

(1997) 08 AHC CK 0115

Allahabad High Court

Case No: Special Appeal No. 472 of 1996

Management Committee,
Maharshi Durbasa Inter College

APPELLANT

Vs

Satya Deo Tiwari and Others

RESPONDENT

Date of Decision: Aug. 6, 1997**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Societies Registration Act, 1860 - Section 25
- Uttar Pradesh Intermediate Education Act, 1921 - Section 16CC

Citation: (1997) AWC 431 Supp**Hon'ble Judges:** D.P. Mohapatra, C.J; S.R. Singh, J**Bench:** Division Bench**Advocate:** K.R. Sirohi, for the Appellant; Uma Kant and S.C., for the Respondent**Final Decision:** Allowed

Judgement

D.P. Mohapatra, C.J.

Maharshi Durbasa Inter College, Kakra Dubewal, Allahabad is a recognised Intermediate College the affairs of which are governed by a Committee of Management constituted in accordance with the Scheme of Administration approved under the U.P. Intermediate Education Act, 1921 way back in 1964. The question that arises for consideration in this Special Appeal directed against the judgment and order dated 8.5.1996 passed by a learned single Judge is as to whether the office bearers of the out-going Committee of Management of the College were competent to organise, conduct and hold the election of the Committee of Management in accordance with the Scheme of Administration even after expiry of the term of the Committee of Management.

2. Minimal facts necessary to unfold the controversy and appreciate the question raised herein may be stated as thus : The first Respondent Satya Deo Tewari who

was the president in the out-going Committee of Management filed the writ petition giving rise to this appeal praying for the relief of mandamus commanding the Deputy Director of Education and the District Inspector of Schools, Allahabad arrayed as party Respondents No. 1 and 2 respectively in the writ petition to appoint a Prabandh Sanchalak for managing the affairs of the College and holding election of its Committee of Management. It was alleged in the writ petition that the term of the Committee of Management constituted on the basis of election held on 27.12.1981 expired on 27.12.1984 but no election was held thereafter for reconstituting the Committee the term of which expired in December, 1984. It was further alleged that the Scheme of Administration of the College initially approved on September 5, 1964 had not been amended and, according to the said Scheme of Administration, the office bearers of the outgoing Committee of Management were to continue until replaced by their successors. It was further alleged that Sri Kant Mishra, who was elected Manager in 1981 continued in office by taking advantage of clause 7 of the Scheme of Administration which provided that the term of the office bearers would be deemed to be continuing even after expiry of the term of the Committee of Management until their successors were elected. The writ Petitioner--Satya Deo Tewari further alleged that the outgoing Committee of Management had no right to hold election after expiry of its three-year term and one month thereafter. In the counter-affidavit filed on behalf of the Committee of Management by its Manager Sri Kant Mishra, it has been averred that a dispute came to be raised in respect of the election held in 1981 which was ultimately decided by the Deputy Director of Education, Allahabad in the year 1983 upholding the validity of the Committee of Management of which he was elected Manager in 1981 and the said Committee of Management continued for a period of three years as per the decision of the Deputy Director of Education and thereafter the elections were held on due dates in 1987 and 1990. The next election which was due in 1993 could not be held because the writ Petitioner--Satya Deo Tewari had raised a dispute before the Assistant Registrar, Firms, Societies and Chits which the latter referred to the Prescribed Authority u/s 25 of Societies Registration Act, 1860 who decided the dispute, vide order dated 6.10.1995, in favour of the Appellant and thereafter the District Inspector of Schools was approached vide letter dated 28.11.1995, with a request to appoint an observer so that the election of the Managing Committee could be held according to law. To complete the chain of events, it may be stated that the election of the Committee of Management was held during the pendency of the writ petition on 11.2.1996 under the supervision of the Associate District Inspector of Schools who was appointed observer by the District Inspector of Schools and in the said election, Sri Kant Mishra was reelected Manager and Sri Vidya Dhar Tewari President of the Managing Committee which came to be recognised by the District Inspector of Schools vide letter dated 22.2.1996 and, therefore, an application dated 6.5.1996 supported with an affidavit annexing thereto the order dated 22.2.1996 and certain other documents was filed on behalf of the Appellant. The writ Petitioner, however, did not get his petition amended so

as to question the validity of the election dated 11.2.1996 and the order dated 22.2.1996.

