
(1995) 11 AHC CK 0072

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 11194 of 1993

Committed of Management, Maharaja Agrasen Inter
College, Deoria and Others

APPELLANT

Vs

Regional Dy. Director of Education, Gorakhpur and Others

RESPONDENT

Date of Decision : 22-11-1995

Acts Referred:

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

Citation : (1995) 11 AHC CK 0072

Hon'ble Judges : R.H. Zaidi, J

Final Decision : Disposed Of

Judgement

R. H. Zaidi, J.—By means of the present petition under Article 226 of the Constitution of India, petitioners pray for issuance of a writ of certiorari quashing the orders dated 221993 and 182 1993 passed by respondent No. 1, Regional Dy. Director of Education, VII Region, Gorakhpur and further for a writ of mandamus commanding respondents No. 1 to 3 to restrain the respondents No. 4 and 3 from managing the affairs of the Colleges and hold the election of office bearers and members of the Committee of Management of Maharaja Agrasen Inter College, hereinafter referred to as "Inter College" and Maharaja Agrasen Girls inter College hereinafter referred to as Girls College, on the basis of 37 members of the general body of the Society.

2. The relevant facts giving rise of the present petition, are that there is a Society known as Sri Marwari Vidyalaya Soceity, Deoria for short Society which runs two educational Institutions known as Maharaja Agrasen Inter College and Maharaja Agrasen Girls Inter College at Deoria. Both the Institutions have got separate Schemes of Administration. Admittedly, the term of the Committee of Management is three years. The general body of the Committee is the same.

3. It wag on 111989 that the election of the Committee of Management was held in which Sri Nath Mal Agrawal was elected as Secretary/ Manager of the Inter College, while Sri Ram Prasad Goel as Secretary/ Manager of the Girls College.

On expiry of the term of the Committee of Management in the year 1991, dispute with respect to the enrolment of members and election of office bearers and members of the Committee of Management arose. I need not enter into the minor details of the said dispute as the term of the aforesaid Committee of Management of the said Colleges has come to an end. It would suffice to state that the petitioners" claimed that the election was held by them on 23/11/1992, while according to the contesting respondents the election was held on 20/3/1992 challenging the validity of the said elections, two writ petitions i.e. No. 6243 of 1992 by Sri Nath Mal Agrawal and No. 10436 of 1992 by the petitioners were filed. Ultimately, the said writ petitions were disposed of by this court by a common judgment on 13/5/1992, the operative portion of the said judgment is quoted below :

?For the reasons stated above, it is fully established that the elections held on 20/3/1992 on the basis of newly approved list of 56 members is not in accordance with law. The order of the Distt. Inspector of Schools, dated 21/3/1992 attesting the signatures of Sri Nath Mal Agarwal as Manager of Maharaja Agarsen Inter College and the attestation of signatures of Sri Ram Prasad Goel as Manager of Mahraja Agarsen Balika Inter College is quashed. The order dated 9/4/1992 passed by the District Inspector of Schools recognising the elections held on 20/3/1992 is also quashed.

Admittedly, the period of three years since the last election of the Committee of Management held on 11/11/1989 has expired. I direct the Dy. Director of Education to appoint Prabandh Sanchalak in accordance with the Scheme of Administration within two weeks of a certified copy of this order being placed before him. The Prabandh Sanchalak will hold the election of the Committee of Management of the Institution within two months thereafter on the basis of the list of 37 members as registered by the Asst. Registrar by order, dated 27/11/1992 filed as Annexure CA3 in writ petition No. 6243 of 1992. The fresh members enrolled by either of the two rival parties after the registration of 37 members by the Asstt. Registrar by order dated 27/11/1992 under Section 4(1) of the Societies Registration Act for 1991/92 shall be allowed to participate in the present election.?

4. Against the aforesaid judgment, two special appeal Nos. 191/92 and 192/92 were filed by the parties. The special appeals came for hearing before a Division Bench of this Court on 13/7/1992 and on the same day both the special appeals were decided by a common judgment, the operative portion of which is quoted below :

?Having regard to the fact that the above factual controversy relied by the parties cannot be decided in the jurisdiction and keeping in view the provisions of Section 16A (7) of the U. P. Intermediate Education Act, 1921. We felt this a preeminently fit case which should be referred to the Regional Dy. Director of Education, Gorakhpur, who should decide the dispute with respect to Management of the College in question and pass necessary consequential order

and we direct accordingly. Needless to say, in deciding the dispute the Dy. Director of Education shall go into all ancillary questions, including the rival claims relating to the number of members, who were entitled to vote.

