

(2008) 09 AHC CK 0286

Allahabad High Court

Case No: None

Committee of Management, Raja
Balwant Singh College

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Sept. 3, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2009) 5 SLR 111

Hon'ble Judges: Rajes Kumar, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Rajes Kumar, J.

By means of present petition under Article 226 of the Constitution of India, the petitioners are challenging the notice dated 29.4.2008 issued by the Principal Secretary, Higher Education Department u/s 57(1) of the U.P. State Universities Act, 1973 (hereinafter referred to as the "Act") and the order dated 29.4.2008 passed u/s 58(2) of the Act whereby the Committee of Management has been suspended and the District Magistrate, Agra has been appointed as the Authorised Controller for the period of six months.

2. Heard Sri Sailendra, learned Counsel for the petitioner, Sri P.S. Baghel, learned Counsel appearing on behalf of respondent No. 5 and learned Standing Counsel.

3. Counter and rejoinder affidavits have been exchanged between the parties. With the consent of the parties the present writ petition is being disposed of finally.

4. Learned Counsel for the petitioners submitted that the notice u/s 57 of the Act is patently bad in law in as much as it does not fulfil the requirements of Section 57 of the Act. He submitted that the allegations made in the notice are vague. He

submitted that in respect of each and every allegations mentioned in the notice, the reply has already been given earlier and the position has been clarified before the issuance of the present notice. However, he admitted that till date the reply of the present impugned notice has not been filed. He submitted that the power u/s 58(2) of the Act can be invoked only in special circumstances after recording the reason while in the order no reason has been recorded for exercising the power. He further submitted that the order u/s 58(2) of the Act was passed earlier also on 11.2.2005 which has been set aside by this Court in Writ Petition No. 12959 of 2005 vide order dated 15.3.2005.

5. In support of the contention, he relied upon the various decisions of this Court in the case of Committee of Management, Raja Mohan Giri Degree College, Faizabad and Ors. v. State of U.P. and Ors. reported in (1999) 1 UPLBEC 658 , Committee of Management, Atarra Mahavidyalaya, Atarra, District Banda v. State of U.P. and Ors. reported in [Committee of Management, Atarra Mahavidyalaya Vs. State of U.P. and Others](#), reported in 1994 (1) ESC 176 (All), Chaudhary Chhotu Ram College, Managing Committee, Muzaffarnagar v. Meerut University reported in 1976 ALJ 680 U.P. State Road Transport Corporation, Meerut Region, Meerut v. State Transport Appellate Tribunal, U.P. Lucknow and Ors. reported in 1992 AWC 71 Committee of Management, Lal Bahadur Shastri Post Graduate College and Anr. v. State of U.P. and Ors. reported in (2000) 2 UPLBEC 63, Committee of Management, Mahip Narain Shahi Janta Inter College, Mahavir Chhapara, District Gorakhpur and Anr. v. State of U.P. and Ors. reported in (2004) 3 UPLBEC 2694, Writ Petition No. 29323 of 2007 Committee of Management Decree College Uparadaha and Anr. v. State of U.P. and Ors. decided on 4.07.2007 Special Appeal No. 836 of 2004 Committee of Management, Hindu College, Moradabad and Anr. v. State of U.P. and Ors. decided on 23.07.2004. The Nathimal Ramsai Mal Edward Coronation College Association, Khurja, Bulandshahr and Ors. v. State of U.P. and Ors. reported in 1979 ALJ 1103 and Board of Trustees, Unani Medical College, Allahabad and Anr. v. State of U.P. and Ors. reported in 1982 UPLBEC 205

6. Sri P.S. Baghel, learned Counsel appearing on behalf of respondent No. 5 submitted that notice u/s 57 of the Act has been issued on the basis of the enquiry made by the Director of Higher Education on the complaint of respondent No. 5. He submitted that the Principal was acting as a Secretary of the Society which was contrary to the bye-laws. The Principal has got the boundary wall constructed without entering into the contract directly; necessary papers have not been provided to the audit parties sent by the Auditor General which was obligatory; a sum of Rs. 8,48,000/- has not been used in the sports and has been used for the payment to the daily wagers; certain amount received for the operation of the engineering and technical education has been misused by the Principal. He submitted that apart from various allegations made in the notice there are other materials of the embezzlement and misappropriation of the money which all be considered during the course of the proceeding before passing the final order u/s

