

(1998) 08 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 24267 of 1998

Committee of Management, Ganesh Smarak Adarsh Inter
College and Another

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 17-08-1998

Acts Referred:

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

Citation : AIR 1999 All 128

Hon'ble Judges : C.P. Garg, J

Bench : Single Bench

Advocate : Anu Jaiswal and A.K. Yog, for the Appellant; Mithilesh Kumar Gupta and Sunil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Garg, J.—By means of this writ petition, under Article 226 of the Constitution of India, it is prayed that the impugned orders dated 16-7-1998 and 18-7-1998 (Annexures 5 and 6 respectively) passed by the District Inspector of Schools (for short "DIOS") Bulandshahr-respondent No. 1 be quashed and the respondents be commanded not to interfere with the working of the petitioners' Committee of Management, which has been validly elected on 29th May, 1998 and of which Someshwar Prasad is the Manager.

2. Counter and rejoinder affidavit, as well as supplementary affidavits have been exchanged. Heard Sri A.K. Yog, learned senior counsel assisted by Ms. Anu Jaiswal, learned counsel for the petitioners, Sri Ratnesh Kumar Pandey, learned counsel for the contesting respondent No. 3 as well as learned Standing Counsel for respondent Nos. 1 and 2.

3. The dispute relates to the validity or otherwise of the election to constitute a Committee of Management which runs Ganesh Smarak Adarsh Inter College, "Narsena Bulandshahr, which is a recognised and aided institution governed by

the provisions of U. P. Intermediate Education Act, 1921. There is a duly approved Scheme of Administration in pursuance of which the affairs of the institution are managed. It is an admitted fact that last elections of the Committee of Management and its office bearers were held on 16-6-1995 in which S/Sri Satya Prakash and Someshwar Prasad were respectively elected as the President and the Manager. This Committee was recognised and approved by the DIOS by his order dated 19-2-1996 and the signatures of Someshwar Prasad as Manager were attested. The term of the Committee of Management was to expire in the year 1998 and consequently on 28-2-98, a meeting was held to finalise the election schedule. It is alleged by the petitioners that elections were held to constitute the new Committee of Management on 29-5-1998 in which again S/Sri Satya Prakash and Someshwar Prasad were respectively elected as President and Manager. Necessary papers were submitted to the DIOS for recognising newly elected Committee of Management but it was not done on account of the fact that a rival Committee of Management having been elected, was set up by Shanti Swaroop Sharma-respondent No. 3. The Committee of Management of which Shanti Swaroop Sharma claims himself to be the Manager was recognised on 18-7-1998 by the DIOS. Aggrieved, the petitioners made a representation dated 19-7-1998 to the Joint Director to challenge the order dated 18-7-1998 passed by the DIOS. The said representation is still pending before the Joint Director. It was followed by another reminder/representation dated 22-7-1998.

4. The case of the petitioners is that the DIOS has committed a grave error in recognising the Committee of Management of which Shanti Swaroop Sharma is alleged to be the Manager. According to learned counsel for the petitioners, the proper course to be adopted by the DIOS was to have referred the dispute of the rival Committee of Management to the Joint Director of Education under the provisions of Section 16-A (7) of the Act.

5. By order dated 16-7-1998-Annexure-5 to the writ petition, the DIOS has intimated the petitioners that since the petitioners have not obeyed the guidelines issued in the letter dated 23-5-1998 to hold elections in a particular manner, the alleged election held on 29-5-1998 by the petitioners cannot be given recognition. By the second order dated 18-7-1998, Annexure-6 to the writ petition, the DIOS has recognised the Committee of Management of which S/Sri Om Prakash Sharma and Shanti Swaroop Sharma have respectively been elected as President and the Manager.

