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(2004) 10 AHC CK 0186

Allahabad High Court

Case No: C.M.W.P. No"s. 35267 of 1992 and 27735 of 1995

Committee of Management, Pt. Jawaharlal Nehra Inter College and Another	APPELLANT
Vs	
Deputy Director of Education and Others	RESPONDENT

Date of Decision: Oct. 15, 2004

Acts Referred:

- Allahabad High Court Rules, 1952 - Rule 5
- Education (Amendment) Act, 1958 - Section 16B, 16C
- Intermediate Education (Amendment) Act, 1980 - Section 16A(7), 16D(3)
- Payment of Wages Act, 1936 - Section 5
- Uttar Pradesh General Clauses Act, 1904 - Section 19A
- Uttar Pradesh Intermediate Education Act, 1921 - Section 16A, 16CC, 17A(7)
- Uttar Pradesh State Universities Act, 1973 - Section 31(8)
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 9

Citation: (2005) 5 AWC 4486

Hon'ble Judges: M. Katju, Acting C.J.; Vikram Nath, J; Sunil Ambwani, J; Sanjay Misra, J; K.N. Ojha, J

Bench: Full Bench

Advocate: Ashok Khare and Anil Bhushan, for the Appellant; A.B. Singh and Sudhir Agarwal, A.G.A. and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Sunil Ambwani, J.
This Bench has been constituted to decide the scope of the powers of the Regional Deputy Director of Education, u/s 16A (7) of U.P. Intermediate Education Act, 1921 (in

short, the Act) in deciding the disputes with regard to rival Committees of Management, claiming actual control over the affairs of the recognized and aided educational institutions.

2. In Writ Petition No. 35267 of 1992, Committee of Management v. Deputy Director of Education , Gorakhpur, in the referring order dated 6.11.1992, a learned single Judge was of the opinion that the Division Bench decision in Committee of Management v. Regional Deputy Director of Education, 1988 UPLBEC 402, and the decisions which have held that the Deputy Director of Education can go into the question of validity of the elections, needs to be reconsidered by a larger Bench. In Civil Misc. Writ Petition No. 27735 of 1995, Committee of Management v. Regional Deputy Director of Education, Agra, the question with regard to the powers of the Deputy Director of Education, where he does not find any of the rival committees to be validly elected, have been referred to the larger Bench to decide as to whether the Deputy Director of Education u/s 16A (7) of the Act can disapprove and disregard elections of both the rival Committees of Management, and whether in that event he will be required to decide the question of effective control over the institution.

3. Both these references were heard by a Bench of three Judges. By an order dated 5.5.1997, they differed with the opinion of the Full Bench of this Court in Committee of Management Shri Kashi Raj Mahavidyalaya, Aurai and another Vs. Dy. Director of Education, Varanasi and others, , in which it was held that the powers of the Deputy Director of Education u/s 16A of the Act are purely administrative in nature, and his jurisdiction is only to find out as to who is in actual control of the affairs of the institution. The Full Bench held that it was not proper for the Bench of three Judges to hold to the contrary to what has been laid down by another Bench of coordinate jurisdiction. They recommended to constitute a Bench of five Judges to decide the controversy, and that is how the matter has been placed before us.

4. The Full Bench decision of this Court in Committee of Management Shri Kashi Raj Mahavidyalaya, Aurai and another Vs. Dy. Director of Education, Varanasi and others, , considered a reference made to it by a Division Bench in special appeal, quoted as under :

Whether the Deputy Director of Education can be said to be functioning as a Tribunal within the meaning of Rule 5 of Chapter VIII of Allahabad High Court Rules while exercising the powers conferred on him under Sub-section (7) of Section 16A of U.P. Intermediate Education Act, 1921.

