

**(2012) 02 AHC CK 0372**

**Allahabad High Court**

**Case No:** Civil Misc. Writ Petition No. 31191 of 2011

Committee of Management,  
B.R.D. Post Graduate College  
Deoria and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Feb. 14, 2012

**Acts Referred:**

- Uttar Pradesh State Universities Act, 1973 - Section 25, 25(1), 25(2), 57, 57(1)

**Citation:** (2012) 4 ADJ 330

**Hon'ble Judges:** Rajes Kumar, J

**Bench:** Single Bench

**Advocate:** G.K. Singh and V.K. Singh, for the Appellant; R.C. Dwivedi, Shailendra and C.S.C., for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Hon'ble Rajes Kumar, J.

Heard Sri G.K. Singh, learned counsel for the petitioners, learned Standing Counsel appears on behalf of respondent Nos. 1 to 4 and Sri Shailendra, learned counsel appearing on behalf of respondent No. 5. By means of the present writ petition, the petitioners are challenging the order dated 25.4.2011 passed by the State Government u/s 58 of the Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as the "Act") by which the committee of management has been superseded.

2. The brief facts, giving rise to the present writ petition, are as follows:

There is a registered Society known as Deoria Shiksha Parishad, which runs a Post Graduate College in the name of B.R.D. P.G. College, Deoria. The college is affiliated with Deen Dayal Upadhyay Gorakhpur University, Gorakhpur. The committee of management of society is being elected amongst the members of the general body

of the Society. The term of the committee of management, as per the by-laws, was three years. The District Magistrate, Deoria happens to be the ex-officio President of the committee of management of the Society and College. The committee of management of the society and college is the same which is being governed by the by-laws.

3. An undisputed election of the committee of management was held on 17.9.1987 in which one Sri Mahendra Singh Yadav was elected as Secretary. Though the term of the committee of management expired in the year 1990, but no fresh election was held and Sri Mahendra Singh Yadav continued as Secretary. On 19.5.1992, in a meeting of the committee of management, it was decided to hold fresh election. On 27.9.1992 the election of the committee of management was held in which petitioner No. 2 was elected as Secretary. When the matter was placed before the Vice-Chancellor for the approval of the election, ex-secretary, Sri Mahendra Singh Yadav, filed objection. The Vice-Chancellor, after hearing the parties, vide order dated 13.4.1993 recognized the committee of management elected on 27.9.1992 in which petitioner No. 2 was elected as Secretary.

4. It appears that one Sri R.K. Tripathi filed Writ Petition No. 45127 of 1992 challenging the aforesaid election which has been dismissed.

5. It appears that on 9.1.1994, 33 life members and 5 Sammanit Sadasyas and on 24.5.1995, 63 life members were enrolled.

6. On 28.11.1995, fresh election of the committee of management was held in which 131 life members and 32 corporate members participated. The petitioner No. 2 was re-elected as Secretary. The Vice-Chancellor vide order dated 18.7.1996 approved the election. The Vice-Chancellor has approved the enrollment of the new members. The order of the Vice-Chancellor has become final as it was not challenged.

7. It appears that a complaint has been filed before the State Government regarding the financial irregularities and the functioning of the management on which inquiry was conducted by the State Government through Regional Higher Education Officer, Gorakhpur. vide letter dated 16.2.1995, issued by the Joint Secretary to the District Magistrate, it was stated that in view of the inquiry report, for the financial irregularities, the then Principal of the college and other connected employees were found responsible and a direction has been issued to take action against them and further direction was issued to the District Magistrate to hold fresh election on the expiry of the term of the committee of management.

8. On 15.3.1995, notice u/s 57 (1) of the Act was issued against the management and simultaneously an order suspending the management was passed u/s 58 (2) of the Act. The petitioners' committee of management filed Writ Petition No. 7277 of 1995 challenging the aforesaid order in which an interim order has been granted and the operation of the order dated 15.3.1995 has been stayed. On 23.3.1995, another show-cause notice was issued by the State Government u/s 57 of the Act. The

committee of management filed reply on 2.2.1997. The State Government, vide its order dated 13.6.1997, has cancelled the notice dated 23.12.1996. Another show-cause notice u/s 57 of the Act was issued by the State Government on 15.10.1997. The management filed reply on 23.12.1997. The State Government passed an order u/s 58 (1) of the Act, superseding the management vide order dated 26.6.1998. The Writ Petition No. 21735 of 1998, filed by the committee of management, was dismissed on 17.9.1998. Against the order of the learned Single Judge, Special Appeal No. 868 of 1998 was filed in which by order dated 4.1.1999, the operation of the order dated 26.6.1998 passed by the State Government has been stayed. It is informed that the said appeal has been dismissed as infructuous on 16.1.2002.

9. Fresh election of the committee of management was held on 30.4.1999. The said committee has not been approved by the Vice-Chancellor. However, the committee continued. One Sri Mahendra Singh Yadav filed writ petition for a direction to hold fresh election, which was dismissed on 12.1.2001 against which Special Appeal No. 393 of 2001 was filed. The said appeal has been disposed of vide order dated 6.5.2002. The Division Bench of this Court has directed the District Magistrate, being the chairman of the committee, to hold election as early as possible within three months. It has been observed that since the term of the committee of management has been expired in the year 1998, the committee should not be allowed to function any further. The District Magistrate shall act as a Special Officer and hold the election.

