
(2015) 04 AHC CK 0069
In the Allahabad High Court
Case No : Writ-C No. 20228 of 2015

C/M Baba Narain Das Inter College

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Citation : (2015) 4 ADJ 716 : (2015) 3 ESC 1507

Hon'ble Judges : Yashwant Varma, J

Bench : Single Bench

Advocate : Amit Krishan and G.K. Singh, for the Appellant; A.K. Aditya, Advocates for the Respondent

Final Decision : Allowed

Judgement

Yashwant Varma, J.—The challenge laid in the present petition is to an order dated 30th March 2015 passed by the Regional Level Committee according recognition to elections held on 28th December, 2014 by the respondent No. 5.

2. This Court has heard Sri G.K. Singh, learned Senior Counsel assisted by Sri AmitKrishan in support of this writ petition and Sri Ashok Khare, learned Senior Counsel assisted by Sri Anil Kumar Aditya on behalf of the contesting respondents.

3. It is the common case of both parties that the last undisputed elections to the Committee of Management of the institution was held on 22.08.2010. As per the Scheme of Administration the term of this Committee of Management was three years plus one month. The Scheme of Administration provided that the term of the Committee would come to an end on the expiry of the period of three years plus one month. It is further provided therein that if within this period a duly constituted Committee of Management does not take over charge, the educational authorities would be obliged to appoint an Authorised Controller who would then exercise all administrative control and management over the affairs of the institution and also oversee the holding of elections and constitution of a

Committee of Management.

4. The Scheme of Administration further provides that 3 months prior to the expiry of the period of three years, the Committee would call a meeting which would then decide an election programme on the basis of which a newly elected Committee of Management would come into existence. While deciding upon the details of the election programme, the clause further provides for the General Body appointing an Election Officer and an Observer who would oversee the entire election process.

5. The petition then asserts that during the term of the Committee of Management elected on 22nd August, 2010, the president, Sri Somdutt Tyagi died on 27th August 2012 and accordingly, a casual vacancy came into existence. It is alleged that the opposite parties set up certain proceedings for filling up of this casual vacancy and forwarded papers to the educational authorities asserting therein that Sri Lajpat was elected as President.

6. Aggrieved by the recognition accorded to the above proceedings by the District Inspector of Schools, the Joint Director Education was moved by the petitioners who by an order dated 2nd November, 2012 annulled the order of recognition by holding that the proceedings taken in respect thereof were not in accord with the provisions of the Scheme of Administration. The petitioners further assert that Sri Lajpat who was only a member of the General Body could not have been nominated to occupy the office of President as he was never a member of the Committee of Management.

7. The petitioners then aver that on 23rd December, 2012 a meeting of the Committee of Management was held in which Sri Brahma Dutt Tyagi was proposed for the post of the president and upon the said resolution being passed, the District Inspector of Schools was duly informed of the factum of Sri Tyagi having been nominated to the office of President.

8. The other event of significance appears to be the resolution passed in the meeting of the Committee of Management held on 17th June 2012 when 53 members came to be enrolled as life members. This enrollment of new members is said to have been approved by the General Body on 12th May 2013.

9. The Committee of Management is then stated to have passed a resolution on 14th June 2013 for the purposes of conduct of elections for constitution of the Committee of Management. The details of the decisions taken by the Committee of Management of 14th June 2013 are said to have been forwarded to the District Inspector of Schools for finalization of the general body and for requisite permissions to carry forward and implement the resolutions passed on 14th June 2013.

10. The District Inspector of Schools is stated to have approved a general body comprising 42 old members and 53 newly enrolled members as comprising the electoral college by his order dated 23rd July 2013. However, the District

Inspector of Schools revisited the above issue and by his letter dated 3rd August 2013 called upon the petitioner and the respondents to file their objections in respect of the electoral body finalized by him on 23rd July 2013. After hearing parties, the District Inspector of Schools passed an order on 11th July, 2014 holding that the electoral body would comprise of only 45 members who had participated in the last election held on 22nd August, 2010. In substance, the newly enrolled 53 members stood excluded from the electoral body finalized. This order passed by the District Inspector of Schools came to be subjected to challenge in Writ Petition No. 39548 of 2013 (Committee of Management And Another Vs. State of U.P. And others) upon which parties were directed to exchange Affidavits. However, no interim orders were passed on this petition and the same remains pending on the board of this Court.

