

(2014) 12 AHC CK 0217

In the Allahabad High Court

Case No : Writ C. Nos. 61863 of 2009, 63529 of 2011 and 58845 of 2014

C/M Dwarika Prasad Inter College

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-12-2014

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16A(7), 16A(7)

Citation : (2015) 2 ADJ 344

Hon'ble Judges : Ashwani Kumar Mishra, J

Bench : Single Bench

Advocate : Ramesh Chand Tiwari and Gajendra Pratap, Advocate for the Appellant; Ashish Kumar Ojha, Advocate for the Respondent

Judgement

Ashwani Kumar Mishra, J.—A short but interesting question arises for consideration of this Court in leading writ petition No. 58845 of 2014, as to whether the right to hold fresh elections, by the outgoing committee, would be available to it, only if it has been recognized by educational authorities?

2. The question aforesaid has been posed in the context of a factual scenario, where the recognized outgoing committee proceeded to hold its election, but the Regional Level Committee has not passed any order of recognition in its favour, even though the educational authorities continued to treat it as the committee of management, and fresh elections have now fallen due. Petitioner contends that fresh elections cannot be got conducted by the outgoing committee, as no order of recognition was passed in its favour, and therefore, an Authorized Controller be appointed to hold fresh elections.

3. The dispute of the committee of management, in the instant case, has a checkered history. A brief overview of the controversy, and adjudication already made, needs to be taken note of in order to appreciate the Issue. Janta Junior High School Anapur, Dashrathpur, Jaunpur, is a society, registered on 16.9.1964 under the Societies Registration Act, 1860, having its bye-laws, which runs a higher secondary school, known as "Dwarika Prasad Inter College, Dashrathpur,

Jaunpur", which is aided and recognized. The committee of management and the general body of the society and institution is one. Last admitted elections of the committee of management of the institution were held on 8.8.1993, wherein Mata Prasad Mishra was elected as President and Devtadeen Pandey was elected as Manager. The term of this committee was until 7.9.1996. The outgoing Manager, Devtadeen Pandey, claimed re-election on 1.9.1996, whereas a parallel claim was set up by Sabhajeet Pandey of election dated 31.8.1996. Both factions sought recognition. The dispute was referred to Joint Director of Education on 15.10.1996, under Section 16-A (7) of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "Act"). The Joint Director of Education, by his order dated 15.7.1997, disapproved both the elections, and appointed District Inspector of Schools to act as the Authorized Controller, with a direction upon him to have fresh elections conducted upon a list of 121 members, which was annexed with the order itself. The Assistant Registrar Firms Societies & Chits, on the other hand, passed an order dated 19.1.1998, for registration of list of office bearers, with Sabhajeet Pandey as the Manager.

4. The order of the Joint Director of Education, dated 15.7.1997, was assailed by filing Writ Petition No. 24998 of 1997, whereas the order of Assistant Registrar, dated 19.1.1998, came to be challenged by filing Writ Petition No. 4267 of 1998. Both the writ petitions were finally decided vide judgment and order dated 1.9.1998. This Court, in the context of challenge made to the order of Joint Director of Education dated 15.7.1997, observed as under:--

"In the light of the above facts, it was not only in the interest of the institution and its students but also quite apt in the circumstances that an order for appointment of a Prabandh Sanchalak, who could hold the elections, was passed and, therefore, Civil Misc. Writ Petition No. 24998 of 1997 fails."

So far as the order of the Assistant Registrar was concerned, this Court rejected the contention that dispute was required to be referred to the prescribed authority, and that Assistant Registrar had no jurisdiction to direct registration of list of office bearers and obtain renewal of registration for the society. It was further observed that the petitioner, Devtadeen Pandey, if felt aggrieved by the order of the Assistant Registrar, had the remedy to approach the prescribed authority, under Section 25(1) of the Act, with the support of 1/4th members. A further direction was issued that the Authorized Controller, already appointed, may get the elections held, on the basis of existing list of enrolled members. The aforesaid judgment, dated 1.9.1998, has attained finality, with the dismissal of Special Appeal No. 805 of 1998, filed against it, on 13th May, 2004.

5. Process of fresh elections, accordingly, got initiated, and pursuant to a query made by District Inspector of Schools, Jaunpur, the Joint Director of Education proceeded to pass an order on 28.11.1998, holding therein that the order of Joint Director of Education, dated 15.7.1997, was self-contradictory, and consequently, a direction was issued to hold fresh elections, on the basis of list of 60 members. A writ petition No. 43326 of 1998 came to be filed by Sabhajeet

Pandey, challenging the order dated 28.11.1998, wherein this Court, on 17.12.1998, permitted holding of elections, but directed that no recognition shall be granted to the elected committee, without leave of the Court. Another writ petition No. 44460 of 1998, challenging the same order dated 28.11.1998, was also filed. Two parallel elections were held on 29.12.1998. Sabhajeet Pandey claimed election on the basis of 121 members, whereas Devtadeen Pandey set up a claim of elections on the basis of 60 members. Dispute, however, could not be resolved.

6. Subsequently, upon expiry of term, fresh elections were claimed to have been got conducted on 13.11.2002, by the Authorized Controller, on the basis of 121 members, wherein Sabhajeet Pandey was declared to have been elected. The Joint Director of Education passed an order on 15th March, 2003, on the basis of orders passed by the Regional Level Committee, for attesting signatures of Sri Sabhajeet Pandey, and consequential orders were also passed on 9.4.2003 by the District Inspector of Schools, Jaunpur. However, the District Inspector of Schools, by an order dated 16.4.2003, restrained the elected committee of Sabhajeet Pandey from functioning, and by a subsequent order dated 19.4.2003, the Prabandh Sanchalak was allowed to manage the institution. Sri Sabhajeet Pandey approached the Joint Director of Education complaining against the letter of DIOS dated 16.4.2003, who called for a report from DIOS. The District Inspector of Schools submitted a report on 25th June, 2003, stating that recognition was obtained by suppressing the orders passed by High Court. The Joint Director of Education, accordingly, passed an order on 1.7.2003, appointing Principal, DIET, to function as the Authorized Controller. By a later order dated 23rd July, 2003, the Joint Director of Education appointed Senior Lecturer, DIET, as Authorized Controller in place of the Principal, and a consequential order was also passed by the DIOS on 24th July, 2003. The orders dated 23rd July, 2003 and 24th July, 2003, were challenged by filing Writ Petition No. 39207 of 2003, which was heard alongwith two previous pending writ petition Nos. 43326 of 1998 and 44460 of 1998. This Court, vide judgment and order dated 20th May, 2005, quashed the orders dated 1.7.2003, 23.7.2003 and 24.7.2003, and the petition was allowed. The judgment and order dated 20th May, 2005 was challenged in Special Appeal No. 955 of 2005, which got dismissed on 17.8.2005. Consequently, the committee through Sri Sabhajeet Pandey, elected on 13th November, 2002, continued to function as the duly recognized committee.

