

(2009) 07 AHC CK 0257

Allahabad High Court

Case No: None

Committee of Management
Bhumidhar Inter College and
Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 22, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Dilip Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Dilip Gupta, J.

The Committee of Management of Bhumidhar Inter College, Sikriganj, Gorakhpur (hereinafter referred to as the ""College") and its Manager have filed this petition for quashing the order dated 2nd July, 2009 passed by the State Government under Sub-sections (5) and (8) of Section 16D of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the ""Act").

2. The College receives grant-in-aid from the State Government and is governed by the provisions of the Act. On 8th February, 1991 the State Government passed an order u/s 16D(4) of the Act appointing an Authorised Controller in the College for a period of one year. This order was challenged by the then Committee of Management in Writ Petition No. 3978 of 1991 and on 18th February, 1991 the Court admitted the petition and stayed the operation of the order dated 8th February, 1991. However, this petition was dismissed as having become infructuous on 16th May, 2002. On the basis of the interim order the Committee of Management continued to function and elections were held. The papers with regard to the elections held on 28th June, 2009 were sent to the District Inspector of Schools for grant of recognition. In the meantime the State Government passed the order dated

2nd July, 2009 which has been impugned in the present petition.

3. A perusal of the said order shows that for the two grounds mentioned in the order, it was considered necessary by the State Government to issue notice to the Management of the College to show cause why an Authorised Controller be not appointed in the College. At the same time, the State Government also suspended the Committee of Management pending the order that may subsequently be made under Sub-section (6) of Section 16-D of the Act as it was of the opinion that immediate suspension of the Committee of Management was also necessary and expedient in the interest of the College concerned.

4. Sri R.N. Singh, learned Senior Counsel appearing for the petitioners submitted that the petitioners are aggrieved by the issuance of the order under Sub-section (8) of Section 16D of the Act by which the Committee of Management has been suspended pending the final order because in respect of the notice issued under Sub-section (5) of Section 16-D, the petitioners will submit a proper reply. Learned Senior Counsel pointed out that even earlier in the year 1991, these two grounds along with one more ground were mentioned in the order that was passed u/s 16-D(4) of the Act and, therefore, there was no urgency to pass the order under Sub-section (8) of Section 16-D. In support of his contention he has placed reliance upon the decision of this Court in Committee of Management, Atarra Mahavidyalaya, Atarra, Banda v. State of U.P. and Ors. 2003 (3) ESC 1650 which deals with Section 58 of the U.P. State Universities Act, 1973.

5. Sri P.S. Baghel, learned Senior Counsel appearing for the newly impleaded respondent No. 5 has placed before the Court the order dated 8th July, 2009 by which the order passed under Sub-section (8) of Section 16-D of the Act has been given effect to by the appointment of the Authorised Controller who has also taken over charge of the Management of the College. He has further submitted that the Court should decline to entertain this petition as it is merely directed against the show cause notice. In support of his contention he has placed reliance upon the decision of the Supreme Court in [Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others](#),

6. As noticed hereinabove, the contention advanced by the Sri R.N. Singh, learned Senior Counsel for the petitioners is about the order passed under Sub-section (8) of Section 16-D of the Act as he has very fairly stated that the petitioner will file a reply to the notice issued under Sub-section (5) of Section 16D of the Act. In such circumstances, the objection raised by Sri P.S. Baghel, learned Senior Counsel for the respondents that the Court should decline to entertain the petition as it is directed against the issuance of the show cause notice is not required to be examined in this petition.

7. The main thrust of the submissions of Sri R.N. Singh, learned Senior Counsel for the petitioners is that while issuing the notice under Sub-section (5) of Section 16-D

of the Act, the State Government was not justified in invoking the jurisdiction under Sub-section (8) as the charges were stale.

8. In order to appreciate the rival contentions, it would be useful to reproduce Section 16-D(5) and Section 16-D(8) which are as follows:

16D(5). If on the receipt of information or otherwise, the State Government is of opinion that in relation to an institution, the ground mentioned in Clause (iii) or Clause (v) of Sub-section (3) exists, and that the interest of the institution calls for immediate action, it may, notwithstanding anything contained in the said Sub-section, issue notice to the management of such institution to show cause within fifteen days from the date of receipt of such notice why an Authorised Controller be not appointed in respect of such institution.

16D(8). If the State Government is of opinion that immediate suspension of the Committee of Management is also necessary or expedient in the interest of the institution concerned, it may, while issuing notice under Sub-section (5), by order and for reasons to be recorded, suspend the Committee of Management and make such arrangement as it thinks proper for managing the affairs of the institution pending the order that may subsequently be made under Sub-section (6).

9. A perusal of the impugned order shows that the State Government formed an opinion that immediate suspension of the Committee of Management was also necessary and the two grounds mentioned in the order are that two acres of land belonging to the College had been transferred to the Degree College without prior approval of the educational authorities and the rent from the shops erected on the land of the College was utilised by the Manager for his personal gains and not for the development of the College. It is true that these two charges were also mentioned in the earlier order passed by the State Government in the year 1991 u/s 16-D(4) of the Act, but the said order was challenged in Writ Petition No. 3978 of 1991 which was ultimately dismissed as having become infructuous on 16th May, 2002 because the period of one year for which the Authorised Controller had been appointed, had come to an end. The validity of the order passed u/s 16-D(4) was, therefore, not examined on merits. The State Government, therefore, could have issued notice to the petitioners calling upon the petitioner to show cause why an order under Sub-section (6) of Section 16-D may not be passed. It will, therefore, not be proper to quash the order only on the ground that the charges are stale.

10. What must also be noticed is that the order under Sub-section (8) cannot remain in force for more than six months and as pointed out by the learned Senior Counsel for the respondents, the Finance and Accounts Officer in the office of the District Inspector of Schools has been appointed as the Authorised Controller and he has also taken over charge. The grounds mentioned in the order are serious in nature and it cannot be said that the order passed under Sub-section (8) of Section 16-D of the Act is arbitrary or that the pre-conditions for passing the order do not exist.

11. The petitioners have been asked to file a reply to the show cause notice within 15 days. They can file a reply and satisfy the State Government that the grounds are baseless and the proceedings should be dropped and in case their version is accepted, the State Government can drop the proceedings and the interim order suspending the Management of the College gets revoked automatically even before the expiry of six months. In this connection, reference may be made to a Division Bench judgment of this Court in *Swami Dayanand Snatak Mahavidyalaya Deoria and Anr. v. State of Uttar Pradesh and Anr.* 1979 (5) ALR 124 wherein in respect of almost identical provisions contained in Section 57 and 58 of the U.P. State Universities Act, 1973, the Court made the following observations:

There is another aspect which, in our opinion, deserves consideration. As seen above Sub-section (2) of Section 58 provides for the suspension of the management. The interim arrangement for the college u/s 58(2) is to be made for the period till further proceedings are completed or for a period of six months computed in accordance with the second proviso to the said Sub-section whichever is earlier. It is open to the management on being served with the notice u/s 57 and the order u/s 58(2) to show cause forthwith and place the necessary material before the State Government and satisfy if it is able to do so that the information conveyed to it u/s 57 was baseless and no credence could be given to it and obtain an order dropping the proceedings which will have automatic effect of revoking the interim order suspending the management even before the expiry of the period of six months contemplated by the first proviso aforesaid....

12. In such circumstances, it would not be appropriate to exercise the discretionary jurisdiction under Article 226 of the Constitution. The petitioner, may, if so advised, file a reply to the show cause notice so that the State Government can take a decision.

13. This petition is, accordingly, dismissed subject to the observations made above.