11. The petitioner-Committee of Management is then stated to have approached the District Inspector of Schools to accord approval to the appointment of Sri Desh Deepak Tyagi as the Election Officer vide its letter dated 13th December, 2013. Hearing nothing from the District Inspector of Schools, the petitioner appears to have published the electoral roll on 8th December 2014 and upon culmination of preliminary steps the election itself is stated to have been held and conducted on 28th December 2014. In the elections so held it is alleged that one Sri Brahma Dutt was elected as Manager. The proceedings of these elections are then said to have been transmitted by the Election Officer along with his report on 29th December 2014.

12. Insofar as the respondents are concerned they also assert elections having been held on 28th December 2014 under the presidentship of Sri Lajpat. In the elections of the respondents Ashok Kumar and Jeevan Singh are stated to have been elected as Manager and Deputy Manager. It is however relevant to note here that the petitioners assert that the primary membership of both the above persons had been annulled and they were expelled by a resolution dated 22nd May 2013. In Paragraph 33 of the writ petition, it is averred that this resolution has not been cancelled or suspended in its operation by any competent Court of Law or other authority.

13. The respondents have asserted that insofar as the electoral college is concerned, the same stood finalized by the order of the District Inspector of Schools dated 11th July 2014. It is further pointed out that the said order though forming subject matter of Writ Petition No. 39548 of 2013, continued to operate in light of the fact that no interim orders were passed by the Court.

14. The other aspect of some significance and which has also been highlighted in the Short Counter Affidavit filed on behalf of the respondent No. 5 is this. They assert that various requests were made for appointment of an Authorised Controller over the affairs of the institution by them and although the papers were forwarded to the Joint Director of Education, he passed an order dated 1st November, 2014 taking the position that an Authorised Controller need not be appointed for the mere purpose of holding of elections. It has been asserted and

submitted before this Court that the order of 1st November 2014 was not subjected to challenge by the petitioners and therefore, for all intents and purposes the same had become final.

15. The respondent then aver that it was pursuant to the Joint Director of Education rejecting the prayer for appointment of an Authorised Controller that the District Inspector of Schools proceeded in the matter and by his order dated 27th November, 2014 appointed an Election Officer and an Election Observer and it was under the control and oversight of the Election Officer and Observer so appointed that election came to be held on 28th December, 2014.

16. Sri Khare, learned Senior Counsel has submitted that these elections which came to be convened and held under the supervision and control of independent persons appointed by the District Inspector of Schools himself, did not warrant any interference of this Court and that the Regional Level Committee has thus committed no illegality in according recognition to the said election.

17. The first circumstance of some significance which the Court must take notice of is that the meeting of the Committee is said to have been convened by Sri Lajpat acting in his capacity as President and he is ultimately shown as having been elected as President in the elections held on 28.12.2014 by the rival faction. However as noticed above, his inclusion in the Committee of Management was itself annulled by the Joint Director Education in terms of his order dated 2nd November 2012. The statement of the learned counsel for the Petitioner made in this regard is not refuted by the respondents. The validity or otherwise of the elections set up by the Respondents would therefore have to be tested in light of the above fact. But more on this aspect a little later.

18. The primary consideration of the Court would have to be accorded to the terms and the clauses of the Scheme of Administration. As noticed above, the term of the Committee of Management is described under the Scheme and more particularly in terms of clause 6 thereof, to be of 3 years. It further provides that the office bearers thereof would continue for a period of 1 month after the expiry of the term of 3 years. The provisions of the Scheme then state that in case the newly constituted Committee does not take over charge within the extended period of 1 month, then and in that situation the Joint Director Education would appoint an Authorised Controller who would take over charge and then proceed to take steps for constitution of a new Committee. Most significantly the Scheme provides that post the period of 3 years and 1 month, the term of the office bearers as well as the Committee would automatically come to an end.

19. The second clause of some significance in the Scheme is clause (5) which lays down the procedure to be adopted by the Committee towards the end of its tenure for conduct of elections for constituting a new Committee of Management. This clause provides that 3 months prior to the expiry of the term of the Committee, a meeting of the same would be convened for the purposes of finalizing the election process. This clause also takes care of a situation where

the Manager fails to convene a meeting and provisions for the President convening a meeting and in case of failure on his part also, 1/2 of the members of the Committee or 1/10th of the members of the general body on a written requisition may convene a meeting for finalizing the election programme, appointment of an Election Officer and completion of other formalities.