7. A review application No. 183720 of 2005, was also filed in Special Appeal No. 955 of 2005, which got dismissed on 2nd May, 2008, by observing as under:--

"The special appeal was dismissed on 17.8.2005, affirming the judgment of the learned Single Judge. While dismissing the appeal, the Division Bench held that no fault could be found in the impugned judgment by the learned Single Judge. The Division Bench also noticed that the election up to 2002 was held on the list of 121 members. The scope of review of the judgment is limited and is only permissible to the extent of reviewing the judgment on error as provided under

Order XLI Rule 1 Code of Civil Procedure. The review application in the present case, pertains to the election which was held on 29.12.1998. In view of the fact that the tenure of the election in issue have already come to an end and thereafter subsequent two elections in the years 2002 and 2005 have already been held, we are not persuaded to consider the various submissions raised by learned counsel for the applicant in this review application or to express any opinion on the merits of the said submissions. Suffice it to observe that as to what are the valid membership entitled to hold election, as and when is raised in any subsequent election, the same be decided by the authority competent in accordance with law after considering all relevant facts and materials.

With the observations as above, we dismiss the review application."

8. In the meantime, upon expiry of the term of elections conducted in the year 2002, fresh elections were claimed by three rival factions in November, 2005. The first claim of election was by Sabhjeet Pandey, who claimed elections on the basis of list of 121 members, the second claim of elections was of Ram Lakhan Shukla, on the basis of 60 members, whereas third set of elections was claimed by Sri Aditya Narain Tiwari, on the basis of 221 members. The Regional Level Committee accepted the elections of committee represented through Sri Sabhajeet Pandey, vide its order dated 2.6.2007, whose signatures were also attested on 21.7.2006. A writ petition No. 47314 of 2007 was filed by committee of management through its alleged Manager through Sri Aditya Narain Tiwari, which was allowed, and the order of the Regional Level Committee and subsequent order of attestation of signatures were set aside, and the matter was remitted back to Regional Level Committee to take a fresh decision, vide judgment and order of this Court dated 27.9.2007. The Regional Level Committee, pursuant to the order of this Court, proceeded to pass a fresh order on 2nd April, 2008, recognizing the elections of committee represented through Sabhajeet Pandey as its Manager, in elections dated 7.11.2005.

9. The committee of management through Aditya Narain Tiwari and Ram Lakhan Sukhla, felt aggrieved by the orders dated 2nd April, 2008, and consequently, filed Writ Petition Nos. 38672 of 2008 and 38675 of 2008, both of which got connected, and were dismissed, vide judgment and order dated 21st November, 2011. This Court rejected the challenge made to the order passed by the Regional Level Committee dated 2.4.2008. Essentially, the Court came to the conclusion that the committee, elected on 13.11.2002, which has been recognized by the Joint Director of Education on 15.3.2003, on the basis of an order passed by the Regional Level Committee, alone, had the right to hold fresh elections and the committee represented by Sri Aditya Narain Tiwari and Sri Ram Lakhan Shukla had no legal right to call for the meeting of elections. A finding was returned that process of elections conducted by any other committee, except the committee of management elected on 13.11.2002, would be in violation of the scheme of administration. While dealing with the Issue Nos. 3 and 4, it was observed by this Court as under:--

"The irresistible conclusion from the aforesaid discussion is that election conducted by the petitioners in electing their managing Committee is not authorized by the Scheme of Administration as such it cannot be clothed with any legal sanctity. It is settled proposition of law that existing Committee of management is competent under the Scheme of Administration to Institute and conclude the election process. No authority is vested on any other person to initiate and conduct the election process. As already stated herein supra the validity of the election process can always be raised by any member of the electoral college of the Society in respect of the manner in which the election process has been initiated and concluded. Unless and until the outgoing Managing Committee is displaced during its tenure in accordance with the Scheme of Administration no other body can claim itself to be legally constituted managing Committee authorized to hold election. It is only the manner of initiation and conclusion of the election process which can be a subject matter for determination.

Viewed thus, it clearly emerges that the election process conducted by the petitioner in both the writ petitions cannot be given any legal sanctity. As the process of election initiated by them was clearly in violation of the Scheme of Administration. Rival committees of Management constituted by the petitioners on the basis of the electoral colleges consisting of 60 & 221 members has not been authenticated by any competent authority nor by the managing Committee as already stated herein above. Any fresh membership or legality of existing members has to be determined by the outgoing Managing Committee six months prior to expiry of its tenure. No other authority is competent to conclude that the electoral college on the basis of which rival Committees have been constituted are legally constituted Committees.

Issue No. 3 is accordingly answered.

