

(2007) 10 AHC CK 0133

Allahabad High Court

Case No: C.M.W.P. No's. 1984 of 1988, 37588 of 1995, 25807 of 1998, 10414 of 2000 and 5841 of 2004

Hindu Uchcharat Madhyamik
Vidyalaya Society (Regd.)

APPELLANT

Vs

Commissioner, Agra Division and
Others

RESPONDENT

Date of Decision: Oct. 23, 2007

Acts Referred:

- Societies Registration Act, 1860 - Section 12D, 3, 3(2), 5A

Citation: (2008) 1 AWC 355

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Advocate: M.K. Gupta and V.K. Gupta, for the Appellant; R.B. Singhal, A.K. Sharma, Rajeev Sharma and Satish Mandhyan and S.C., for the Respondent

Final Decision: Dismissed

Judgement

S.U. Khan, J.

Heard learned Counsel for the parties.

2. At the time of arguments learned Counsel for both the parties categorically stated that judgment in the first writ petition (1984 of 1988), would automatically dispose of all other writ petitions and no separate judgment would be required to be delivered in other writ petitions.

First Writ Petition:

3. A society by the name of Brahman Sabha, Aligarh was got registered on 23.7.1954 (Registration No. 127). The objects of the society are social, religious and welfare of Brahman community in general. The aforesaid society established a Junior High School which later on became a higher secondary school recognized as such under

Uttar Pradesh Intermediate Education Act, 1921. The school was known by the name of Brahman Secondary School, Aligarh. The school was being run under approved scheme of administration as required by U. P. Intermediate Education Act, 1921. Scheme of administration was approved on 10.4.1967. According to the Petitioner on 15.6.1967 a resolution was passed by the General body of the society which had established the school, i.e., Brahman Sabha wherein it was decided to change the name of the Institution to Hindu Uchchatar Madhyamik Vidyalaya and the name of the School was accordingly changed.

4. According to para 9 of the writ petition another resolution was passed on 29.9.1968 authorizing the Committee of Management of the School to reorganize the general body of the Institution to bring it in conformity with the legal requirements.

5. Para 9 of the writ petition is quoted below:

That another resolution being resolution No. 3 was passed on 29.9.1968 by which the general body authorized the Managing Committee of the Institution to reorganize the general body of the institution to bring it in conformity with the requirement of the scheme of administration as directed by the Deputy Director by his letters dated 21.7.1981, 21.12.1981 and 10.11.1983. A true copy of the resolution in question dated 29.9.1968 is being filed as Annexure-II.

6. This resolution of 29.9.1968 is seriously disputed by the contesting Respondents. The assertions of the aforesaid para 9 are self-contradictory. It is inconceivable that in 1968 a resolution could be passed in accordance with directions of Deputy Director issued in 1981-83, i.e., 13 and 15 years after.

7. According to the Petitioner thereafter a new society to hold elections of Committee of Management of the School was formed and scheme of administration of the school was amended and sent to Deputy Director of Education on 13.12.1983 and same was approved on 28.4.1984. In the said scheme of administration an altogether new society was mentioned as the society having ultimate control over the institution and it was further mentioned that the general body of the said society would elect the office bearers and members of Committee of Management of the school. The new society was formed by the name of Hindu Uchchatar Madhyamik Vidyalaya Society, Aligarh which is Petitioner in the writ petition. Registered office of the Petitioner's society was same as registered office of the original society Brahman Sabha. The Petitioner's society was got registered on 23.1.1984. Registration No. was 1426/1983-84 file No. 4835.

8. Naturally the dispute arose in between Petitioner's society and Brahman Sabha Society. Assistant Registrar, Firm Societies and Chits, Agra cancelled the registration of the Petitioner's society through order dated 11.3.1986 u/s 12D of Societies Registration Act. Against the said order appeal was filed by the Petitioner being Appeal No. 2/1985-86. Commissioner, Agra Division, Agra through order dated

11.11.1987 dismissed the appeal hence this writ petition.

