

(2018) 02 AHC CK 0042
In the Allahabad High Court
Case No : 51652 of 2017

C/M Kanya Pathshala Association

APPELLANT

Vs

State Of U.P. & Ors.

RESPONDENT

Date of Decision : 06-02-2018

Acts Referred:

[Societies Registration Act, 1860](#), [Section 25](#) of [Section 25\(1\)](#), [Section 25\(3\)](#) -
Uttar Pradesh Intermediate Education Act, 1921, Section 7, Section 16(a), Section 16-A(7)

Citation : (2018) 02 AHC CK 0042

Hon'ble Judges : Sunita Agarwal

Bench : Single Bench

Advocate : Ashish Mohan Srivastava

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.
2. The present petition is directed against the order passed by the prescribed authority, Dibai, Bulandshahar on 18.09.2017 whereby the application moved by the petitioner raising dispute regarding maintainability of the reference had been rejected. The reference made by the Deputy Registrar vide communication dated 29.07.2016 is also under challenge.
3. The facts in brief relevant to be noted here are that the Society namely Kanya Pathshala Association Dibai is running an intermediate institution in the name and style of Sri Krish Jaju Kanya Inter College, Dibai, Bulandshahar. It was registered on 12.08.1929 and the last registration was renewed for a period of 5 years w.e.f 10.10.2015. The said institution is recognized by the Madhyamik Shiksha Parishad, U.P. Allahabad and is receiving grant in aid from the State Government. It is amenable to the provisions of U.P. Intermediate Education Act 1921 (in short Act" 1921) as also the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees)

Act" 1971 (in short Act" 1971). The Scheme of Administration of the petitioner's society for running the institution has been approved by the Deputy Director of Education, Meerut Region Meerut.

4. At the outset, it is noteworthy that there is one elected committee of management which is managing the society and the institution both. The elections of committee of management are held as per the approved "Scheme of Administration" from amongst the members of the General body of the society who would form the electoral college. It appears that an election dispute arose between two factions. The respondents Sri Om Prakash Maheshwari had set up his election as Manager/Secretary in the proceedings held on 09.04.2016. On the other hand, the petitioner Sri Sanjeev Rathi claimed his election as Manager/Secretary in the proceedings dated 17.04.2016. Upon hearing the parties having found that there were rival elections, the Deputy Registrar made a reference under Section 25(1) of the Societies Registration Act" 1860 (in short Act" 1860) for adjudication before the Prescribed Authority/Sub Divisional Officer. An objection was taken by the petitioner raising an issue of maintainability of reference by moving an application dated 19.05.2017.

5. The ground taken therein was that with reference to the intermediate institution the dispute between two rival claimants for management of the institution is required to be determined under Section 16-A (7) of Act" 1921. It was further contended that the dispute relating to the rival elections in relation to the society had already been decided by the Deputy Director of Education, Meerut vide detailed order dated 12.08.2016 in exercise of powers under Section 16-A(7) of the Act" 1921. It was thus submitted that the prescribed authority had no jurisdiction to enter into the question which had already been adjudicated by the competent educational authority. This application was rejected vide order dated 18.09.2017 passed by the prescribed authority/Sub Divisional Officer, Dibrui, which is under challenge.

6. Learned counsel for the petitioner assailing the order impugned vehemently urged that in relation to an intermediate institution, the Deputy Director of Education is the appropriate authority to hear the rival disputes relating to elections of committee of management after a reference was made by the District Inspector of School under Section 16-A (7) of the Act" 1921. Once the dispute had been settled with the decision by the Deputy Director of Education in favour of the petitioner after providing detailed hearing to the contesting parties, the Deputy Registrar had no jurisdiction to refer the same dispute to the prescribed authority under Section 25 of the Act" 1860. In so far as the eligibility of membership of any member of the society, the disputed questions of fact can only be decided in a civil suit and not by the Sub Divisional Officer/Prescribed Authority. In any case, the prescribed authority had no jurisdiction to re-open the controversy already settled after the committee of management has been recognized, more-so when there is one committee both for the college and the society. It was urged that two separate forums would not decide the validity of

claim of rival elections. The reference, therefore, is bad and the decision of the prescribed authority in rejecting the application raising issue of maintainability deserves to be set aside.

7. The question thus has arisen for adjudication before the Court is as to whether the jurisdiction of the prescribed authority under section 25(1) of the Act" 1860 would be barred in case there is a previous adjudication by the Deputy Director of Education or the Regional Committee, as the case may be, on a reference made under Section 16-A (7) of the Act" 1921. The contention of the petitioner that once the dispute had been decided by the competent authority under Section 16-A(7) of the Act 1921 the same dispute cannot be re-opened for decision by the prescribed authority under Section 25(1) of the Act has to be examined by the Court.