Issue No. 4

The plea taken by the respondents that the Regional Committee while dealing with the question of right of rival committees of management has not addressed itself to the issue raised before it. The dispute in the present case was confined to the issue as to which set of the elections is legal and valid. Petitioners had claimed that in view of the fresh election held in the year 2005 they are entitled to be recognized as lawful committee of Management who are to be put in actual control of the affairs of the Institution. While dealing with this issue, Regional Committee has held that the rival claims of the petitioners that they are duly elected Managing Committee cannot be accepted as the elections have been held in violation of the Scheme of Administration which authorizes only outgoing Managing Committee to hold such election. The plea has been raised by Mr. Shailendra that the Regional Committee has not gone into the question as to which of the electoral college was valid for the purpose of electing the Committee of Management. According to him, electoral college of 60 members continues to hold good as on today. Regional Committee was not required to go into this

question as the validity of electoral college of 121 members had already been affirmed by this Court in its judgment stated herein above and on the basis of that electoral colleges Managing Committee 2002-05 was constituted regarding which there is no dispute. It was this body alone which was competent to hold the election for 2005-08. The contention raised by Mr. Gajendra Pratap Singh is that the Regional Committee was required to declare the election as void in view of the finding recorded by this Court as the same have been held fraudulently. Regional Committee has specifically dealt with this issue by stating that mode of communicating the election schedule has been done through the publication which is sufficient compliance with the Scheme of Administration. This issue has already been discussed herein supra.

For the reasons stated above, I find no merit in the writ petition. The writ petition is liable to be dismissed and is hereby dismissed. No order as to costs."

10. The judgment dated 21.11.2011 has been challenged by filing Special Appeal No. 2539 of 2011, which has been admitted on 2.1.2012, is pending consideration.

11. The committee elected in the year 2002 was recognized, and the challenge made to it, had not succeeded. So far as the elections conducted by the outgoing committee in the year 2005 is concerned, the issue stands adjudicated by the Hon"ble Single Judge, vide judgment and order dated 21.11.2011, against which, although a special appeal has been filed and admitted, but no interim orders have been passed. It is well settled that mere entertaining of appeal does not amount to passing of an order of stay, and consequently, the finding returned in the judgment and order dated 21.11.2011 continues to operate with full force. The committee, elected on 13.11.2002 and again re-elected on 7.11.2005, was again recognized, pursuant to the elections dated 16.11.2008, by the order of Joint Director of Education dated 26.10.2009. A consequential order of DIOS was also passed. The order dated 26.10.2009 has been challenged by the committee of management through its alleged Manager Sri Aditya Narain Tiwari, by filing Writ Petition No. 61863 of 2009, on the ground that claim of parallel elections of the petitioner has been wrongly discarded. The petitioner committee thereafter filed another Writ Petition No. 63529 of 2011 with the prayer to direct the Joint Director of Education to decide the issue of electoral college and validity of list of members, in accordance with the observation made on 2.5.2008, in the review application, and to hold consequential elections.

12. The term of the committee elected on 16.11.2008, was to expire in November, 2011, and consequently, fresh elections by the recognized outgoing committee was conducted on 13.11.2011. The recognized outgoing committee claimed re-election of Sabhajeet Pandey. Two parallel claims were again set up by Aditya Narain Tiwari and Ram Lakhan Shukla, of elections held on the same date. The basis of claim for the three parallel elections on 13.11.2011, appears to be the same i.e. Sri Aditya Narain Tiwari's election on the basis of list of 221 members, Sri Ram Lakhan Shukla on the basis of 60 members, and Sri

Sabhajeet Pandey on the basis of 121 members. Precisely, this very dispute in the context of same factual scenario cropped up in the year 2005, which was decided by this Court on 21.11.2011. The DIOS referred the matter to Regional Level Committee on 12.6.2012. Thereafter, Writ Petition No. 60243 of 2013 was filed, without bringing on record the judgment dated 21.11.2011, and without impleading the recognized committee, for a direction upon the Regional Level Committee to decide the issue of rival election dated 13.11.2011. The writ petition was disposed of on 30.10.2013, with a direction to the Regional Level Committee to conclude the proceedings within three months. The records, however, go to show that the matter is still pending at the level of Regional Level Committee, wherein 17.11.2014 is the next date fixed by the order of Joint Director of Education dated 16.10.2014. This order also states that previous proceedings were all deferred due to non-appearance of the petitioner.

13. Sri Sabhajeet Pandey, elected and recognized as Manager on 13.11.2002, 7.11.2005, 16.11.2008, and thereafter re-elected on 13.11.2011, sought recognition, which is pending consideration before the Regional Level Committee. An election programme has also been published fixing 10.11.2014, as the date for holding of election. It is at this stage that the leading Writ Petition No. 58845 of 2014 has been filed, with the prayer to appoint an Authorized Controller, who may hold election of the committee, in accordance with the scheme of administration, after deciding the issue of membership. A further prayer has been made to restrain the respondent committee from proceeding to hold the scheduled elections.

14. With the consent of learned counsel for the parties, all the aforesaid three writ petitions have been heard together, and are being decided together by this common judgment.

15. I have heard Sri Gajendra Pratap, learned Senior Counsel, assisted by Sri R.C. Tiwari, learned counsel for the petitioners, learned Standing Counsel for the State of U.P. and its Educational Authorities, and Sri R.K. Ojha, learned Senior Counsel, assisted by Sri N.K. Chaturvedi, learned counsel appearing for the respondent committee of management represented through its Manager Sri Sabhajeet Pandey.

16. Sri Gajendra Pratap, learned Senior Counsel, appearing for the petitioner, states that the elections of the committee of management with Sabhajeet Pandey as its Manager, held for a period of three years in the year 2005, is subjudice in Special Appeal No. 2539 of 2011, whereas subsequent election held by the same committee on 16.11.2008, is subjudice in Writ Petition No. 61863 of 2009. The elections conducted, thereafter, on 13.11.2011, has not been recognized, and the matter is pending consideration before the Regional Level Committee. He, therefore, submits that the committee of management represented by Sabhajeet Pandey, is not the recognized outgoing committee, and thus, has no right to hold fresh elections, particularly, as dispute in respect of the previous elections are already pending, and thus, Sri Sabhajeet Pandey has no

right to hold elections, for which election programme has been published by him. He contends that there exists a bona fide dispute as to which of the three committee of management is the valid committee, and in the absence of any recognition granted to the elections dated 13.11.2011, it has no right to hold the elections. He submits that in this factual scenario, it is only the Authorized Controller, who can hold elections, after determining the issue of membership. He submits that the committee of management, as a body, performs various statutory and non-statutory functions, and in the absence of grant of recognition to it, it can have no jurisdiction to discharge functions assigned to the committee, which includes the obligation to get fresh elections conducted.

