

(1993) 09 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 20957 of 1990

Ashibhuja Prasad Dubey and and Another

APPELLANT

Vs

Basic Shiksha Adhikari and Others

RESPONDENT

Date of Decision : 21-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 AWC 73 : (1993) 3 UPLBEC 1983

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Ashok Bhusan, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Narain, J.—The Petitioners have sought a writ of certiorari for quashing the order dated 19th September, 1989, passed by the Basic Shiksha Adhikari, Allahabad and the order dated 20th August, 1990, passed by the Director of Education (Basic), U.P., Allahabad, Respondent no. 2.

2. I have heard learned counsel for the parties.

3. The facts in brief are that the Uttar Pradeshiya Balika Vidyalaya Junior High School, Malak Harhar, Allahabad (hereinafter referred to as the "Institution") is an Institution recognized as Junior High School. The Institution was founded by a registered Society in the year 1968. The Society was known as "Harishyam Khadi Gramodyog Seva Sangh (Sabha), Malak Harhar, district Allahabad." It was registered on 23rd September, 1968. There was a dispute in the Society in the year 1978. Another Society known as "Harishyam Khadi Gramodyog Sava Samiti" was got registered. The Society, which was registered in the year 1968, also applied to the Registrar Funds, Societies and Chits, deleting the word "Sangh" and substituting the word "Sabha" which was allowed by the Assistant Registrar. In the result, two Societies came into existence.

4. The Petitioner No. 1 claimed himself as Manager of the Society which was

originally registered in the year 1968 and Ravindra Nath Misra, Respondent No. 3, claimed himself as Managing Secretary of the" Society which was registered in the year 1978.

5. The Petitioner No. 1 and Respondent No. 3 both claimed their rights to manage the Institution. Respondent No. 3 alleged that Petitioner No. 1 was earlier Manager of the Institution. He was found to have committed embezzlement of the fund of the Institution and was removed in the month of June, 1975 and after his removal one Sri Bhai Lal was elected as Manager of the Institution. Sri Bhai Lal resigned from the said post which followed the election and Respondent No. 3 was elected as Manager of the Institution on 6th June, 1976 and since then he has been continuously elected as Manager of the Institution from time to time and is still working as such.

6. The Petitioner No. 1 claimed that he was Managing Secretary of the Society which was registered in the year 1968 and he has never been removed from the post of Manager and is functioning as a Manager of the Institution. The Respondent No. 1 was not recognizing the Petitioner as a Manager of the Institution. The Petitioner No, 1 filed Writ Petition No 5368 of 1981 in which besides other relief"s he claimed that his representation be decided. The said writ petition was disposed of by order dated 13th January, 1988, directing the Respondents to decide the representation of the Petitioner with the following observations :

It will be open to the Petitioner to make fresh representation to the Director of Education if he feels that even till to day the suspension of grant-in-aid has not been considered at all. If such representation is made, then it will be open to the Director of Education to first examine the question as to whether Sri Dubey is a Manager of the Institution and has any locus standi to make a representation. If the representation is made, we have no doubt that the same will be disposed of expeditiously.

The writ petition is dismissed summarily.

7. The grant-in-aid which was suspended was restored. The Petitioner made a representation to the Basic Shiksha Adhikari (Women), Allahabad to recognize him as a Manager, a copy of which has been filed as Annxure T to the writ petition. The said representation was not decided and the Petitioner No. 1 again approached this Court commanding the Respondents to dispose of the representation of the Petitioner. The Court directed to dispose of the said representation by order dated 18th January. 1989.

8. As there was a dispute as to which Society was the real Society, the Basic Shikha Adhikari vide his letter dated 16-2-1989 wrote to the Assistant Resgistrar Funds. Societies and Chits, Kanpur, requiring him to give decision as to which is the real Society. The Assistant Registrar Funds, Societies, and Chits, Kanpur, after giving opportunity of hearing to Petitioner No. 1 and Respondent No. 3 passed an order holding that the Society which was registered on 18th December, 1978 in

the name of Harishyam Khadi Gramodyog Seva Samiti has in its memorandum of Association an object to run the Institution, while the Society which was registered in the year 1968 in the name of Harishyam Khadi Gramodyog Seva Sangh (later on substituted by word "Sabha") has no specific object to run the Institution. He found that the office bearers of both the Societies are different. He did not record any finding as to which Society is actually running the Institution. The Basic Shiksha Adhikari on the basis of the aforesaid finding recorded by the Assistant Registrar held by his, order dated 19th September, 1989 that Respondent No. 3 should be recognised as Manager of the Institution and made recommendation to Respondent No. 2 for grant of recognition to Respondent No. 3 as Manager of the Institution. The recommendation was accepted by Respondent No. 2. The Petitioner No 1 made a representation to Respondent No. 2 against the said decision, but that was rejected by order dated 20th August, 1990.