8. In order to answer the said question, it would be appropriate to go through the aforementioned two provisions, their scope and area of enquiry by the authority/forum provided under the statutes. For ready reference, Section 16(A) of Act" 1921 and Section 25(1) of the Act" 1860 are re-produced as under;-

9. Section 16-A of the Intermediate Education Act" 1921:- "[16A. Scheme of Administration. - (1) Notwithstanding anything in any law, document, or decree or order of a Court or other instrument, there shall be a Scheme of Administration (hereinafter referred to as the Scheme of Administration) for every institution, whether recognised before or after the commencement of the Intermediate Education (Amendment) Act, 1958. The Scheme of Administration shall amongst other matters provide for the constitution of a Committee of Management (hereinafter called the Committee of Management) vested with authority to manage and conduct the affairs of the institution.] [The head of the institution] and two teachers thereof, who shall be selected by rotation according to seniority, in the manner to be prescribed by regulations, shall be ex officio members of the Committee of Management with a right to vote.

(2) No member of the Committee of the Management shall either attend a meeting of the Committee or exercise his right to vote whenever a charge concerning his personal conduct is under discussion.

(3) The Scheme of Administration, shall also describe, subject to any regulations the respective powers, duties and functions of [the head of the institution] and Committee of Management in relation to the institution.

(4) Where more than one recognised institution is maintained by a body or authority there shall be a separate Committee of Management for each institution unless otherwise provided in the regulations for any class of institutions.

(5) The Scheme of Administration of every institution shall be subject to the approval of the Director and no amendment to or change in the Scheme of Administration shall be made at any time without the prior approval of the

Director.

[Provided that where the Management of an institution is aggrieved by an order of the Director refusing to approve an amendment or change in the Scheme of Administration, the State Government, on the representation of the Management, may, if it is satisfied that the proposed amendment or change in the Scheme of Administration is in the interest of the institution, order the Director to approve of the same, and thereupon the Director shall act accordingly.]

6) Every recognised institution shall be managed in accordance with the Scheme of Administration framed under and in accordance with sub-section (1) to sub-section (5) and Section 16-13 and 16-C.

[(7) Whenever there is dispute with respect to the Management of an institution, persons found by the Regional Deputy Director of Education, upon such enquiry as is deemed fit to be in actual control of its affairs may, for purposes of this Act, be recognised to constitute the Committee of Management of such institution until a Court of competent jurisdiction directs otherwise:

Provided that the Regional Deputy Director of Education shall, before making an order under this sub-section, afford reasonable opportunity to the rival claimants to make representations in writing."

10. Section 25 of the Societies Registration Act" 1860 "25. Dispute regarding election of office-bearers.-

(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office-bearers of such society, and may pass such orders in respect thereof as it deems fit: [Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied-

(a) that any corrupt practice has been committed by such office-bearer; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election in so far as it concerns such officebearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any noncompliance with the provisions of any rules of the Society. Explanation. -A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person-

(i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at the election;

(ii) with a view to inducing any elector to give or refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election, offers or gives any money, or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person;

(iii) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in clauses (i) and (ii);

(iv) induces or attempts to induce a candidate or elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure;

(v) canvasses on grounds of caste, community, sect or religion;

(vi) commits such other practice as the State Government may prescribe to be a corrupt practice. Explanation II.-A promise of individual advantage or profit to a person includes a promise for the benefit of the person himself or of any one in whom he is interested. Explanation III.-The State Government may prescribe the procedure for hearing and decision of doubts or disputes in respect of such elections and make provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the society.] [Ins. by U.P. Act 13 of 1978, sec. 4 (w.r.e.f. 27-2- 1978).]

(2) Where by an order made under sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a society has not been held within the time specified in the rules of that society, he may call a meeting of the general body of such society for electing such office-bearer or office-bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the society relating to meetings and elections shall apply to such meeting and election with necessary modifications.

(3) Where a meeting is called by the Registrar under sub-section (2), no other meeting shall be called for the purpose of election by any other authority or by any person claiming to be an office-bearer of the society. Explanation.-For the purposes of this section, the expression "prescribed authority" means an officer or court authorised in this behalf by the State Government by notification published in the Official Gazette."

11. The Act" 1921 was enacted to establish the Board of High School and Intermediate Education for regulating and supervising the system of High school and Intermediate education in Uttar Pradesh and prescribed courses therefor. Section 7 of the Act" 1921 specifies powers of the Board which inter alia provides the power to prescribe course of instructions, textbook, other instruction material, to grant diploma or certificate and to conduct examination and further to recognize institution for the purpose of its examination. It can also make

provisions to admit candidate to its examination, to demand and receive such fee as may be prescribed in the regulations and to publish or withhold publication of result of its examination wholly or in part. To enable the Board to perform its duties properly and effectively, as per the provisions of the Act, it is essential that every institution is administered satisfactorily. With this view, the State Government brought amendment in the Intermediate Education Act" 1921 by Amendment Act 1980 U.P. Act no.1 of 1981 for inserting section 16-A. The relevant portion of the statement and object and purpose of the Amendment Act" 1981 is quoted as below:- "Since the cases of mismanagement in the institutions are increasing fast, which obviously affects the teaching work in such institutions, it has been decided to amend the provisions relating to "Scheme of Administration " and appointment of authorized controller, with a view to make effective provisions for proper management of such institutions."

