

(1995) 03 AHC CK 0107

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4568 of 1995

Committee of Management, Chaudhary Chotu Ram Post-Graduate College, Muzaffarnagar and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 27-03-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Presidents Act, 1973 — Section 57, 58(2)

Uttar Pradesh State Universities Act, 1973 — Section 58(1)

Citation : AIR 1996 All 45 : (1995) 2 UPLBEC 790

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : R.N. Singh and A.P. Sahi, for the Appellant;

Final Decision : Dismissed

Judgement

1. In this petition, learned counsel for the caveat or Shri Sudhir Agarwal appeared and accepted notice on behalf of Ved Pal Singh. The caveator was directed to be impleaded as respondent No. 5 in the writ petition. Counter and rejoinder affidavits have been exchanged and the learned counsel for petitioners, learned standing counsel and learned counsel for the caveator have agreed that the petition be decided finally at this stage.

2. Chaudhary Chotu Ram Post Graduate College, Muzaffarnagar (hereinafter referred to as the College) is affiliated to Chaudhary Charan Singh University, Meerut, State Government in exercise of powers u/s 58(1) of U.P. State University Act, 1973 (hereinafter referred to as the Act) served a show cause notice on the management of the College as to why authorised controller may not be appointed to manage the affairs of the college for the irregularities committed by the management as mentioned in the notice. The notice dated 3-2-1995 has been filed as Annexure 3 to the writ petition. In this notice as many as ten grounds for taking action u/s 58(1) of the Act have been shown

which relate mainly to financial matters. The State Government simultaneously also passed an order u/s 58(2) of the Act suspending the management during the pendency of proceedings. The order has been filed as Annexure 5 to the writ petition. Aggrieved by this order, suspending the management and appointing Collector, Muzaffarnagar as authorised controller, petitioners have approached this Court under Art. 226 of the Constitution.

3. Learned counsel for petitioner has submitted that the committee of management was elected on 22-12-1994 with Shri Samay Singh as President and Shri Ishwar Singh Malik as Secretary. This newly elected committee of management could hardly function for a month and the impugned order has been passed without giving any opportunity in arbitrary manner, It has also been sub-mined that u/s 58(2) of the Act, the State Government is required to record reasons for passing orders which means that order should be self-explanatory. However, the impugned order contains only conclusions and not the reasons. Thus the order is violative of the principles of natural justice as well as the mandatory provisions of Section 58(2) of the Act. Learned counsel has further submitted that no reason has been recorded showing necessity of the immediate action. Learned counsel for petitioners has placed reliance on certain judgments of this court as well the Apex Court.

4. Learned counsel for respondents, on the other hand, submitted that from a perusal of the provisions of Section 58(2) of the Act, it is clear that the occasion for forming opinion is at the time when the State Government decides to issue notice and at the stage opinion can be formed only on the basis of the material available. The impugned order contains sufficient reasons and prima facie satisfaction for putting the management under suspension during pendency of the proceedings. If on the material available at this stage the view taken by the State Government is possible, the order fulfils the requirement of law and no interference can be made by this Court with the conclusion arrived at by the State Government. It has been further submitted that it is interlocutory order and petitioners will have full opportunity to submit their explanation and contest the notice and for this reason also no interference is required. Learned counsel for respondents has also placed reliance on certain authorities.

5. I have considered the submissions made by the learned counsel for the parties. As clear from the submissions made by the counsel for the parties, the impugned order, Annexure-5 to the writ petition, has been assailed on behalf of the petitioners mainly on the ground that it does not contain reasons for suspending the management during pendency of the proceedings u/s 58(1) of the Act. For better appreciation of the controversy it would be appropriate to reproduce the impugned order:--

^^pwafd pkS/kjh NksVwjke fMxzh dkWyst eqt?Qjuxj ds izca/kra= dks mRrj izns"k jkT; fo"fo|ky; vf/kfu;e dh /kkjk 57 ds varxZr uksfVI tkjh dh tk jgh gS A

2- vkSj mDr uksfVI esa mFYyf[kr foRrh; vfu;ferrk;sa dkQh xaHkhj gSaa vkSj

egkfo|ky; dh lEifRr dk lkjdku :i ls nqfoZfu;kstu nq:i;kstu ,oa ifjorZu fd;k x;k gS A
ftlls egkfo|ky; dk vfgr gks jgk gS A

3- vr% egkfo|ky; ds fgr esa ;g vko";d gS fd bl izdj.k esa rRdky dk;Zokgh dh
vko";drk gS A vr,o m- iz- jkT; fo"ofO|ky; vf/kfu;e dh /kkjk 58 dh mi/kkjk ?2? esa
izn?k "kfDr;ksa dk iz;ksx djrs gq, jkT;iky egksn; mDr egkfo|ky; ds izca/kra= dks
rRdky fuyafr fd;s tkus rFkk 6 ekg ds fy, mDr egkfo|ky; dh lEif?k dk izca/k ftykf/
kdkjh eqt?Qj uxj dks iznku fd;s tkus dk lg"kZ vkns"k iznku djrs gSa A

6. From a perusal of Section 58(2) of the Act, it is apparent that State Government while issuing notice u/s 57 of the Act, may form an opinion to suspend the management during pendency of the proceedings. There is a further mandatory requirement that reasons should be recorded that immediate action is necessary in the interest of the college.