6. In the counter affidavit filed by the respondent No. 3, certain startling facts have been disclosed. It is stated that the petitioner sent notices to the members of the General Body by registered post but the envelopes did not contain any notice of holding of the meeting to determine the election schedule or an intimation of the various dates on which different steps in the process of election were to be taken. One such envelope was received by Sri Virendra Sharma, Advocate, who is said to be the Patron member of the General Body. He

immediately wrote to the DIOS about the evil designs of the petitioners. Thereupon the DIOS issued certain instructions to the petitioners on 23-5-1998, a copy of which is Annexure-CA 3 to the counter-affidavit. It is further stated that since the President and the Manager elected in the last meeting had not convened the meeting for holding the elections and to chalk out the election schedule, a meeting was held on 16-5-1998 with the permission and approval of the DIOS and an election schedule was declared. The date of poll was notified as 6-6-1998 and the elections were held in the supervision of Sri Prem Pal Singh, Advocate who was appointed as election officer as well as under the observance of Rajeshwar Pal Singh Gaur who was appointed as observer by the DIOS. All the 12 members and the office bearers were declared elected unopposed. The result of the election was intimated to the DIOS who recognised the Committee of Management of which Shanti Swaroop Sharma is the Manager. His signatures were also attested by the DIOS by the impugned order dated 18-7-1998-Annexure 6.

7. Sri A.K. Yog, Senior Advocate, assisted by Ms. Anu Jaiswal urged that the DIOS has committed a grave illegality in not making a reference u/s 16-A (7) of the Act to the Joint Director concerned and that in view of the dispute about the elections of the rival Committees of Management, the DIOS did not have any jurisdiction or authority to recognise the Committee of Management of respondent No. 3 and to attest his signatures. According to Sri Yog, the Joint Director of Education had to decide the question as to which one of the rival Committees of Management was in effective control of the affairs of the institution. It was also urged that the term of the last Committee of Management, which was admittedly elected on 18-6-1995, had not come to an end as the Committee of Management had taken over charge on 24-2-1996 after the signatures of Someshwar Prasad were attested by the DIOS on 19-2-1996 and, therefore, during the subsistence of the term of the last Committee of Management, the question of constitution of new Committee of Management of which Shanti Swaroop Sharma is the Manager, did not arise. According to Sri Yog, the term of the petitioners' Committee of Management is to expire on 24-3-1999 and, therefore, no fetters should be put on the petitioners' Committee of Management in running the institution as the term of three years and one month, contemplated under the Scheme of Administration, has not yet expired. All these submissions have been rebelled by Sri Ratnesh Kumar Pandey, on behalf of the respondent No. 3.

8. To begin with, it may be mentioned that there can be no dispute about the well established legal position that the DIOS has no jurisdiction or authority to determine the validity or otherwise of a particular election of the members and office bearers of a Committee of Management. It is also well embedded proposition of law that if there is a dispute about the election in between the rival Committees of Management, the only course open to the DIOS is to make a reference u/s 16-A (7) of the Act. Nevertheless, it is equally well established under the U. P. Intermediate Education Act as also under the U. P. High School

and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, the DIOS 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-C of the Act and dealing with the management of such an institution u/s 5 of the U. P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. Not only this, the DIOS has to perform various administrative functions of statutory character in collaboration with the management of High School and Intermediate Colleges. These duties cannot be discharged by the DIOS unless he is in a position to find out on an administrative level as to who are the real office bearers of the Committee. For this limited purpose, the DIOS must, of necessity, satisfy himself as to who, according to him, are validly elected office bearers of the institution. Mere raising of a dispute about the election of the members of the Managing Committee and its office bearers would not absolve the DIOS from its 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 Acts. Viewed from the angle of administration, the DIOS is duty bound to take a decision to recognise the Committee of Management and to attest the signatures of the Manager who has been elected, after satisfying himself as to who, according to him are validity elected office bearers of the institution. An administrative inquiry may always be necessary whenever some sort of dispute or doubt is raised about the election of the new Committee of Management and its office bearers. This aspect of the matter came to be considered in an earlier decision in the case of Committee of Management SAV Inter College v. District Inspector of Schools (Civil Misc. Writ No. 12725 of 1975) decided on 24-11-1977 by a Division Bench of this Court. The said decision was again came to be considered by another Division Bench of this Court in the case of Committee of Management v. DIOS Meerut 1978 All WC 124 : (AIR 1978 NOC 90) in which the earlier view was reiterated. To the same effect is another decision of a Division Bench of this Court, reported in Committee of Management Vaidik Higher Secondary School and Another Vs. District Inspector of Schools and Another, . In the case of Committee of Management v. DIOS Meerut (supra), relying upon the decision of SAV Inter College (supra), it was held as follows :--

