

(2002) 05 AHC CK 0130
In the Allahabad High Court
Case No : C.M.W.P. No. 15043 of 2001

Committee of Management, Dropadi Devi Saraswati Vidya
Mandir Inter College and Others

APPELLANT

Vs

Regional Joint Director of Education and Others

RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16AA

Citation : (2002) 3 AWC 2359 : (2002) 3 UPLBEC 2457

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Ashok Khare and S.D. Shukla, for the Appellant; P.P.S. Rathore, S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Th e Committee of Management, Dropadi Devi Saraswati Vidya Mandir Inter College, Badaun and others through Shri Satish Chandra Vaish, Shri Om Prakash Vaish and Shri Badri Prasad have filed this writ petition for qua'shing the order dated 30.3.2001 (Annexure-13 to the writ petition) passed by District Inspector of Schools, Badaun, by which he has recognized the Committee of Management of which Shri Narendra Pal Singh is the President and Shri Subhash Dhingra is the Manager.

2. I have heard learned counsel for the petitioner and Shri P. P. S. Rathore, appearing for respondent No. 4.

3. The institution is recognized and governed by provisions of U. P. Intermediate Education Act, 1921. It was granted recognition as High School in 1996. The scheme of administration was approved by Joint Director of Education, Bareilly on 20.2.1996. Clause (9) of the scheme of administration provides that the term of the office bearers shall be of three years provided that the term shall continue until the successor is elected, but in any case it shall not be more than one

month. In case after the expiry of the term of elected office bearers, the President and Manager do not take necessary steps for holding elections according to the scheme, District Inspector of Schools shall on a written request of any four members hold elections for new Committee of Management. In case any four members, as aforesaid, do not make any written request, the District Inspector of Schools, after one month, shall dissolve the old Committee of Management, and shall have a right to constitute a new Committee, according to the scheme, and after constituting new Committee of Management, he shall send the list thereof with his signatures to the Regional Deputy Director of Education.

4. The last undisputed elections of the Committee of Management were held on 19.5.1996, in which Shri Badri Prasad, petitioner No. 3 and Shri Om Prakash Vaish, petitioner No. 2 were elected as President and Assistant Manager. The term of this Committee of Management expired after three years. A decision was taken to hold fresh elections on 23.7.2000, which could not be held due to some dispute, and thereafter, a fresh notice is alleged to have been given on 25.7.2000 for holding elections on 20.8.2000. Again elections could not be held and as such, fresh steps were taken. The third effort to hold elections on 7.1.2001, also failed and, thereafter, on 5.2.2001, a notice was issued afresh convening meeting of general body for 25.2.2001 to hold fresh elections. On this date, it is alleged that elections were held in which Shri Subhash Dhingra was elected as Manager, along with other office bearers, and a claim was set-up before the District Inspector of Schools, Badaun. By the impugned order, the District Inspector of Schools, on the recommendation of Regional Committee approved the Committee of Management elected on 25.2.2001. It appears that the petitioners made some representations with regard to validity of election notice and elections. They filed Writ Petition No. 12964 of 2001, which was disposed of by this Court, with the direction that in case petitioner makes fresh representation before the District Inspector of Schools, Badaun, within a period of two weeks, the same shall be decided by him in accordance with law by a speaking order within a period of two months. It is alleged in paragraph 31 that even before a certified copy of the said judgment could be issued to the petitioner, it transpired that District Inspector of Schools, Badaun, has passed an order dated 30.3.2001 granting recognition to the Committee of Management elected on 25.2.2001.

5. The order passed by the District Inspector of Schools on 30.2.2001 has been challenged on the grounds, inter alia, according to Clause (9) of the scheme of administration, after expiry of three years and one month, elections could only be held by District Inspector of Schools, there were sixty four thus members of general body, whereas notices were issued to only twenty five members. Shri Purushotam Dhingra was enrolled as a member, after expiry of the term of erstwhile Committee of Management, the District Inspector of Schools, ought to have decided petitioner's representation in terms of orders passed by this Court on 10.4.2001 in Writ Petition No. 12964 of 2001, that no opportunity was given to petitioners by the Regional Committee and that they have not been able to

obtain a copy of its recommendations.