9. The Basic Shiksha Adhikari did not record any finding as to whether Petitioner No. 1 or Respondent No. 3 was functioning as a Manager and who was in actual control of the affairs of the Institution. The Assistant Registrar by . his order dated 28th August, 1989 came to the conclusion that two Societies in different names were existing, one in the name of Harishyam Khadi Gramodyog Sangh (Sabha) which was originally registered in the year 1968 and the other Society Harishyam Khadi Gramodyog Seva Samiti registered on 18th December , 1978. Both the Societies have different office bearers. He, however, came to the conclusion that the latter Society which was registered in the year 1978 has in its memorandum of Association an object to run the Institution known as Uttar Pradeshia Balika Vidyalaya Junior High School, Malak Harhar and! therefore, it is the real Society while the former Society has no such specific object in its Memorandum of Association. The Assistant Registrar, however, did not record any finding as to which Society was in actual control of the affairs of the Institution and who is working as a Manager of the institution. The object of the former Society was general in nature and the object of the latter Society was general as well as specific. This, however, itself was not sufficient to hold that the office bearers of the latter Society were entitled to take control of the affairs of the Institution unless there was a finding that such latter Society was in effective control of the Institution. The Respondent No. 1 also did not record his own finding. If the office bearers of a Society are not in actual control of the affairs of the Institution, they cannot be directed to take possession by Respondent No. 1.

10. The Basic Shiksha Adhikari has to recognize Manager of an Institution for the purpose of performing his administrative duties conferred under the provisions of U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978 and U.P. Recognised Basic Schools (Junior High Schools) Recruitment and Conditions of Service of Teachers) Rules, 1978 and such other Acts, Rules, Regulations and Orders which entrust duties or powers on him. He has to make summary enquiry to find out as to who is entitled to manage the Institution as well as who is in its effective control. In *Jaswant Singh v. District Inspector of*

Schools, 1990 ALJ 174, a Division Bench of this Court took the view that the District Inspector of Schools is entitled to make a summary enquiry, as to the person entitled to function as a Manager. The same principle is applicable also when the Basic Shiksha Adhikari recognizes any person as a Manager of any Junior High School.

11. Learned counsel for the Respondents contended that the Basic Shiksha Adhikari passes an administrative order when he recognizes a person as President or the Manager of an Institution and this Court should not interfere in such an order under Article 226 of the Constitution of India. He placed reliance upon Committee of Management, Sri Pyare Lal Shastri Junior High School, Jajau, via Fatehpur Sikri, district Agra v. Basic Shiksha Adhikari, Agra. 1990 AYVC 778, where the Court expressed the opinion that the Basic Shiksha Adhikari is entitled to determine as to which Managing Committee should be recognized for the purposes of carrying on day to day administration of the Junior High School and if he recognizes some one as a Manager of an Institution, the Court should not interfere in such order under Article 226 of the Constitution of India. In this case, the Court on facts found that the rival Committee of Management claimed rights on the basis of an election which could not have taken place before the expiry of term and such rival Committee of Management had no right to claim recognition.

12. The Basic Shiksha Adhikari exercises administrative power while recognizing a person as a Manager of the Institution. There is a dispute as to who should be recognized as manager. He has to apply his mind considering various facts before granting recognition. The distinction between administrative power and quasi-judicial power has been held quite thin. In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the Supreme Court observed:

The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one had to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferred that power, the consequence ensuing from the exercise of that power and manner in which that power is expected to be exercised.

13. The Basic Shiksha Adhikari relied upon the finding recorded by the Assistant Registrar and passed the impugned order recognizing Respondent No. 3 as a Manager of the Institution. The Assistant Registrar only recorded a finding that there were two Societies and office bearers of the two Societies are different. He did not record any finding as to which Society was in effective control of the affair of the Institution. He also did not record any finding that Respondent No. 3 was functioning as a Manager of the Institution. In the absence of such finding by the Assistant Registrar, it was the duty of Respondent No. 1 to record such a finding.

14. In the result, the writ petition is allowed. The order dated 19-9-1989 (Annexure "9" to that writ petition) and the order dated 20th August, 1990 (Annexure "11" to the writ petition) are hereby quashed. Respondent No. 1 is directed to decide the matter afresh keeping in view the observations made above and in accordance with law possibly within three months from the date of production of certified copy of this order. The parties shall bear their own costs.