

(1992) 08 AHC CK 0108

Allahabad High Court

Case No: Civil Misc. Writ Petition No"s. 30135 and 33272 of 1991

Surendra Mani Tripathi and
Others

APPELLANT

Vs

District Inspector of Schools and
Others

RESPONDENT

Date of Decision: Aug. 12, 1992

Acts Referred:

- Uttar Pradesh Intermediate Education Act, 1921 - Section 16A(7)

Citation: (1993) 1 AWC 216

Hon'ble Judges: S.P. Srivastava, J

Bench: Single Bench

Advocate: S.P Singh, for the Appellant;

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

S.P. Srivastava. J.

1. Rashtriya Intermediate College, Sujariganj, district Jaunpur is an institution, which imparts education up to the standard of intermediate classes and stands recognised under the provisions of U.P. Intermediate Education Act and the Regulations framed thereunder. It is to be run by a Committee of Management duly elected in accordance with the approved scheme of administration, which was amended in the year 1985. The amended provisions of the Scheme of Administration indicated above, fixed a term for the members of the Committee of Management to be three years providing however that they may continue in office for one month more after the expiry of their term of three years and thereafter the will cease to hold the office. It was further provided in the amended scheme of administration that, if the newly elected committee of management does not resume office, within the aforesaid period of three years and one month, the Deputy Director of Education

shall appoint a "Prabandh Sanchalak" who shall take over management and take steps for holding the election.

2. It is not disputed by the learned Counsel for the Petitioners that the rights of the office bearers of the Committee of Management of the aforesaid college, to continue in office automatically comes to an end on the expiry of the period of three years and one month.

3. On 2nd of December, 1988, the District Inspector of Schools, Jaunpur passed an order purporting to attest the signature of Prithvipal Tripathi, the Respondent No. 3 recognising him as the Manager of a Committee of Management said to have been elected on 20-11-1988. The aforesaid order was challenged before this Court by means of Civil Misc. Writ petition No. 23825 of 1988, which was decided vide the judgment and order dated 1-2-1989, where-under noticing that on 2nd December, 1988 a dispute as to whether the management committee of which the present Petitioners were the members or the managing committee of which the Respondent No. 3 claims to be the member had come in existence and as such holding that the District Inspector of schools had no jurisdiction to attest the signature of the Respondent No. 3, this Court came to the conclusion that in the aforesaid circumstances, the District Inspector of Schools ought to have referred the dispute for adjudication to the Deputy Director of Education u/s 16-A(7) of the U.P. Intermediate Education Act, 1921. The order challenged in the aforesaid writ petition was therefore, quashed and the District Inspector of School was required to make a reference to the Deputy Director of Education, so that a decision could be taken as contemplated u/s 16-A(7) of the U.P. Intermediate Education Act.

4. It appears that in pursuance of the aforesaid direction, a reference had been made, which has been decided by the Respondent No. 2 vide the order dated 25-9-1991, where under holding that none of the rival committees of Management could be deemed to have been elected in accordance with the provisions contained in the approved scheme of administration, the Deputy Director of Education v. region, Varanasi issued a direction requiring Sri. Rajaram Pandey and Sri. Prithvipal Tripathi, who had held the office of President and Manager respectively of the committee of management, which had been elected on 3-11-1985. To get an election for electing a committee of management held for running and managing the institution in question in accordance with the approved scheme of administration within a period of three months from the issue of the said order.

5. Feeling aggrieved, the Petitioners, who claimed to have been elected in the month of November, 1988 have approached this Court by means of the present writ petition seeking the quashing of the order dated 26-9-1991, passed by the Respondent No. 2 and for the issue of a mandamus requiring the Respondents not to interfere in the functioning and working of the Petitioners management and holding of the election in accordance with the amended scheme of administration.

6. The writ petition No. 33272 of 1991 has been filed by Daya Shankar Tewari, who claims to have been elected as Assistant Manager in the Committee of Management of the Institution in question and asserting that he had been working as Manager (Officiating) on the date when the petition had been filed. He has also challenged the order, which is the subject matter of writ petition No. 30135 of 1991 and has claimed the same reliefs as claimed in the present writ petition.

7. Since the facts and circumstances as well as the questions raised in both the writ petitions are common, these writ petitions had been heard together and are being disposed of by a common judgment.

8. I have heard Sri. S.P. Singh, learned Counsel for the Petitioner and Sri. R.N. Singh and Shri K.K. Dwivedi as well as learned Standing Counsel for the Respondent.