5. The special appeal had arisen from an order passed by a learned single Judge dismissing the writ petition, questioning the validity of the order passed by Deputy Director of Education u/s 16A (7) of the Act. An objection was raised that the special appeal was not maintainable in view of the provisions of Rule 5 of Chapter VIII of the Allahabad High Court Rules, as the Deputy Director of Education acts as a Tribunal and

no special appeal lies in respect of an order of a Tribunal. In para 17 of the judgment, the Full Bench held as follows :

17. It would appear that to determine the question whether an authority is a Tribunal, the nature of the order passed by the authority and also the characteristic of the body which is called upon to adjudicate upon the matter in dispute are material considerations. Even a judicial authority may, in a given situation, act in administrative or executive capacity. In that situation the authority would not be a Tribunal. Likewise an administrative authority, even if required to act judicially would not be a Tribunal if it is not invested with the inherent judicial power of the State. As pointed out earlier u/s 16A (7), the Regional Deputy Director of Education may find the persons who are in actual control of the affairs of an institution, yet those persons may not be recognized as constituting the Committee of Management. By way of illustration, such a situation may obtain where a valid election has been held, but the previous Committee of Management has not allowed the newly selected persons to have actual control of affairs of the institution. In such a case, even though members of the previous Committee of Management may be in actual control of the affairs of the authority, they may not be recognized as constituting the Committee of Management. Whether the persons who are found to be in actual control of the affairs of an institution are to be recognized as constituting the Committee of Management of the institution under Sub-section (7) of Section 16A is essentially administrative in character. The finding of the Deputy Director of Education as to the persons in actual control of affairs of the institution does not decide the dispute as to the entitlement to be members of the Committee of Management. He is not entrusted with the duty to act judicially, though he must act fairly. He has no trappings of the Court. This finding as to the persons in actual control of the affairs of an institution lacks in finality or conclusiveness and binding nature, which is associated with the decisions of a Court or a Tribunal. Therefore, the Regional Deputy Director of Education is not a Tribunal within the meaning of Rule 5 of Chapter VIII of the Allahabad High Court Rules.

6. We have heard Sri Ashok Khare, learned senior advocate assisted by Sri Anil Bhushan for the Petitioner and Sri Sudhir Agarwal, learned Additional Advocate General for Respondents. Having heard the respective submissions, we find that the following questions arise for consideration by us :

(1) Whether the Regional Deputy Director of Education while deciding a dispute u/s 16A (7) of the U.P. Intermediate Education Act, 1921, exercises administrative or quasi-judicial powers.

(2) Whether the Regional Deputy Director of Education while deciding a dispute u/s 16A (7) of the Act can go into the question of validity of the elections.

(3) Whether in case the Regional Deputy Director of Education finds that the elections of both the rival committees are invalid, still he can decide the question of actual control and recognize one or the other Committee of Management.

7. In order to consider these questions, it is necessary to go into the background in which Section 16A was inserted in the Act. Every recognised institution is to be managed by a Committee of Management elected in accordance with a "scheme of Administration" approved by the Deputy Director of Education. Such a Committee of Management is required to discharge various statutory functions under the Act including the payment of salaries, appointments of ad hoc teachers, determination of seniority etc. The District Inspector of Schools has to exercise various statutory functions in collaboration with such Committee of Management under the Act and the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (in short the U.P. Act of 1971). It is, therefore, necessary to find out as to which of the elected Committee of Management is in actual control of the affairs of the institution. Where the elections are not disputed, the District Inspector of Schools is required to attest the signatures of the Principal and the Manager for the purposes of carrying out statutory functions and for maintenance of accounts. Where however there is a dispute regarding the elections, and the control over the Institution the District Inspector of Schools is required to satisfy himself as to who, according to him, is the validly elected Committee of Management.

8. In Committee of Management v. District Inspector of Schools and Ors. 1978 AWC 124, a Division Bench held that the mere raising of a dispute did not absolve the District Inspector of Schools from his duty, to find out on administrative level as to who are the real office bearers of the college. In order to perform statutory functions under the U.P. Act of 1921 and the U.P. Act of 1971, it is the duty of the District Inspector of Schools to satisfy himself as to who, according to him, are validly elected office bearers of the institution. In Jaswant Singh v. District Inspector of Schools and Ors. 1980 ALJ 124, another Division Bench held that neither U.P. Act of 1921, nor U.P. Act of 1971, makes a provision for deciding the dispute raised by rival Committees of Management, in regard to the validity of elections in which they claim to be elected and considerable time and expenditure is involved in getting the adjudication from a civil court, consequent upon the Deputy Director of Education recognizing one of the rival contenders as a duly constituted Committee of Management. Further since the experience of the court had shown that the rate of litigation on this score is fairly high, the Court recommended that some Tribunal may be constituted to decide such disputes as has been referred in the case.