9. During arguments, learned Counsel for the Petitioner categorically stated that the school building belongs to the old society, Brahman Sabha. Authorities below held that according to the registered by-laws of the Brahman Sabha Society the said society is required to elect Committee of Management including Manager and Deputy Manager of Hindu Uchchatar Madhyamik Vidyalaya.

10. Societies establish schools and not vice-versa. Members of the general body of society elect Committee of Management of recognized school/college. Committee of Management of the school/college cannot constitute society or new society. A delegatee or agent cannot repudiate the authority of its Master and elect or select a new Master. There was no such requirement that name of the society running a college or school should be changed. Section 3 of Societies Registration Act has been substituted in U. P. in 1979. By virtue of Section 3 (2) (b), as substituted by U. P. certain names have been prohibited to be used by Societies like Gandhi, Union and State etc. There is no restriction that word Brahman cannot be used. The only requirement might be regarding change of name of school or college if it included the name of a particular caste. Section 16CC of U. P. Intermediate Act added in 1981 prescribes that Scheme of Administration in relation to any recognised school/college shall not be inconsistent with the principles laid down in the Third Schedule. Proviso to para (3) of Third Schedule provides that:

No such scheme shall contain provisions creating monopoly in favour of any particular person, caste, creed or family.

It does not restrict use of any name. In any case the name of school had in fact been changed by the old society itself. There is no allegation that the old society, i.e., Brahman Sabha passed any resolution after coming into existence of the new society i.e., the Petitioner to the effect that it was handing over the school and ultimate control over the school to the new society, i.e., the Petitioner. Formation of a society/new society is voluntary act of requisite number of persons to form a society. It cannot be delegated.

11. It has been admitted by learned Counsel for the Petitioner that the property of the School belongs to the old society. In any case by virtue of Section 5A added by Uttar Pradesh to the Societies Registration Act, 1860, it is not lawful for the governing body of a society to transfer without the previous approval of the Court any immovable property belonging to such society and if any transfer is made then it shall be void. A society which does not own the building of a school or has got no control over the properties of the school cannot elect Committee of Management of the school.

Even if it is assumed for the sake of argument that any resolution was passed by the old society (Brahman Society) on 29.9.1968 as alleged in para 9 of the writ petition, firstly it was without jurisdiction and secondly, there was no sense in acting upon

the said resolution after 15 or 16 years. In this regard learned Counsel for the Petitioner has argued that in the year 1966-67 it was merely a Government order which required change of name as the name included word "Brahman" which was toothless however in early 80s it was statutory requirement to change the name. This argument is not tenable firstly, for the reason that even if it is held that Government order of 1966-67 was not binding still a resolution had been passed and it could be acted upon promptly (if it is presumed that resolution was in fact passed) secondly, if the argument is accepted then there ought to have been a fresh resolution and thirdly, there was no legal requirement to delete the word "Brahman" from the name of the society. The name of the school had suitably been amended by the old society itself in 1967.

12. For the sake of brining the scheme of administration of the school in conformity with the legal requirement as indicated by Educational authorities in their letters to the Society/School, an altogether new society could not be formed by the Committee of Management of the School.

13. Accordingly, the formation of new society to run the already existing school, i.e., Hindu Uchchattar Madhyamik Vidyalaya, Aligarh was utterly illegal and without jurisdiction.

14. Some technical arguments have also been raised by learned Counsel for the Petitioner regarding the provision under which power of cancellation could be exercised or notice to authorities concerned. However, as the very formation and registration of the Petitioner society was utterly illegal and without jurisdiction and it was rightly set aside and cancelled hence on technicalities writ cannot be allowed. Exercise of writ jurisdiction may very well be refused if setting aside the impugned order amounts to revival of another order which is equally illegal. However, with regard to power of cancellation, learned Counsel for Respondents have cited two authorities, one is in Sheo Shakti Mandir Samiti v. Commissioner, Meerut (HC), 1993 (21) ALR 281: 1993 (2) AWC 760 , single Judge and other is [Shri Krishna Educational Society and another Vs. The State of Uttar Pradesh and others](#)

15. Accordingly, first writ petition is dismissed.

16. As per statement of learned Counsel for both the parties (supra) writ petition at Sl. Nos. 2 to 5 are disposed of in terms of the judgment of the first writ petition.