10. The District Magistrate has published the schedule of the election vide order dated 16.6.2003 to hold the election on 4.7.2003. The election was proposed to be held on the basis of the list of the membership of 1973. Challenging the schedule of the election, two writ petitions being Writ Petition Nos. 27467 of 2003 and 27195 of 2003 were filed in which interim orders were passed staying the declaration of the result of the election. On 21.4.2004, both the writ petitions had been dismissed as not maintainable for the reason that the election process had already started. On 10.6.2004, the result of the election held on 4.7.2003 was declared by the District Magistrate and the papers were placed before the Vice-Chancellor for approval. The Vice-Chancellor approved the election vide order dated 6/7/ 8.2005. The petitioner filed Writ Petition No. 58322 of 2005 challenging the order of the Vice-Chancellor. The writ petition was allowed and the matter has been remitted back to the Vice-Chancellor for a fresh decision. vide order dated 30/1.10.2005, the Vice-Chancellor again recognized the election held on 4.7.2003. The petitioner again filed Writ Petition No. 71324 of 2005 challenging the order of the Vice-Chancellor, vide order dated 18.4.2007, the writ petition was disposed of referring the matter to the Prescribed Authority u/s 25 (1) of the Act. The Court was of the view that the dispute, relating to the membership, can more appropriately be adjudicated in the proceeding u/s 25 (1) of the Act by the Prescribed Authority. The parties were given liberty to file documents to lead the evidence. Further opportunity has been given to

challenge the election held on 4.7.2003. The Prescribed Authority vide order dated 22.9.2007 has declared the election on 4.7.2003 invalid and ordered the Assistant Registrar to hold election u/s 25 (2) of the Act. The Prescribed Authority has directed to hold election by three Shanrashak members, 7 Sammanit members, 121 life members and 34 corporate members, who have participated in an election held on 30.4.1999 leaving the dead members. Against the order of the Prescribed Authority, three writ petitions were filed by Sri Jai Prakash Rao, Sri Anirudh Shukla and Sri K.P. Tripathi. All the writ petitions have been dismissed with liberty to file suit. A fresh election was held on 3.9.1997 in which petitioner No. 2 was re-elected as Secretary. The said election has been recognized by the Vice-Chancellor on 25.8.2008. The said committee took the charge on 10.9.2008 and continued to function. Sri Jai Prakash Rao filed Writ Petition No. 46800 of 2008 challenging the order of the Vice-Chancellor. The said writ petition has been dismissed with cost of Rs. 10,000/- on 9.9.2008. Special Appeal filed against the said order is pending.

11. Learned counsel for the petitioners states that the said appeal would stand abated as Sri Jai Prakash Rao died on 19.1.2011.

12. It appears that Sri Jai Prakash Rao filed a complaint on 20.5.2009 before the Director of Higher Education in respect of the functioning of the management. The Director of Higher Education appointed one Sri Raghvendra Mall as the inquiry officer. A show-cause notice was given to the petitioner by the inquiry officer. The petitioner filed a detailed reply to the show-cause notice on 20.8.2008. The inquiry officer submitted his report and it appears that he recommended supersession of the management. On 18.12.2009, the State Government issued a show-cause notice u/s 57 of the Act. On 14.2.2009, the petitioner filed a detailed reply to the show-cause notice. On 5.4.2010, the State Government passed an order u/s 58 of the Act superseding the committee of management. The petitioner's committee of management filed Writ Petition No. 20470 of 2010 in which operation of the order dated 5.4.2010 passed by the State Government has been stayed.

13. Feeling aggrieved, Sri Jai Prakash Rao filed Special Appeal No. 726 of 2010, which has been disposed of vide order dated 19.5.2010 directing the State Government to decide the matter afresh by a speaking order after giving opportunity of hearing to both the parties. It has been further directed that till the matter is not decided, the committee which is in effective control of the management shall continue to function. On 23.9.2010, the State Government passed an order u/s 58 of the Act and superseded the committee of management. The petitioner filed Writ Petition No. 63202 of 2010 on the ground that the hearing was done by one officer and the order has been passed by the different officer in violation of the principle of natural justice. The writ petition was allowed on 25.10.2010 and the matter was remitted back to the State Government for passing the fresh order against which Special Appeal No. 1836 of 2010 was filed, which has been dismissed on 16.11.2010. Now the State Government has passed the impugned order dated 25.4.2011 u/s 58 of the

Act superseding the petitioner's committee of management, which is Annexure-37 to the writ petition.

14. Being aggrieved, the petitioners filed the present writ petition. The writ petition has been entertained and an interim order has been passed on 26.5.2011 staying the operation of the order dated 25.4.2011.