9. The Act was consequently amended by Intermediate Education (Amendment) Act, 1980 (U.P. Act No. 1 of 1981). The relevant portion of the statement and object and purpose for inserting Section 16A is quoted as below :

Since the cases of mismanagement in the institutions are increasing fast, which obviously affects the teaching work in such institutions, it has been decided to amend the provisions relating to "Scheme of Administration" and appointment of authorised controller, with a view to make effective provisions for proper management of such institutions.

10. The newly inserted Section16A by the U.P. Act No. 1 of 1981 is quoted as under :

16A. Scheme of Administration.-

(1)Notwithstanding anything in any law, document or decree or order of a court or other instrument there shall be a scheme of administration (hereinafter referred to as the Scheme of Administration) for every institution, whether recognized before or after the commencement of the Intermediate Education (Amendment) Act,1958. The Scheme of Administration shall amongst other matters provide for the constitution of a Committee of Management (hereinafter called the Committee of Management) vested with authority to manage and conduct the affairs of the institution. The head of the institution and two teachers, thereof, who shall be selected by rotation according to seniority in the manner to be prescribed by regulations, shall be ex-officio members of the Committee of Management with a right to vote.

(2) No member of the Committee of Management shall either attend a meeting of the committee or exercise his right to vote whenever a charge concerning his personal conduct is under discussion.

(3) The Scheme of Administration shall also describe subject to any Regulations, the respective powers, duties and functions of the Head of the Institution and Committee of Management in relation to the institution.

(4) Where more than one recognized institution is maintained by a body or authority, there shall be separate Committee of Management for each institution unless otherwise provided in the Regulations for any class of institution.

(5) The Scheme of Administration of every institution shall be subject to the approval of the Director and no amendment to or change in the Scheme of Administration shall be made at any time without the prior approval of the Director:

Provided that where the management of an institution is aggrieved by an order of the Director refusing to approve an amendment or change in the Scheme of Administration, the State Government, on the representation of the management, may, if it is satisfied that the proposed amendment or change in the scheme or administration is in the interest of the institution, order the Director to approve of the same, and thereupon the Director shall act accordingly.

(6) Every recognized institution shall be managed in accordance with the Scheme of Administration framed under and in accordance with Sub-section (1) to Sub-section (5) and Sections 16B and 16C.

(7) 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 directs 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.

Explanation.-In determining the question as to who is in actual control of the affairs of the institution, the Regional Deputy Director of Education shall have regard to the control over the funds of the institution and over the administration, the receipt of income from its properties, the Scheme of Administration approved under Sub-section (5) and other relevant circumstances.

11. The nature of power in the Deputy Director of Education u/s 16A (7) of U.P. Act of 1921 has been subject matter of consideration on several decisions of this Court. In Committee of Management of Sarvodaya Inter College v. Deputy Director of Education, Vth Region Varanasi and Ors. 1982 UPLBEC 31, a Division Bench of this Court held that the forum now provided by Section 16A (7) is only a substitute for that which were being decided by the District Inspector of Schools u/s 5 of the Payment of Wages Act, 1971. This Court has held in a number of cases that for the purposes of enabling himself to pay the salaries to the teachers on the bills submitted by a Manager, it was necessary for the District Inspector of Schools to recognize him and to decide the dispute relating to his right. Such a decision was, of course, summary in nature and was subject to the decision of a civil court. As there were serious doubts about the desirability of the District Inspector of Schools, being conferred such a power, by U.P. Act No. 1 of 1981, a new forum was created. By Section 16A (7) the Deputy Director of Education was conferred the power to decide the dispute. This only brings about the change of forum. The Deputy Director of Education is not an appellate authority over the District Inspector of Schools in respect of cases earlier decided by the District Inspector of Schools. The power of the Deputy Director of Education is the same as used to be exercised by the District Inspector of Schools.