12. The newly inserted section 16-A by the U.P. Act No.1 1981 has already been quoted above.

13. By insertion of section 16-A in the Act, it has become mandatory that every recognized institution is managed by the committee of management elected in accordance with the "Scheme of Administration" approved by the Deputy Director of Education. Such a committee of management is required to discharge various statutory functions under the Act such as appointments, payment of salaries, determination of seniority etc. These functions have to be discharged by the District Inspector of Schools in collaboration with the committee of management under the Act 1921 and Act" 1971.

14. It is, therefore, necessary for him to find out as to which of the elected committee of management is in actual control of the affairs of the institution. Where the elections are not disputed, the District Inspector of Schools is required to attest the signatures of the Principal and the Manager for the purpose of carrying out statutory functions and for maintenance of account. Where, however, there is a dispute regarding the election and the control over the institution, the District Inspector of Schools is required to satisfy himself as to who, according to him, is the validly elected committee of management.

15. The scope of enquiry in exercise of the powers conferred upon the Deputy Director of Education under Section 16-A (7) of the Act 1921 had been subject matter of consideration in several decisions of this Court. It would be apt to refer to some of the decisions relevant to the issue in hand.

16. In Committee of Management of Sarvodaya Inter College Vs. Deputy Director of Education, Vth Region, Varanasi & others, 1982 UPLBEC 31 a Division Bench of this Court has held that the forum created by Section 16-A (7) is only a substitute to the powers of the District Inspector of Schools under Section 5 of Act" 1971. As there were serious doubts about the desirability of the District Inspector of Schools, being conferred such a power, a new forum was created by the Amendment Act namely U.P. Act no.1 of 1981. By Section 16-A(7), the

Deputy Director of Education was conferred the power to decide the dispute but not as an appellate authority over the decisions of the District Inspector of Schools in respect of cases decided earlier. The power of the Deputy Director of Education is same as used to be exercised by the District Inspector of Schools.

17. In Committee of Management, Janta Inter College, Thekma, Bijauli, District Azamgarh Vs. Deputy Director of Education, VIIth Regional, Gorakhpur, 1982 UPLBEC 38 another Division Bench held that the question as to who was in control of the management is linked with the decision about the validity of the elections pleaded by the rival parties, and for this purpose the Deputy Director of Education is required to examine the evidence of the parties and to give a finding thereon. In Committee of Management, Gandhi "Uchchtar Madhyamik Vidyalaya Vs. Regional Deputy Director of Education & others, 1996 ACJ 226 a Division Bench held that the provisions contained under Section 16-A (7) itself implies that for deciding the question of actual control, the Regional Deputy Director of Education, shall have regard to various circumstances including the "Scheme of Administration". It has been held that under sub section (5) of Section 16-A and in the "Explanation" appended thereto, it is made clear that the Regional Deputy Director of Education has to have regard to other relevant circumstances as well. While deciding as to who is in actual control, he will have to find out the nature of such control and the background in which such control was claimed by rival factions and would require to make an enquiry into the validity of the elections. Undoubtedly, the final verdict regarding the validity of the committee of management and its elections has to be pronounced by a competent court.

18. In Sankatha Prasad Srivastava Vs. Deputy Director of Education, 1985 UBLBEC 751 a Division Bench has held that while examining the question of an effective control, the question as to who was elected as office bearers is relevant. This enquiry is obvious because the law does not contemplate a rank outsider to meddle with the management of the institution.

19. In Maharishi Sukhdeo Vidyalaya Vs. Regional Deputy Director of Education, 1985 (2) UPLBEC 1053 the Division Bench has held that the scope of enquiry regarding the validity of elections of the managing committee, is however, limited. The Deputy Director is not expected to make a detailed enquiry and function like an election tribunal. He has to only prima facie satisfy himself about the validity of the elections i.e. if a managing committee has been elected after due notice to the members entitled to vote in accordance with the register maintained by the former managing committee according to the rules and that the election has been held in accordance with the approved "Scheme of Administration". In case, these questions find favour on the claim of one faction, it shall be deemed to have been validly elected. It is not necessary to go into further detail. If anyone wants to contest the validity of election of the managing committee on other grounds, a regular suit is the proper remedy.

20. In Committee of Management Bhakt Vatsal Inter College Vs. Deputy Director of Education & others, 1988 (1) UPLBEC 402 it was held that the issue of actual

control gets inevitably linked to the question about the validity of the elections in deciding the dispute of control. In such circumstances, it becomes necessary for the Deputy Director of Education in exercise of its power under Section 16-A (7) to investigate the validity of the elections, even if in a summary way, set up by the rival groups. The said inquiry is necessary in the scheme of Intermediate Education Act and for the Deputy Director of Education to decide as to which of the groups should be recognized as constituting the committee of management, so that the educational authorities may deal with that group in the context of the appointment of teacher and employees, disciplinary action against the staff, conduct of examination, payment of salaries to the teachers and staff etc.