3. Learned single Judge disposed of the writ petition with a direction to the Director of Education who was not even arrayed as party Respondent to the writ petition to appoint Prabandh Sanchalak within a period of one month and the Prabandh Sanchalak so appointed, would hold election of the Committee of Management within a period of three months and hand over charge to the duly elected Committee of Management. Learned single Judge was of the opinion that the election of the Committee of Management could not have been held during the pendency of the writ petition "without permission of the Court". Learned single Judge was also of the view that even though the Scheme of Administration had not been amended, the election could only be held under the supervision of an authority appointed by the Deputy Director of Education and further that the election held by the office bearers of the out-going Committee of Management "was without authority and the Education Authorities could not recognise the same".

4. We have heard Sri K. R. Sirohi for the Appellant, Sri Uma Kant for the first Respondent and learned standing counsel of the Respondents No. 2 and 3. In our considered view, the judgment of the learned single Judge cannot be sustained and the appeal deserves to be allotted for the reasons herein given. The petition was presented in the Registry of the Court on 5.12.1995 and it came up before the appropriate single Judge Bench on 6.12.1995 but on the request made on behalf of the counsel for caveator, it was adjourned to the next following day, i.e., 7.12.1995 on which date the matter was adjourned to 8.1.1996 with a view to enabling the parties to exchange counter and rejoinder affidavits. No interim relief was given even though an application for ad-interim injunction restraining the Appellant herein from functioning as Manager of the College was moved along with the writ petition. The writ petition came to be heard and finally disposed of vide judgment and order dated 8.5.1996. Sri Kant Mishra the Manager in the outgoing Committee of Management continued to function as such without any demur from the relevant authorities under the U.P. Intermediate Education Act, 1921 and neither Authorised Controller nor Prabandh Sanchalak was appointed in relation to the College in question even though, according to the Petitioner, no periodical election was held for the constitution of the Committee of Management after 1981. Indeed the counsel for the parties could not invite our attention to any provision either in the Act or in the approved Scheme of Administration providing for appointment of Controller or Prabandh Sanchalak on the failure of the office bearers of the out-going Committee of Management to hold election before expiry of its three-years term or within a reasonable time thereafter. We are of the considered view that mere pendency of the writ petition could not inhibit the office bearers of the outgoing Committee of Management to convene an election meeting of the General Body and get the office bearers and members of the Committee of Management elected in accordance with the Scheme of Administration and the

election cannot be invalidated merely because it was held during the pendency of the writ petition. As a matter of fact, the election held pending writ petition and its recognition by the District Inspector of Schools were not at issue in the writ petition in that the Petitioner took no steps to get his petition suitably amended.

5. So far as the second reasoning given by the learned single Judge is concerned, the decision of this Court in *Committee of Management of Sri Maheshwar Inter College and Anr. v. State of U.P. and Ors.* 1994 (1) ESC 305, reliance on which has been placed by the learned single Judge has no relevance to the facts of the present case inasmuch as unlike the case on hand, the Scheme of Administration in that case did not contain the stipulation that the office bearers of the out-going Committee of Management would continue to function till their successors were elected. Concededly, clause 7 of the Scheme of Administration we are concerned with, which prescribes three-year term of the Committee of Management, clearly provides that the term of the office bearers would be deemed to be continuing till the election of their successors.

6. Keeping in view the provision of clause 7 of the Scheme of Administration which stipulates that notwithstanding the expiry of the term of the Committee of Management, the term of its office bearers would be deemed to be continuing till their successors are elected and having regard to the fact that the case is such that to hold null and void the election held by the office bearers under the supervision of Associate Inspector of Schools would work serious injustice and inconvenience to those who were not at fault, we are of the considered view that if the election was otherwise valid, it should not be invalidated merely because it was held during the pendency of the writ petition without permission of the Court or because it was held at the instance of the office bearers of the Committee of Management the term of which had expired long back. It would be worthwhile to quote here the following principle aptly stated by their Lordship of the Privy Council:

When the provisions of a Statute relate to the performance of a public duty and the case is such that to hold null and void acts in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those who are entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only--*Montreal Street Railway v. Normandin* AIR 1917 PC 142.

7. It would be apt to observe here that even breach of the Regulations or of the approved Scheme of Administration not materially affecting the result of the election would not invalidate it for a trivial lapse in conducting the election should not be visited with the consequences of ultra vires doctrine. If the meeting of the General Body is found to have been validly held and the decision taken thereat do not violate any express or implied mandate of any statutory provision impinging on the decision, this Court, sitting in supervisory jurisdiction under Article 226 of the Constitution, would certainly decline to interfere.