12. In Committee of Management, Sri Gandhi Mahavidyalaya v. District Inspector of Schools, Ballia and Ors. 1981 EC 100, the Division Bench held that the enquiries are to be made, to first ascertain as to whether the meeting to hold the election has been held in accordance with the requirement of the "Scheme of Administration" and any other relevant provision in this behalf applicable to the affairs of the society which runs the institution. It is true that the District Inspector of Schools is not expected to write a detailed judgment as if he was a court of law, but nevertheless as observed in Jaswant Singh"s case his order must indicate that he has applied his mind to the controversy involved before him.

13. In Committee of Management, Janta Inter College, Thekma, Bijauli, district Azamgarh v. Deputy Director of Education, VI Ith Regional, Gorakhpur, 1982 UPLBEC 38, the Division Bench held that the question as to who was in control of the management is linked with the decision about the validity of the election pleaded by the rival parties, and for this purpose the Deputy Director of Education is required to examine the evidence of

the parties and to give a finding on the same. In Committee of Management, Gandhi Uchchtar Madhyamik Vidyalaya v. Regional Deputy Director of Education and Ors. 1996 ACJ 226 , another Division Bench held that the provisions contained u/s 16A (7) itself implies that for deciding the question of actual control, the Regional Deputy Director of Education, shall have regard to various circumstances including the "Scheme of Administration". Under Sub-section (5) of Section 16A in the Explanation, it is made clear and further it has been held that he has to have regard to other relevant circumstances. While deciding as to who is in actual control, the Regional Deputy Director of Education will have to find the nature of such control, and the background in which such control was claimed by rival factions and though the exclusive enquiry is in potentiality regarding the validity of the election, still consideration of the nature of the election held and a background may be taken into consideration by the Deputy Director for deciding the controversy, undoubtedly the final verdict regarding the validity of the Committee of the Management and its institution has to be pronounced by a competent court. The Court relied upon a Full Bench decision in Buddhan Singh and Another Vs. Nabi Bux and Another, , which interpreted the expression "held" used in Section 9 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, to mean lawfully held, and that a rank trespasser was not held entitled to get the benefit of Section 9 of the Act. Any other interpretation may embolden, the persons completely devoid of any claim whatsoever, to set up a claim on the basis of a mere control, whatsoever be the nature.

14. In Sankatha Prasad Srivastava v. Deputy Director of Education, Gorakhpur, 1985 UPLBEC 751, yet another Division Bench held that while examining the question of an effective control the question as to who was elected as office bearers is relevant. This enquiry is obvious because the law does not contemplate a rank outsider to meddle with the management of the institution.

15. In Maharishi Sukhdeo Vidyalaya v. Regional Deputy Director of Education, 1985 (2) UPLBEC 103, a Division Bench held that the scope of an enquiry regarding the validity of election of a Management Committee, is however limited. The Deputy Director is not expected to make a detailed enquiry and function like an election Tribunal. He has to only prima facie satisfy himself about the validity of the election. If a Management Committee has been elected after due notice to the members entitled to vote in accordance with the register maintained by the former Management Committee according to the rules, and the election has been held in accordance with approved "Scheme of Administration", the Management Committee shall be deemed to have been duly elected. It is not necessary to go into further details. If any one wants to contest the validity of election of the Management Committee on other grounds, a regular suit is the proper remedy.

16. In Committee of Management, Bhakt Vatshav Inter College v. Deputy Director of Education and Ors. 1988 UPLBEC 402, it was held that the issue of actual control gets inevitably linked to the question about the validity of the elections in deciding the dispute of control. In such circumstances, it becomes necessary for the Deputy Director of Education, in exercise of his powers u/s 16A (7) to investigate the validity of the elections,

even after elections set up by the rival group, for in the scheme of the U.P. Intermediate Education Act it is important for the Deputy Director of Education, to decide whether any of the group should be recognized as constituting the Committee of Management so that the educational authorities may deal with the group in the context.