21. In Committee of Management, Subhash Uchhtar Madhyamik Vidyalaya, Rajapura (Mawana), Meerut Vs. Deputy Director of Education, Meerut, 1985 UPLBC 241 Sankata Prasad (supra), the Division Benches have held that the Deputy Director of Education is not required to make any elaborate or detailed enquiry into the validity of the elections set up by the rival groups. He is not to act as an election tribunal and has only to satisfy himself prima facie about the validity of the elections. Thus so far as the scope of enquiry under Section 16-A (7) made by the Deputy Director of Education is concerned, it is settled that he shall determine the question about the actual control of the affairs of the institution by making such enquiry as he may deem fit and proper having regard to the factors mentioned in the "Explanation" to Section 16-A (7). However, it does not confer power on the Deputy Director of Education, as an election tribunal, to investigate and decide the validity of the elections of the office bearers. Instead the provision merely confers power on him to decide as who should be deemed to be in actual control of the affairs of the institution. The scope of enquiry before the Deputy Director of Education is limited and has been confined to the aforesaid aspect. The Deputy Director of Education has to conduct this enquiry in a summary manner. The decision under Section 16-A (7) as provided by the Act itself is indisputably subject to the decision of the Court of competent jurisdiction. The recognition is not to settle the dispute of elections between the rival claimants but only to carry out the purpose of the Act" 1921 i.e. to find out the persons as to whom actual control of the affairs of the institution has to be given and who would exercise statutory functions in collaboration with the educational authorities. While deciding dispute with regard to the management, the Deputy Director of Education is incidentally required to go into the validity of the elections but shall not act as an election tribunal.

22. The question as to the nature of powers vested in the Deputy Director of Education under Section 16-A (7) of the Act came up for consideration before a Full Bench of this Court in Committee of Management Vs. Deputy Director of Education, 1996 (3) UPBELC 1617 it was held therein that the powers of the Deputy Director under Section 16-A(7) are essentially administrative in character. The said decision was referred to a larger bench of five judges on a doubt raised by the learned Single Judge.

23. The five judges bench in Committee of Management Vs. Deputy Director of Education & others, 2004 (4) ESC 2257 (ALL) had held that the Regional Deputy Director of Education while deciding the dispute under Section 16-A(7) of the Act" 1921, exercises quasijudicial powers and not purely administrative powers. The reasons for forming such an opinion as given therein are that while deciding the dispute as to who is in actual control of the affairs, he has to give reasonable opportunity to the parties. In order to reach to a just decision, with regard to the actual control of the affairs he has to incidentally decide the question about the validity of the elections.

24. It was held that there is no bar upon him from granting any interim relief even though there is no specific provisions. His order has to be a reasoned order and he has to consider relevant material and apply objective considerations in reaching the decision. For the purpose of carrying out the statutory functions under the Intermediate Education Act" 1921 and Payment of Salary Act" 1971, he is invested with the powers to find out as to which of the claimants should be recognized.

25. Simultaneously, it has been held therein that the Deputy Director of Education is not vested with any judicial powers and does not act as a tribunal while deciding the dispute. He discharges quasi-judicial powers and is required to act fairly, reasonably and to follow the principles of natural justice.

26. The relevant paragraph nos. 24, 25, 26 & 27 of the five judges/Full bench judgement in Committee of Management 2004 (4) ESC 2257 (All) (F.B) are quoted as under:- 24. The powers of the Deputy Director of Education, under Section 16-A(7) spring into action, as soon as the dispute with respect to a Management of an institution is raised before him or referred to him by the District Inspector of Schools. He is required to make an enquiry as is deemed fit. The proviso to sub-section (7) requires him to afford reasonable opportunity to the rival claimants to make representations in writing. The explanation provides for the guidelines to determine the question as to who is in actual control of the affairs of the institution. The order passed by the Deputy Director of Education, affects the other party, and his decision visits civil consequences upon him. All the attributes of powers require him to act fairly. He must conform to the norms of judicial procedure in exercise of his powers. The statute requires him to act fairly consistently with the rules of natural justice. The power exercised by him, therefore, is not administrative in character. It has all the attributes of a quasi-judicial power. We find that Full Bench in Committee of Management v. Deputy Director of Education, AIR 1997 All 99 : (1996) 3 UPLBEC 1617 (FB), did not take a correct view in holding that the Regional Deputy Director of Education, while exercising his powers under Section 16-A(7) of UP. Act, 1921, is not entrusted with the duty to act judicially, though he must act fairly and that since he does not have trappings of this Court, his powers are essentially administrative in character. As discussed above even if an administrative authority does not have the trappings of the Court and is not required to act

judicially, where the decision given by the authority visits civil consequences, on any of the party before him, and the nature of the powers require him to hear the parties, he acts as a quasi- judicial authority.