8. Learned Counsel appearing for the first Respondent then tried to support the judgment under challenge herein on the strength of a Division Bench decision in Committee of Management, Indira Gandhi Inter College v. District Inspector of Schools 1992 ACJ 502, wherein it was held as under:

But where term of the members have come to an end by efflux of time, the Committee of Management ceases to exist even though its office bearers have been authorised by the Scheme of Administration itself to continue to function till their successors are elected, Such provision does not have the effect of extending the life of the Committee of Management after term of its members has come to an end. Object of clause 7 is to prevent the vacuum in the Administration of the Institution.

(Emphasis supplied)

9. In the instant case, it is not the argument of the learned Counsel appearing for the Appellant that the Committee of Management continued even after expiration of its three-year term. Instead the submission was that although the term of the Committee of Management came to an end on expiration of its three-year term, yet the term of the office bearers continued, by virtue of clause 7 of the Scheme of Administration until their successors were elected and thus rightly urged the counsel, they were entitled to hold the election.

10. True, it would be inconsistent with the Scheme visualised by Section 16CC of the U.P. Intermediate Education Act, 1921 and its Schedule III to allow the office bearers to continue in perpetuity after expiration of the term of the Committee of Management by efflux of time but the remedy under the Act was to call upon the Management to amend the Scheme of Administration of the College so as to bring it in tune with the requirements of Section 16CC of the Act read with IIIrd Schedule of the U.P. Intermediate Education Act, 1921 and on failure of the Management to so amend the Scheme of Administration, to de-recognise the institution, but so long as the Scheme approved in 1964 stands, it cannot be said that the term of the office bearers of the Committee of Management would automatically expire after one month of the expiration of the three-year term of the Committee of Management. The office bearers of the outgoing Committee of Management were no doubt expected to hold election within a reasonable time and what is "reasonable time" would depend upon the facts and circumstances of each case. We are of the considered view that office bearers of the out-going Committee of Management were competent, by virtue of clause 7 of the Scheme of Administration, to convene the meeting of the General Body for the purpose of holding election of the Committee of Management and if the meeting is found to have been properly convened and conducted in accordance with the Scheme of Administration, the business conducted at such meeting of the General Body and the election held thereat would not be vitiated merely because it was held after expiration of the three-years term of the outgoing Committee of Management. It would be apt to observe here that even the Scheme of Administration amended in accordance with

the provisions of Section 16CC read with IIIrd Schedule of the U.P. Intermediate Education Act, contains a stipulation that the Management of the Institution would be taken over by a person appointed as Prabandh Sanchalak by the Deputy Director of Education on the failure of the out-going Committee of Management to constitute the successor Committee of Management within the stipulated period. In Committee of Management, Janta Inter College, Bhopa, Muzaffarnagar and Anr. v. Deputy Director of Education, Meerut Region, Meerut 1996 (3) ESC 578, it has been held by one of us (S. R. Singh, J.) as under:

The stipulation that the Management of the Institution would be taken over by a person appointed as Prabandh Sanchalak in the event of failure to constitute the Committee of Management within the stipulated period is suggestive of the fact, that the Committee would not automatically cease to be functional. In other words, it would continue to be functional until replaced by Prabandh Sanchalak.

11. The department, it is not disputed, has been dealing with Sri Kant Mishra as Manager of the Committee of Management even after its term had expired. Even the Petitioner, Satya Deo Tewari, described himself as President of the Committee of Management. We are of the considered view that in the peculiar facts and circumstances of the case, the maxim--"Argumentum ab inconvenienti Plurimum Valet in law", i.e., an argument drawn from inconvenience is forcible in law is attracted. In other words, this argumentum inconvenienti is that the law will sooner suffer a private mischief than a public inconvenience. Accordingly, we are of the opinion that the election having been allowed by the District Inspector of Schools to be held at the behest of the office bearers of the lapsed Committee of Management and the District Inspector of Schools having recognised the same should not be reopened merely because it was held and organised by the office bearers of the Committee of Management after expiry of its term.

12. In view of the above discussion, the appeal succeeds and is allowed. The judgment and order dated 15.5.1996 passed by learned single Judge in Civil Misc. Writ Petition No. 35327 of 1995 Satya Deo Tewari v. Deputy Director of Education, Allahabad and Ors. is set aside. The first Respondent is, however, given liberty to challenge if so advised, the legality and validity of the business transacted and election held at the General Body meeting dated 11.2.1996 at appropriate forum. In the circumstances of the case, the parties shall bear their own costs.