57 of the Act. He submitted that it is not in dispute that Principal Secretary, Higher Education has a jurisdiction to issue the notice u/s 57 of the Act. Therefore, there is no case of lack of jurisdiction and in the circumstances the writ petition against the notice is not maintainable. He submitted that it is open to the petitioner to give reply to the notice and the same may be considered while passing the order. So far as the order Section 58(2) of the Act is concerned, he submitted that the order was passed on the same day when the notice u/s 57 of the Act was issued. In the order allegations made in the notice u/s 57 of the Act have been adopted and made basis for the order and, therefore, it cannot be said that no reason has been given for passing the order. He further submitted that since both the notice u/s 57 of the Act and the order u/s 58(2) of the Act have been issued on the same day it is explicit that the allegations in the notice are the basis of order u/s 58(2) of the Act. He further submitted that though about four months have passed but the petitioner has not given the reply to the notice u/s 57 of the Act and in case, if it may be filed the same may be considered by the Principal Secretary and appropriate order be passed. in support of the contention he relied upon the decisions in the case of Swami Dayanand Snatak Mahavidyalaya, Deoria and Anr. v. State of U.P. and Anr. reported in 1979 (5) ALR 124, Committee of Management v. State of U.P. and Ors. reported 1995 AWC 976 [Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others](#), [Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others](#), [Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another](#), Writ Petition No. 27565 of 2003, Committee of Management, Hindu College, Moradabad and Anr. v. State of U.P. and Ors. decided on 5.7.2004 and Committee of Management, Hindu College, Moradabad and Anr. v. State of U.P. and Ors. reported in 2004 (5) AWC 4333.

7. Having heard learned Counsel for the parties and have given my anxious consideration to the rival submissions and have gone through the impugned notice, and order u/s 58(2) and various documents annexed with the writ petition.

8. It is useful to refer the contents of the notice u/s 57 of the Act and the order u/s 58(2) of the Act which reads as follows:

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Section 57 and 58 (2) of the Act reads as follows:

57. Power of the State Government to issue notice.- If the State Government receives information in respect of any affiliated or associated college (other than a college maintained exclusively by the State Government or a local authority)-

(i) that its Management has persistently committed wilful default in paying the salary of the teachers or other employees of the college by the twentieth day of the month next following the month in respect of which or any part of which it is payable; or

(ii) that its management has failed to appoint teaching staff possessing such qualifications as are necessary for the purpose of ensuring the maintenance of academic standards in relation to the college or has appointed or retained in service any teacher in contravention of the Statute or Ordinances [or has failed to comply with orders of the Director of Education (Higher Education) made on the basis of the recommendation of the Uttar Pradesh Higher Education Services Commission Act, 1980,] or

(iii) that any dispute with respect to the right claimed by different persons to be lawful office-bearers of its Management has affected the smooth and orderly administration of the college; or

(iv) that its Management has persistently failed to provide the college with such adequate and proper accommodation, library, furniture, stationery, laboratory, equipment, and other facilities, as are necessary for efficient administration of the college; or

(v) that its Management has substantially diverted, misapplied or mis-appropriated the property of the college to the detriment of the college; it may call upon the Management to show cause why an order u/s 58 should not be made:

Provided that where it is in dispute as to who are the office-bearers of the Management, such notice shall be issued to all persons claiming to be so.

58 (2) Where the State Government while issuing a notice u/s 57 is of opinion, for reasons to be recorded, that immediate action is necessary in the interest of the college, it may suspend the Management, which shall thereupon cease to function, and make such arrangement as it thinks proper for managing the affairs of the college and its property till further proceedings are completed:

Provided that no such order shall remain in force for more than six months from the date of actual taking over the Management in pursuance of such order:

Provided further that in computation of the said period of six months, the time during which the opinion of the order was suspended by any order of the High Court passed in exercise of jurisdiction under Article 226 of the Constitution or any period during which the Management failed to show cause in pursuance of the notice u/s 57, shall be excluded.

9. There is no dispute that the Principal Secretary is the competent authority to issue a notice u/s 57 of the Act. Therefore, it is not the case where the notice has been issued without jurisdiction. The submission of the learned Counsel for the petitioner that the allegations mentioned in the notice u/s 57 of the Act do not fulfil the requirement of Section 57 of the Act and, therefore, notice is patently bad in law, cannot be accepted. In the notice there are allegations that the Principal was acting as a Secretary of the Society which was contrary to the bye-laws. The Principal has got the boundary wall constructed without entering into the contract directly; necessary papers have not been provided to the audit parties sent by the Auditor General which was obligatory; a sum of Rs. 8,48,000/- has not been used in the sports and has been used for the payment to the daily wagers; certain amount received for the operation of the engineering and technical education has been misused by the Principal. The case of the petitioners that such allegations are wrong and baseless, requires investigation and can more appropriately be looked into by the competent authority and cannot be examined in writ jurisdiction. In the case of *Swami Dayanand Snatak Mahavidyalaya, Deoria and Anr. v. State of U.P. and Anr.* (Supra), the Division Bench of this Court has held that the question whether the charges mentioned in the show cause notice have been made out or not is one which can appropriately be decided by the State Government after the petitioners have submitted their reply to the said notice. That on the receipt of the information as contemplated by Section 57 of the Act a show cause notice can be issued by the State Government admits of no doubts. As such no question of lack of jurisdiction in issuing such a notice arises. The only question which will arise is whether those charges have been substantiated and as already pointed out above, the said question will have to be decided by the State Government after the explanation has been submitted by the petitioners.