17. In support of the submissions, aforesaid, reliance has been placed upon the scheme of administration of the institution, which provides that the term of the committee and its office bearers shall be of three years, and if the new committee does not take over charge, within a month thereafter, then the outgoing committee shall become time barred after three years and one month, and the Deputy Director of Education shall appoint an Authorized Controller, who shall have the powers of committee of management of the institution. The scheme further provides that the Authorized Controller, so appointed, shall ensure immediate handing over of charge to the committee, and in case of a dispute, the decision of the Regional Deputy Director of Education shall be final. Relevant portion of the scheme, which provides the procedure and manner of constitution of committee, and the resolution of its dispute, is reproduced:--

18. It is contended by Sri Gajendra Pratap, learned Senior Advocate, that as no recognition has been granted to the committee elected after 2008, the mere fact that the respondent committee continues to perform the functions of the committee is of no consequence, in the absence of an express order of recognition passed in its favour. It is also contended that a dispute in the context of elections held in November, 2011, has already been referred to Regional Level Committee, which is pending consideration, and therefore, unless the dispute gets resolved by the Regional Level Committee, the respondent committee cannot be allowed to function or perform the duties of a committee of management. Reliance has been placed upon the decisions of the Apex Court reported in Nand Deo Pandey Vs. Committees of Management and others, ; 1990 (1) UPLBEC 339(D.B.), (Committee of Management of Shri Nehru Intermediate College, Rohi, Varanasi and another v. District Inspector of Schools, Varanasi and another); Committee of Management, Intermediate College and Others Vs. The Joint Director of Education, Gorakhpur Region and Others, ; 1993(1) ACJ 193 (Committee of Management, Gangadin Ram Kumar Inter College, Jaunpur v. Deputy Director of Education, Vth Region, Varanasi & Ors.); Committee of Management, Panchayat Raj Inter College and Another Vs. State of U.P. and Others, ; 1991 (2) UPLBEC 1183 , (Committee of Management, Jangali Baba Intermediate College Garwar, District Ballia and another v. Deputy Director of Education, Vth Region, Varanasi and others); 1994 (3) UPLBEC 1728, (Committee of Management, Brig. Hoshiar Singh Memorial Inter College, Shamli

and another v. Deputy Director of Education, Ist Region, Meerut and others); and Committee of Management, Shri Kashi Raj Mahavidyalaya Aurai and Another Vs. Dy. Director of Education, Vth Region and Others, .

19. Sri R.K. Ojha, appearing for the respondent committee of management, on the other hand, submits that the dispute of committee of management stood resolved with recognition granted to the elections dated 13.11.2002 with Subhajeet Pandey as its Manager, and such position was restored by this Court, vide judgment dated 20.5.2005. Subsequent claim of elections of the year 2005 has also been decided in favour of committee with Sabhajeet Pandey, as its Manager. He submits that dispute raised by the petitioner was rejected by this Court, vide judgment dated 21.11.2011, and thereafter the only remedy available for the petitioner is to press the pending special appeal No. 2539 of 2011, and it is not open for the petitioner to raise the same question all over again, just because fresh term of committee has started. It is stated that it is not a case of subsequent accrual of fresh cause for the petitioner, rather, it is the same question/issue of membership, already decided by this Court on 21.11.2011, which is again sought to be reopened. Such challenge, according to the respondents, is opposed to public policy. He submits that in view of the existence of judgment dated 21.11.2011, the petitioner cannot seek revival of the same issue, just because the recognized committee got re-elected, after the term of previous committee, has expired. He submits that same dispute is being raised, time and again, by the same petitioner, which is frivolous and is not maintainable. He submits that the committee of management with Sabhajeet Pandey as Manager has been continuing since 2002, and all functions of the committee of management are being performed by it, with the express consent of the educational authorities. Sri Ojha also contends that the payment of salary to the teachers and employees of the institution are also being disbursed under the signatures of Sri Sabhajeet Pandey. It is, therefore, contended that for all practical purposes, the committee of management with Sri Sabhajeet Pandey as Manager stands approved/recognized, and is in actual control of the management, and the mere fact that no specific order of recognition has been passed, is not material. He submits that the educational authorities have already rejected the claim of the petitioner, and only course open for the petitioner is to approach the competent civil court, for an appropriate adjudication of the dispute raised, and filing of successive writ petition, upon the expiry of the term, raising same grievance, is not maintainable. Sri R.K. Ojha, further submits that petitioner Aditya Narain Tiwari is a complete stranger, and is not even a member of the general body, and has no right to maintain the writ petition.

20. Sri Gajendra Pratap, learned Senior Advocate, appearing for the petitioners, submits that in the context of the facts of the present case, this Court is required to determine the meaning or legal status of an "out going committee" of the institution and its right to hold next periodical elections under the scheme of administration. As per him, the out going committee would not include a committee, though continuing to discharge the functions of the elected

committee, if it is in dispute, and is still awaiting adjudication/recognition by the competent authority.

21. In order to appreciate the rival contentions advanced, it would be expedient to refer to Section 16-A of the U.P. Intermediate Education Act, which requires that there shall be a scheme of administration for every recognized institution. The manner of constitution of the committee of management is specified and regulated by the provisions of the Scheme of Administration. The principles, which are to be incorporated in the scheme of administration, are also specified, and it also requires approval of the competent educational authority. Scheme of administration, therefore, is framed under the Act, but such scheme itself is not statutory in nature. Nevertheless, the provisions of the Scheme are binding upon the committee, which owes its existence to the scheme itself.

22. The right to participate on the management of educational institution is a civil right. The constitution of committee of management, therefore, is a private affair of a non-statutory body, governed by its scheme of administration. The committee, therefore, has to be constituted strictly in accordance with the provisions of its scheme of administration, and the true intent of the scheme of administration, therefore, will have to be seen to find the answer to the question raised.