"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."

9. A scrutiny of the impugned order dated 18-7-98 Annexure 6 to the writ petition reveals that no order of reference u/s 16-A (7) has been passed but certainly it does not purport directly or indirectly to determine any dispute between the two rival Committees of Management. It does not profess to be an adjudication of the rival claims of the parties. It is a plain and simple recognition of a new Committee of Management for day to day working of the department, such as payment of salary to the teachers and staff of the college. In any case, the impugned order does not purport to decide any dispute and consequently, it cannot be said that the DIOS has arrogated to himself the powers which were exclusively exercisable by the Deputy Director of Education u/s 16-A (7). In this context, it would not be out of place to make a reference to the decision of a Division Bench of this Court in the case of Gauri Shankar Rai v. Ram Lakhan Pande, DIOS 1984 UPLBEC 166 : (1984 All LJ 291).

10. The material which has been placed on record is indicative of the fact that the petitioners from the very beginning had some evil designs and it was for this reason that in order to hold the election in secrecy they performed an empty formality of sending the registered letter to the members of the General Body containing progress report of the School rather than an intimation to hold a meeting to decide the election schedule. It was in the wake of this machination on the part of the petitioner that the DIOS had to issue a letter dated 23-5-1998, a copy of which is Annexure C.A. 3. In this letter, it was specifically mentioned that the petitioners were attempting to hold fresh elections in a clandestine manner. It was directed that the petitioners shall send the election schedule/ programme to all the members through registered post by folding the letter itself and affixing the postal stamp on it and to publish the election schedule in certain newspapers specified in the letter. The petitioner were reminded that in no case the provisions of the Scheme of Administration with regard to the procedure of election shall be violated. In spite of this letter, Annexure C.A. 3, it appears that the petitioners did not pay any heed and proceeded with the election schedule which was not intimated to all the members of the general body.

11. In the above circumstances, the submission of the learned counsel for the petitioners that the DIOS should have afforded an opportunity before recognising the Committee of Management of which Shanti Swaroop Sharma claims himself to be the Manager becomes otiose. The elections held by the petitioners on 29-5-1998 were clearly in flagrant violation of the Scheme of Administration and the directions issued by the DIOS in his letter dated 23-5-1998. It is not necessary in all the cases to afford an opportunity of hearing. When once it was found that the election organised and held by the petitioners on 29-5-98 was nothing but farce, DIOS was not obliged to afford an opportunity of hearing to the petitioners. The Committee of Management of which Shanti Swaroop Sharma claims himself to be the Manager was constituted after notifying the schedule of

election, which was finalised in the meeting of 16-5-1998. Sri Prem Pal Singh, Advocate was appointed as Election Officer and on 1-6-1998, DIOS appointed Sri Rajeshwar Pal Gaur as an observer. The poll was scheduled on 6-6-1998 but since the various members and the office bearers were elected unopposed, poll did not take place. The unopposed Committee of Management was duly recognised by the DIOS.

12. There is yet another aspect of the matter. It is not necessary in all the cases that a reference u/s 16-A (7) should be made by the DIOS for mere asking by a rival contender. There should be a genuine and bona fide dispute in between the claims of the rival Committees of Management. If the dispute raised by one of the rival claimants is bogus and per se, mala fide and not genuine, the DIOS is not required to make a reference. In this connection, a reference may be made to 1995 All WC 181 : (1995 All LJ 11), Committee of Management v. DIOS Mau (DB) and 1997 (1) LB ESR 386 ,Sukhnandan Inter College v. Stale of U. P.

