
(2014) 10 AHC CK 0098
In the Allahabad High Court
Case No : Writ-C No. 69096 of 2011

C/M Lala Babu Baijal Memorial Inter College	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Constitution of India, 1950 — Article 162
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16A(5), 16B, 16C, 16CC

Citation : (2014) 10 ADJ 520 : (2015) 3 ALJ 195 : (2015) 1 ESC 234 : (2014) 4 UPLBEC 3134

Hon'ble Judges : Rajan Roy, J

Bench : Single Bench

Advocate : N.L. Pandey, Advocate for the Appellant

Judgement

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Rajan Roy, J.—Heard Shri N.L. Pandey, learned counsel for the petitioners and Shri Vivek Shandilya, learned Additional Chief Standing Counsel for the respondents.

2. By means of this writ petition the petitioners have challenged the validity of the Government Order dated 25.8.2011 and the consequential orders passed by the subordinate authorities by which the petitioners and other Committees of Management of educational institutions recognized under the U.P. Intermediate Education Act, 1921 (in short "Act of 1921") have been directed to submit a proposal in terms of model Scheme of Administration annexed therewith for approval of the education department and implementation in respective institutions.

3. The contention of the learned counsel for the petitioners herein, is that the Committees of Management of respective institutions are governed by the provisions of the Act of 1921 and the teachers/employees of the said institutions are paid salary from Grant-in-Aid received from the State Government. The

petitioners" institutions have duly approved Scheme of Administration and the affairs of the institutions are managed according to the said scheme.

4. Every institution, whether recognized before or after the commencement of the U.P. Intermediate Education (Amendment) Act 1958, (in short "Amending Act of 1958") is required to have a Scheme of Administration, which, as per Section 16-A(5) of the Act of 1921 shall be subject to approval of the Director and any amendment or change in the Scheme of Administration shall be made with 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 satisfied that the proposed amendment or change in the Scheme of Administration is in the interest of institution, order the Director to approve the same and thereupon, the Director shall act accordingly. As per sub-section (6) of Section 16-A every recognized institution shall be managed in accordance with the Scheme of Administration framed under and in accordance with subsection (1) to sub-section (5) of Section 16-B & Section 16-C.

5. In the case of an institution already recognised at the time of commencement of the Amending Act of 1958, draft of the Scheme of Administration shall be prepared and submitted to the Director for its approval in accordance with Section 16-C within a stipulated period of six months from the said commencement and in all other cases along with an application for recognition.

6. As per Section 16-C, subject to the Regulations governing the Principles for according approval to the Scheme of Administration, the Director shall, within such period of time as may be prescribed, either approve the Scheme of Administration submitted under Section 16-B or suggest any alteration or modification therein. Whenever, the Director so suggests any alteration or modification in the Scheme of Administration, he shall send a copy of the same to the institution recording reasons therefor and affording an opportunity to the institution to make a representation, within such period of time as may be prescribed; provided that, if the Director does not suggest any alteration or modification in the approved Scheme of Administration within the period of time prescribed by the Regulation, the draft Scheme of Administration shall be deemed to have been approved. Under sub-rule (2), the Director shall consider any representation made in accordance with the provisions of sub-section (1) and may approve the Scheme of Administration in its original form or subject to alteration or modification suggested under sub-section (1) with any other changes as may appear to him to be just and proper; where the Director proposes to make a new alteration or modification in the Scheme of Administration, he shall give an opportunity to the institution to make a representation to him within such period of time as may be specified.

7. Section 16-CC which has been inserted by the U.P. Intermediate Education (Amendment) Act 1980, (in short "Amending Act of 1980") provides that the

Scheme of Administration in relation to an institution, whether recognised before or after the commencement of the Amending Act of 1980, shall not be inconsistent with the principles laid down in the Third Schedule.