23. In the present case, the scheme provides that there shall be a general body of the institution, which shall consist of founder member/patron/life members and ordinary members. The term of an ordinary member is to be 3 years. The manner of enrolling a member has also been provided. The elected committee is to have a term of 3 years and the office bearers would continue for a further period of one month, and if a newly elected committee does not assume charge, then the previous committee shall be time barred and authorized controller shall be appointed by the Deputy Director. The authorized controller shall have all powers of the committee, and he shall ensure handing over of charge to the elected committee, and dispute of committee shall also be resolved by the Deputy Director of Education.

24. Clause-3 of the scheme of administration provides that six months prior to the expiry of the term of the committee, the general body shall determine the manner of enrolling new members, and shall be published in local news papers. The manager shall issue receipt of membership fee. Three months prior to the election, the list of members shall be got approved by the committee of management of the institution and shall be sent to the members and in case the committee does not accept to enroll a member, then the decision of the general body shall be final. It is also provided that proceedings aforesaid would have to be intimated to the District Inspector of Schools and the Deputy Director of Education. The scheme, thereafter, provides that two months prior to the expiry of the term, the out going president/manager shall determine the date of election, which shall be intimated by publication in the news paper, approved by the District Inspector of Schools and the members shall be informed by

communication sent vide registered post. However, if members are more than 200, then in addition to publication in local news paper, intimation by ordinary post shall be sufficient. In the publication, with regard to holding of election, the date of receiving nomination, its scrutiny, withdrawal of nomination and the date, time and place of election is required to be specified. The scheme further provides that it shall be the manager and the president who shall call the meeting of general body for holding the election. In case they failed to do so, then 1/3rd members of the general body can approach the president and the manager to call the meeting and if such a meeting is not held by them, then with the approval of the inspector, a meeting of the general body could be called.

25. The scheme aforesaid casts an obligation upon the elected committee of management, in control, to initiate the process of holding fresh election, in the manner specified in the scheme of administration. It is, therefore, upon the committee, which is in actual control of the institution and is performing the functions and duties of the committee of management, which is to undertake the task of getting the fresh election conducted. This is so, as the procedure which is to be followed for holding of the fresh elections, can only be undertaken by the committee, already in control of the institution.

26. The scheme of administration does not state that the out going committee, which is to take steps for holding fresh elections has to be the committee, which is already recognized by the educational authorities. There is no such contemplation in the scheme of administration nor there exists such a provision in the Act. In the absence of any contemplation, in the scheme of administration itself, requiring existence of recognition before it could hold elections, such a requirement cannot be read in the scheme.

27. It is not in dispute that the committee of management with Sabhajeet Pandey, as its manager, has been continuing since 2002 and all functions and duties of the committee of management are being performed by it, though an order of recognition, on the basis of elections dated 13.11.2011, has not been passed as yet, and the matter is pending before the Regional Level Committee. It is undisputed that the educational authorities have allowed the committee with Sabhajeet Pandey as its Manager to perform the functions assigned to the committee of management under the provisions of the U.P. Intermediate Education Act and also under the Payment of Salaries Act. While adjudicating the dispute of rival elections held in the year 2005, this Court vide judgment dated 21.11.2011 was pleased to observe that it is the outgoing committee managing the institution, which alone had the right to conduct fresh elections, and for such reason, the election of the committee represented Sri Sabhajeet Pandey was held to be valid, and the elections conducted by the present petitioner and the other function was disapproved.

28. The petitioner had come up with a claim of parallel election dated 13.11.2011, on the strength of 221 members. Its claim is based upon a separate set of members, constituting the general body. The dispute raised by the

petitioner in the context of elections held in the year 2005, and in all subsequent terms, have never been recognized nor the petitioner has ever discharged the functions of the committee of management. The dispute, in the facts of the present case, is as to which of the three rival committee has the right to manage the institution.

29. Full Bench of this Court in the case of Committee of Management v. Deputy Director of Education, 1996 AWC 1788, had the occasion to consider the powers of the Regional Director of Education under Section 16-A(7) of the Act. Full Bench came to the conclusion that the exercise of power by the Regional Deputy Director of Education, is summary in nature, and does not amount to exercise of judicial power, and thus, is not a Tribunal or a Court. The subsequent Full bench judgment of this Court in Committee of Management, Pt. Jawaharlal Nehra Inter College and Another Vs. Deputy Director of Education and Others, , did not endorse the view that the functions performed by the Deputy Director is an administrative act, yet, it was held that exercise of power was summary in nature. The later Full Bench observed as Under:--

"35. Control is a comprehensive term. Ordinarily it means the powers to govern, dominate, direct and supervise in some respect the conduct of another, the extent and degree of dominion depending upon the circumstances of the particular case. Where the enquiry is with regard to " actual control" and the statute prescribes the method of the inquiry and the factors to be considered in termination of the dispute, the authority vested with the powers to decide the question must confine its powers to the relevant factors, keeping in view the object and purpose of such determination. We find that the purpose of determination under Section 16-A (7), is to find out as to who, prima facie, is entitled to manage and administer the educational institution. The " Scheme of Administration" provides for the procedure for constituting the Committee of Management by periodical elections. It also provides for qualification and disqualification of the members and office -bearers and the terms of the office and the procedure to call and to conduct the meetings. In our view, the Deputy Director of Education in such matter must investigate about the validity of the election of the office-bearers. This enquiry, however, is to be summary in nature and is subject t o the final decision of the Court of competent jurisdiction."

30. In the present case, this Court finds that the dispute which has been raised by the parties, had been the subject matter of consideration by the educational authorities and ultimately by this Court on previous occasions. This Court, vide judgment dated 20.5.2005 and the subsequent judgment dated 21.11.2011, had accepted the claim of committee with Sri Sabhajeet Pandey as its Manager, and the claim of petitioner was not accepted. It is the same recognized committee, which has been re-elected and is continuing. A prima-facie consideration of dispute has taken place at the level of the educational authorities, which has been approved by this Court. The tendency to re-agitate the same dispute, at the end of each term, which has already been adjudicated earlier, is not a healthy

practice and cannot be encouraged.