The Deputy Director will comply with this directions of ours in accordance with law, within a period of two months from the date of presentation of a certified copy of this order, pending decision of the Dy. Director, status quo as on today should be maintained regarding the management of the College in question. The appeals are thus disposed of.?

5. The Regional Dy. Director of Education in compliance of the directions issued by this court, vide order dated 221993 decided the dispute whereby the claim of respondents No. 4 and 5 was upheld. It was held that the election held on 2031992 was valid and election held on 2321992 is invalid. Vide order dated 1821993, it was held that since in the meeting held on 203IS92, Sri Ram Prasad Goel was validly elected as Secretary/Manager of the College. The Authorised Controller was consequently withdrawn and said Manager was permitted to function. According to the case set up by the petitioners, the election held on 2321992 was valid as the same was held on the basis of 37 valid members and the election held on 2031/92 was invalid. The view taken to the contrary by the Regional Dy. Director of Education is manifestly erroneous and illegal. It has been contended that this court vide judgment and order dated 1351992 set aside the election held on 2321992 and directed the Dy. Director of Education to appoint Authorised Controller for holding the election with the help of 37 members. The special appeals filed against the said judgment was confined to the dispute relating to Maharaja Agrasea Inter College and the judgment and order passed by learned Single Judge with respect to the Girls College become final. The Dy. Director of Education had no jurisdiction to record the finding contrary to the findings recorded by the learned Single Judge and to uphold the claim of respondents.

6. On the other hand, in the counteraffidavit filed by contesting respondents, the facts state'd in the writ petition have been controverted. It has been asserted that election of the office bearers and members of the Committee of Management was held on 2031992 under the orders of this court dated 2721992 in accordance with the provisions of Scheme of Administration and under the supervision of observer appointed by the District Inspector of Schools. The said election was recognised by the District Inspector of Schools and signatures of the respondents were also attested and they have since then are in effective control of the affairs of the two Colleges. It has further been asserted that against the judgment and order passed by learned Single Judge two special appeals were preferred. Since question of law and facts involved in the said two special appeals were same, the counsel appearing for the appellants with a view to avoid confusion placed the facts of the case relaing to "Inter College". He never given up the case with respect to the Girls College and ultimately both the special appeals were disposed of by a common judgment dated 1371992. There was

nothing on record to show that the appeal with respect to the Girls College was dismissed. It has also been stated in the counteraffidavit that in the meanwhile the term of the Committee of Management elected on 2031992 was about to expire, therefore, the election after following the procedure prescribed under law was held on 25121994 and the office bearers and members of the Committee of Management were elected. Papers relating to the said election were submitted before the District Inspector of Schools, but till date approval was not granted in view of the order passed by this Court on 23121994, which read as under :

?Heard Sri R. S. Misra, counsel for petitioners and Sri T. P. Singh counsel appearing for respondents. In the facts and circumstances of the case, it is hereby directed that if the election is held as scheduled on 25121994, that shall be subject to the further order of this court. On 1271995 following orders were passed by this court:

?Heard learned counsel for the parties. The interim order dated 23121994 shall not be construed as an order restraining the declaration of the result of the election, if any, held on 25121994 All that the interim order means is that the result of the election, if any, held as scheduled would be subject to further orders of this court.

The matter shall now be listed before appropriate Bench at an early date. It shall not be treated as tied up.?

7. On 2381995, this case was directed to be put up on the next date alongwith the records of special appeal Nos. 190 and 191 of 1992. Thereafter the matter was heard.

8. I have heard learned counsel for the parties. In the special appeals referred to above, learned counsel for the appellants made submission before court that he was confining his case to the management of only Maharaja Agrasen Inter College and not in respect of other two educational Institutions and the Society. It was submitted that in view of the said statement, the judgment and order passed by learned Single Judge with respect to the Girls Inter College remained in tact. It was, therefore, not open to the Regional Dy. Director of Education to record the finding contrary to the finding recorded by the learned Single Judge inasmuch as principle of resjudicata will apply and there can be no two conflicting judgments in the same matter. The finding recorded by the learned Single Judge with respect to the validity of the members and the election as well as the orders passed by him have become final. It has also been contended that on expiry of the term of the Committee of Management, the Committee of Management, who was elected in the year 1989 ceased to exist and no election could be held on 2031995 except under the supervision of Authorised Controller. The said election was also liable to be discarded on the said basis. It has also been asserted that interim order dated 2721992 merged in the final order passed by this court on 1351992 and the election held on 2031992 cannot be held to be valid.