17. In Committee of Management, Subhash Uchchtar Madhyamik Vidyalaya, Rajapura (Mawana) Meerut v. Deputy Director of Education, Meerut, 1985 UPLBEC 241; Sankatha Prasad Srivastava v. Deputy Director of Education, Gorakhpur, 1985 UPLBEC 751 and Committee of Management of Sri Bala Prasad Kushwaha Inter College, Balrampur v. Deputy Director of Education I Vth Region Allahabad, the Division Benches held that the Deputy Director of Education is not required to make any elaborate or detailed enquiry into the validity of the elections set up by the rival groups. He has not to act as an election Tribunal and has only to satisfy himself prima facie about the validity of the elections. Section 16A (7) makes it clear that the Deputy Director of Education may determine the question about the actual control of the affairs of the institution by making such enquiry as it may deem fit and proper having regard to the factors mentioned in the Explanation to Section 16A (7). In view of the limited scope of Section 16A (7) the Deputy Director of Education was not required to pronounce conclusively on the validity of the elections.

18. We find that in a majority of cases, the Division Benches of this Court took a view that while deciding the dispute with regard to the management the Deputy Director of Education is incidentally required to go into the validity of the elections. There are, however, some decisions, which have struck a different note. In Sudhir Kumar Pathak v. Regional Deputy Director of Education, Agra, 1985 ALJ 555, a Division Bench held that the Regional Deputy Director is required to hold an enquiry and to decide who is found to be in actual control of the affairs of the institution, and in doing that he is required to follow the guidelines contained in the Explanation. Section 16A (7) does not confer power on the Regional Deputy Director to act as an Election Tribunal to investigate and decide the validity of the election of office bearers. Instead it merely confers power on him to decide as to who should be deemed to be in actual control of the affairs of the institution. A similar view was taken by another Division Bench in Committee of Management v. District Inspector of Schools and Ors. 1994 (3) UPLBEC 1541, in which it was held that the enquiry before the Deputy Director of Education is limited and is confined to determine as to who is in control of the affairs of the institution. The Deputy Director of Education has to conduct this enquiry in a summary manner. The decision u/s 16A (7) as provided by the Act itself is subject to the decision of a court of competent jurisdiction. The recognition is not to settle the dispute between the rival claimants but only for the purpose of the Act. The Regional Deputy Director of Education may find the persons who are in actual control of the affairs of an institution, yet those persons may not be recognised as constituting the Committee of Management. By way of illustration, a situation may obtain where valid elections have been held but the previous Committee of Management has not allowed the newly elected persons to have actual control of affairs of institution. In such a case even though persons of the previous Committee of Management may be in actual control of

affairs of the authority, they may not be recognized as constituting the Committee of Management. The Bench held that the institution exists for imparting education to the students and their interest is supreme. The right of any person to manage the institution cannot override the interest of a large body of students. Frequent management disputes affect the smooth and ordinary administration of institution. The management may obstruct payment of salary. In such situation Section 16D (3) (iii) gives power to the State Government to appoint an authorised controller. The Court while appointing the District Magistrate as authorised controller, directed the parties to get their rights settled from the civil court.

19. We have to first find out the nature of the powers vested in the Deputy Director of Education, u/s 16A (7) of the Act. In R. v. Electricity Commrs. (1924) 1 KB 171, Atkin, L.J. it was held that when anybody or person has legal authority to determine questions affecting the rights of a subject, and having the duty to act judicially, such body of persons is a quasi judicial body and the decision given by it is a quasi-judicial decision. Even though there is no contest or lis between two contending parties, the Commissioner after making an enquiry and hearing objections was required to pass an order. It was held that where a statutory authority is empowered to take a decision which affects the rights of a person and such an authority is under the relevant law, required to make an enquiry and hear the parties, such authority is quasi-judicial and a decision rendered by it is a quasi judicial act.

20. In Province of Bombay Vs. Kusaldas S. Advani and Others, , it was held :

(i) If a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a lis and prima facie, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act ; and (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially.

21. In Indian National Congress (I) Vs. Institute of Social Welfare and Others, , it was held :

The legal principle emerging from these decisions is that where (a) a statutory authority empowered under statute to do any act (b) which would pre-judicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decisions of the said authority is quasi judicial.