31. However, it cannot be disputed that in respect of the election dated 13.11.2011, the Regional Level Committee has not yet taken a decision. Subsequent elections of the year 2014, also have been held, and the Regional Level Committee would be required to take a decision, keeping in view the earlier orders passed by this Court, and the provisions of the scheme of administration. In such circumstances, this Court is not inclined to accept the prayer of the petitioner to appoint an Authorized Controller for holding of fresh elections. Instead, the Regional Level Committee is liable to be directed to take a decision in the matter relating to grant of recognition of the elections held.

32. The claim of petitioner of constituting a valid committee, based upon an electoral college, consisting of 221 members, has been rejected upon a prima-facie adjudication by the educational authorities. A writ petition filed by the petitioner, against it, has already been dismissed. The petitioner has preferred a Special Appeal, which is pending consideration. The proper course, for the petitioner, in such circumstances, would be to press the pending special appeal or obtain appropriate declaration from the Civil Court. Filing of successive claim, on the same basis, at the commencement of new term, is not the proper course.

33. The Committee of management, as a private body, gets constituted, in accordance with the provisions of the scheme of administration, and if the terms of the scheme do not contemplate a requirement of a specific order of recognition, before the out going committee, in control of the institution, proceeds to conduct fresh elections, such requirement cannot be read into it. A broad proposition, as canvassed on behalf of the petitioner, suggesting that only a recognized committee can get fresh elections conducted, therefore, cannot be accepted.

34. Learned counsel for the petitioner has relied upon the decision of Hon''ble Supreme Court in Nand Deo Pandey Vs. Committees of Management and others, , wherein the Principal of the institution was being proceeded departmentally by the committee of management. The service conditions of the Principal were governed by the provisions of U.P. Intermediate Education Act, 1921, as well as U.P. Secondary Education Service Commission Act, 1982. Hon''ble Apex Court noticed that the District Inspector of Schools had found that the managing committee had seized to be a valid committee due to non renewal of the registration of the society and non holding of periodical elections and a dispute was pending before the Sub Divisional Magistrate and the Deputy Director of Education. The educational authorities themselves had not recognized the committee of management and it was in this factual backdrop that the Hon''ble Supreme Court was pleased to hold that the petitioner is entitled to urge that the committee, which is proceeding to inquire into his conduct, should be properly constituted committee of management of the institution. It is but obvious that a statutory function cannot be performed by the committee unless it is duly constituted. However, the judgment, does not appear to have any

applicability upon the facts of the present case, where the fresh elections have been held, and the authorities continue to recognize the elected committee of Sri Sabhajeet Pandey. This Court, in taking of such a view, is fortified by the judgment of the Division Bench of this Court in Committee of Management v. Joint Director of Education, 2005 (2) ESC 1523.

35. Reliance has also been placed upon a decision reported in 1991 (2) UPLBEC 1183, where the Division Bench of this Court dealt with a controversy regarding the taking over charge by the elected committee of management. This decision of the Division Bench has been the subject matter of consideration by subsequent decisions of this Court in Committee of Management, Lakhori Inter College and Another Vs. District Inspector of Schools, Moradabad and Others, ; and 2010 (2) ADJ, 470. Para-38 of the judgment reported in 2010 (1) ADJ 262, which has subsequently been followed in 2010 (2) ADJ 470. Para Nos. 38 to 40 are reproduced:--

"38. In Committee of Management, Lakhori Inter College and Another Vs. District Inspector of Schools, Moradabad and Others, (by Hon"ble S.K. Singh, J.), clarifying position regarding the term "taking over charge", after referring to Committee of Management, Jangali Baba Intermediate College (supra) and another Division Bench decision in Committee of Management v. Dy. Director of Education & others (1995) 1 UPLBEC 149; Committee of Management Brij. Hoshier Singh Memorial Inter College, Shamli (supra), His Lordship observed as under:

"In both the cases aforementioned, it was held that commencement of the term of the committee of management was not dependent on attestation of signature by the DIOS but at the same time, the Court did recognise that the term of the committee in a given case may begin to run from the date the elected committee of management takes over charge of the management. It would depend upon the facts of each case that whether term of committee of management will begin from the date of election or from the date of taking over charge. In a case where the affairs of the college are manage by the Committee which holds the elections in accordance with the scheme of administration, before expiry of its term, the newly elected committee of management will begin to run not from the date of election but from the date of taking over charge of the management after expiry of the term of the outgoing committee."

39. We find ourselves in respectful agreement with the above observations.

40. The above discussion makes it clear that the term of Committee of Management would commence when the Committee of Management starts functioning as a result of the election. If a Committee of Management which is already existing and the same Officer Bearers have come to be elected in the new election, if the election has been held after expiry of the term of the earlier Committee of Management, the newly elected Committee of Management can start function from the date its result is declared but where Office Bearers are

different, for newly elected Committee of Management the same can be said to have taken over charge after the term of the earlier Committee is over and newly elected Committee is allowed to function. However where the newly elected Committee of Management is not able to function not on account of any lapse on its part, but for the reasons beyond its control, namely, some order issued by the educational authorities restraining it from functioning or an order by the Court or similar other circumstances, the term of the Committee of Management would commence after it takes over charge and starts function. We make it clear that there may be a case where despite of a new election having taken place, the term of the earlier Committee of Management is over, and, in the absence of any prohibitive order by any competent authority, Committee of Management newly elected does not take any step on its own to take over charge of the management of the College, in that case we are clearly of the view that the lapse on the part of the newly elected Committee of Management would not give it any advantage to differ or postpone the commencement of the period inasmuch it cannot be allowed to take advantage of its own wrong but where despite of efforts etc., the rival Committee or the Authorised Controller, as the case may be, has not permitted the newly elected Committee of Management to function, in that case the dictum as laid down above that the term would commence from the date of taking over the charge would apply."