8. Section 16-CCC which has also been inserted by U.P. Amending Act No. 1 of 1981, inter alia, provides that where in relation to any institution, Scheme of Administration has been approved or deemed to have been approved under Section 16-A or Section 16-B or Section 16-C, at any time before the commencement of the Amending Act of 1980, and such Scheme of Administration is inconsistent with the provisions of the Act, the Director shall send, within a period of three years, from such commencement, a notice to such institution suggesting any alteration or modification therein and requiring the institution to submit a fresh Scheme of Administration or to amend or alter the existing Scheme of Administration. While making any suggestion in the Scheme of Administration under sub-section (1), the Director shall give reasons therefor and shall also afford an opportunity to the institution to make a representation within such period as may be specified in the notice. Under sub-rule (3), the Director shall consider any representation made in accordance with sub-section (2) and may approve the Scheme of Administration in its original form or subject to any alteration or modification suggested under sub-section (1) or with any other changes as may appear to him to be just and proper; provided that where the Director proposes to make any new alteration or modification in the Scheme of Administration, he shall give an opportunity to the institution to make a representation within such period of time as may be specified by him.

9. The contention of the learned counsel for the petitioners is that under the scheme of the Act of 1921, there is a provision for a Scheme of Administration and also as to how it shall be prepared and approved. The provisions referred to hereinabove provide for the manner of alteration or amendment in the said Scheme of Administration. It is not a unilateral action of the official respondents, but there is a participation of Committee of Management also in determining the Scheme of Administration for running the institution. Contrary to the provisions referred to hereinabove and inconsistent with the principles laid down in the Third schedule, the State Government has articulated a model Scheme of Administration annexed along with the impugned Government Order directing the Committees of Management of respective institutions to submit a proposal in the light of the said model Scheme of Administration for approval by the education department, which, according to him, is impermissible as provisions of the Statute cannot be overridden or superseded by a Government Order issued under Article 162 of the Constitution of India. The said Government Order is not sustainable as it is inconsistent with the provisions of the Statute.

10. In this regard, learned counsel invited the attention of the Court to the provisions of the Government Order dated 25.8.2011, especially paragraph 2 thereof, and provisions of the model Scheme of Administration, which, according to him, were clearly at variance with the principles laid down in the Third

Schedule regarding such Scheme of Administration. The contention of the learned counsel is that the State Government has virtually tried to amend the provisions of the Statute by issuing the Government Order which is impermissible.

11. Learned counsel has relied upon a judgment of the Supreme Court in *B.N. Nagarajan and Others Vs. State of Mysore and Others*, in support of his contention which states that if there is a Rule or Act on the matter, the executive must abide by that Act or Rule and it cannot, in exercise of executive power under Article 162 of the Constitution, ignore or act contrary to that Rule or Act.

12. On the other hand, learned Additional Chief Standing Counsel appearing for the State, submitted that except for averments made in paragraph 19 of the writ petition, the writ petition did not disclose any valid ground for challenging the validity of the Government Order in question. With regard to the averments made in paragraph 19 of the writ petition, it is submitted that the provisions of the Act have not been amended by the Government Order and the contention of the learned counsel for the petitioners in this regard is misconceived.

13. He invited the attention of the Court to the contents of paragraph 2 of the Government Order, by which, according to him, the Committees of Management of respective institutions had merely been asked to submit a proposal in the light of the model Scheme of Administration annexed therewith, to the education department for approval so that the same may be implemented. According to him, the direction was in keeping with the scheme of the Act as contained in Sections 16-A, 16-B, 16-C, 16-CC, and Section 16-CCC and not inconsistent with it. He further submitted that the object behind issuance of the Government Order is to bring about uniformity in the running of the management of the educational institutions and to facilitate the same. He relied upon the judgments of this Court in *Committee of Management, Pandit Jawaharlal Nehru Inter College, Bangsaon vs. Deputy Director of Education, Gorakhpur* reported in 2004 ESC (4) 2257 and in *Committee of Management, Mohammad Hasan Inter College vs. State of U.P. and others*, reported in LBESR-2006-2-1015 in support of his contention.

14. Apart from the above, no other argument was advanced by learned counsel of either parties nor any other decision was cited.

15. A pointed query was put to the learned Additional Chief Standing Counsel as to the provision under which the impugned Government Order had been issued. In response, he referred to Section 9 of the Act of 1921.

