

(1997) 05 AHC CK 0181**Allahabad High Court****Case No:** C.M.W.P. No. 15434 of 1997

Committee of Management, Shiv
Sahai Inter College

APPELLANT**Vs**

Civil Judge (Senior Division) and
Others

RESPONDENT**Date of Decision:** May 27, 1997**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 9
- Constitution of India, 1950 - Article 226, 227
- Uttar Pradesh Intermediate Education Act, 1921 - Section 16A, 16A(7)
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 3(4)

Citation: (1997) AWC 307 Supp**Hon'ble Judges:** R.K. Mahajan, J**Bench:** Single Bench**Advocate:** K.K. Tripathi, for the Appellant;**Final Decision:** Allowed**Judgement**

R.K. Mahajan, J.

This writ petition is in the nature of certiorari quashing the order dated 25.4.1997, Annexure 7 to the writ petition, passed by Respondent No. 1. A prayer has also been made in the nature of mandamus commanding the Respondent No. 3 to conclude the inquiry in compliance of order dated 11.4.1997 within a specific period as fixed by this Court and order dated 11.4.1997 may be restored.

2. This petition has arisen out of power struggle between two groups who want to control over the Managing Committee of the institution named Shiv Sahai Inter College. It is alleged that Petitioner's institution is a recognised institution upto Intermediate and aided upto High School. It is governed by the provisions of

Intermediate Education Act and Payment of Salary Act is also applicable. According to the bye-laws of the Society and the Scheme of Administration, the Management is valid for three years one month. The election of the Management was held on 13.3.1994 and Rajendra Singh was elected as Manager and Shiv Nath Katiyar was elected as President of the Management of the institution.

3. The allegations made in this petition are that Respondent No. 4 had held the election of the Management on 27.1.1997 after passing the Agenda on 16.1.1997 with forged signatures of the Managing Trustees; that no publication was made in the newspapers and no information was given to the District Inspector of Schools regarding the alleged election of 27.1.1997, that after the election was held the signatures are forwarded to the District Inspector of Schools for attestation. It appears that caveat has been filed by Respondent No. 4 in this Court and when the Petitioner came to know about the election and other things, he immediately approached Respondent No. 3 for holding fresh election according to the procedure of law. Enquiry was started on the application of the Petitioner and Respondent No. 2 issued notice dated 11.4.1997 to Respondent No. 4 requiring him to appear before him on 29.4.1997 at 2.00 p.m. alongwith record of the alleged election. A direction was also issued by Respondent No. 3 to the extent to stay the order of the District Inspector of Schools attesting the signature of Respondent No. 4 and a further direction was given to make the payment of salary through Accounts Officer of District Inspector of Schools. In order to thwart the enquiry and to justify the election, a civil suit being Civil Suit No. 150 of 1997 Prabandh Samiti v. State of U.P. and Ors. for granting mandatory injunction recognising Respondent No. 4 as Manager of the Committee of Management was filed by Respondent No. 4. Respondent No. 1, Civil Judge (Senior Division), Kanpur Dehat, passed an order dated 25.4.1997 allowing the application to the extent to maintain status quo and a direction was given for not cancelling the election except in due course of law. Aggrieved by the said order dated 25.4.1997 of Respondent No. 1, Petitioner has filed this writ petition.

4. Learned Counsel for the Petitioner has submitted that the impugned order could not have been passed by Respondent No. 1 as he has no jurisdiction and he could not stop the enquiry regarding the validity of the constitution of the Managing Committee. He further submitted that only the Deputy Director of Education u/s 16A of the U.P. Intermediate Education Act, 1921, (hereinafter called as the Act), has power to decide the dispute of the college management regarding the election. He has further submitted that out of 15 members of the Managing Trustee, only three has made signatures, remaining signatures of 12 members are forged and they have filed affidavit before the Deputy Director of Education denying their signatures on the agenda.

5. Learned Counsel for the Respondent submitted that the order of the civil court is justified. The Petitioner has no locus standi to file the instant writ petition as he is

not a member of the Managing Committee. He further submitted that there is a difference between the member of the society and member of the Managing Committee. He further submitted that even the order passed by the Deputy Director of Education is subject to challenge in competent court of law and the civil court has jurisdiction to adjudicate the matter. He has further submitted that under the scheme of administration, the elections have been held to be valid.

6. I am of the considered view, after hearing the counsel for the parties, that the order of the learned civil Judge is without jurisdiction and cannot be sustained on the following reasons:

Firstly, I would like to quote Section 16A (7) of the U.P. Intermediate Education Act, 1921:

Whenever there is dispute with respect to the Management of an institution, persons found by the Regional Deputy Director of Education upon such enquiry as is deemed fit to be in actual control of its affair may, for purposes of this Act, be recognised to constitute the Committee of Management of such institution until a Court of Competent jurisdiction direct otherwise:

Provided that the Regional Deputy Director of Education shall, before making an order under this sub-section, afford reasonable opportunity to the rival claimants to make representations in writing.

7. It is a very serious matter as the determination involves control of the affairs of institution, control over the funds of the institution and over the administration. The enquiry has been started by the Regional Deputy Director of Education on the complaint of the member of the society and that enquiry was challenged by filing a civil suit and stay order was obtained. The said stay order has killed the enquiry process which is not permissible under the law. The order of the Regional Deputy Director of Education could have been challenged under competent court of jurisdiction after the enquiry was over and not before that.

8. Learned Counsel for the Petitioner has relied upon a decision in the case of Sanad K. Niranjan v. Collector, District Jalaun and Ors. 1997 AIM 620, wherein it was observed that "there is no other remedy provided except u/s 3 of the Act of 1972. Special Law will override general law. Civil suit is impliedly barred except as discussed. In our view since the bank has resorted to this procedure it is open for the Petitioner to make objection regarding maintainability of the suit in the appeal, if Petitioners like."

9. Section 9 of CPC also bars the remedy for time being, i.e., till the enquiry by Regional Deputy Director of Education is over.

10. Learned Counsel for the Petitioner also relied upon a decision in the case of Committee of Management of Subhash Uchchatar Madhyamik Vidyalaya, Rajapura (Mowana), Meerut and Anr. v. Deputy Director of Education, Meerut and Ors. 1985

UPLBEC 241. The emphasis in this rule is statutory because of the Legislature on Deputy Director of Education and Deputy Director of Education may require to form the statutory duty in accordance with law. In other words, the Deputy Director of Education cannot go into the disputed question except with a view to decide the question of effective control of the management of the institution by regular process of procedure, i.e., bye-laws, scheme of administration. Finally the question has to be decided by the civil court.

11. I would like to touch ipso facts of Article 226 of the Constitution of India. The High Court can interfere under Article 226 when the power has been used arbitrarily by a statutory authority and against the provisions of the statute and against the provisions of the statute and where it lacks jurisdiction to determine the fact as postulated u/s 16A (7) of the Act. Since the impugned order is without jurisdiction and the power has been exercised arbitrarily, the same cannot be sustained and it is hereby quashed. The proceedings before civil court are quashed by using suo motu power under Article 227 of the Constitution of India.

12. In the result, the petition is allowed. Impugned order dated 25.4.1997 (Annexure 7 to the writ petition) passed by Respondent No. 1 is hereby quashed. The Deputy Director of Education shall proceed with the enquiry in accordance with law and it is hoped that the enquiry shall be concluded within two months from the date a certified copy of this order is produced before him by either of parties after giving them opportunity of hearing.