36. In the facts of the present case, the committee constituted, pursuant to election dated 13.11.2002, has been continuing. In view of the law laid down, the respondent committee has through out functioned as recognized committee, and has continued, pursuant to re-election. The mere fact that an order of recognition has not been passed, has no significance, as the committee continued to remain in control, and is performing functions of the Committee of Management, including those assigned to it by law. It is settled that commencement of the term of newly elected committee of management does not depend upon the grant of recognition by DIOS.

37. Learned counsel for the petitioner has also placed reliance upon a judgment in Committee of Management v. District Inspector of Schools, 1990 (1) UPLBEC 339, wherein an order under Section 5(1) of the Payment of Salaries Act, 1971, had been passed by the District Inspector of Schools on the ground that dispute in committee of management has arisen, which had been referred to the Deputy Director of Education under Section 16-A(7) of the Act. This Court found no infirmity with the action, for the reason that there was no recognized management of the institution and the continuance of the out going manager, after expiry of the term, was held to be irrelevant.

38. Sri Gajendra Pratap, learned Senior Advocate has laid emphasis on the aforesaid judgment and contends that on the facts of the present case also, the Manager has been continuing pursuant to the recognition granted for the previous term and the issue of grant of recognition for the present term is pending before the Regional Level Committee. Though, the argument appears

attractive at the outset, but in the facts of the present case, a deeper scrutiny would render it unacceptable, for the reason that the educational authorities themselves have not passed any order of single operation, and rather the outgoing committee has been continuing and discharging all functions of a committee. The alleged dispute, which is claimed by the petitioner, has already been prima-facie adjudicated by the educational authorities, against the petitioner, which has not been interfered with by this Court. In such circumstances, the ratio laid down by the Division Bench would not be applicable upon the facts of the present case. In the present case, the educational authorities have allowed the Committee of Management to continue, being in actual control, and though subsequent elections have been referred to the Regional Level Committee, but for all practical purposes, the petitioner continues to exercise powers of a re-elected committee in actual control over the institution.

39. At this juncture, it would be appropriate to refer to another Division Bench judgment of this Court in Committee of Management Sri Kashiraj Mahavidyalaya Inter College and Dwarika Nath Dubey, Manager, Committee of Management of Kashiraj Mahavidyalaya Inter College Vs. Joint Director of Education, Vindhyaachal Region, District Inspector of Schools, Jai Narain Pandey and Daya Shankar Singh, which has greater similarity on the facts with the present matter. The Division Bench, after noticing the views expressed by the learned Single Judge, under challenge therein, examined the question in Para Nos. 5 to 15, 20, 21 and 22, as under:--

"5. In the impugned judgment learned Single Judge observed:

"It is well settled that once the term of committee of Management expires it becomes defunct and can not continue to Junction as Committee of Management unless fresh election is recognized by the authorities in such a situation it is always open to the Joint Director of Education to appoint Prabandh Sanchalak in the Institution to look after the affairs of the Institution."

The preposition, "It is well settled that once the term of Committee of Management expires, it becomes defunct....." without referring to specific provision of U.P. Intermediate Education Act, Regulations framed thereunder or the "Bye laws" of the Society owning the College or particular provision of duly approved Scheme approved Scheme to" Administration of the College (contemplated under UFIE Act), is too wide to entertain in law Respondents" counsel has also failed to show us any statutory provision to support the above preposition or any provision contemplating such a situation under legal fiction.

6. With respect, we are unable to subscribe to the above "settled" preposition Such an observation is neither contemplated in law nor there is Judicial precedent to that effect Such a conclusion is perverse and conjectural.

7. On the contrary, in absence of a specific statutory provision, a Committee of Management of a College shall not be rendered defunct even after its normal term is over. Office bearers of an out going COM of college, normally continue to

discharge functions till new COM is constituted and takes charge.

8. In the present case, we find educational authorities, (DIOS, Joint Director, etc.). the concerned banks, students-Guardians, members of teaching, Non-Teaching staff as well as respondent Nos. 3 and 4 themselves raised no objection to the working of appellants COM and treated it as de-facto COM, continued to deal with it as valid COM, which apparently has complete control and charge of the affairs of the college. This aspect can not be over looked, Sweeping observation in the impugned judgment in writ petition is devoid of merit and without basis.

9. Otherwise also, to conceive that Management of the College may be treated in, "abstract" or "vacuum" is not practical approval of permissible in law. Management of College, its staff and students, its assets movable and immovable, its funds Bank Account etc. can not be expected to be in air. Doctrine of "De facto" existence and working of COM is attracted.

10. No one, in the present case, claimed appointment and working of Authorized Controller as COM of the College. No legal provision brought to our notice contemplating automatic appointment of Authorized controller.

11. Where normal term of a Committee of Management comes to an end while educational authorities also fail to appoint Prabandh Sanchalak and on the other hand, old COM continues to control and manage the College (and all concerned deal with it as such), law recognizes its existence as "De facto Management".

12. Law does not permit abstract preposition which is froth with practical anomalies, viz. rendering uncertainties and as a consequence of it leaving management of college in lurch. Teaching and non teaching staff, students, educational authorities etc. (responsible to ensure payment of salaries to its employees, and disciplinary control over its staff, students and protect college assets) shall all be seriously jeopardized. All these various aspects, need to be kept in mind.

