

(2005) 09 AHC CK 0265

Allahabad High Court

Case No: Special Appeal No. 1078 of 2005

Munna Lal Singh, Manager,
Committee of Management
Janta Inter. College and
Mahendra Pratap Singh,
President, Committee of
Management, Janta Inter.
College

APPELLANT

Vs

The State of Uttar Pradesh and
Others

RESPONDENT

Date of Decision: Sept. 15, 2005

Acts Referred:

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

Citation: (2005) 6 AWC 5958

Hon'ble Judges: Ajoy Nath Ray, C.J; Ashok Bhushan, J

Bench: Division Bench

Advocate: D.S.M. Tripathi, for the Appellant; R.M. Saggi and S.C., for the Respondent

Final Decision: Allowed

Judgement

Ashok Bhushan, J.

This is an appeal from an order of are, Hon''ble Single Judge dated 30th August, 2005 wherein his Lordship has disposed of four writ petitions.

2. The particular controversy befor; his Lordship was about validity of an order dated 4.9.2004 wherein the Regional Joint Director of Education decided a management dispute between the rival fractions, who are respectively the appellants and the respondents before us.

3. The decision of the Regional Joint Director of Education went in favour of the appellants, i.e. in favour of the group of M.P. Singh.

4. Mr. Saxena appearing for the respondents, submitted that the Hon"ble single Judge rightly set-aside the decision of the Joint Director of Education dated 4,9.2004 and rightly directed also to place the papers pertaining to the rival elections set up by the parties and the consideration/before the regional level committee, of which the Joint Director of Education is the chairman.

5. Before coming to certain factual aspects and as to the point, where such factual aspects are appropriately dealt with in the writ Court, we have to dispose of the principal legal point which has occupied us in this appeal. The point raised in this appeal is that, it is after the decision of the Joint Director of Education was given on 4.9.2004, that the regional level committee approved the said decision.

6. When there is a management dispute, u/s 16-A(7) of the UP. Intermediate Education Act, 1921, the decision as to actual control has to be taken by the Regional Joint Director of Education. The said sub section is set out below:-

16- A(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 affairs may, for purposes of this Act, be recognized 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 subsection (5) and other relevant circumstances.]"

7. However, a Government order has also been issued and the date of the said order is 19.12.2000. The said order is to this effect that a Regional Level Committee is constituted and that the committee is empowered to decide/ consider / deliberate (vichar karenge).

8. Five items are given in the list for the Regional Level Committee, the first item being the handing over of the Committee of Management i.e. the attestation of signatures of the Manager and the third item is all types of management dispute.

9. The Government Order further proceeds to lay down that after examination by the Regional Level Committee it will prepare its report (Sanstuti) and then it will forward the same to the authority who is to take the decision in the said matter. Such authority is the authority under the Act i.e. 1921 Act. The Hon"ble Single Judge has opined that although the Regional Level Committee had approved the decision of the Joint Director of Education yet it had not itself heard the rival party; and the

approval of the Regional Level Committee of a decision already taken, cannot be equated to a decision actually taken by the Regional Level Committee itself.

10. On this point of law, which is no doubt an appropriate point for consideration by the writ Court when it examines the decision making process this Lordship has quashed the decision of the Joint Director of Education although it was latter approved by the Regional Level Committee.

11. A Division Bench of our High Court has already pronounced on the validity of the Government Order and the decision was given by the Division Bench in Special Appeal No. 1394 of 2004 by way of judgement dated 26th October, 2004. Their Lordships have clearly opined that the Government Order dated "19.12.2000 is not invalid or ultra virus the U. P. Intermediate Education Act, 1921. However, there is no clear pronouncement by the Division Bench as to whether the Government Order is mandatory or directory. There is no pronouncement that if the Government Order is complied with substantially and not exactly or the Government Order is not complied with at all, whether in those events the decision taken by the Regional Director, shall be completely invalid. This point falls for our decision.

12. We are of the opinion that the Government Order cannot in any manner have to " vary or alter the provisions of the statute which is the product of the State Legislature or its predecessor. However, the Government Order can, and indeed, does operate in area which are silent in the Act and operate in that area, does not in any manner touch the Act.

13. It is noticed that within the Government Order itself the report of the Committee is to be forwarded to the authority under the Act which has jurisdiction to decide the matter. This wording of the Government Order itself presupposes that it is not within the jurisdiction of the Committee itself to decide the matter but that the jurisdiction for decision is only, ascertained from provision of the 1921 Act itself.

