No. 2) besides a writ of mandamus commanding respondent No. 2 to approve the election dated 30.11.2003 and to respondent No. 3 to attest the signatures of the petitioner as the Manager of the Institution.

3. The case of the petitioners is that Adarsh Janta Uchchattar Madhyamik Vidyalaya, Shikohabad, District Firozabad (hereinafter referred to as the institution) is a duly recognized and aided educational institution having its own duly approved Scheme of Administration under Section 16 of the Act.

4. The election of the Committee of Management is held from the list of members of the General Body of the registered society named Adarsh Shiksha Samiti,

Shikohabad having total 66 members. Petitioner No. 1 claims himself to be a duly elected Manager of Committee of Management while petitioner No. 2 is said to be the former Manager and elected Secretary of the Society (General Body), which has been renewed for a period of five years from 10.10.2005.

5. It is submitted by the petitioners that the last undisputed election of the Committee of Management was held under the provisions of the Scheme of Administration on 31.10.1999 from the approved list of the aforesaid 66 members and the papers for granting recognition and attestation of the signatures of the elected Manager were sent to the D.I.O.S. but no decision or action was taken by him.

6. A complaint in this regard was sent to the Lokayukta, Lucknow who sought report from the Joint Director of Education which was submitted by him on 1.9.2002. The signatures of the then elected Manager Sri Gyanendra Prakash Kulshreshtha were thereafter attested by the D.I.O.S. on 17.12.2002.

7. During the period 31.10.1999 to 17.12.2002, there was single operation of accounts of the institution due to inaction of the respondents and nonrecognition of election held by the petitioner on 31.10.1999.

8. In pursuance of the recognition granted to the Committee of Management of the petitioner it continued to function uninterruptedly and the salary bills of the staff members were passed by the Manager and accepted by the authority concerned till the impugned order dated 1.5.2006 was passed.

9. By letter/application dated 16.5.2003 the petitioner had sought guidance and clarification, from the D.I.O.S. whether the term of Committee of Management is to be counted from the date of attestation of signatures, i.e., 17.2.2002 or from actual working of the Committee of Management for four years. When he did not receive any response from the D.I.O.S. a complaint dated 2.9.2003 was made by him to the Joint Director of Education who in turn directed the D.I.O.S. to decide the matter. The direction of the Joint Director of Education was disregarded by the D.I.O.S. and he neither passed any order nor clarified the position contained in letter dated 16.5.2003 by the Management.

10. It is submitted that when despite repeated requests the D.I.O.S failed to pass order regarding clarification of date of term of the Committee of Management, it was decided by the Committee of Management to hold election in accordance with Clause 5 of the Scheme of Administration by appointing an ad hoc Election Officer. The election programme was published in the Daily Newspaper "Amar Ujala" dated 22.10.2003 informing that election was scheduled to be held on 30.11.2003. After the election all relevant papers including entire record pertaining to election proceedings were sent to the D.I.O.S. by the President under covering letter dated 7.12.2003 for approval of the newly elected Committee of Management and attestation of signatures of the newly elected Manager. The D.I.O.S. in response vide

his letter dated 3.6.2004, directed the Manager to supply complete file of election proceedings through messenger which is stated to have been sent to him along with letter dated 18.6.2004, but the D.I.O.S. is again alleged to have not taken any action to forward the papers to the Regional Level Committee and instead he again sought the record of the election proceedings.

11. It is stated that the petitioner again supplied the record vide letter dated 3.9.2004 and simultaneously also sent a complaint to the Joint Director of Education against the D.I.O.S. with regard to his mala fide intentions, harassment and dilatory tactics being adopted by him in referring the matter to the Regional Level Committee for granting recognition to the newly elected Committee of Management.

12. Thereafter the petitioner again took the matter before the Lokayukta, U.P. Lucknow who vide his letter dated 25.11.2005 directed the Joint Director of Education to decide the controversy or appear before him. On this, it appears that the D.I.O.S. issued letter dated 8.2.2006 to the Joint Director of Education for appointment of Prabandh Sanchalak on the ground of irregularities said to have been committed by the petitioners in holding the election. Upon the receipt of the letter dated 8.2.2006, the Joint Director of Education sought reply from the petitioner within a week on the following points vide his letter dated 27.2.2006 which is stated to have been sent by the petitioners vide registered letter dated 19.3.2006 :

13. The Joint Director of Education thereafter vide his letter dated 17.4.2006 directed the petitioner to submit his reply as to selling of the properties of the institution without prior approval of the department and in violation of the provisions of the Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974, the petitioner sought time in order to enable him to produce the judgment and order of the District Judge, Firozabad granting permission to sell the alleged house in the shape of "Khandhar " belonging to the Society. Relying upon the recommendations dated 8.2.2006 submitted by the D.I.O.S. the Joint Director of Education vide impugned order dated 1.5.2006 disapproved the Committee of Management on the ground that the term of the Committee of Management had expired.