25. Applying the aforesaid tests we find that the Deputy Director of Education is an authority constituted under the Act. He has to decide as to who is in actual control of the affairs, at least at the interlocutory stage. He takes decision after giving reasonable opportunity to the parties. Section 19- A of the U.P. General Clauses Act give him ancillary and incidental powers which are necessary for effectively deciding the rival claims. In order to reach to a decision, with regard to actual control of the affairs, he has to incidentally decide the question about the validity of the elections, and there is no bar upon him from granting any interim relief even though there is on specific provision. His order has to be a reasoned order and he has to consider relevant material and apply objective considerations in reaching the decision. For the purpose of carrying out the statutory functions under the Act and the U.P. Act of 1971, he is invested with the powers to find out as which of the claimants should be recognized.

26. The Deputy Director of Education is, however, not vested with any judicial powers. He has no power to compel the attendance of witnesses and to examine them on oath. He is not required to follow the Rules of evidence; the sittings are not held in public and no finality is attached to his decision. Further he has no power to impose fine, damages or to issue prohibitory orders. He does not exercise any sovereign powers and thus, it cannot be said that the Deputy Director of Education acts as a Tribunal while deciding the disputes.

27. From the aforesaid discussion, we find that the Deputy Director of Education, in deciding as to which of the rival Committees of Management is in actual control of the affairs of the institution, discharges quasi-judicial powers and is required to act fairly, reasonably and to follow the principles of natural justice. His order must be supported by reasons, considering the relevant material and on objection considerations.

27. Second question which came up for consideration before the five judges full bench was whether the Regional Deputy Director of Education while deciding a dispute under Section 16- A (7) of the Act can go into the question of validity of the elections. To answer the said question, the words "actual control" in sub section (7) of Section 16-A were interpreted and it was held in paragraph no.35 as follows;- "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 enquiry and the factors to be considered in determination 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 officebearers 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 to the final decision of the Court of competent jurisdiction."

28. It was observed that there may be a variety of circumstances, in which the claims are raised before the Regional Deputy Director of Education. There may arise a situation where a group of persons may take control over the funds, administration and income of its properties without a claim based on valid elections. Such a situation cannot be permitted to arise as the State Government spends a huge amount of money towards grants to the educational institutions. The unauthorized persons cannot be allowed to deal with the Government funds. It was held that to prevent such a situation, the Regional Deputy Director of Education in holding enquiry about the actual control of the affairs is required to go into the validity of the elections incidentally and to find out whether the persons claiming control have been validly elected.

29. Thus the nature and scope of powers exercised by the Deputy Director of Education under sub-section (7) of Section 16-A of the Act"1921 is fairly well settled. The question of validity of elections is to be examined by him incidentally considering as to who was in actual control of the institution in order to decide as to whom the control of the institution is to be given so as to ensure its effective management. The Deputy Director of Education in order to observe the principles of natural justice has to afford opportunity of hearing to the rival parties and pass a reasoned order for rejecting or accepting claim of the parties before it. As the power exercised by him is quasi-judicial in nature, he is not vested with the power to compel the attendance of witnesses and to examine them on oath. He is not required to follow the rules of evidence and no finality is attached to his decision. Further he has no power to impose fine, damage or to issue prohibitory orders. He does not exercise any sovereign powers and cannot act as a tribunal while deciding the election dispute.

30. In so far as the nature of the power vested with the Prescribed Authority under Section 25 (1) of the Societies Registration Act" 1860 is concerned, the said issue came up for consideration before the Division Bench of this Court in *Jai Prakash Agarwal Vs. Prescribed Authority & others*, 1999 (1) UPLBEC 697 on the question raised before it as to whether the Special Appeal under Chapter VIII Rule 5 of Allahabad High Court Rules would be maintainable against a decision of the learned Single Judge in a writ petition under Article 226 of the Constitution, challenging the orders passed by the Prescribed Authority under Section 25 (1) of the Act" 1860.

31. The Division Bench while answering the said question has considered the

"Statement of object and reasons" of the Societies Registration Act (U.P. Amendment) Act 1978 i.e. U.P. Act no.13 of 1978 whereby Section 25 of the Act 1860 was amended. The statement of object and reasons of the U.P. Amendment Act 1978 appended to the bill reads as under:- "It is considered necessary to empower the prescribed authority authorised to hear dispute of elections of officebearers of the Societies. The aforesaid election of office bearers of a society whether it is satisfied of the commission of corrupt practices or of improper conduct of election."

