

(2007) 10 AHC CK 0147

Allahabad High Court

Case No: None

Committee of Management,
Intermediate College and Sugriv
Mani Tripathi

APPELLANT

Vs

District Inspector of Schools,
Regional Committee Headed by
Chairman, Joint Director of
Education 7th Region, State of
U.P. and Committee of
Management Intermediate
College through its alleged
Manager, Rajiv Kumar Ram
Tripathi

RESPONDENT

Date of Decision: Oct. 5, 2007

Acts Referred:

- Uttar Pradesh Intermediate Education Act, 1921 - Section 16A

Citation: (2008) 5 AWC 4580

Hon'ble Judges: V.K. Shukla, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

V.K. Shukla, J.

Sugriv Mani Tripathi, claiming himself to be the Manager of Committee of Management Intermediate College, Pindi, District Deoria has approached this Court for quashing the order dated 18.11.2006 passed by Regional Committee headed by Regional Joint Director of Education, as its Chairman and further for issuance of writ in the nature of mandamus commanding respondent No. 2 to consider the recognition of the Committee of Management of petitioners within fortnight from the command of this Court.

2. In the district of Deoria there is an institution known as Intermediate College, Pindi. Said institution is duly recognized under the provision of U.P. Act No. II of 1921 and the said institution has its own approved Scheme of Administration framed in exercise of power vested u/s 16-A of U.P. Act No. II of 1921. Last election of the Committee of Management of the institution has been held on 08.08.2004. In the said election Rajiv Kumar Ram Tripathi, has been shown to have been elected as Manager and Dr. Trivikram Mani Tripathi was elected as President, Smt. Indu Devi was elected as Secretary and Ravindra Bahadur Singh was elected as Vice President alongwith other office bearers and papers were transmitted to District Inspector of Schools for further transmission of the same to the Regional Level Committee constituted under Government Order dated 19.12.2000 for according approval to the said election. It has been stated that Rajiv Kumar Ram Tripathi started functioning against the interest of the society and similarly against the institution and in this background General Body of the institution which elected him as Manager called meeting on 21.05.2006 for no confidence motion. It has been contended that said meeting was held wherein out of 12 members 8 members have participated and each one expressed no confidence against the Manager, Rajiv Kumar Ram Tripathi and thereafter it has been contended that petitioner No. 2 Sugriv Mani Tripathi has been elected as Manager for remaining period and papers were transmitted and further assertion has been made that District Inspector of Schools on 22.05.2006 forwarded the entire papers to Regional Joint Director of Education, Gorakhpur for placing the same before the Regional Level Committee for approval. On 05.08.2006 the Regional Joint Director of Education, Gorakhpur asked for certain information and thereafter it has been contended that District Inspector of Schools has requested to take decision on said aspect of the matter. Petitioner has contended that thereafter order impugned has been passed. At this juncture present writ petition has been filed.

3. Counter affidavit has been filed and therein it has been contended that dispute has arisen on account of Secretary Indu Devi, as her nephew has not been favoured by the Manager and it has also been contended that allegation leveled are bogus and no confidence has been dubbed to be paper work. It has also been stated that persons who are purported to have participated in the no confidence have disowned the said proceedings. It has also been stated that Sugriv Mani Tripathi himself filed affidavit contending therein that he has no objection in functioning of contesting respondents as its Manager. Allegation leveled have also been disputed. It has also been contended that ten incumbents have already expressed confidence in contesting respondent No. 4. In this background no interference is warranted.

4. Counter affidavit has been filed on behalf of State-Respondents and therein it has been contended that that action which has been taken is rightful action and no interference is required.

5. Supplementary counter affidavit has been filed appending therein copy of Scheme of Administration and bye laws of the society as well as letter written by the Manager to the District Inspector of Schools, Deoria.
6. Rejoinder affidavit has been filed disputing the averments mentioned in the counter affidavit and reiterating averments mentioned in the writ petition.
7. After respective arguments have been advanced present writ petition has been taken with the consent of the parties for final hearing and disposal.
8. Sri I.R. Singh, counsel for the petitioner contended with vehemence that once Rajiv Kumar Ram Tripathi has been removed by way of no confidence motion and entire papers were placed before the Regional Level Committee then Regional Level Committee was obligated to go into the question as to whether removal of Rajiv Kumar Ram Tripathi is there or not instead of mechanically accepting the election and accepting Rajiv Kumar Ram Tripathi, as Manager, as such order impugned dated 18.06.2006 is liable to be quashed by this Court.
9. Sri R.C. Dwivedi, Advocate appearing for Rajiv Kumar Ram Tripathi contended that no interference is warranted, inasmuch as the very theory which has been set up by petitioner No. 2, that no confidence motion has taken place wherein no confidence has been expressed against Rajiv Kumar Ram Tripathi, is unsustainable as under the provision of Scheme of Administration there is no provision of no confidence motion, and in this background in absence of there being any provision this Court will not direct the Regional Level Committee to take up futile exercise.
10. After respective arguments have been advanced fact which has not been disputed is that election had taken place on 08.08.2004 wherein Rajiv Kumar Ram Tripathi has been elected as Manager; Dr. Trivikram Mani Tripathi was elected as President, Smt Indu Devi was elected as Secretary and Ravindra Bahadur Singh was elected as Vice President alongwith other office bearers, and after said election have been held papers have been transmitted to Regional Level Committee for the purposes of according approval to the said election. During the pendency of said proceedings while recognition could not be considered by the Regional Level Committee. Meeting dated 21.05.2006 shown wherein motion for no confidence has been passed against Rajiv Kumar Ram Tripathi based on the same it has been contended that Rajiv Kumar Ram Tripathi could not be recognized as Manager, rather petitioner No. 2 Sugriv Mani Tripathi should have been recognized as Manager.
11. In normal course of business contention of petitioner would have been accepted, inasmuch as admittedly there is no adjudication on this question as to whether Rajiv Kumar Ram Tripathi has been removed by way of no confidence motion or not and for adjudication of this question matter would have been remitted back but before this Court, further question has been raised that there is no provision in Scheme of Administration giving right to Managing Committee of