6. Counsel for respondents has submitted that it was petitioners who had issued earlier election notices, after expiry of three years and one month, and thus, they cannot challenge the elections on the ground of violation of Clause (9) of Scheme of Administration. No notice was issued for the meeting to be held on 20.8.2000. As per Karyavahi Register, proceedings for convening elections were held for the first time on 27.8.2000 by Shri Badri Prasad. Only twenty five members had cleared their dues and thus membership of remaining member had ceased. Notice dated 5.2.2001 in pursuance of which elections were held was circulated to all valid members and four members boycotted the elections. The quorum was found to be complete in which the Committee of Management recognized by District Inspector of Schools has been elected. Shri Subhash Dhingra is a life member and his membership could never have ceased. Petitioners intentionally concealed the act of making of the order by this Court on 10.4.2001, and even after issuance of a certified copy on 13.4.2001 did not file it before District Inspector of Schools. Counsel for respondents relied on number of decisions of this Court in support of his contention, that petitioner has misused the process of Court, and having obtained an order for deciding representations, mislead this Court in obtaining an interim order. He submits that petitioners cannot be permitted to take advantage of their own wrong.

7. The maxim "*nullus commodum capere potest de injuria sua propria*" has been pressed into service as a principle of law upheld in *Union of India and others Vs. Major General Madan Lal Yadav (Retd.)*, ; *Ashok Kapil Vs. Sana Ullah (Dead) and Others*, . It has also submitted that earlier petition filed by the petitioner and fact of concealment of the order passed in the said writ petition will not bind the petitioners and debar them from claiming any relief In this case. For this proposition, counsel for respondent has also relied upon *Rajappa Hanamantha Ranoji Vs. Sri Mahadev Channabasappa and Others*, and *Ajit Prasad Gupta Vs. State of U.P. and others*, and *State of U.P. and another Vs. Labh Chand*, .

8. There is no need to go into the facts and proposition of law laid down in the cases cited by respondents. Impugned order dated 30.3.2001 was passed by District Inspector of Schools, before this Court directed him to decide representation on 10.4.2001. The order was prepared on 13.4.2001 and should have been filed with the D.I.O.S. who has certified by his letter dated 14.5.2001 sent to the Principal of the college that he has not received the order on 23.4.2001 and that only an interim order dated 23.4.2001 passed in this writ petition was received by him.

9. The first writ petition was disposed of by a direction to decide the representation. It did not decide rights of any of the parties. It was passed ex parte, directing D.I.O.S. to consider the matter on the questions raised before him so that the controversy may be decided by this Court with the help of a reasoned order.

10. Prima facie, there is substance in the submissions made by the petitioner that under Clause (9) of the scheme of administration, elections could only be held by D.I.O.S. after expiry of three years and one month of the last elections held, and that after the said period, the respondents were not entitled to determine the list of members of the general body and to declare membership of 39 members out of 64 has ceased. It is clear from Clause (9) of the scheme of administration, and it is also admitted by respondent No. 4 in his counter-affidavit, after period prescribed in Clause (9) of the scheme, the elections could only be held by District Inspector of Schools and that the said procedure was not followed. The filing of writ petition and non-production of the order for deciding representation cannot validate the elections held on 25.2.2001, which could only be held by D.I.O.S. The elections held on 25.2.2001, are thus, declared to be illegal.

11. The writ petition is allowed, and the order dated 30.3.2001, passed by District Inspector of Schools, recognizing the Committee elected on 25.2.2001. is set aside. The District Inspector of Schools, Badaun, is directed to hold fresh elections in accordance with Clause (9) and other provisions of scheme of administration within a period of three months from the date a certified copy of this order is produced before him. There shall be no order as to costs.