22. In Neelima Misra v. Harinder Kaur Paintal (1990) 2 SCC 746, the Supreme Court while deciding the powers of the Chancellor u/s 31 (8) (a) of the U.P. State Universities Act, 1973, was required to consider whether the decision of the Chancellor is in exercise of administrative or quasi-judicial powers. The Supreme Court following Ridge v. Baldwin (1963) 2 All ER 66 ; State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , held that an administrative function is called quasi judicial when there is an obligation to adopt a judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called "purely administrative" and there is no third category.

23. In Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , the Supreme Court held that "the concept of a quasi-judicial act" implies that the act is not wholly judicial, it describes only a duty cast on the execution body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive powers. In para 21 of this decision, the Supreme Court quoted H.W.R. Wade in his Administrative Law, 6th edition pages 46-47 quoted as below :

A judicial decision is made according to law. An administrative decision is made according to administrative policy. A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A quasi-judicial decision is, therefore, an administrative decision which is subject to some measure of judicial procedure, such as the principles of natural justice.

24. The powers of the Deputy Director of Education, u/s 16A (7) spring into action, as soon as the dispute with respect to a management of an institution is raised before him or referred to him by the District Inspector of Schools. He is required to make an enquiry as is deemed fit. The proviso to Sub-section (7) requires him to afford reasonable opportunity to the rival claimants to make representations in writing. The Explanation provides for the guidelines to determine the question as to who is in actual control of the affairs of the institution. The order passed by the Deputy Director of Education, affects the other party and his decision visits civil consequences upon him. All the attributes of powers require him to act fairly. He must conform to the norms of judicial procedure in exercise of his powers. The statute requires him to act fairly consistently with the rules of natural justice. The power exercised by him, therefore, is not administrative in character. It has all the attributes of a quasi-judicial power. We find that Full Bench in Committee of Management Shri Kashi Raj Mahavidyalaya, Aurai and another Vs. Dy. Director of Education, Varanasi and others, , did not take a correct view in holding that the Regional

Deputy Director of Education, while exercising his powers u/s 16A (7) of U.P. Act, 1921, is not entrusted with the duty to act judicially, though he must act fairly and that since he does not have trappings of this Court, his powers are essentially administrative in character. As discussed above even if an administrative authority does not have the trappings of the Court, and is not required to act judicially, where the decision given by the authority visits civil consequences, on any of the party before him, and the nature of the powers require him to hear the parties, he acts as a quasi-judicial authority.

25. Applying the aforesaid tests we find that the Deputy Director of Education is an authority constituted under the Act. He has to decide as to who is in actual control of the affairs, at least at the interlocutory stage. He takes decision after giving reasonable opportunity to the parties. Section 19A of the U.P. General Clauses Act gives him ancillary and incidental powers which are necessary for effectively deciding the rival claims. In order to reach to a decision, with regard to actual control of the affairs, he has to incidentally decide the question about the validity of the elections, and there is no bar upon him from granting any interim relief even though there is no specific provision. His order has to be a reasoned order, and he has to consider relevant material, and apply objective considerations in reaching the decision. For the purpose of carrying out the statutory functions under the Act and the U.P. Act of 1971, he is invested with the powers to find out as to which of the claimants should be recognized.

26. The Deputy Director of Education is, however, not vested with any judicial powers. He has no power to compel the attendance of witnesses and to examine them on oath. He is not required to follow the Rules of evidence ; the sittings are not held in public and no finality is attached to his decision. Further he has no power to impose fine, damages or to issue prohibitory orders. He does not exercise any sovereign powers and thus it cannot be said that the Deputy Director of Education acts as a Tribunal while deciding the disputes.

27. From the aforesaid discussion, we find that the Deputy Director of Education, in deciding as to which of the rival Committee of Management is in actual control of the affairs of the institution, discharges quasi-judicial powers and is required to act fairly, reasonably and to follow the principles of natural justice. His order must be supported by reasons, considering the relevant material and on objective considerations.