7. Now, it has to be seen whether the impugned order satisfies the aforesaid requirements or not. Para 2 of the impugned order states that the irregularities mentioned in the notice are serious. Thus, all the grounds mentioned in the notice stands incorporated by reference in the impugned order and as both the notice as well as the impugned order have been served on the petitioners together, the grounds mentioned in the notice provided material for forming the opinion. The impugned order further says that the property of the college has been substantially diverted, misapplied and misappropriated to the detriment of the interest of the college, Para 3 of the impugned order then says that an immediate action is necessary in the interest of the college. A Division Bench of this Court in identical facts and circumstances in the case of Swami Devanand Snatak Mahavidyalya v. State of U.P. reported in 1979 ALJ 23 (DB) has occasion to consider the provisions of Sections 57 and 58(2) of the Act and the view expressed by the Division Bench squarely covers the facts and circumstances of the present case. It would be appropriate to reproduce the observations of the Division Bench hereunder:--

"The words "while issuing a notice u/s 57 is of opinion" occurring in subsection (2) of Section 50 pinpoint the stage at which an order suspending the management can be passed and that stage is the point of time of issuing notice u/s 57. When Section 58(2) contemplates the passing of an order suspending the management at the stage of the issuing of the, notice itself there seems to be no doubt that an opportunity of hearing being given prior to the passing of an order suspending the management was ruled out by the provisions contained in Section 58, if not expressly then by necessary implication. The nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power do not lead to a different conclusion. Thus the State Govt. order suspending management without giving an opportunity of hearing cannot be held to be illegal on the ground that it was violative of the principles of natural justice."

"An order contemplated by Section 58 (2) is of necessity to be passed ex parte

and on the basis of the information which may have been received u/s 57 of the Act at the Stage when this order is passed the explanation of the management is not before the State Government and the reasons which are to be recorded by it can naturally not be expected to be such reasons which may show as to why and how the explanation given to the charges has been considered. In the very nature of things the opinion which the State Government is to form on the question as to whether immediate action is necessary in the interest of the college will be a prima facie opinion based on ex parte material and not a final opinion given after considering the cases of both the parties."

"The only finding which has to be given or the conclusion which has to be reached by the State Government before passing an order under sub-section (2) of Section 58 is that immediate action is necessary in the interest of the college to suspend the management. To expect that a finding should be recorded by the State Government that the information conveyed to it u/s 57 is correct would not be proper inasmuch as at this stage there is nothing to discredit the information received. What has to be seen by the State Government is whether, if the facts stated in the information are correct on their face value a case has been made out for appointing an authorised controller u/s 58(1). At this stage, no better reasons can be expected to be recorded except that the State Government is prima facie satisfied that the information conveyed to it makes out a case for taking action u/s 58."

8. If the facts of the present case are considered in the light of the aforesaid Division Bench judgment, in my opinion the requirements of Section 58(2) of the Act have been fully satisfied. At this ex parte stage while issuing notice the opinion could be formed only on the basis of the material available. After perusal of the financial irregularities mentioned in the notice, it cannot be said that the opinion-formed by the State Government and the conclusion arrived at were not possible. It is quite different thing that after considering the explanation given by the petitioners this opinion or conclusion may be rendered unsustainable but this Court has to judge the legality of the order only on the basis of the material which was before the State Government and not with the help of the explanation given by the petitioners.

9. I have gone through the judgments cited by learned counsel for petitioners and, in my opinion, none of the cases cited are in any way helpful to the petitioners in the present case. In case of Union of India (UOI) Vs. Mohan Lal Capoor and Others, , the circumstances were entirely different. Hon"ble Supreme Court held that it is incumbent on the selection committee to state reasons in a manner which would disclose how the record of each superseded officer stood in relation to records of others who were to be preferred for promotion. The Court also observed that the recording of reasons is necessary as it is the only visible safeguard against possible injustice and arbitrariness in making selections. In the present case there is no dispute that law itself makes it imperative that for suspending the management during proceedings reason are to be recorded that

immediate action is necessary in the interest of the college. However, a perusal of the impugned order makes it clear that such reasons showing forming of prima facie opinion has already been mentioned. Similarly in case of S.N. Mukherjee v. Union of India reported in AIR 1990 SC 1984, constitutional bench of Hon"ble the Supreme Court elaborated and considered the occasions where and the when the administrative authorities should be record reasons in support of their orders. In the present case as the law itself makes it imperative to record reasons, the case does not help petitioners in any way. Another case on which reliance has been placed is by a Division Bench of this court in case of Committee of Management of Soni Thapa Khandelwal Balika Inter College, Maunath Bhajan v. State of U.P. reported in 1985 UPLBEC 530 : (1985 ALJ 575). However, from a perusal of the judgment it appears that it was a final order passed u/s 16D of U.P. Intermediate Education Act. The Director had not given any reasons and straightway concluded to appoint authorised controller. In my opinion, the view expressed" by the Division Bench is not applicable in any manner to the facts of the present case and the case is clearly distinguishable. Similarly other cases relied on behalf of the petitioners are distinguishable and do not carry the case of the petitioners any further.

10. For the reasons recorded above, petitioners have failed to make out any case for interference by this Court under Art. 226 of the Constitution. However, considering the fact that petitioners have already submitted their explanation along with the material which has also been filed along with the writ petition, it appears appropriate and proper that the State Government may be directed to decide the matter finally u/s 58(1) of the Act within a specified period so that the newly elected committee of management may discharge its functions.

The writ petition is thus dismissed. However, the State Government is directed to take a decision in the matter within a period of three months from the date a copy of this order is filed before the concerned authority. There will be no order as to costs. The interim order dated 21-2-1995 is vacated.

11. Petition dismissed.