9. On the other hand, learned counsel for contesting respondents contends that

it was only with a view to avoid confusion on facts, the statement was made by the learned counsel for the petitioners in special appeals that he was confining his argument to Maharaja Agrasen Inter College inasmuch as the question of facts and law involved in the two special appeals were common and that both the appeals were disposed of by a common judgment. He has also contended that on the record, there is no other order dismissing the special appeals with respect to Maharaja Agrasen Girls College. The order dated 1371992 passed by Divisors Bench in two special appeals thus disposed of both appeals, therefore, there was no question of the judgment and order dated 1351892 passed by learned Single Judge to operate as resjudicata. The same has merged in the judgment of special appeals. It has further been contended that the orders passed by the Regional Dy. Director of Education is concluded by the finding of the fact and does not suffer from any illegality and infirmity. It has further been urged that during the pendency of the present petition, fresh election of the office bearers and members of the Committee of Management of the two Institution was held and since 111989 till date the respondents No. 3 and 4 were in effective control and they were discharging their duties of management of the affairs of the Institution in accordance with law, the writ petition has become infructuous and was liable to be dismissed.

10. I have considered the rival contentions made by the learned counsel for the parties and have gone through the record of the case.

11. In almost all Intermediate Educational Insitutions where there are Committees of Management, they do not manage the affairs of the College, but they are mismanaging the same. Normally the term of the Committee of Management is three years. Within three years they involved themselves in completed litigations and before the disputes are decided by the courts or competent authorities, the term of the Committee of Management comes to an end. Thus dispute goes on, but the Committee of Management became nonexistent which ultimately affects the working of educational Institutions as well as career of the students and members of the teaching and nonteaching staff. In most of the cases rival committee approached this court several time within a period of three years. They also approached the appellate courts including the Supreme Court.

12. Unless appropriate action is taken by the State Government in this regard by introducing amendment in the Act to avoid litigation in the educational matters, the students and ultimately the entire country shall continue to suffer irreparable loss.

13. In the present case, parties have approached this court several times for redressal of their grievances and admittedly during the pendency of the present petition, the term of the Committee of Management has come to an end.

14. The contesting respondents now claim the election of the office bearers and members of the Committee of Management was held on 25121994, result of

which was also declared and they continue to be in effective control of the affairs of the Institutions. Even if the point raised by learned counsel for, petitioner are decided in favour of the petitioners the matter will have to be sent back to the Dy. Director of Education for decision afresh. It would, therefore, be an exercise of futility. So far as the validity of the election dated 25/12/1994 is concerned, according to the respondents own case that the last election of the office bearers and members of the Committee of Management was held on 20/3/1992 therefore, three years would elapse on 20/3/1995. It is well settled in law that term of the Committee of Management could not be cut short. A reference in this regard may be made to the decision of case of *Bajaj Shiksha Parishad v. Dy. Director of Education*, 1988 UPLBEC 267, wherein it was held as under ;

?Direction for holding election of Committee of Management of Intermediate College, passed by Regional Dy. Director of Education in exercise of power under Section 16A (7) before expiry of term of elected members of Committee of Management, which was in actual control of affairs of that College illegal and without jurisdiction. Term of Committee of Management in actual control cannot be curtailed.?

15. In view of the said decision, the election held on 25/12/1994 cannot be said to be valid. Under the facts and circumstances stated above and without deciding the points raised by the learned counsel for the parties.

I direct the Dy. Director of Education to immediately appoint Authorised Controller to administer the affairs of the two Colleges i.e., Inter College and Girls College, and to hold the election of the office bearers and members of the Committee of Management. The Dy. Director of Education is also directed to scrutinise and finalise the list of the members of the, general body of the two Colleges before holding the election. The list shall be finalised within two weeks from the date a certified copy of this order is produced before him and election will be held within another one month from the date of finalisation of list.

16. With the aforesaid observations and directions the writ petition stands disposed of finally.