
(2004) 11 AHC CK 0100
In the Allahabad High Court
Case No : C.M.W.P. No. 21897 of 2004

Committed of Management, National Inter College and
Another

APPELLANT

Vs

Joint Director of Education, Region-I and Others

RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 30
Uttar Pradesh Intermediate Education Act, 1921 — Section 16(CC)

Citation : (2005) 1 AWC 988 : (2005) 1 ESC 740

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashok Khare and Vivek Chaudhary, for the Appellant; I.N. Singh and N.L. Pandey and Ajay Yadav, S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Ashok Khare, senior advocate, assisted by Sri Vivek Chaudhary, on behalf of the petitioners, learned standing counsel on behalf of the respondent Nos. 1 and 2, Sri N. L. Pandey on behalf of the respondent No. 3.

2. National Inter College Lalkurti, Meerut, Cantt. is a minority institution, recognized under the provisions of the U. P. Intermediate Education Act. The said institution has its own approved scheme of administration. The Committee of Management of the institution is elected strictly in accordance with the provisions of the aforesaid scheme of administration.

3. The last undisputed elections for constituting the Committee of Management of the institution were held on 7th January, 2001. The term of the Committee of Management as provided under the approved scheme of administration is three years with a rider that in case newly elected office bearers do not assume the charge within one month from the expiry of the term, the Committee of Management shall be treated as time barred and a Prabandh Sanchalak shall be appointed by the Deputy Director of Education for holding fresh elections of the

Committee of Management. Further under Clause 9 (3) of the scheme of administration, it is provided that the list of members of the general body, entitled to participate in the elections, shall be forwarded to the District Inspector of Schools and the Deputy Director of Education 11 months prior to the date of elections.

4. According to petitioner Committee of Management, list of the members of the general body was forwarded to the District Inspector of Schools as per the provisions of scheme of administration. The respondent No. 5, on coming to know of the same, raised certain objections with regards to enrollment of 74 new member. The District Inspector of Schools, by means of order dated 16th January, 2004 and 9th February, 2004 held that the aforesaid 74 persons were not validly enrolled members and were, as such, held not entitled to participate in the elections for constituting the Committee of Management of the institution.

5. Against the aforesaid two orders Writ Petition No. 6971 of 2004 was filed by three persons in their individual capacity, wherein an interim order was passed directing that the elections may take place as per the schedule, however, the result of the said elections shall not be given effect to. According to the petitioners, elections have been held on 23.3.2004, in which the petitioner No. 1 was again elected as Manager. All the relevant papers were transmitted through the office of the District Inspector of Schools to Regional Level Committee, constituted under the Government order dated 19th December, 2000, for necessary approval of the aforesaid elections. The Regional Level Committee by means of the order dated 20th May, 2004 has declared the aforesaid elections to be invalid on various reasons, as mentioned in the impugned order. Thereafter the Joint Director of Education has proceeded to appoint a Prabandh Sanchalak in the institution for holding fresh elections of the Committee of Management.

6. On behalf of the petitioner it is contended that the impugned order has been passed (a) without notice or opportunity of hearing to the petitioner (b) the impugned order, in so far as it directs appointment of Prabandh Sanchalak, infringes upon the fundamental right of the minority institution as guaranteed under Article 30 of the Constitution of India. Lastly it is submitted that in view of the interim order of this Court, passed in Writ Petition No. 6971 of 2004, the respondents could not have acted upon the result of the elections, which have taken place on 23.3.2004 and should have awaited the outcome of the earlier writ petition.

7. On behalf of the respondent it is contended that the impugned order has been passed strictly in accordance with the provisions of the approved scheme of administration, which has been framed by the Committee of Management of the institution itself, and as such there is no illegality or infirmity in the order passed by the Joint Director of Education. It is further submitted that the term of three years one month had already expired on 6th February, 2004 and, as such, no elections could have been held by the outgoing Committee of Management, thereafter.

8. I have heard counsel for the parties and have gone through the records of the writ petition.

9. The foremost question raised before this Court is as to whether Clause 8 of the scheme of administration, which provides for appointment of Prabandh Sanchalak after expiry of the prescribed term of three months with grace period of one month infringes upon the fundamental rights of the minority institution to establish and administer educational institution as guaranteed by Article 30 of the Constitution of India with specific reference to the observations of the Hon"ble Supreme Court in the case of Islamic Academy of Education and Another Vs. State of Karnataka and Others,

10. In order to appreciate the aforesaid issue, it would be relevant to refer to certain provisions of the Intermediate Education Act. Section 16 (CC) and relevant provision of third schedule (Section 16CC), which are relevant for the purposes, reads as follows :

"16CC. The scheme of administration in relation to any institution, whether recognized 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."