28. The Scheme of Administration of a recognised educational institutions provides for the constitution of a Committee of Management, vested with authority to manage and conduct the affairs of the institution. The committee performs various statutory functions, in coordination with the educational authorities. Section 16CC of the U.P. Act of 1921 provides that the Scheme of Administration, in relation to any institution, whether recognised before or after the commencement of the Intermediate Education (Amendment) Act, 1980, shall not be consistent with the principles laid down in the third schedule. The third schedule provides for the principles on which approval to a Scheme of Administration shall be accorded. The third schedule is quoted as below :

THIRD SCHEDULE

(1) Provide for proper and effective functioning of the Committee of Management ;

(2) Provide for the procedure for constituting the Committee of Management of periodical elections ;

(3) Provide for the qualifications and disqualifications of the members and office-bearers of the Committee of Management and the term of their offices :

Provided that no such scheme shall contain provisions creating monopoly in favour of any particular person, caste, creed, or family ;

(4) Provide for the procedure of calling meetings and the conduct of business at such meetings ;

(5) Provide that all the decisions shall be taken by the Committee of Management and powers of delegation, if any, shall be limited and clearly defined ;

(6) Ensure that the powers and duties of the Committee of Management and its office-bearers are clearly defined ;

(7) Provide for the maintenance and security of property belonging to the institution and also for the utilization of its funds and for the regular checking and auditing of accounts.

29. The Regional Deputy Director of Education, in making enquiries in the matter of a dispute, to decide as to which of rival Committees of Management is in actual control of the affairs of the institution, is required to consider the factors given in the Explanation to Section 16A (7). His enquiry must have regard to the control over the funds of the institution, the administration, the receipt of income from its properties, the Scheme of Administration approved under Sub-section (5) and other relevant circumstances.

30. Both Sri Ashok Khare, senior advocate appearing for the Petitioners and Sri Sudhir Agarwal, Additional Advocate General for the State submit that the words "the Scheme of Administration approved under Sub-section (5)" in the Explanation to Sub-section (7) of Section 16A have been used with a purpose to find out whether the claimant was elected in accordance with the approved Scheme of Administration. The enquiry with regard to "actual control of the affairs", is hence not confined to merely factual matters, e.g. control over the funds of the institution, administration and the receipt of income from its properties. The Deputy Director of Education must also consider and record findings as to which of the rival claimant is prima facie validly elected in accordance with the Scheme of Administration. A Committee of Management holding over, beyond its term, as prescribed in the Scheme of Administration, or a rank trespasser cannot be regarded u/s 16A (7) to have control over the institution, even if they have actual control over the funds, administration and receipt of income from its properties.

31. We find that there may be a variety of circumstances, in which the claims are raised before the Regional Deputy Director of Education. It is also true that the enquiry held by him is summary in nature and that his decision is subject to the directions of the court of competent jurisdiction. We, however, cannot permit a situation where a group of persons may take over the control over the funds, administration and income of its properties, without a claim based on valid elections. The State Government spends a large amount of money towards grants to the educational institutions and thus there are chances of unauthorized persons taking over the control over the institution by illegality, deceit and/or force. Such persons, in our opinion, shall not be allowed to deal with the Government funds. The Regional Deputy Director of Education, therefore, in holding the enquiry about the actual control of the affairs u/s 16A (7) is hence required to go into the validity of the elections incidentally, and to find out whether the persons claiming control have been validly elected.

32. The cases decided by this Court cited above have consistently taken a view that in deciding the question of actual control, the validity of the elections of the claimant is an important factor.

33. The word "actual" is defined in Stroud"s Dictionary as follows :

Actual.-

(2) But where a word has a constructive legal meaning not completely corresponding to the fact it indicates, then the addition of "actual" will intensify that word, so that it will not be fully satisfied by such legal meaning (See R. v. St. Nicholas, Rochester 3 LJMC 45).

34. In Words and Phrases Permanent Edition V.II the word "actual" has been referred to mean "real", as opposed to nominal, it has been defined as something real as opposed to constructive and speculative, something existing in act, fact and reality.