32. Considering the provisions contained in Section 25 of the Act and the object and reasons for its insertion, it was held that the legislative intent is clear that the aforesaid provision was made to provide a forum for deciding the dispute in respect of elections or continuance in office of the office bearers of a society. The proviso to sub section (1) of Section 25 provides grounds on which the election of office bearers can be set aside by the Prescribed Authority. Explanation I and II provide when a person shall be deemed to have committed corrupt practices for individual advantage or profit of another persons. Explanation III confers powers on the State Government to prescribe the procedure for hearing and decision of doubt or dispute in respect to the elections and make provision in respect of any other matters relating to the elections for which sufficient provisions are not provided in the Act or in the Rules of the society. Explanation to sub section (3) of Section 25 further provides that the expression "Prescribed Authority" means an officer or Court authorized in this behalf by the State Government by notification published in the Official Gazette. Thus, once an officer or the Court is authorized by the State Government by publishing a notification, he or it shall act as the Prescribed Authority. The State Government by notification dated 28.10.1975 published in the Official Gazette, etc. dated 28.10.1975 has authorized the Sub Divisional Magistrate as the Prescribed Authority for the purpose of Section 25 (1) of the Act 1860.

33. Considering the nature of powers exercised by the Prescribed Authority i.e. Sub Divisional Magistrate vis-a-vis the powers of the Deputy Director of Education in deciding the dispute under Section 16-A (7) of the Intermediate Education Act 1921, it was held in paragraph nos.12 & 13 as under:- 12. Now if the aforesaid test is applied to the prescribed authority under Section 25 of the Act. there remains no doubt that it is a tribunal. Under Section 25 prescribed authority decides important dispute of election and continuance in office of an office-bearer, which is essentially a dispute of civil nature. The order passed by the prescribed authority though has not been said to be final in specific words but sub-section (2) of Section 25 of the Act specifically provides that where by an order made under sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a society has not been held within the time specified in the rules of that society, he may call meeting of the general body of such society for electing such office bearer or office-bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officers

authorised by him in this behalf, and the provisions in the rules, of the society relating to meetings and elections shall apply to such meeting and election with necessary modifications. Thus, the provisions contained in sub-section (2) of Section 25 of the Act provide that if the election is set aside by the prescribed authority a fresh election is required to be held by the Registrar. This is sufficient indication that the order is final. The prescribed authority is also required to hear and decide in summary manner any doubt or dispute in respect of the election. Thus, the order has to be passed after hearing parties and giving them opportunity to adduce evidence. From the provisions contained in proviso, it is clear that he decides the dispute in exercise of inherent judicial powers of the State vested in him by the notification.

13. Learned counsel for the appellant submitted that the order of the Prescribed authority is not final and suit can be filed challenging the same, hence he decides the dispute administratively and not judicially. We are not prepared to accept this submission. Prescribed authority under Section 25 of the Act decides the dispute judicially and in exercise of the inherent judicial powers of the State. This position is not in any way diluted because against the order of the Prescribed authority, a suit may be filed in the civil court. If this test is accepted, then no Court can exercise inherent judicial power of the State because orders can be challenged in appeal or revision or before this Court under Article 226 of the Constitution. Finality of the order has to be judged from the effect of it on the rights of parties, if the order is not challenged further. In such a situation, it should finally resolve the dispute between parties. In our considered opinion, the Prescribed authority is a tribunal and possesses the trappings of the Court.....

34. While arriving at the said conclusion, the observations made by another Division Bench in All India Council and another Vs. Assistant Registrar Firms, Societies and Chits Varanasi Region Varanasi, AIR 1988 ALLD 236 in paragraph no.6 & 7 were relied upon which read as under:- 6- "The petitioners are clearly right. Section 25 of the Societies Registration Act as amended by the State Legislature enacts a comprehensive Code and creates a designated forum or tribunal for adjudication in a summary manner of all disputes or doubts in respect of the election or continuance in office of an office-bearer of such society. It also provides the grounds upon which the election of an office bearer can be set aside. The procedure to be followed for filling up of the vacancies arising from the decisions rendered by the Prescribed authority under subsection (1) of Section 25 has also been laid down (Section 25 (2)).

7.- It will, therefore, be seen that insofar as disputes or doubts in respect of the election or continuance in office of the officebearers of a Society registered in Uttar Pradesh are concerned the Legislature has created a specific forum and laid down an exhaustive procedure for determination of the same under Section 25. There is no other provisions, express or otherwise, providing for determination of such disputes specifically. It is settled law that where, as here, the Legislature

creates a specific forum and lays an exhaustive procedure for determination of a particular class of disputes in respect of matters covered by the statute. Such disputes can be determined only in that forum and in the manner prescribed thereunder and not otherwise. If, therefore, a dispute is raised with regard to the election or continuance in office of an office-bearer of a society registered in Uttar Pradesh, the same has to be decided only by the Prescribed authority under Section 25 (1) and not by the Registrar, save, of course, to the decision of the Prescribed authority being subject to the result of a civil suit."

35. Thus it was held by the Division Bench in J.P. Agarwal (supra) that the nature of powers exercised by the Prescribed Authority, a forum provided by the legislature is in the nature of the powers exercised by a tribunal. Having said that, it was held by the Division Bench that the Prescribed Authority under Section 25 of the Act" 1860, as applicable in the State of U.P. is a tribunal and if the order passed by the Prescribed Authority is challenged in a writ petition under Article 226 of the Constitution, the Special Appeal under Chapter VIII Rule V of the Rules of the Court will not lie against the order of the learned Single Judge passed in the said writ petition.