the institution to carry out no confidence motion. Once there is no provision in the Scheme of Administration then even a ter said no confidence motion has been carried out same is of no consequence as no confidence motion can be expressed only when there is express provision and in absence of express provision no confidence motion cannot be carried out. In the absence of express provision this Court would not proceed to direct respondents to undertake futile exercise

12. As cuestion raised is essentially legal question Sri I.R. Singh, learned Counsel for the petitioner countered the said situation by conceding to this fact that under the Scheme of Administration there is no provision of no confidence motion but he has tried to justify action taken petitioner No. 2 by contending that under the bye laws of the society there is provision that in case there is no rule and regulation which covers the field then whatever decision would be taken by the majority view, same will be binding and in this background it has been contended that there is provision in the bye laws of the society/Trust which is not in conflict with the provision of Scheme of Administration as such it would hold the field.

13. At this juncture the provision of Section 16 A is being looked into.

16-A Scheme of Administration.- 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 institutor 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 relat on 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 or 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 Section 16-B and 16-C.

(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.

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 16-CC 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 inconsistent 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

(see Section 16-CC)

Principles on which approval to a Scheme of Administration shall be accorded. Every Scheme of Administration shall.

(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.

14. On the touchstone of the above-noted provision, the Scheme of Administration of Institution in question is being looked into. Under the Scheme of Administration "Trust" has been defined as Satrugan Pati Trust Prabandhak Samiti Gram Pindi, Post Pindi, District Deoria. Committee of Management has been defined as that Committee of Management which has authority to manage and conduct the affairs of the Institution which shall vest in the Committee of Management which shall be responsible for proper running of the Institution in accordance with the provision of the Act, the Regulations the education code and instructions issued from time to time by authorities of the Education Department U.P. Constitution of Committee of Management has also been provided for Committee of Management shall comprise of as Ex-Office members of the Committee of Management (i) Principal (ii) two teachers representatives for a term of one year, each by rotation according to seniority selected in the manner prescribed in the regulations. (b) Elected executive Committee of the General Body consisting of 10 members; two persons who are helpful. Tenure of Committee of Management of the institution is five years. Clause 9 of the Scheme of Administration of deals with filling up casual vacancy; Clause 12 deals with disability of members. Clause 13 provides for power, duties and function of the Committee of Management; Clause 14 deals with power, duties and function of the Principal; Clause 15 deals with power, duties and function of office bearers; Clause 19 deals with powers, and duties and exercises and discharges mentioning therein that Committee of Management, the office-bearers and Headmaster, Principal shall exercise their powers and discharge their duties subject to the provision of the act, the regulation, the Educational Code and the instructions issued by the officers of the Department from time to time. Clause 29 deals with in case of

conflict between the provisions of this Scheme and those of any other rule/bye-law/regulations of the Trust or the institution then the former shall prevail. The provisions of Scheme of Administration noted above is clear each and every aspect of the matter is clearly specified and covered under the Scheme of Administration running and managing the institution. Committee, Office bearers are to exercise their authority subject to provisions of the Act, the Regulations, the Education Code and the instructions issued by the Officers issued from time to time. Managing Committee and the office bearers of the institution cannot take any assistance from the provisions of bye-laws of the Society/Trust Deed, Managing Committee of Trust and Managing Committee of Institution are two separate entities and provisions of Trust ipso facto cannot be made applicable qua scheme of Administration, which is framed in exercise of authority vested u/s 16-A of U.P. Act No. II of 1921 as per which affairs of the institution is to be run and managed. The Scheme of Administration does not contain the provision of no confidence motion however Scheme of Administration does provide for provision authorizing the Committee of Management from debarring the member from attending its meeting, exercising the right of vote on the ground that he has acted in a manner against the interest of the institution. Thus, there is express provision for debarring the member but there is no express provision of no confidence motion being expressed against office bearers.