14. We are of the opinion that the Regional Joint Director of Education should not be encouraged to give a go bye to the Government Order altogether. If the Director chooses to act in an unreasonable manner or if he tries to by pass the Regional Level Committee or otherwise act in such an unreasonable manner as to make his inter connection with the Regional Level Committee non existent, then in that event, the Joint Director of Education will render his decision liable to be set aside by a scrutinising court ; that is the effect of such vitiating factors as harshness, bias or unreasonable action, In those circumstances it will not be that the Regional Joint Director of Education will not be having jurisdiction; he will always have jurisdiction to decide the management dispute under sub section (7) but the case will be then that he will make a wrongful exercise of jurisdiction liable to be scrutinised by the writ Court and his order will be liable to be quashed.

15. Applying this principle to our case we find that the Director has not acted in any unreasonable manner at all. The Regional Level Committee of which he is the

Chairman was kept aware and even the approval being-obtained; there is no material on the papers to show that there is even a single ocsseuhwes voice.

16. In this view of the matter we are of the opinion that the justdiction exercised under sub section (7) by the Regional Joint Director of Education was not vitiated because of any improper action in relation to or in alleged non observance of the said Government Order dated 19.12.2000.

17. Mr. Saxena submitted that it was not open to us to decide that the Regional Joint Director of Education alone had jurisdiction to decide the actual control in this committee dispute matter because the learned counsel had conceded otherwise before the Hon"ble Single Judge. In the manner we read the paragraph in the said judgement which concerns with this part of Mr. Saxena's argument [which is to be found at internal page 5 of the judgement or at page 24 of the paper book of Special Appeal, we feel that the concession ron only to this extent that in the Government Order dated 19.12.2000 the jurisdiction is only of the Regional Level Committee; the concession did not go, so for as to admit so ever body else in the State. sub section (7) the jurisdiction for decision has vested by reason of the Government Order dated 19.12.2000 in the Committee and not. the Joint Director of Education had been divested of his sole jurisdiction given to him under the Act. Even if in the matter we/conceded it being a point of law, the Court of appeal would not be bound by such concession and would not be bound to rule that Sub-section (7) has been amended by the Government Order; any such decision by the Court of appeal on the basis of concession made between the two parties is not even on fact,/as the decision of the Division Bench binding by not parties who are litigating before us in the particular case but also every body, in the State.

18. On the factual issue of the substance of the decision given by the Joint Director of Education on 4.9.2004 Mr. Saxena submitted that the decision is liable to be set aside even by the writ Court. The main thrust of the argument was that from 1993 his client M. K. Singh had been elected on the basis of votes cast by the then 246 members of whom 202 were inducted as life members. According to him, it was only in 2004 that M. P. Singh did not choose to abide by the total voter strength, but that he submitted before the Joint Director of Education that there are only 44 eligible voters and that 202 life members are not eligible. The counsel for the appellants submitted that 202 members were not life members; that they had paid only Rs.100/- or so for their membership which would make them members only for three years; that in 1992 the life membership fee had been raised to Rs.2000/- , that life membership fee is now Rs.5000/- ; that even if the members might have been temporary members in 1993, they have no right to vote now ; that under the signatures even of Mr. Saxena's client in the, a meeting held in June, 2003 the list of 44 members have been approved. It was further submitted that the respondents for the purpose of getting him elected sought to raise an unacceptable case of adjourning the and in fact which adjournment did not take-place. meeting fixed for

18th January, 2005 for which there was no cause

19. The case of the respondents was that at the time 202 members were inducted the life membership fee had not gone up to Rs. 2000/- but was still Rs.101/- .

20. We have recounted this fact only for demonstrating that the writ Court is not the proper Court for adjudicating upon this factual dispute. Because disputes like this do arise in regard to Management Committee dispute; and have always arisen and will arise in future Sub-section (7) provides that the decision of the Joint Director of Education of actual control, will hold the field only until a competent court of law decides the matter. If according to the respondents' advice they have a good set of facts, there is no reason why they should not go to court and obtain declaration about the validity and eligibility of the crucial/luck of Us 202 members until they do so, are not see how the decision of the Joint Director of Education is to be set aside- in a Court since we have found the decision making process and the vesting of jurisdiction to be in favour of the appellants.

21. As such the appeal is allowed. The decision of the Joint Director of Education dated 4.9.2004 as approved by the Regional Level Committee is upheld and it will hold and be of full effect until a competent court of law decides otherwise or orders otherwise. On- all consequential orders passed by all authorities on the basis of the order dated 4.9.2004, will also be treated as valid until the decision of a Court of law as mentioned above, if all comes into interference.

22. No order as to costs.