36. An earlier Division Bench in Committee of Management of Hindu Inter College & others Vs. Regional Deputy Director of Consolidation, Agra region, Agra and others, 1988 UPLBEC 732 adjudicating the dispute between two rival groups in respect of the management of the institution which was decided by the Deputy Director of Education under Section 16-A(7) of the Act" 1921 has considered the scheme of Section 16-A (7) of the Act" 1921 and Section 25(1) of the Act 1860 and held that the two enactments namely the Intermediate Education Act and the Societies Registration Act operate in distinct fields. There is no over-lapping between the two . In so far as the dispute pertaining to management of the recognized institution for the constitution of the Committee of Management, the Deputy Director of Education enjoys, in view of the scheme of the Act, exclusive powers and to the said extent that the decision of the Deputy Director of Education under sub-section (7) shall operate till a Court of competent jurisdiction directs otherwise. The Societies Registration Act, on the other hand, deals inter alia with the resolution of dispute with respect to the elections of office bearers of the registered society. The power of the Registrar or the Prescribed Authority to determine disputes in respect of the election of the office bearers of the society, as distinct from the managing committee of the institution run by the society, operates in altogether different field from that with which the Regional Deputy Director is concerned. The scope of enquiry under Section 16-A (7) of the Act" 1921 is not co-terminous, with the enquiry envisaged under the Societies Registration Act.

37. The relevant paragraph nos.5 & 6 of Committee of Management of Hindu Inter College (supra) are quoted as under:- "5. The legislative intent behind Section 16A seems explicit and unambiguous. It is that so far as the constitution of the Committee of Management of a recognized institution and disputes arising

in respect thereof are concerned, the Director of Education or the Regional Deputy Director of Education, as the case may be, enjoy overriding powers in that within these spheres no other authority may intrude except that where the Regional Deputy Director of Education determines a dispute in respect of the management of the institution under sub-section 16-A(7) and finds any group of persons in actual control of its affairs and accords recognition to that group, the recognition operates until a court of competent jurisdiction determines the dispute. The object behind conferring such a power on a Regional Deputy Director of Education is not far to seek. For the proper functioning of a recognized institution the educational authorities charged with the duties of ensuring that the management is carrying on its obligations under the Intermediate Education Act and for smooth day to day management of the affairs to the institution it is necessary that dispute in respect of management must be resolved expeditiously by an authority constituted for that purpose under the Intermediate Education Act. Care has, however, been taken that rival rights of the persons claiming to represent the management should be left to be determined finally by courts of competent jurisdiction. But till that decision is rendered, the Regional Deputy Director of Education has to determine that dispute for himself so that the cause of the students and teachers or employees of the institution does not suffer by the continuing uncertainty or emasse.

6. The Societies Registration Act, on the other hand, deals, inter alia, with the resolution of disputes with respect to the election of the office bearers of a registered society. The power of the registrar of the prescribed authority to determine disputes in respect of the election of the office bearers of the society, as distinct from the managing committee of the institution rule by that society, operates in an altogether different field from that with which the Regional Dy. Director is concerned. The two enactments, namely, the Intermediate Education Act and the Societies Registration Act, to our mind, operate in distinct fields. There is no overlapping between the two. Even if there is, insofar as disputes pertaining to the management of a recognized institution or the constitution of the Committee of Management are concerned, the Dy. Director of Education enjoys, in view of the scheme of the Act and the non-obstante clause used in Section 16A(1) and the clear provisions of Section 16A(1) exclusive powers save to the extent that the decision of the Dy. Director of Education under sub-section (7) shall operate only till a court of competent jurisdiction directs otherwise."

38. The said observations of the Division Bench regarding the exclusive and overriding powers of the Deputy Director of Education under the Act" 1921 came in the facts of the said case in as much as there was a dispute between two rival groups wherein both were claiming to have been elected in accordance with the "Scheme of Administration" and had set up their claims for being recognized before the District Inspector of School. There was challenge to the validity of the elections held by the other on the ground that the same had not been conducted in accordance with the "Scheme of Administration". The argument raised by the appellants therein that the Prescribed Authority alone was competent to decide

the dispute pertaining to the elections of the managing committee of the institution was, therefore, repelled with the observations that in such a contingency, the dispute fell squarely within the purview of the jurisdiction of the Deputy Director of Education upon the plain terms of Section 16-A(7) of the Act" 1921. The Deputy Director of Education was held to be competent in law to pass order deciding the rival disputes.

39. Relevant extract of the paragraph no.11 of the Committee of Management of Hindu Inter College (supra) is quoted as under:- "11.....As already noticed two rival groups both claiming to have been elected in accordance with the Scheme of Administration had set up their claims for being recognised before the District Inspector of Schools. Each was challenging the validity of the elections held by the other on the ground that the same had not been conducted in accordance with the Scheme of Administration. In such a contingency, the dispute fell squarely within the purview of the jurisdiction of the Deputy Director of Education upon the plain terms of Section 16A(7). And as demonstrated above within the sphere of management of educational institutions recognised under the Intermediate Education Act, the Deputy Director enjoys, subject to the decision of a Court of competent jurisdiction, exclusive powers. The Deputy Director was therefore competent in law to pass the impugned order."