10. The Division Bench in the case of *Swami Dayanand Snatak Mahavidyalaya, Deoria and Anr. v. State of U.P. and Anr.* (Supra) has also considered the scope of Section 58(2) of the Act. It is said that no opportunity is required for passing the

order u/s 58(2) of the Act. Relying upon the decision of the Apex Court in the case of [Union of India \(UOI\) Vs. Col. J.N. Sinha and Another](#), the Division Bench further held as follows:

A perusal of these Sections makes it clear that on the receipt of information as contemplated by Section 57 of the Act a notice is to be issued under the said Section 57 calling the management to show cause why an order u/s 58 should not be made. The words "while issuing a notice u/s 57 is of opinion", occurring in Sub-section (2) of Section 58 under which the impugned order suspending the management has been passed are relevant. They pin-point the stage at which an order under Sub-section (2) of Section 58 can be passed and that stage is the point of time of issuing notice u/s 57 of the Act. In the other words, Section 58(2) contemplates passing an order suspending the management, if the State Government is of opinion for reasons to be recorded that immediate action is necessary in the interest of college...simultaneously with the issue of the notice u/s 57. Apparently, therefore, an order u/s 58(2) is contemplated to be passed on the ex parte material contained in the information contemplated by Section 57 of the Act. Reply to the show cause notice issued u/s 57 can be expected from the Management only after such notice has been served on it. And when Section 58(2) contemplates the passing of an order suspending the management at the stage of the issuing of the notice itself there seems to be no doubt that an opportunity of hearing being given prior to the passing of an order suspending the management was ruled out by the provisions contained in Section 58, if not expressly then by necessary implication. In view of the decision of the Supreme Court in J.N. Sinha's case (supra) it is not possible for the Court to ignore the mandate of the legislature on this point. The nature of the power conferred the purpose for which it is conferred, and the effect of the exercise of that power which also have to be taken in mind while considering an argument in regard to the violation of the principles of natural justice as contemplated by J.N. Sinha's case (supra) also lead to the same conclusion. The nature of the power conferred on the State Government u/s 58(2) is as already pointed out above, a power to be exercised while issuing a notice u/s 57, i.e. simultaneously with the issue of such notice, and giving of an opportunity of hearing at this stage is ruled out. The purpose for which the power has been conferred is to take immediate action in the interest of the college. The effect of the exercise of that power is also not such which is likely to cause any permanent injury to the management, the outer limit of an order of suspension passed u/s 58(2) of the Act remaining in force being six months from the date of the actual taking over of the management as contemplated by the first proviso to the said sub-section. The Division Bench further held as follows:

The question which falls for consideration is whether the aforesaid order fulfils the requirements of reason to be recorded as contemplated by Section 58(2) of the Act. Counsel for the petitioners in support of his submission on this point has placed

reliance on various authorities reference to which will shortly be made out in our opinion they are clearly distinguishable. Before dealing with those cases it is necessary to be kept in mind that an order contemplated by Section 58(2) as already pointed out above is of necessity to be passed ex parte and on the basis of the information which may have been received u/s 57 of the Act. At the stage when this order is passed the explanation of the management is not before the State Government and the reasons which are to be recorded by it can naturally not be expected to be such reasons which may show as to why and how the explanation given to the charges has been considered. The cases cited by Counsel for the petitioners in which observations have been made that the reasons should be such which may indicate why and how the explanation submitted by the party accused has been repelled will, therefore, not apply to the facts of the instant case. In the very nature of things the opinion which the State Government is to form on the question as to whether immediate action is necessary in the interest of College will be a prima facie opinion based on ex parte material and not a final opinion given after considering the cases of both the parties. This is a circumstance which cannot be lost sight of while considering the arguments made by Counsel for the petitioners.