20. From a conjoint reading of the above clauses of the Scheme it is apparent that the various processes envisaged under clause 5 have to be completed, elections held and the newly elected Committee of Management must join within the period of 1 month from the end of 3 years. This window of 1 month assumes significance for the reason that the office bearers and the existing Committee are to continue only for a period of 3 years plus 1 month whereafter they would cease to exist in the eyes of law. Further in case the newly elected Committee does not take over charge within this period of 1 month from the end of 3 years, the affairs of the institution and the committee itself stand transferred and vested in the Authorised Controller. If therefore the Committee of Management does not assume office within a period of 1 month from the expiry of 3 years, the appointment of the Authorised Controller would become an inevitable reality.

21. The law on the subject has been consistently held by various Division Benches of our Court to be that the Committee of Management loses all rights to convene or conduct elections after the period of 3 years and 1 month. It would here be apposite to refer to some of these authorities.

22. In *Prithvi Pal Tripathi and Another Vs. District Inspector of Schools and Others*, (1993) 2 AWC 1028 the Division Bench held as follows:-

"6. The submission of the learned counsel for the appellant is based upon the presumption that a valid election was held on 20th November, 1988. The Deputy Director of Education by order dated 25th September, 1991 has recorded a categorical finding of fact that none of the Committees of Management as claimed by the two rival Committees of Management was validly elected. The appellant No. 1 was claiming himself to have been elected as Manager on 20th November, 1988. He did not file any writ petition challenging the findings recorded by the Deputy Director of Education. Surendra Mani Tripathi, claiming himself to have been elected as Manager on 20th November, 1988, filed writ petition challenging the order of the Deputy Director of Education by which he had permitted the appellant No. 1 to hold fresh election. On the findings recorded by the Deputy Director of Education that no Committee of Management was duly elected on 20th November, 1988, the period of the Committee of Management which was elected on 3rd November, 1985 expired on 2nd December, 1988 and thereafter no validly elected Committee of Management existed. The period of Committee of Management is three years and one month under the Scheme of Administration. The right to hold the election of the Committee of Management and who will hold such election, is contained in the Scheme of Administration which is quoted below (translated in English)

"The term of the office bearers and members of the Committee of Management shall be three years. After the expiry of this period the office bearers may continue- for further one month. In case after the expiry of three years and within one month if duly constituted Committee of Management does not take charge the term of the old Committee of Management shall automatically come to an end and the person appointed by Regional Deputy Director of Education shall be entitled to function....."

Under the Scheme of Administration the old Committee of Management was not entitled to function after the expiry of three years and one month and this follows that the old Committee of Management was not entitled to hold the election and it was only the Authorised Controller appointed by the Regional Deputy Director of Education who was entitled to run and manage the affairs of the institution and he alone could hold the election of the Committee of Management. This question also came up for consideration before this Court in Committee of Management, Sri. Gandhi Inter College and Another Vs. Deputy Director of Education and Others, (1989) 1 AWC 23 . The Court held that if on inquiry the Regional Deputy Director of Education comes to conclusion that the election for constituting the Committee of Management was held after the expiry of terms of previous Committee of Management, such an election would be illegal.

7. Similar view was expressed in The Committee of Management, Sri Krishna Merchant Association Inter College Vs. The District Inspector of School and Others, (1992) 2 AWC 865

23. Following the above, another Division Bench in Committee of Management, Shukhpura Inter College and Another Vs. Alleged Committee of Management, Shukhpura Inter College and Others, (1998) 1 UPLBEC 379 held as follows:

"7. On careful consideration of the entire matter, we are of the considered view that the impugned judgment does not suffer from any serious illegality or infirmity which warrants interference in the appeal. The position has to be taken as well-settled that it is not open to the Committee of Management of an Institution or its office bearers to hold an election after the term of the Committee of Management has come to an end. Any order of the D.I.O.S. attesting the signature of the Manager of such invalid Committee of Management cannot cure the invalidity in the constitution of the Committee.

8. A Division Bench of this Court in the case of Prithvi Pal Tripathi and Another Vs. District Inspector of Schools and Others, (1993) 2 AWC 1028 , referring to the Scheme of Administration of the Institution, held that the term of the Committee of Management is three years one month and the right to hold the election of the Committee of Management came to an end on expiry of the said period and any election held by the Committee of Management after the expiry of the period would be illegal. Reliance was placed on the decisions in the cases of Committee of Management, Sri. Gandhi Inter College and Another Vs. Deputy Director of Education and Others, (1989) 1 AWC 23 and The Committee of

Management, Sri Krishna Merchant Association Inter College Vs. The District Inspector of School and Others, (1992) 2 AWC 865 . This Court further held that the term of the Committee of Management cannot be treated to have been extended by its remaining in effective control of the Institution and that would not empower the Committee of Management to hold the election after expiry of the term of the Committee of Management as provided under the Scheme of Administration. The validity and term of the Committee of Management has to be determined in accordance with the provisions contained in the Scheme of Administration.