13. In the alternative, Sri A.K. Yog, learned counsel for the petitioners urged that since the term of the last Committee of Management had not come to an end, the eventuality of fresh election did not arise and the old Committee would, therefore, continue to function till 24-3-1999 and, therefore, recognition to another Committee of Management by the DIOS during the subsistence and continuance of last Committee of Management, admittedly elected on 18-6-1995, could not be made. This submission is nothing but putting the cart before the horse. If the term of the last Committee of Management had not expired it is not understandable as to under what circumstance, the petitioners themselves have taken the recourse to hold a new election on 29-5-1998. The petitioner understood fully well that the period of the Committee of Management, which is 3 years and 1 month from the date of the last election, was to expire on 18-7-1998 and it was for this reason that the petitioners took upon their shoulders to hold the election and according to them, the elections were actually held on 29-5-1998. This fact, therefore, clearly militates against the plea of the petitioners that the term of the last Committee of Management is to continue up to 24-3-1999. Since the learned counsel for the parties have canvassed this point in some details with reference to the prevailing law, I find it proper to scrutinise the same with reference to the various decisions of this Court.

14. The term of the Committee of Management is to be governed primarily by the provisions made in the Scheme of Administration. Under the amended Clause 10 of the Scheme of Administration filed with the Supplementary Affidavit by the petitioners, it is provided that the period of the Committee of Management and its office bearers shall be three years and that after the expiry of the period of three years the office bearers shall continue to function for a period of one month more. In case during the period of three years and one month, the newly constituted Committee does not take over the charge, the term of the existing Committee of Management shall, ipso facto, come to an end and the Regional Deputy Director of Education shall appoint a Prabandh Sanchalak he will perform

the functions of the Committee of Management. In view of this provision in the Scheme of Administration, the period of the Committee, which was admittedly constituted on 18-6-1995, shall come to an end on 18-6-1998 and its office bearers shall be entitled to function for the one month more, meaning thereby on 18-7-1998, the last Committee of Management automatically ceased to function. Sri A.K. Yog, learned counsel for the petitioners pointed out that the Committee of Management which was elected on 18-6-1995 was approved/recognised by the DIOS on 19-2-1996 and that the said Committee took over charge of the affairs of the institution for the first time on 24-2-1996 as would be indicated from a certificate which is Annexure S.A. 2 to the Supplementary Affidavit. In support of his contention, Sri A.K. Yog placed reliance on (1991) 2 UPLBEC 1183, Committee of Management Jangali Baba Intermediate College, Garwar, District Ballia v. Deputy Director of Education Vth Region Varanasi. In that case, the provision relating the term of Committee in the Scheme of Administration was almost identical as in the present case. It was observed by a Division Bench of this Court that it is significant that the language used therein (Scheme of Administration) makes no option. The Scheme of Administration has been framed under the U. P. Intermediate Education Act and the language used therein for the life of Committee of Management is mandatory, and its ceaser is also automatic. A plea was raised in that case that the Committee of Management shall be deemed to have entered the office from the date the DIOS approved the same or the signatures of the Manager were attested. The question raised, therefore, was as to when the period of the Committee of Management would start running, i.e., either from the date of the election validity held where the period of earlier Committee of Management has already come to an end prior to this date and there being no dispute, or, from the date the elected Committee of Management takes over the charge of the Management. It was further observed that the purpose to prescribing period of three years is that elected Committee of Management should function for the period prescribed in the Scheme. If for some reasons, even after election, the newly elected Committee of Management is not able to take charge from the earlier Committee of Management or from the Prabandh Sanchalak the period of the Committee of Management would not start. However, the day such elected Committee of Management takes over charge and, or, starts functioning as such, then the period of three years starts running. This period of three years in no case can be extended even if intermittently such Committee of Management is not able to discharge its functions on account of infighting litigations between the parties or on account of stay order passed by this Court. The oft quoted observations made in Jangali Baba's case (1991 (2) UPLBEC 1183) (supra) may be extracted, for ready reference, as below :--