15. Counter and rejoinder affidavits have been exchanged between the parties.

16. With the consent of the parties, the writ petition is disposed of at this stage.

17. Learned counsel for the petitioners submitted that the impugned order has been passed in pursuance of a show-cause notice dated 18.12.2009 issued u/s 57 of the Act. The petitioners filed a detailed reply to the aforesaid show-cause notice on 14.2.2010 and further filed reply on 30.7.2010 when the matter was remitted back by this Court on 19.5.2010. In the notice dated 18.12.2009, seven charges have been mentioned. Each and every charge has been replied in the reply dated 14.2.2010 and in the reply dated 30.7.2010. These two replies have not been considered by the State Government while passing the impugned order, which are the main replies to the show-cause notice issued u/s 57 of the Act. The State Government has considered the reply dated 17.1.2011, which was filed in reply to the representation dated 2.8.2010 filed by Sri Jai Prakash Rao and the letter of the Director of Higher Education dated 31.8.2010 before the State Government, therefore, the impugned order is vitiated and is liable to be set aside.

18. He further submitted that the State Government has illegally relied upon the ex-parte report of Dr. Raghvendra Mall dated 12.9.2009, who was appointed as the inquiry officer by the Director of Higher Education on the complaint of Sri Jai Prakash Rao. The petitioner filed reply to the show-cause notice issued by Dr. Raghvendra Mall. However, he did not conduct any inquiry at all. He submitted that the report has been prepared by him in collusion with the complainant, without providing a copy thereof to the petitioner's committee of management. Based upon the aforesaid report, the Director made a recommendation for superseding the petitioner's committee of management. In the reply dated 14.2.2010 it was categorically stated that the report of Dr. Raghvendra Mall was an ex-parte report and, therefore, it could not be relied upon. The said plea of the petitioners has not been considered at all. It is submitted that the charges levelled against the management in the show-cause notice were stale. The District Magistrate functioned as an administrator from 2002 to 2008. In case, there were any irregularities, which had not been committed by the management prior to taking of the charge by the present management, it could have been removed by the District Magistrate, who was functioning as an administrator. Number of times, an attempt has been made to supersede the management earlier but the same failed.

19. The plea of respondent No. 5 that the writ petition has become infructuous as the term of the committee of management has come to an end is misconceived. The

Committee of Management was recognized by the Vice-Chancellor vide order dated 25.8.2008 and was given charge on 10.9.2008. Its term expired on 9.9.2011. Prior to the expiry of the term, the election was held on 5.2.2011. The necessary papers for approval have been placed before the Vice-Chancellor, which are pending for consideration. There is no provision either in the bye-laws or in the statute of the University which provides that on the expiry of the term, the committee of management would become defunct. Reliance has been placed on the decision of the learned Single Judge in the case of [Committee of Management A.K. College, Shikohabad and another Vs. State of U.P. and others](#), . He further submitted that since the fresh election has been held and the papers are pending before the Vice-Chancellor for consideration, let the Vice-Chancellor may pass the order of approval.

20. Sri Shailendra, learned counsel appearing on behalf of respondent No. 5 submitted that in the impugned order, replies dated 17.1.2011 and 29.3.2011 have been considered, which are Annexures-34, 35 85 36 of the writ petition. Once the matter has been remitted back by the Division Bench of this Court for passing the fresh order on 19.5.2010 and fresh replies have been filed, the earlier replies filed by the petitioners stand superseded and since the replies dated 17.1.2011 and 29.3.2011 have been considered, no prejudice has been caused and the impugned order cannot be said to be in violation of principle of natural justice and is not vitiated. He submitted that the charges against the committee of management are very serious and, therefore, this Court should not interfere in the matter.

21. I have considered the rival submissions and perused the impugned order.

22. Admittedly, only show-cause notice u/s 57 of the Act is dated 18.12.2009. The petitioners filed a detailed reply to the said show-cause notice on 14.2.2010. After the remand of the case and direction to pass a fresh order, no fresh show-cause notice has been issued. The reply dated 17.1.2011 has been submitted in reply to the representation dated 2.8.2010 by Sri Jai Prakash Rao and the letter of Director of Higher Education dated 31.8.2010. It is not the reply to the charges levelled in the show-cause notice. The charges levelled in the show-cause notice have been replied only in the reply dated 14.2.2010, and thereafter additional reply was given in respect of each charges on 30.7.2010 therefore, the said replies ought to have been considered. There is no whisper about these replies in the impugned order. Perusal of the reply dated 14.2.2010 reveals that in the said reply, seven charges have been individually replied and in the reply dated 30.7.2010 additional reply was given in respect of each charges. Therefore, the Court is of the view that the order is vitiated on account of non-consideration of the replies dated 14.2.2010 and 30.7.2010. The matter is remanded back to the State Government to pass a fresh order in accordance to law on the consideration of the replies dated 14.2.2010 and 30.7.2010. The period of committee of management has been expired and a fresh election has been held on 5.2.2011, approval of which is pending before the

Vice-Chancellor. The State Government while passing the fresh order may also consider this aspect of the matter. In the result, the writ petition is allowed. The impugned order dated 25.4.2011 passed by the State Government u/s 58 of the Act, Annexure-37 of the writ petition, is set aside and the matter is remitted back to the State Government to pass a fresh order in the light of the observations made above.