

(1977) 12 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3565 of 1977

Comittee of Management and Another

APPELLANT

Vs

The District Inspector of Schools and Another

RESPONDENT

Date of Decision : 14-12-1977

Acts Referred:

Uttar Pradesh General Clauses (Amendment) Act, 1975 — Section 19A
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 2, 5
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16G(3)
Uttar Pradesh General Clauses (Amendment) Act, 1975 — Section 19A
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 2, 5
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16G(3)
Uttar Pradesh General Clauses (Amendment) Act, 1975 — Section 19A
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 2, 5
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16G(3)

Citation : (1978) AWC 124

Hon'ble Judges : R.R. Rastogi, J;N.D. Ojha, J

Bench : Division Bench

Advocate : A.K. Yog and V.K. Khanna, for the Appellant;

Final Decision : Allowed

Judgement

N.D. Ojha, J.—An educational institution, Shahamal Smarak Junior High School, Bijrol, Meerut, by name is duly recognised under the U.P. Intermediate Education Act (hereinafter referred to as the Act) and is being run under a scheme of administration duly approved u/s 16-A of the Act. In accordance with the scheme of administration the general body of the Society, which is running the aforesaid college, in its annual general meeting held on 30th June, 1974, elected the office bearers and members of the Committee of Management. The term of these office bearers and members was in view of paragraph 7 of the scheme of administration to be three years subject to a proviso "that the term of every office bearer shall be deemed to have continued till his successor is chosen".

According to the Petitioners Ram Kishan, Respondent No. 2, who had been elected as manager in the election held on 30th June, 1974, even though the term of three years was to expire, did not take any steps to hold fresh elections. Consequently steps were taken by Malkhan Singh, who had been elected President in the election held on 30th June, 1974, for holding the annual general meeting to elect the members of the committee of management and its office bearers. The case of the Petitioners further is that a meeting was held on 7th August, 1977, in which new office bearers were elected. Thereafter a letter was sent to the District Inspector of Schools, Respondent No. 1, intimating him about the fact that a fresh committee of management had been elected and that he may verify the signature of the new manager. We may point out that the prayer for verifying the signature was apparently a loose prayer. The intention was to request the District Inspector of Schools to recognise the new committee of management for purposes of dealing with the affairs of the college. It appears that a dispute was raised before the District Inspector of Schools presumably by some office bearer of the old committee of management and the District Inspector of Schools by his order dated 7th September, 1977, a true copy of which has been attached as Annexure 18 to the writ petition, repelled the claim of the Petitioners made in their letter aforesaid. In his order the District Inspector of Schools stated that since a dispute has arisen in regard to the validity of the election said to have taken place in the meeting dated 7th August, 1977, and since he had no authority to decide the dispute which had been raised he would recognise the office bearers who had been elected in the meeting held on 30th June, 1974, till the dispute was decided by a competent court or amicably. It is this order of the District Inspector of Schools which is sought to be quashed in the present writ petition.

2. Having heard counsel for the parties we are of opinion that the impugned order cannot be sustained. It is true that neither under the U.P. Intermediate Education Act nor under any other statutory provision the District Inspector of Schools has been given the power to adjudicate upon the claims of the rival contending managing committees but it is equally clear that under the U.P. Intermediate Education Act as also under the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, the District Inspector of Schools has to deal with the committee of management of a recognised educational institution in respect of various affairs of the institution, i.e., granting of approval as contemplated by Sub-section (3) of Section 16-G of the Act and dealing with the management of such an institution u/s 5 of the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, etc. In *Committee of Management S.A.V. Inter College v. District Inspector of Schools Writ Petition No. 12725 of 1975* decided on 24th November, 1977, a Division Bench of this Court held:

Under the U.P. Intermediate Education Act as well as under the High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, the District Inspector of Schools has to perform various administrative

functions of statutory character in collaboration with the management of High Schools and Intermediate Colleges. These duties cannot be discharged by the District Inspector of Schools unless he is in a position to find out on an administrative level as to who are the real office bearers of the College. For this limited purpose the District Inspector of Schools must of necessity satisfy himself as to who, according to him, are validly elected office bearers of the institution. If any party feels dissatisfied with the administrative decision taken by the District Inspector of Schools he is at liberty to file a suit against the rival claimants for adjudication of their rights either as office bearers or as members of the Managing Committee. In the event of a decree being obtained by such a party there can be little doubt that the District Inspector of Schools, in case he has taken a wrong decision, will alter his decision and will recognise that party in whose favour decision has been given judicially,

It is true as pointed above that some sort of a dispute in regard to the validity of the election of the members of the managing committee and its office bearers said to have been held on 7th August, 1977, was raised by some one before the District Inspector of Schools and a similar challenge has been made even before us on behalf of Respondent No. 2, but in our opinion the mere raising of a dispute did not absolve the District Inspector of Schools from his duty to "find out on an administrative level as to who are the real office bearers of the college" in order to perform his statutory functions under the aforesaid two Acts. It was the duty of the District Inspector of Schools "to satisfy him as to who, according to him, are the validly elected office bearers of the institution." In the instant case the District Inspector of Schools does not appear to have applied his mind at all to the facts brought to his notice by the Petitioners in regard to a fresh election of the members of the committee of management and its office bearers having taken place on 7th August, 1977. Simply because a dispute was raised in regard to the validity of the said election" the District Inspector of Schools was not right in taking the view that until the dispute was resolved by a civil court or amicably between the parties it is the office bearers of the old managing committee whose term had apparently expired would continue to be recognised by him. If the view taken by the District Inspector of Schools is upheld it is likely to lead to disastrous results. For instance even if in a given case fresh election may have validly taken place all that the office bearers of the old committee of management, whose term has expired, need do is to raise a dispute before the District Inspector of Schools and thereby deprive the new office bearers to discharge their functions and themselves continue as office bearers of the committee of management even though their term had expired. According to the position of law enunciated in the case of Committee of Management S.A.V. Inter College (supra) the District Inspector of Schools should have on the dispute being raised proceeded to satisfy himself on an administrative level to find out as to who according to him were the validly elected office bearers of the institution. It is only if the District Inspector of Schools was, after such administrative inquiry, of the view that it has not to his satisfaction been established that any