"(Third Schedule) (See Section 16CC)

Principles on which approval to a scheme of administration shall be accorded :

Every scheme of administration shall--

(1)

(2) Provide for the procedure for constituting the Committee of Management of periodical elections ;"

11. From the aforesaid provisions, it is apparently clear that the scheme of administration of every recognized institution has to be in conformity with Schedule 3 appended to the Intermediate Education Act, which provides for amongst other holding of periodical elections.

12. With reference to the aforesaid provisions of the Intermediate Education Act, the petitioner's Committee of Management itself proposed amendment in the existing scheme of administration, which were duly approved by the Joint Director of Education, as is admitted to the petitioner, copy whereof has been enclosed as Annexures-2 and 3 to the writ petition. The said scheme of administration, which was approved by the Joint Director of Education, admittedly contains Clause 8, which provides for the term of the Committee of Management and reads as follows :

^^inkf/kdkjh ,oa lfejr ds lnL;ksa dk dk;Zdky rhu o"kZ dk gksxk A dk;Z vof/k lekIr gks tkus ij vxys ,d ekl rd gh inkf/kdkjh cus jg ldsaxs A ;fn rhu o"kZ ds ckn ,d ekg ds vUnj uop;fur lfejr dk;ZHkkj xzg.k ugha djrh rks 3 o"kZ 1 ekg ds

ckn dkykrhr lfefr dk dk;Zdky Lor% lekIr le>k tk;sxx vkSj IEHkkxh; mi f"kk{kks
funs"kd }kjk euksuhr ,d O;f? izcU/k lapkyd dk;Zjr ekuk tk;sxx ftls izcU/kkf/kdj.k
ds iw.kZr;k vf/kdkj gksaxs A og izcU/k lapkyd uo p;fur lfefr dks Hkh izfr dk;Zjr
dj;k;sxx vkSj ;fn pquko ugha gqvk rks] pquko djks p;fur lfefr dks dk;Zjr dj;k;sxx
vkSj ;fn izcU/k lfefr;ksa ds vf/kdkj dk nkok gS rks ftlds i{k esa IEHkkxh; mi
f"kk{kks funks"kd dk fu.kZ; gks mls dk;Zjr dj;k;sxx A**

13. The Committee of Management of the institution, having itself made amendments in the existing scheme of administration, which were duly approved by the Joint Director of Education, cannot be permitted to turn down and assert that the constitutional right, as guaranteed under Article 30 of the Constitution of India, has been infringed because of the incorporation of the provisions under Clause 8 of the scheme of administration, which provides for appointment of Prabandh Sanchalak after expiry of the term of the Committee of Management including the grace period. The Committee of Management cannot be permitted to blow hot and cold at the same time. The Committee of Management itself cannot be permitted to question the legality of the aforesaid rules, which have been made by the said committee itself for its own governance. Even otherwise, Clause 8 of the amended scheme of administration only contemplates a situation where fresh elections of the Committee of Management are not held by the outgoing Committee of Management within the time specified, including the grace period, and in such circumstances, only for the purposes of ensuring that fresh elections take place in an independent and fair manner, the committee itself decided for appointment of Prabandh Sanchalak by the Joint Director of Education for the purposes of conducting such subsequent elections. Further under the said clause the Prabandh Sanchalak is duty bound to handover the charge to the newly elected Committee of Management immediately after holding fresh elections, In such circumstances, it cannot be said that the management of the minority institution has been taken over because of Clause 8 of the scheme of administration. The portion of the judgment of the Hon"ble Supreme Court, relied upon by the petitioner, in the case of Islamic Academy v. State of Karnataka, is reproduced herein below :

"However, the right given under Article 30 to minorities cannot be done away with and the minorities will still have a fundamental right to establish and administer educational institutions of their choice. Similarly, even though the Government may have a right to take over management of a non-minority educational institution, the management of a minority educational institution cannot be taken over because of the protection given under Article 30."