16. On a perusal of the provisions contained in Sections 16-A, 16-B, 16-C, 16-CC, and Section 16-CCC read with the Third Schedule referred to in Section 16-CC, the picture which emerges is that every institution referred to in the said provisions, is required to have a Scheme of Administration duly approved by the concerned authority mentioned therein and the institution in question is to be run and managed according to the said Scheme of Administration. Section 16-CC reads as under:

"16-CC. The Scheme of Administration in relation to any institution, whether recognised before or after the commencement of the Intermediate Education (Amendment) Act, 1980, shall not be inconsistent with the principles laid down in the Third Schedule."

17. Thus, the Scheme of Administration has to conform with the principles laid down in the Third Schedule which read as under:

"THIRD SCHEDULE

(See Section 16-CC)

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

Every Scheme of Administration shall,-

1. Provide for proper and effective functioning of the Committee of Management;
2. provide for the procedure for constitution of the Committee of Management by periodical elections;
3. provide for the qualifications and disqualifications of the members and office-bearers of the Committee of Management and the term of their offices:

Provided that no such Scheme shall contain provisions creating monopoly in favour of any particular person, caste, creed or family;

4. provide for the procedure of calling meetings and the conduct of business at such meetings;
5. provide that all the decisions shall be taken by the Committee of Management and powers of delegation, if any, shall be limited and clearly defined;
6. ensure that the powers and duties of the Committee of Management and its office-bearers are clearly defined;
7. provide for the maintenance and security of property belonging to the institution and also for the utilisation of its funds and for the regular checking and auditing of accounts."

18. Section 16-CCC also requires the Scheme of Administration to be consistent with the provisions of the Act of 1921 and in the event of any inconsistency, Section 16-CCC lays down the manner in which the Director shall proceed to suggest requisite alteration or modification therein and to ensure the institution to submit a fresh Scheme of Administration or to amend or alter the existing scheme.

19. Further, the Regulations contained in Chapter I of the Regulations made under the Act of 1921 also refer to certain requirements regarding Scheme of Administration which are as under:

20. The scheme of the Act clearly reveals that the proposal concerning the

Scheme of Administration for the institution is to emanate from the Committee of Management of the said institution, subject to approval by the concerned officer and such alteration or modification as may be suggested by him in terms of the provisions already referred to above. It is not a unilateral act. The representations of Committees of Management are also required to be considered and reasons are required to be given to the Committees of Management in appropriate cases as per the provisions referred to hereinabove. The State Government has not been bestowed with any power under the Act of 1921 to prepare a model Scheme of Administration and to enforce it by issuance of a Government Order.

21. As per Section 16-CC, a Scheme of Administration has to be consistent with the principles laid down in the Third Schedule of the Act of 1921. The approval to the Scheme of Administration is to be accorded in terms of the aforesaid principles. Thus the field relating to the Scheme of Administration is already occupied by the above statutory provisions.

22. It is trite that when the Statute requires something to be done in a particular manner then it should be done in that manner. Reference may be made in this regard to the pronouncements of the Supreme Court rendered in *A.K. Roy and Another Vs. State of Punjab and Others*, and in *State of Mizoram Vs. Biakchhawna*, .

23. A perusal of the model Scheme of Administration reveals that it contains various conditions which are inconsistent with the principles mentioned in the Third Schedule. In the Third Schedule there is no mention of a general body whereas in the model scheme, there is a provision that there shall be a general body of the college which shall be the same as the general body of the parent society of the college. The model scheme also refers to office bearers of the General Body and its duties and responsibilities. There are various other provisions in the model scheme regarding the duties of the Committees of Management, its constitution, tenure, the process of election to such Committees of Management, attestation of signatures of the Manager, meetings of the Committees of Management etc., which do not figure in the Third Schedule. The Third Schedule merely contains the broad parameters required in a Scheme of Administration without specific details whereas the model Scheme contains specific and detailed provisions relating to the above mentioned topics. Detailed provisions have been made in the model scheme regarding meetings of General Body of the college, passing of a no-confidence motion against any member or officer bearer of the Committees of Management, which are not mentioned in the Third Schedule nor in any Regulation of the Regulations of Act of 1921 nor in the Act itself.

24. While intention of the State Government to remove the complexities and ensure smooth functioning of the institutions and to bring about uniformity in the management of the educational institutions is laudable, but the manner in which such model scheme is being enforced by issuance of a Government Order cannot

be sustained; the field being occupied by the statutory provisions, the preparation and implementation of the Scheme of Administration is to be governed strictly in accordance with the said statutory provisions.