valid election had taken place on 7th August, 1977, that he could fall back upon paragraph 7 of the Scheme of Administration to continue to recognise the office bearers of the old committee of management even though their term had expired. It is for this reason that we are of opinion that the impugned order of the District Inspector of Schools cannot be sustained and a direction deserves to be issued to him to make the necessary inquiry on an administrative level to satisfy himself as to who according to him are the validly elected office bearers of the institution as held in the case of Committee of Management S.A.V. Inter College (supra).

3. In this connection it was urged by counsel for the Respondents that a mandamus, can be issued to the District Inspector of Schools only if he was in view of some statutory provision under an obligation to make such an inquiry. Firstly, the implied power which according to the decision in the case of Committee of Management S.A.V. Inter College (supra) vests in the District Inspector of Schools to make an inquiry on an administrative level for his satisfaction exists because of the fact that he has to discharge certain statutory duties. If the duties which are to be performed are statutory, the implied power must apparently partake of the same nature. We, however, find it unnecessary to express any final opinion on this point in view of the fact that a new Section being Section 19-A has been inserted in the U.P. General Clauses Act by U.P. General Clauses (Amendment) Act, 1975 (U.P. Act 54 of 1975). This section reads:

19-A. Ancillary powers - Whereby any Uttar Pradesh Act, a power is given to a person, officer or functionary to do or enforce the doing of any act or thing, all such powers shall be deemed also to be given as are necessary to enable that person, officer or functionary to do or enforce the doing of the Act or thing.

Even though we have described above the functions of the District Inspector of Schools under the two Acts referred to above as his duties but keeping in view their nature they are statutory powers which the District Inspector of Schools has to exercise while dealing with a recognised educational institution. In view of Section 19-A aforesaid the District Inspector of Schools shall be deemed also to have been given all such powers as are necessary to enable him to do or enforce the doing of the act which he is required to perform under the two Acts referred to above.

4. The term "management" has been defined in Section 2(d) of the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, as follows:

"management" in relation to any institution, means the committee of management constituted in accordance with the scheme of administration, if any, and includes the manager or other person vested with the authority to manage and conduct the affairs of the institution.

It is thus apparent that the power which the District Inspector of schools is to

exercise under the two Acts aforesaid in relation to any recognised educational institution has to be exercised in collaboration with the committee of management constituted in accordance with the scheme of administration. In the instant case the case of the Petitioners was that a fresh election of the members of the committee of management and its office bearers had taken place on 7th August, 1977, in accordance with the scheme of administration. In view of Section 19-A, therefore, the District Inspector of Schools had the power to make the inquiry in the manner laid down in the case of Committee of Management S.A.V. Inter College (supra). Indeed this inquiry was such which the District Inspector of Schools was duty bound to make in view of Section 19A of the U.P. General Clauses Act for properly dealing with the committee of management in connection with the discharge of statutory functions under the two Acts aforesaid. Since the District Inspector of Schools has failed to discharge that duty or to exercise the statutory power, by whatever name it may be called, we are of opinion that a direction can be issued to the District Inspector of Schools as stated above.

5. Before parting with the case we, however, wish to make it clear that till the District Inspector of Schools makes an inquiry in the manner stated above and passes an order the office bearers of the old committee of management, which was elected on 30th June, 1974, and whom he had recognised by the impugned order, may continue to be recognised by the District Inspector of Schools so that no vacuum is created and the management of the institution does not suffer in any manner.

6. In view of the foregoing discussion the writ petition succeeds and is allowed and the impugned order of the District Inspector of Schools dated 7th September, 1977, is quashed subject to the aforesaid observations and he is directed to pass fresh orders after hearing the parties and making an inquiry in the matter on an administrative level to satisfy himself as to who, according to him, are the Validly elected office bearers of the committee of management of the aforesaid college. It has been asserted in the supplementary counter-affidavit filed by Ram Kishan, Respondent No. 2, that another election has taken place on 23rd October, 1977, and in that election he has been elected as the manager. He had been elected manager even in the election held on 30th June, 1974. Counsel for the Petitioners as well as counsel for Respondent No. 2, Ram Kishan, undertake that their respective clients will appear before the District Inspector of Schools on 24th December, 1977, and will produce a certified copy of this order on that date. The District Inspector of Schools will pass orders after making the necessary inquiry as aforesaid within six weeks from 24th December, 1977. It would not be necessary for him to issue fresh notices to any of the parties in view of the aforesaid undertaking and it is made clear that if any one of the parties fails to appear on that date he would be doing so at his own risk. In the circumstances of the case the parties will bear their own costs. A copy of this order may be supplied to counsel for the parties within three days on payment of usual charges.