9. It may be noticed that by an order dated 22-10-1991, passed by this Court, it had been directed that no election shall be held in pursuance of the impugned order dated 25-9-1991 with the result that the term of the committee of Management, which is said to have been elected on 20th November, 1988 came to an end and the office bearers ceased to hold the office subsequent to 20th December, 1991 by operation of law.

10. In view of what has been said above, the office bearers of either of the committee of management which claim to have been elected on 20-11-1988 can not be deemed to be continuing to hold the office on the expiry of the term of the committee of management as provided under the amended approved scheme of administration subsequent to 20-12 1991.

11. In the circumstances as indicated above, I do not think it necessary to go into the question raised by the learned Counsel for the Petitioners as well as the learned Counsel for the Respondent No. 3 regarding the correctness or propriety of the findings recorded in the impugned order in regard to the validity or otherwise of the election proceedings wherein the rival committees of management claim to have been elected. In this connection, the effect of the provisions contained in the amended scheme of administration referred to hereinbefore, which are of a mandatory-nature cannot be ignored and the effect of the Petitioners or the Respondent No. 3 having been divested, by operation of law, of their authority, which they claim to have held by virtue of the alleged election set up by them, cannot go unnoticed.

12. While considering the effect of an election of committee of Management, which was held much after the time stipulated under the provisions of the approved scheme of administration, this Court in its decision in the case of Committee of Management Shri Gandhi Inter College, Chhur-Meerut v. Deputy Director of Education Meerut; 1989 ALJ 214, held that such an election cannot be said to be an

election in the eye of law. It was further observed that such an election shall be deemed to have been held by the person who was not authorised to do so, and no sanction or sanctity can be attached to that election under the law and it has to be ignored. The Division Bench in the aforesaid case was clearly of the opinion that such an election had to be treated as illegal and void, as the proceedings of such an election having been taken by persons, who were not authorised to hold the election were clearly illegal.

13. Similarly in the case of Committee of Management Shri Krishna Inter College, Niwari Distt. Ghaziabad v. District Inspector of Schools, Ghaziabad 1991 AWC 313, a learned Single Judge of this Court held that the office bearers of a committee of management, whose term had expired and who had ceased to hold the office in accordance with the amended provisions of the scheme of administration were not legally entitled to convene a meeting for holding an election and if such an election is held by them, it is bound to be absolutely void-ab-initio. The aforesaid decision of the learned Single Judge of this Court was approved by a Division Bench of this Court in the case of Committee of Management and Anr. v. Kumari Shamim Zafar and Ors. (Special Appeal No. 92) decided on 17.04.1992

14. In the aforesaid circumstances, the directions, which have been issued by the Respondent No. 2 under the impugned order cannot be upheld. However, in view of the legal position, which has emerged on account of the provisions contained in the approved scheme of administration, none of the members of either the committees of management, who claim to have been elected as indicated above, can be recognised to have any jurisdiction or authority to hold any election subsequent to the date of their ceasing to hold the office of either the President or the Manager in the said Committee of Management.

15. It is therefore, obvious that the election of the committee of management, which claims to have been elected on 23-2-1992 as asserted in the supplementary counter affidavit filed by Shri Prithvipal Tripathi cannot be given any recognition as the said election cannot be deemed to be in accordance with the approved amended scheme of administration. A person, who has ceased to hold the office of an office bearer of a committee of management cannot be deemed to have been authorised to perform a function or discharge a duty which could be done only by a person, who continues to hold such an office under the law. Such an action, if done after ceasing to hold an office will be void-ab-initio.

16. For the reasons stated hereinbefore, I am clearly of the view that while quashing the impugned order dated 26-9-1991, the Respondent No. 2 should be directed to appoint a "Prabandh Sanchalak", who shall take over the management and take steps for holding the election for electing a committee of Management in accordance with the approved scheme of administration and put the committee of management so elected in office as contemplated in the aforesaid approved scheme of administration.

17. In the result, the writ petition succeeds in part. The impugned order dated 29-6-1991 is quashed and a mandamus is issued requiring the Respondent No. 2 to appoint a "Prabandh Sanchalak" as contemplated under the approved amended scheme of administration, who shall hold an election for electing a committee of management for running and managing the institution in question in accordance with the provisions contained in the aforesaid scheme and put the said committee of management in office in accordance with the law.

18. There shall be no order as to cost.