14. It is contended that all the relevant papers relating to the proceedings of the election dated 30.11.2003 were sent to the D.I.O.S. twice on his request, but with mala fide intention and with a view to harass the petitioner he issued letter dated 17.8.2004 requiring the same documents on which reply had been submitted on 3.9.2004 by the petitioner. It is also contended by the learned Counsel for the petitioners that the impugned order dated 1.5.2006 has been passed by the Joint Director of Education without deciding the complaint/representation of the petitioners and suffers from nonapplication of mind. It is submitted that the petitioners had not been afforded full and fair opportunity of being heard and the

order impugned is in violation of the principles of natural justice. It has been urged that it is wrongly stated in the impugned order by the Joint Director of Education that the term of the Committee of Management expired without any election having taken place merely on the basis of misleading and mala fide report/recommendation dated 8.2.2006 submitted by the D.I.O.S. while the election dated 30.11.2003 has been validly held well within time in accordance with the provisions of the Scheme of Administration and the matter of approval only remained. It is stated that the Joint Director of Education deliberately did not "pass any order either by raising an objection or disapproving the election and has illegally and arbitrarily ousted and dislodged the elected Committee of Management by appointing Prabandh Sanchalak and directing him to hold election of the Committee of Management within a period of three months. It is also stated that no cogent reasons have been given in the impugned order for appointing the Prabandh Sanchalak and the Prabandh Sanchalak has not even taken any steps for holding the election till date in pursuance of the impugned order.

15. The further contention of the learned Counsel for the petitioners is that the District Judge, Firozabad had granted permission to sell the alleged house in the shape of Khalidhar, belonging to the Society but the Joint Director of Education did not grant further time to the Society for submitting the judgment of the District Judge, Firozabad dated 24.7.1999 in Misc. Petition No. 6 of 1999.

16. I have considered the arguments of the learned Counsel for the petitioners.

17. The D.I.O.S. by his letter dated 3.6.2004 had directed the petitioners to send all relevant records by special messenger, but the records are said to have been sent by the petitioners under covering letter dated 18.6.2004. Whether records were at all sent or not is highly disputed question of fact as the D.I.O.S. has even thereafter requested the petitioners by his letter dated 17.8.2004 to send the required documents, hence it cannot be said that the action of the D.I.O.S. was mala fide or with a view to harass the petitioners. The petitioners did not comply with the directions of the D.I.O.S. in letter and spirit and had not sent the papers by special messenger but allegedly by post which appears not to have been received by the D.I.O.S.

18. As regards submission of judgment dated 24.7.1999 of the District Judge, Firozabad in Misc. Petition No. 6 of 1999 is concerned, it is provided under The Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974 that the permission for sale of properties or their disposal is to be taken from the departmental authorities under The Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974. Evidently the petitioners did not take any permission from the departmental authorities for sale of the property or of the alleged "Khandhar", rather filed case before the District Judge, Firozabad in this regard. The law is well settled that if the Act or law provides nothing to be done in certain manner it has to be done in that manner or not at all. Even if the contention

of the learned Counsel for the petitioners is taken at its face value that he had sole his property under the permission of the District Judge, Firozabad it would not validate his act which was otherwise prohibited by The Uttar Pradesh Educational (Prevention of Dissipation of Assets) Act, 1974 in Misc. Petition No. 6 of 1999 by the District Judge, Firozabad.

19. Furthermore it is apparent from Clause 7 of the Scheme of Administration contained in Annexure No. 1B to the writ petition which provides :

20. Hence, it has rightly been held under the impugned order that the term of the Committee of Management had expired and the Prabandh Sanchalak was rightly appointed for holding the election.

21. The last contention of the learned Counsel for the petitioners that the order is without jurisdiction as it has been passed by the Joint Director of Education is also incorrect. It is apparent from the definition of "Director" under the U.P. Intermediate Education Act that it embodies Joint Director of Education also. The learned Counsel for the petitioners at this age concedes and in the circumstances he does not press this point. The factual dispute raised in this case render the writ petition as not maintainable in view of the decision rendered in Himmat Singh v. State of Haryana and others, 2006 (109) FLR 223, in Paragraph 11 of which it has been held that only question of law can be raised and not statement of fact. It was further held that :

"Whether statements of the appellants or the respondents were correct or not could not ordinarily be decided in a writ jurisdiction. It is well known that in writ petition ordinarily such a disputed question of fact could not be entertained. The High Court arrived at finding of fact on the basis of affidavit evidence."

22. Since the disputes raised by the learned Counsel for the petitioners are factual disputes, they cannot be decided in writ petition under Article 226 of the Constitution, as they require adjudication on the basis of documentary and oral evidence. The High Court is a Court of records. The petitioners have alternate remedy by filing either an appeal before the State Government or a suit before the Civil Court concerned, as the case may be, and may get their grievance redressed.

23. No other point has been raised by the learned Counsel for the petitioners

24. In the mean time the Prabandh Sanchalak may held election within two months and pass a reasoned and speaking order in accordance with law.

25. It is further directed that the representations of the petitioners dated 3.9.2004 and 19.3.2006 contained in Annexure 11 and 15 respectively to the writ petition be decided by the respective authorities at the earliest.

26. For the reasons stated above, the writ petition is dismissed on the ground of alternative remedy by filing either an appeal before the State Government or a suit, as the case may be.