15. Division Bench of this Court in the case of *Lakshmi Narain Mishra v. Municipal Board and Ors.* reported in 1962 ALJ 113 has taken the view that general power cannot be exercised in the matter and there has to be specific provision in respect of no confidence motion. In the said case it has been held that power to pass a no confidence resolution qua President may be necessarily implied in Section 47-A, but in the absence of similar provision with respect to the Vice President shows that legislature did not envisage a no confidence motion against the Vice President. In the said background as such resolution has not been backed up by any statutory provision view taken was that Vice President does not hold the office at the will of the Municipal Board rather once elected, he gets into office for a specified period and not removable during that period.

16. Hon"ble Apex Court in the case of [Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others](#), has taken the view that for the purposes of carrying out "no confidence motion" there has to be statutory provision in case there is no statutory provision then motion of confidence cannot be supported and arguments based on political philosophy is of no consequence.

17. Division Bench of the Court in the case of [Riaz Uddin Vs. State of U.P. and Others](#), has taken the view that no confidence motion cannot be carried out as there is no provision in the Intermediate Education Act or any other statute or in Scheme of Administration for passing vote of no-confidence against members of Committee of Management Hence no confidence motion passed by Committee of Management is

wholly null and void and has no legal effect, Respondent Committee of Management to continue till period prescribed in the Scheme of Administration. Relevant extract of the said judgment is being quoted below:

Under the Scheme of Administration the term of the office of the Committee of Management is three years from the date of election, in the present case, respondent No. 6 Ghulam Nabi who is the Manager was elected on 24.05.2001 and this was approved by the Regional Committee headed by the Joint Director of Education on 31.08.2001.

Under Clause 7 of the Scheme of Administration the term of the Committee of Management is three years (copy of which is enclosed as Annexure-4 to the writ petition).

It is mentioned therein that "the term of office-bearers and members V (a) and (c) other than ex-officio members shall be three years from the date they are chosen provided that the term of every office bearer shall be deemed to have continued till his successor is chosen. The term of the ex office members shall be governed by the Regulations of the Act,"

There is no provision in Scheme of Administration for passing of vote of no-confidence against the members of the Committee of Management also there is no statutory provision in the U.P. Intermediate Education Act or any other statute to his effect.

It has been contended by the learned Counsel for the appellant that the no-confidence motion was passed against the respondent No. 5 on 31.08.2003 and it was also affirmed by the General Body of the society on 08.09.2003.

In our opinion such no confidence motion is wholly null and void and has not legal effect, at all Only if there is a provision for passing a no-confidence motion can a no confidence motion. For example under the Representation of the people Act there is no provision for passing a motion of no-confidence against an elected Member of Parliament and hence the term of the member will continue as long as that Parliament exist.

The term of a member of Parliament can therefore, no be curtailed by passing a motion of no confidence. Even if passed by a majority of the voters in the constituency. Some statutes contain a provision for a motion of no confidence e.g. the U.P. Panchayat Raj Act U.P. Municipalities Act, U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam etc. Hence wherever there is a provision for passing a motion of no-confidence it can certainly be passed, but where there is no such provision a no confidence motion legally cannot be passed at all and if passed will be null and void.

For the reasons given above this appeal is dismissed and it is observed that the respondent No. 5 shall continue on the post till the period prescribed under Clause 7

of the Scheme of Administration expires. Writ Petition No. 49451 of 2003 is allowed. The order impugned in this writ petition is quashed.

18. On the touchstone of the provisions quoted above and judgment quoted above inevitable conclusion is that Committee of Management is constituted in term of provisions of scheme of Administration framed in exercise of authority vested u/s 16-A of U.P. Act No. 16 of 1921 and affairs of the same has to be run and managed, strictly as per the provisions of Scheme of Administration accordingly and there being no provision provided for "no confidence motion" being carried out, as such this Court cannot issue futile writ to the Regional Level Committee to consider the merits of no confidence, as said proceeding is not at all backed by any statutory provision or the provision of Scheme of Administration and provision of bye laws cannot be utilized for carrying out such "no confidence motion" against office bearer and members of Managing Committee of institution. Section 16-A specifically proceeds with non-obstante clause that there shall be Scheme of Administration for every institution which shall provide for constitution of Managing Committee of Institution vested with the authority of Managing and conducting the affairs of institution. Sub-section (6) of Section 16-A specifically provides that institution shall be managed in accordance with the scheme of Administration, framed under and in accordance with Sub-section (1) to (5) of Section 16-A and Section 16-B and 16-C and this particular objective is further buttressed by the provisions of Clause 5, 13 and 19 of Scheme of Administration in respect of running and managing the affairs of institution. Provision or which reliance has been placed by Sri I.R. Singh is certainly in reference of Managing Committee of Trust and not at all in reference of Managing Committee of Institution, which has its own separate independent entity as constitution of Managing Committee of "Trust" and "Institution" are entirely different, with general body being the same. Affairs of "Trust" has to be carried out as per the "Trust Deed" and affairs of Institution has to be run and managed as per the provisions of Scheme of Administration. In this Background once election has been recognized and claim of petitioner No. 2 is based on "no confidence motion" which otherwise is not at all subscribed in law, as such no directives can be issued.

19. Consequently present writ petition lacks substances and is dismissed.

20. Interim order, is hereby discharged.