40. Having considered the nature of powers exercised by the Deputy Director of Education under Section 16-A (7) of the Act 1921 and that of the Prescribed Authority under Section 25-(1) of the Act 1860, in the light of the pronouncements of the Court noted above, it can be safely concluded that the nature and scope of jurisdiction and powers conferred upon the aforesaid Authorities under the two enactments is distinct and operate in different fields. The reasons for coming to this conclusion are summarized as under:- (i) The enquiry as to the managerial dispute with regard to an educational institution though falls within the jurisdiction of the Deputy Director of Education under Section 16-A (7) of the Act" 1921, but the question of validity of elections on the issues which fall for determination within the scope of enquiry under section 25(1) of the Act is exclusively within the jurisdiction of the Prescribed Authority. The decision of the Deputy Director of Education or the Prescribed Authority, as the case may be, however, is subject to the decision of a Civil Court.

(ii) Both the provisions i.e. Section 16-A of the Intermediate Education Act and Section 25 of the Societies Registration Act are complete and comprehensive codes by themselves. The former has been enacted with the intent to constitute a valid committee of management of recognized institution whereas the latter creates a designated forum or tribunal for adjudication, in a summary manner, of all disputes or doubts in respect of conduct of the elections of office bearers of the society.

(iii) The Deputy Director of Education while exercising his powers under Section 16-A (7) can go into the question of validity of elections incidentally in order to find out as to who are the persons who are in actual control of the affairs of the

institution so as to satisfy himself that no outsider is able to take control or meddle with the affairs of the institution. Whereas, the Prescribed Authority under Section 25(1) of the Act 1860 has to examine the validity of the elections on any allegations of commission of corrupt practices by the rival group, or any misrepresentation by them on the grounds mentioned in the Section.

(iv) The nature of power exercised by the Deputy Director of Education is quasi-judicial, whereas the Prescribed Authority under Section 25(1) of the Act 1860 acts as a tribunal having trappings of the Court.

(v) Two separate forums have been provided by the legislative enactments prescribing the scope of enquiry within the sections/provisions wherein the said forums are created. Looking to the legislative scheme, it cannot be said that the enquiry made by one authority would be barred in case decision is taken by the other, earlier in point of time.

(vi) The nature and scope of enquiry made by both forums fall in different area/distinct fields. There is no overlapping. There is no contradiction. One decides the dispute relating to elections incidentally whereas the other decides the issue regarding illegality, if any, in the elections essentially. While deciding the question of validity of elections, the Prescribed Authority has to decide the incidental question regarding validity of the membership so as to ensure that no outsider can control the affairs of the society. Both the decisions, however, would be subject to the decision of the Civil Court, if any.

(vii) It goes without saying that where there is a common committee, the office bearers of the society and that of the committee of management of the institution are same. But that fact by itself would not give an overriding effect to the decision of the Deputy Director of Education under Section 16-A (7) of the Act over the decision of the Prescribed Authority within the scope of its area of jurisdiction under Section 25(1) of the Societies Registration Act.

41. Lastly, it is well settled that on a dispute raised before the Registrar Societies which falls within the four corners of the class of dispute or doubt referred to in section 25 (1) of the Act, he has no option but to refer the same for adjudication to the Prescribed Authority as he has no jurisdiction to decide the dispute or doubt which had arisen with regard to the elections of two factions. There are catena of decisions to the effect that as soon as the rival dispute are raised before the Registrar, he has to keep his hand off and refer the dispute to the Prescribed Authority under Section 25(1) of the Act.

42. Thus, the answer to the question arisen herein is that the dispute regarding validity of elections even in a case where the managing committee of both society and the institution is one and the same, has to be decided by the Prescribed Authority under Section 25(1) of the Act. However, the issue regarding recognition of the committee of management for the purpose of discharge of statutory functions under the Intermediate Act i.e. for smooth day-to-day management of the affairs of the institution has to be decided by the

Deputy Director of Education under Section 16-A(7) of the Act 1921. While granting recognition i.e. for deciding rival claims of management, the Deputy Director of Education can incidentally look into the issue of validity of elections. Similarly while deciding the issue of validity of elections, the Prescribed Authority can look into the incidental question of validity of membership.

43. In view of the above discussion, the objection taken by the petitioner regarding the maintainability of the reference made by the Registrar and challenge to the powers of the Prescribed Authority to decide the dispute relating to validity of elections referred under section 25 (1) of the Act" 1860, is devoid of any substance.

44. No ground is made out to interfere in the order of rejection of the application raising objection regarding maintainability of the reference passed by the Prescribed Authority.

45. The writ petition fails and is dismissed.