9. A similar view was taken in the case of Ram Kripal Singh and Another Vs. Committee of Management, Uchchttar Madhyamik Vidyalaya and Others, (1993) 1 AWC 518 : (1993) 1 UPLBEC 344 , in which it was held that the Committee of Management, which is alleged to have been elected on 5.5.86 ceased to exist with effect from 4.6.1989 and thereafter no election can be held by such committee; thereafter the only authority who is entitled to hold election of the Committee of Management of the college is the Prabandh Sanchalak, who is to be appointed by the Deputy Director of Education. The view was reiterated in the case of Committee of Management Brig, Hoshiar Singh Memorial Inter College, Shamli and another v Deputy Director of Education, 1st Region, Meerut and others, 1994 ESC 328 (All)."

24. To underline the consistency of judicial dictum on this score one may lastly refer to the judgment of the Division Bench in Rajpati Vs. Regional Committee Vindhyachal Mandal, Mirzapur and Others; 2007 (6) ADJ 733 (DB) when again the position was reiterated in the following terms:-

4. From a perusal of the order which was impugned in the writ petition dated 9.2.2005, we find that the respondent Rajbali had taken a clear stand in paragraph 4 of his objections to the effect that the erstwhile Committee had become functus officio and, therefore, it had no right to hold any election. From a perusal of the order, we do not find any such issue having been adjudicated upon by the Regional Joint Director of Education or the Regional Level Committee and the same was clearly avoided to be answered. In our opinion, once the scheme of administration makes a provision specifying the tenure of Committee of Management without there being any provision for relaxation in favour of such Committee, then it is the Authorised Controller alone who can hold fresh elections. The outgoing Committee having continued without authority of law could not have proceeded to hold elections as it had no right in law to do so.

5. Apart from this, in the Full Bench decision referred to by the learned Judge in Committee of Management, Pt. Jawahar Lal Nehru Inter College, Gorakhpur and another v. Deputy Director of Education, Gorakhpur and others, 2004 (4) ESC 2257 (FB), it has been clearly held that once the tenure of the Committee has expired, then it is the Authorised Controller who has to take over the charge and proceed to hold elections.

6. Learned Counsel for the respondents has relied upon the decisions rendered in the case of Committee of Management, Shukhpura Inter College and Another Vs. Alleged Committee of Management, Shukhpura Inter College and Others, (1998) 1 UPLBEC 379 ; and Ram Kripal Singh and Another Vs. Committee of Management, Uchchtar Madhyamik Vidyalaya and Others, (1993) 1 AWC 518 : (1993) 1 UPLBEC 344 to urge that once the Committee had completed its tenure, it had no right to hold elections and, therefore, the impugned order of the Regional Joint Director of Education was rightly set aside by the learned Single Judge."

25. Now the District Inspector of Schools records in his order dated 27th November 2014 that the term of the Committee of Management had come to an end on 22nd August 2013. Taking a cue from this it is apparent that the term of the office bearers and the erstwhile Committee came to an end at best on 21st September 2013. What then was to follow as per the Scheme of Administration stands duly set out in the preceding paragraphs. But the narration of facts show that the District Inspector of Schools finalized the list of the general body by his order dated 11th July 2014, finalized the election programme vide his order dated 27th November 2014 and ultimately got elections convened and held albeit under the supervision of observers appointed by him on 28th December 2014.

26. The fact that the term of the Committee of Management had come to an end was not really disputed by both parties. In fact to a pointed query of the Court, Sri G.K. Singh learned senior counsel candidly admitted that even the claim of the Petitioners with respect to elections held by their faction on 28.12.2014 would have to fall. Sri Khare on the other hand sought to salvage the situation by submitting that since the election of the respondents had come to be conducted under the supervision and aegis of the District Inspector of Schools the same stood imbued by statutory control and oversight and therefore did not warrant interference by this Court.

27. The Court however is concerned more about the mandatory character of the provisions of the Scheme of Administration and the law on the subject as laid down authoritatively by this Court. More fundamentally the Court cannot lose sight of the fact that although elections set up by both factions appear to be tainted by the above illegality, the impugned order confers statutory recognition and protection to one such exercise.