"Attestation is only for the purpose of distribution of salary under the Payment of Salary Act. It is true that the functioning of the Committee of Management is varied and is not confined merely for the purposes of distribution of salary and thus the attestation of the signatures by the District Inspector of Schools could

not be the starting point on the life of the Committee of Management. It may be in a given case from the date of the election's result are declared as urged by the respondents. However, in case the election took place earlier than the prescribed period of the earlier Committee of Management coming to an end. In such cases it cannot be said that the period started from the date of election. Question, therefore, would be as to what would be the date which can be said that the period of the Management Committee starts. We find that there is nothing in the Act, Rules or under the Scheme of Administration. However, we feel after perusing the Scheme of Administration, the various provisions of the Act and the Rules that its period would start running either from the date of election validly held where the period of earlier Committee of Management has already come to an end prior to this date and there being no dispute or from the date the elected Committee of Management takes over the charge of the Management."

15. It is true that in Jangali Baba's case (1991 (2) UPLBEC 1183) (supra) the starting point of the life of the Committee of Management, i.e., when it shall be deemed to have taken the charge or started functioning has been made dependant on certain unavoidable contingencies. For example, if the newly constituted Committee of Management is not able to take over charge by relieving the Prabandh Sanchakal or on account of any stay order passed by the competent Court, in that event, the starting point of the Committee of Management would be taken to be the date on which all such impediments are removed. Mere recognition/approval by the DIOS or the attestation of the signatures of the Manager shall not in any manner, postpone the starting point of the life of the Committee of Management if it has come to replace the previous Committee of Management, the life of which stood already expired. This aspect of the matter came to be considered by another Division Bench of this Court in (1995) 1 UPLBEC 149 -- Committee of Management Brig. Hoshiyar Singh Memorial Uchchar Madhyamik Vidyalaya Shamli District Muzaffarnagar v. Dy. Director of Education, 1st Region, Meerut. It was a case in which the old Committee of Management held elections of the new Committee of Management after the expiry of its term of 3 years and 1 month. It was held that according to the Scheme of Administration of the College, as approved u/s 16-A of the U. P. Intermediate Education Act, the life of the Committee of Management is 3 years and 1 month, after the expiry of which its term will come to an end automatically even if the new Committee of Management has not been elected. It is settled law that life of the Committee of Management comes to an end after the expiry of 3 years and 1 month and it is not open to it or its office bearers to hold election of the new Committee of Management thereafter. The contention that the term of the Committee of Management commences from the date of the attestation of signatures of the Manager of the newly elected Committee of Management was negatived. A dispute before the Division Bench with regard to calculation of period of three years and one month of the life of the Committee of Management was also raised in 1996 (3) ESC 152 , Girish Chandra v. Rajendra Singh. In that