35. Control is a comprehensive term. Ordinarily, it means the powers to govern, dominate, direct and supervise in some respect the conduct of another, the extent and degree of dominion depending upon the circumstances of the particular case. Where the enquiry is with regard to "actual control" and the statute prescribes the method of the enquiry and the factors to be considered in determination of the dispute, the authority vested with the powers to decide the question must confine its powers to the relevant factors, keeping in view the object and purpose of such determination. We find that the purpose of determination u/s 16A (7), is to find out as to who, prima facie, is entitled to manage and administer the education institution. The "Scheme of Administration" provides for the procedure for constituting the Committee of Management by periodical elections. It also provides for qualification and disqualification of the members and office-bearers and the terms of the office and the procedure to call and to conduct the meetings. In our view, the Deputy Director of Education in such matter must investigate about the validity of the election of the office-bearers. This enquiry, however, is to be

summary in nature and is subject to the final decision of the court of competent jurisdiction.

36. The third and last question posed before us is that where the Deputy Director of Education finds that the elections of both rival committees are invalid, is he still required to proceed to decide the question of actual control, and to recognize one or other Committee of Management. We find that where the Committee of Management has not been lawfully constituted, the Director of Education has powers u/s 16D, to recommend to the State Government to appoint an authorised controller in the institution. In Short Commissioned Officers Welfare Association and Another vs . Union of India and Another reported as , the Supreme Court disapproved the interference of the High Court in the findings of the Deputy Director of Education that neither of two factions was in effective control of the institution, and directing the holding of fresh elections.

37. The scheme of the Act provides for management of the educational institution by a validly elected Committee of Management, in terms of the Scheme of Administration u/s 16A, which u/s 16CC is not to be inconsistent with the principles laid down in the third schedule. The Committee of Management exercises important statutory functions under the Act and the U.P. Act of 1971. It has been given powers to make adhoc appointments on class III posts, determination of seniority, notification of vacancies to the District Inspector of Schools, preparation and submission of salary bills, etc. It is also entrusted with the Government funds, for the purposes of maintenance and payment of salaries. Where the persons are not found to be validly elected office-bearers, they cannot be allowed to manage and administer the institution only on the ground that they are in actual physical control over the affairs of the institution. In the circumstances, we hold that where the Regional Deputy Director of Education finds that the elections of both the rival committees are invalid, he is not required to decide the question of actual control, and to recognize one or the other committees. In such circumstances, where the Scheme of Administration provides for appointment of an Administrator (Prabandh Sanchalak), the Dy. Director (or Jt. Director, as the case may be) may appoint an Administrator with direction to hold elections in accordance with the Scheme of Administration, and where there is no such provision he may appoint an authorised controller, who shall expeditiously hold elections and manage the affairs of the institution until a lawfully elected Committee of Management is available for taking over the management.

38. Accordingly, we answer the questions as follows :

(1) The Regional Deputy Director of Education, while deciding a dispute u/s 16A (7) of U.P. Intermediate Education Act, 1921, exercises quasi-judicial powers, and not purely administrative powers.

(2) The Regional Deputy Director of Education while deciding a dispute u/s 16A (7) of the U.P. Intermediate Act, 1921, must decide the question of validity of the elections prima facie, in deciding the question of actual control over the affairs of the institution.

(3) Where the Regional Deputy Director of Education finds that the election of both the rival committees are invalid, he is not required to decide the question of actual control to recognize one or the other Committee of Management, and instead he shall, where the Scheme of Administration provides for appointment of an Administrator (Prabandh Sanchalak), appoint an Administrator with the direction to hold elections expeditiously in accordance with the Scheme of Administration, and where there is no such provision in the Scheme of Administration he shall appoint an authorised controller who shall expeditiously hold elections to the Committee of Management and shall manage the affairs of the institution until a lawfully elected Committee of Management is available for taking over the management.

39. Both the writ petitions shall be listed before the appropriate Bench, to be decided in accordance with the opinion expressed by us as above.

M. Katju, A.C.J.

40. I agree.

K. N. Ojha, J.

41. I agree.

Sanjay Misra, J.

42. I agree.

Vikram Nath, J.

43. I agree.