13. Learned Counsel for the appellants (petitioners) placed reliance upon following decisions:

(1) Committee of Management, Brig. Hoshiar Singh Memorial Inter College, Shamli and Anr. v. Deputy Director of Education, Ist Region, Meerut and Ors. (1994) 3 UPLBEC 1728) in which a Division Bench of this Court vide para 4 of the reported judgment observed:

"..... Taking over the charge" of the College by the newly elected committee is not dependent on the recognition by the D.I.O.S. The term of the newly elected Committee begins immediately on the expiry of the term of the outgoing Committee and if the Committee of Management is not elected before the expiry of the term of the outgoing Committee, Regional Deputy Director of Education is required by the Scheme itself to appoint an Administrator for holding election of a new committee and till then to manage the affairs of the college. It is thus,

obvious that commencement of the term of the newly elected Committee of Management does not depend on the recognition by the D.IOS. Recognition and attestation of the signature of the manager of the newly elected Committee is only for the purpose of payment of salary of employees of the College..... ""

14. The relevant extract of para 5 of the case reported in Committee of Management, Jangali Baba Intermediate College Gurwar District Ballia and another v. Deputy Director of Education Vth Region, Varanasi and Ors., (1991) 2 UPLBEC 1183 is as below:

"..... Attestation is only for the purposes of distribution of salary under the payment of Salary Act. It is true that the functioning of the committee of Management is varied and is not confined merely for the purposes of distribution of the salary and thus the attestation of the signatures by the District Inspector of Schools could not be the starting point of the life of the Committee of Management..... "

It has been consistently held by Courts, as is evident from the aforementioned decisions on that functions of Committee of Management are not dependent upon "attestation" of signatures by District Inspector of Schools which is for operating "salary payment" account under Payment of salaries Act, 1971. It is only one of the obligations of COM. Otherwise COM and its Manager are obliged to deal with and perform many functions and duties in law including operation of Bank accounts viz. Boys fund, Maintenance fund, which require no attestation Manager's signatures by DIOS.

15. The learned Single Judge further went on to observe " in such a situation it is always open to the Joint Director of Education to appoint Prabandh Sanchalak in the Institution to look after the affairs of the Institution."

20. We fail to appreciate that said observation which suffers from manifest contradiction. The learned single judge refers to no legal fiction wherein a committee of management, after its term is over, be automatically ceases or gets extinct automatically. The learned single Judge, interestingly noted that salary (to the staff of the college) was paid through the appellant COM. As noted above, College is on grant in Aid, and provisions of U.P. High Schools and Intermediate Colleges (Teaching and Other Staff) Payment of Salary Act 1971 are applicable to the College. This indicates that the appellant- COM/Manager, in practice and day to day working, for all intents and purposes was recognized and dealt with as such by the Educational Authorities and others concerned, e.g. Teachers, other employees and students etc..

21. The learned Single Judge has referred to the case of Nand Deo Pandey Vs. Committees of Management and others, .

22. We have carefully perused the said judgment and find that the case of Nand Deo Pandey (supra) is distinguishable. Perusal of paras 5 and 6 of the said reported judgment shows that there was impending dispute between two rival

groups claiming right to function as "Committee of Management". There is also nothing in the said reported decision to show that anyone of them was in de facto control or otherwise recognized or dealt with as COM of college in question by educational authorities."

40. Since the claim of the petitioner for elections, based on 221 members conducted in November, 2005, has been, prima-facie, adjudicated by the educational authorities in summary proceedings vide order dated 3.4.2008, which has not been interfered with by this Court as well, as such, it could not have raised a fresh claim of parallel elections in the year 2008. The challenge made by the petitioner to the order passed by the Regional Level Committee dated 26.10.2009 in Writ Petition No. 61863 of 2009, is, thus, wholly misconceived. The Regional Level Committee had found that elections had been conducted by the outgoing committee, which has been recognized by the Regional Level Committee vide order dated 2.4.2008, in the presence of the observer, appointed by the DIOS. The Regional Level Committee rightly held that once the claim of the elections by petitioner Aditya Narain Tiwari had been rejected on 2.4.2008, by the Regional Level Committee, he has no right to hold a parallel elections on the basis of same 221 members on 16.11.2008. Although, it has been argued that the order aforesaid has been passed in violation of the principles of natural justice, but all such issues may not be gone into by this Court, in view of the fact that a previous claim of the petitioner had been considered and rejected, vide order dated 2.4.2008, which was not interfered with by this Court vide judgment dated 21.11.2011. In such circumstances, petitioner had no right to conduct fresh elections on 16.11.2008 and the decision of the Regional Level Committee, dated 26.10.2009, suffers from no infirmity. No interference is, therefore, called for, by this Court, in Writ Petition No. 61863 of 2009.

41. Reliance has also been placed upon a judgment of this Court in Committee of Management, Panchayat Raj Inter College and Another Vs. State of U.P. and Others, . In Para-8, the Hon"ble Single Judge of this Court was pleased to observe that the claim of fresh elections are awaiting consideration by the Regional Level Committee and, therefore, the District Inspector of Schools, if had passed an order of Single Operation, no fault can be find with it. I am in respectful agreement with the ratio laid down in the aforesaid judgment, but in the facts of the present case, the petitioner cannot derive any benefit from it, inasmuch as the educational authorities have already, prima-facie, adjudicated the claim of the petitioner, and have for all practical purposes allowed the respondent committee to remain in effective control. From the record, it further transpires that the non-consideration of claim with regard to grant of renewal, is apparently due to delaying tactics adopted by the petitioner himself, and the petitioner, therefore, cannot be allowed to built a case on account of it.

42. In view of the discussions made above, I am of the opinion that the petitioner has no right to object to the holding of fresh elections by the

respondent committee of management and its prayer to appoint authorized controller cannot be sustained.

43. Admittedly, the elections of the respondent committee, conducted on 13.11.2011, is awaiting consideration for grant of recognition by the Regional Level Committee. Fresh elections in November, 2014 have also been held, which would also require consideration of the Regional Level Committee, for the purposes of grant of recognition. The Regional Level Committee shall have to examine as to whether the elections, under consideration, have been conducted, in accordance with the provisions of the Scheme of Administration and in accordance with law. In such circumstances, it would be appropriate to direct the Regional Level Committee to examine the issue of grant of recognition, pending before it, pursuant to the elections dated 13.11.2011, as well as the elections proposed on 10.11.2014, and pass a reasoned and speaking order, in accordance with law, within a period of six weeks from the date of presentation of certified copy of this order, after hearing the parties concerned, keeping in view the observations made above.

44. Subject to the observations and directions, made above, the writ petition Nos. 58845 of 2014 & 63529 of 2011 are disposed of, and writ petition No. 61863 of 2009 is dismissed.