case, there was a specific provision that the newly elected Committee of Management shall assume charge only after the DIOS has accorded its approval. On the basis of this specific provision, it was held that the Committee of Management came into being from the date approval was accorded by the DIOS. In the present case, there is no such provision and, therefore, the aforesaid case is of no assistance and help to the petitioner. Sri A.K. Yog, learned counsel for the petitioner further placed reliance on the decision of this Court, dated 6-9-1996 in Civil Misc. Writ No. 19089 of 1996, Committee of Management Intermediate College Sarurpur Khorki Meerut v. Dy. Director of Education, in which relying upon Jangali Baba's case (supra), it was held that the period of newly elected Committee of Management would start running from the date it actually took over the charge. In that case, a dispute was pending before the Regional Deputy Director. The Committee of Management could not take the charge, as the Prabandh Sanchalak, even after the election of the new Committee of Management, continued to function and to manage the affairs of the institution. It was only after the order of the DIOS dated 30-10-1993 that the Committee of Management took over the charge on 30-11-1993 on which date the Prabandh Sanchalak ceased to function. It was in these circumstances that it was held that the life of the Committee of Management would commence from 30-11-1993 the date on which the Committee actually took over the charge. In the instant case, there was no impediment, whatsoever, in taking over the charge of the Committee of Management, which was elected on 18-6-1995 and consequently, the last Committee of Management shall be deemed to have come into existence right from the date of the element itself which was the date on which the previous Committee of Management ceased to function. As a matter of fact, the petitioners have well understood the above position and, it was for this reason that the alleged elections were held on 29-5-1998, i.e., during the period of 3 years period of the old Committee. Now it is too late to say that the period of the old Committee of Management is to expire in March 1999. The plea taken on behalf of the petitioners is wholly untenable both on legal and factual matrix.

16. As said above, the DIOS is supposed to recognise/approve a particular Committee of Management for administrative purposes as he has to collaborate with the institution and its Committee, in connection with day to day affairs. This administrative function of the DIOS is subject to scrutiny by the superior authority on administrative side. The Deputy/Joint Director of Education, undoubtedly is an authority superior to DIOS. He exercised supervisory powers over the administrative function of the DIOS, who is subordinate to him. If on the administrative side, DIOS has committed any mistake, the supervisory authority has always the power to rectify and correct the same. This aspect of the matter came to be considered in the case of Shandar Hussain v. Dy. Director of Education, XII Region, Moradabad (1995) 2 All LJ 1244 in which it has been held that the orders passed by the DIOS in his administrative capacity are always subject to supervisory control of the Regional Deputy Director of Education. In that case also, the order passed by the DIOS on administrative side was reversed

by the Deputy Director of Education by passing another administrative order in his supervisory jurisdiction. This case came to be considered before the Division Bench of this Court in the case of Committee of Management, Tagore Uchchattar Madhyamic Vidyalaya and Another Vs. District Inspector of Schools and Others, . Though Shandar's case (supra) was distinguished by the Division Bench in Tagore Uchatar Madhyamik's case (supra), on facts of the latter case, it was impliedly approved, meaning thereby the power of Deputy Director of Education or Joint Director, as the case may be, or for that matter, an officer superior to the DIOS to rectify the mistakes of the subordinates has been recognised. In carrying on the general administration of the State, executive functions are performed by a hierarchy of the officers who have to perform their respective functions according to rule of law. The hierarchy of civil service is bound by the norms and disciplines and violation of direction of superiors by the subordinates amount to insubordination and misconduct for one simple reason that no Government can function in case indiscipline and insubordination are given up. It will lead to anarchy and disaster, to the entire fabric and democratic structure and rule of law if the unsustainable orders passed by the subordinate officers are not allowed to be corrected by superior and higher functionaries. In the instant case, the petitioners have approached the Deputy/ Joint Director of Education, 1st Region, Meerut by making representations dated 19-7-1998 and 22-7-1998 which are contained in Annexures 7 and 8 to the writ petition. These representations have not yet been disposed of Deputy/Joint Director of Education-respondent No. 2 may well be directed to give a fresh look into the matter and pass appropriate orders on administrative side.

17. In the result, for the reasons stated above, the writ petition turns out to be without any merits and substance, which is accordingly dismissed. It is, however, directed that the respondent No. 2-Joint/Deputy Director of Education, 1st Region, Meerut shall pass appropriate speaking orders on the representations dated 19-7-1998 and 22-7-1998 respectively Annexures 7 and 8 to the writ petition within 2 months from the date of certified copy of this order is produced before him. Needless to say that he shall, before passing the orders, afford reasonable opportunity to the petitioners and the contesting party-Shanti Swaroop Sharma-respondent No. 3 and permit them to produce material in support of their respective contentions.