The Division Bench further held as follows:

The impugned order simply contained these findings without giving reasons, therefore, and was thus obviously bad in law. Coming to the facts of the instant case it would be seen that the only finding which has to be given or the conclusion which has to be reached by the State Government before passing an order under Sub-section (2) of Section 58 is that immediate action is necessary in the interest of the college to suspend the management. It is true that since order u/s 58(2) is to be passed while issuing a notice u/s 57 the State Government would be deemed to have been satisfied that it was a fit case for issuing a notice u/s 57. But this satisfaction too would be a prima facie satisfaction on the basis of an ex parte material. The requirement of issuing a notice u/s 57 is receipt of information as contemplated by the said action. No findings or reasons are expected to be recorded by the State Government in the document issuing notice. To except that a finding should be recorded by the State Government that the information conveyed to it u/s 57 is correct would not be proper inasmuch as at this stage there is nothing to discredit the information received. What has to be seen by the State Government is whether, if the facts stated in the information are correct on their face value a case has been made out for appointing an authorised controller u/s 58(1). At this stage no better reasons can be expected to be recorded except that the State Government is prima facie satisfied that the information conveyed to it makes out a case for taking action u/s 58. It is in this back ground that the words for reasons to be recorded in Section 58(2) have to be construed. As already seen above the only finding or the conclusion which would justify an order u/s 58(2) is that immediate action is necessary in the interest of the college to suspend the management.

11. In the case of Committee of Management v. State of U.P. and Ors. (supra), the learned single Judge held as follows:

If the facts of the present case are considered in the light of the aforesaid Division Bench judgment, in my opinion, the requirements of Section 58(2) of the Act have been fully satisfied. At this ex parte stage while issuing notice, the opinion could be formed only on the basis of the material available. After perusal of the financial irregularities mentioned in the notice, it cannot be said that the opinion formed by the State Government and the conclusions arrived at were not possible. It is quite different thing that after considering the explanation given by the petitioners this opinion or conclusion may be rendered unsustainable but this Court has to judge the legality of the order only on the basis of the material which was before the State Government and not with the help of the explanation given by the petitioners.

12. In Civil Misc. Writ Petition No. 27565 of 2003 Committee of Management Hindu College, Moradabad and Anr. v. State of Uttar Pradesh and Ors., the learned single Judge has affirmed the order u/s 58(2) of the Act passed on the basis of irregularities alleged in the notice u/s 57 of the Act.

13. Let me examine the various decisions relied upon by the learned Counsel for the petitioners. The decisions in the case of Committee of Management, Raja Mohan Girls Degree College, Faizabad and Ors. v. State of Uttar Pradesh and Ors. (supra), Committee of Management, Atarra Mahavidyalaya, Atarra, District Banda v. The State of U.P. and Ors. (supra), Committee of Management, Dayanand Arya Kanya Degree College, Moradabad and Anr. v. State of U.P. and Ors. (supra) and Chaudhary Chhotu Ram College, Managing Committee, Muzaffarnagar v. Meerut University (Supra) are the decisions of the learned single Judge and, therefore, in view of the law laid down by the Division Bench, herein above, it is not necessary to deal with the said decisions. In all the aforesaid decisions of learned single Judge and the decision of Division Bench in the case of Swami Dayanand Snatak Mahavidyalaya, Deoria and Anr. v. State of U.P. and Anr. (Supra) has not been considered. In the case of Committee of Management, K.A.P.G. College, Kasganj, Etah and Anr. v. State of U.P. and Ors. (supra) it has been held that on the date of passing of the order u/s 58(2) the notice u/s 57 was not issued and, therefore, the order has been held bad in law. In this view of the matter, this case is clearly distinguishable. In the case of Nathimal Ramsai Mal Edward Coronation College Association, Khurja, Bulandshahr and Ors. v. State of U.P. and Ors. (Supra) the validity of the order u/s 58(1) was under consideration and not notice u/s 57 and the order passed under order 58(2) of the Act. Therefore, on the fact, this case is distinguishable. Likewise in the case of Board of Trustees, Unani Medical College, Allahabad and Anr. v. State of U.P. and Ors. (Supra) the order u/s 57(1) was under consideration before the Division Bench and not the notice u/s 57 and the order u/s 58(2) of the Act and, therefore, this case is also distinguishable on the fact.

14. In the instant case, both the notice u/s 57 and order u/s 58(2) were issued on the same date. In the order u/s 58(2) allegations made in the notice u/s 57 of the Act have been adopted, therefore, order Section 58(2) cannot be said to be without any reason. Moreover, four months have been passed, the life of the order u/s 58(2) is only six months. Therefore, in my opinion, in the interest of justice it would be appropriate that the Principal Secretary may take a final decision in the matter after considering the reply and hearing in person. In such a situation, I direct the petitioners to file the reply within two weeks and the Principal Secretary is directed to pass the appropriate order after giving opportunity of hearing to the petitioners and all the concerned parties within another period of four weeks. The order passed u/s 58(2) of the Act shall continue till the date of passing of the order u/s 57 of the Act and shall be subject to the said order.

15. With the aforesaid observation, the writ petition stands disposed of.