14. The legal proposition laid down by the Hon"ble Supreme Court is not in doubt. However, the facts of the present case are clearly distinguishable inasmuch as Clause 8 only eclipses the functioning of the Committee of Management for a short duration, during which elections are to be held by the Prabandh Sanchalak for the purposes of new office bearers being inducted. The said provision takes care of interregnum between time barred outgoing.

Committee of Management and the incoming newly selected office bearers. As such, Clause 8 does not supersede the management or takes over the management of the minority institution, which is prohibited under Article 30 of the Constitution of India and as interpreted by the Hon''ble Supreme Court. The provision is in the nature of appointment of an independent election officer for the purpose of getting independent elections held. The continuance of the earlier Committee of Management is brought to end as its term has expired and the provision declares such a committee to be time barred and as such non-existent in the eye of law. The provision is for the purpose of ensuring periodical elections regularly as well as fairly, which is necessary for the good governance of the institution. The provision has the effect of striking at maladministration and uncalled for continuance of elected office bearers for indefinite period.

15. In the opinion of the Court, Clause 8, in so far as it provides for fresh elections to be held by the Prabandh Sanchalak after expiry of the term of the prescribed period of three years one month, does not violate Article 30 of the Constitution of India nor the petitioners can be permitted in writ court, under Article 226 of the Constitution of India, to challenge the same, once they themselves have opted for being governed by the aforesaid provisions of the scheme of administration.

16. Even minority institution is bound by the regulations, which are in the interest of the institution, as right to administer does not include right to mal-administer. Clause 8 cannot be read in a manner to suggest that the management of the institution has been taken over so as to contravene Article 30 of the Constitution of India. Regulations can also be framed to prevent maladministration as also for laying down the standard of education, teaching, maintenance of discipline, public order, health, morality etc. Reference-- T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . and Islamic Academy of Education and Another Vs. State of Karnataka and Others,

17. In view of the aforesaid, it is accordingly held that if the term of the Committee of Management of the petitioners'' minority institution has expired including its grace period, there is no illegality or infirmity in appointment of Prabandh Sanchalak for getting fresh elections of the Committee of Management held.

18. So far as the merits of the order dated 23.2.2004 is concerned, counsel for the petitioner has stated that the said order has been passed without notice or opportunity of hearing to the petitioner, and as such is bad (reference paragraph 16 of the writ petition). Reply to the contents of paragraph 16 has been given in paragraph 10 of the counter-affidavit filed on behalf of the respondent and it has been clearly conceded that no opportunity of hearing was afforded. However, the stand taken is that it is not necessary for the Regional Level Committee to afford opportunity of hearing to the petitioner.

19. In the opinion of the Court, since the order passed by the Regional Level

Committee visits the petitioner with evil civil consequences and further since the same relies upon the ex parte report of the District Inspector of Schools in respect of the elections which have taken place on 23.3.2004, it was mandatory that an opportunity of hearing should have been afforded to the petitioner to controvert the allegations made in the report of the District Inspector of Schools, Reference may also be had to the allegation, of the petitioner to the effect that the Regional Level Committee has misdirected itself in referring to un-amended provisions of Clauses 6 and 7 of the scheme of administration. According to petitioner, the said Clauses 6 and 7 have been amended in 1994 with the approval of the Deputy Director of Education and therefore the impugned order is liable to be set aside on this ground also.

20. In the totality of the circumstances as noticed above, in the opinion of the Court, it was necessary for the Regional Level Committee to have afforded opportunity of hearing to the petitioner and in absence thereto, the impugned order passed by the Regional Level Committee cannot be legally sustained. The order dated 20th May, 2004 is hereby quashed, having been passed in violation of the principles of natural justice. The matter is remanded to Regional Level Committee to decide the dispute afresh after affording opportunity of hearing to the parties and after permitting exchange of documents. The Regional Level Committee shall also decide the issue as to whether 74 new members enrolled by the Committee of Management between 1st April, 2001 to 25th May, 2002 were entitled to participate in the elections of the Committee of Management or not irrespective of the orders passed by the District Inspector of Schools dated 16th January, 2004 and 9th February, 2004, which were subject matter of challenge in Writ Petition No. 6971 of 2004, which has been disposed of by this Court today. If the Regional Level Committee comes to a conclusion that the elections dated 23.3.2004 have not been held in accordance with the scheme of administration, it shall appoint a Prabandh Sanchalak under Clause 8 of the scheme of administration for fresh elections of the Committee of Management of the institution strictly in accordance with the approved scheme of administration.

21. In view of the aforesaid, writ petition is partly allowed.