28. As noted above, the term of the Committee admittedly came to an end on 22nd August 2013. In terms of the Scheme of Administration the Committee could have at best continued only for another month and therefore upto 21st September 2013. Post the aforesaid date, the existence of the Committee as a whole came under eclipse. It is nobody's case that a new Committee came into existence or stood constituted prior to the above dates.

29. Surprisingly the District Inspector of Schools in his communication dated 27th November 2014 refers to the fact that the term of the Committee had come

to an end on 22.08.2013 and yet commands it to convene and hold the elections in accordance with the list of the general body as finalized on 11th July 2014. In the opinion of this Court, no faction claiming control over the affairs of the Institution and acting through a Committee whose term had come to an end could have exercised the right or been conferred the jurisdiction to conduct and hold the elections in question. In fact it is perhaps to avoid the coming into existence of this very specie of disputes that the Scheme of Administration unambiguously provisions for an independent statutory authority to step in and aid in the transition process.

30. Coming then to the impugned order this Court finds that this aspect of the matter which was really staring all in the face was not noticed or considered at all by the Regional Level Committee. The Committee takes notice of the various steps taken by the District Inspector of Schools as also his order dated 27th November 2014. And yet chose not to advert to or confer consideration on this aspect at all. This despite the fact that the above order of the District Inspector of Schools itself recorded the fact that the term of the Committee had expired.

31. The non application of mind by the Regional Level Committee to the facts and records of the case is further evident when one notices that it refers to the order of the District Inspector of Schools dated 10.10.2012 as according acceptance to Sri Lajpat having been anointed the President. However it completely fails to notice the subsequent order dated 02.11.2012 passed by the Joint Director annulling the proceedings in which he was nominated to the office of President. This apart from the issue as to whether the said Sri Lajpat could have at all been inducted into the Committee in light of the provisions of the Scheme of Administration.

32. Secondly there is an assertion in the writ petition (in paragraph 33 thereof) that the primary membership of Ashok Kumar and Jeevan Singh had been struck off. It is asserted that their removal from the membership of the body had not been subjected to challenge before any forum. Ashok Kumar is stated to be part of the Committee of Management accorded recognition by the impugned order. The order of the Regional Level Committee records no findings on this aspect of the matter either.

33. The Court therefore comes to the conclusion that the order suffers from manifest errors of law and that the Regional Level Committee has failed to apply its mind to relevant and material facts germane to the controversy at hand.

34. Lastly the Court may deal with two submissions advanced by Sri Khare which though attractive at the outset do not commend acceptance. Sri Khare had submitted that it did not lie in the mouth of the Petitioner to assail the elections on the ground of expiry of the term of the Committee of Management as they themselves held elections on 28.12.2014. Secondly he submitted that in any view of the matter since the elections accorded recognition were held under the supervision and control of the District Inspector of Schools, the same were not

liable to be interfered with.

35. Insofar as the first submission is concerned, suffice it to state that there is no estoppel against statute. In any view of the matter, the provisions of the Scheme of Administration cannot be given a go by or overridden by the actions of interested persons. This Court is concerned with the maintenance and adherence to the rule of law. More fundamentally and as noticed above, acceptance of the above submission and negation of the challenge by the present petitioners would only perpetuate an illegality.

36. Coming then to the second submission of Sri Khare, it needs to be noticed here that the Respondents did make an effort to see that an Authorised Controller is appointed. The same was also recommended by the District Inspector of Schools. Sri Khare has also submitted that the order of the Joint Director Education refusing to appoint an Authorised Controller was not subjected to challenge by the Petitioners. Suffice it to state that the implementation of and adherence to the provisions of the Scheme of Administration cannot be left to the whim or caprice of the educational authorities. Once the Scheme provides for a particular methodology for transition the same has to be adhered to. The mere fact that the District Inspector of Schools has chosen to be associated with a particular set of elections cannot act as a protective umbrella or shield over proceedings which are otherwise contrary to the Scheme. In fact sanction to such recourse may give rise to various allegations of nepotism and bias against the educational authorities. While there may have been no challenge to the order of the Joint Director Education dated 01.11.2014 refusing to appoint an Authorised Controller, the Court can neither be a party nor provide judicial protection to an exercise which was otherwise not sanctioned by the Scheme and the law. In fact it appears that both sides took advantage of the above position and proceeded to hold their rival elections.

37. In light of the above discussion this Court is of the opinion that the impugned order cannot be sustained. Accordingly the writ petition shall stand allowed. The order of the Regional Level Committee dated 30th March 2015 shall stand quashed. The matter is remitted back to the said Committee to consider and pass appropriate further orders in accordance with law and the observations made hereinabove.