25. A model of Scheme of Administration which is inconsistent with the provisions of the Act of 1921, the Third Schedule appended to the said Act and the Regulations made thereunder cannot be enforced, certainly not, by issuing a Government Order, without making amendments in relevant provisions of the Statutes, referred to above.

26. The Supreme Court in the case reported in 1996 AIR SC 1942 has held as under:

"It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under Art. 162 of the Constitution ignore or act contrary to that rule or act."

27. The judgments relied upon by the learned Additional Chief Standing Counsel are not at all relevant in the subject matter in issue in this case. In the case of Committee of Management, Pandit Jawaharlal Nehru Inter College, Bangsaon vs. Deputy Director of Education, reported in ESC-2004-4-2257, the subject matter therein was different. The subject matter in issue therein was whether the Deputy Director of Education can be said to be functioning as a Tribunal within the meaning of Rule-5 of Chapter-VIII of Allahabad High Court Rules, while exercising the powers conferred on him under sub-section (7) of Section 16-A of U.P. Intermediate Education Act, 1921, which has no relevance in this case. The other judgment relied upon by him is equally inapplicable in this case.

28. Learned Additional Chief Standing Counsel was unable to place before the Court any provision under the Act of 1921 under which the State Government could have issued such a Government Order for implementation of a model Scheme of Administration. The reference to Section 9 in this regard is completely misplaced. The said provision reads as under:

"9. Powers of State Government.-(1) The State Government shall have the right to address the Board with reference to any of the works conducted or done by the Board and to communicate to the Board its views on any matter with which the Board is concerned.

(2) The Board shall report to the State Government such action, if any, as it is proposed to take or has been taken upon its communication.

(3) If the Board does not, within a reasonable time, take action to the satisfaction of the State Government the State Government may, after considering any explanation furnished or representation made by the Board, issue such direction consistent with this Act as it may think fit, and the Board shall comply with such directions.

(4) Whenever, in the opinion of the State Government, it is necessary or expedient to take immediate action, it may, without making any reference to the Board under the foregoing provisions, pass such order or take such other action consistent with the provisions of this Act as it deems necessary, and in particular, may by such order modify or rescind or make any regulation in respect of any matter and shall forthwith inform the Board accordingly.

(5) No action taken by the State Government under subsection (4), shall be called in question."

29. It only refers to the power of the State Government to address the Board with reference to any of the work conducted or done by the Board. The subject matter in issue in this petition has nothing to do with the work of the Board, therefore, Section 9 does not confer upon the State Government any power to issue a Government Order such as the one impugned herein.

30. The impugned Government Order is not only without jurisdiction but also clearly inconsistent with the provisions of Section 16-CC read with Third Schedule to the Act of 1921 and the Regulations 14, 15 and 16 of the Regulations made thereunder and in fact, by asking Committees of Management to submit a Scheme of Administration in keeping with the model scheme, which is inconsistent with the principles contained in the Third Schedule, it is asking them to act in violation of Section 16-CC, which is impermissible. In view of the above discussion, the impugned Government Order cannot be sustained and is accordingly quashed. All consequential orders are also quashed.

31. As the impugned Government Order and consequential orders issued in respect thereof have been in operation for a period of more than three years, it would be appropriate that the status quo relating to the Scheme of Administration of the educational institutions existing at present be allowed to continue for a period of six months in order to avoid any chaotic situation resulting from quashing of the said Government Order. During this period, the State Government, if it so desires, may take steps for amending the Act of 1921 so as to incorporate the model Scheme of Administration therein. If no amendment in the Act of 1921 is carried out during the aforesaid period of six months, the position with respect to the Scheme of Administration, as existing prior to the issuance of the Government Order dated 25.8.2011, shall be restored back in terms of the existing provisions of the Act of 1921. Consequences will follow accordingly. It is ordered accordingly.

32. It is made clear that this Court has not considered the validity of the terms and conditions contained in the model Scheme of Administration but has only considered the validity of the Government Order dated 25.8.2011 by which it is sought to be implemented in derogation to the statutory provisions of the Act of 1921.

33. The writ petition is allowed in the aforesaid terms.