
(2011) 09 AHC CK 0323

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10345 of 2011

Committee of Management Kashiraj Mahavidyalaya Inter
College and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16D(4), 16D(6)

Citation : (2011) 9 ADJ 586

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon'ble S.U. Khan, J.—Heard learned counsel for all the parties.

2. High School and intermediate colleges in U.P. are generating lot of litigation concerning their management. (As far as the college in question is concerned since 1988 till now about 25 writ petitions, two or three special appeals couple of suits and several rounds of proceedings before authorities under U.P. Interim Order Education Act 1921 and the allied Acts have taken place). Apart from management dispute teachers of these institutions are also responsible for much more litigation in this High Court which may be 8 or 10 times more than the litigation centring around the management disputes.

3. The centre of the controversy in this writ petition is Kashiraj Mahavidyalaya Inter College, Aurai, District Sant Ravidas Nagar, Bhadoi, Committee of Management of which and its Manager are petitioners in this writ petition.

4. The writ petition is directed against order dated 28.1.2011 passed by the State Government. Superseding the petitioner Committee of Management and appointing Authorised Controller u/s 16D(6) of U.P. Intermediate Education Act 1921.

Back Ground Facts:

5. In the year 1979 an Authorised Controller was appointed to manage the affairs of the college in question u/s 16D(4) of U.P. Intermediate Education Act, 1921 who continued for a very long time. Ultimately through judgment and order dated 13.7.1989 passed by this Court in writ petition No. 8944 of 1988 filed by Ram Achal Dubey the then manager of the Committee of Management of the College, the authorised controller was removed and was directed to hand over the charge of the college to the Committee of Management.

6. Fresh election of Committee of Management was held in the year 1990 in which Ram Achal Dubey was again elected as manager. However, D.I.O.S. did not approve the election which action/inaction was challenged through writ petition in which interim order was granted and thereafter committee of Management headed by late Ram Achal Dubey was granted recognition. D.I.O.S. on 8.5.1991 passed the order of single operation. In a writ petition filed against the said order High Court directed the D.I.O.S. to reconsider the matter and thereafter on 5.7.1991 D.I.O.S. Passed the order recognising the Committee of Management, and directing joint operation of accounts.

7. Thereafter elections were held in 1993, 1996, 1999, 2002, 2005 and 2008. According to the assertions made in the writ petition Sri R.A. Dubey was again elected as manager in 1993 and in all the subsequent elections Sri Dwarika Nath Dubey (D.N. Dubey), petitioner No. 2 was elected as manager. (Sri R.A. Dubey died before 1996).

8. Each and every election was challenged by Sri Prabhu Nath Misra (P.N. Misra), respondent No. 8. Some times he set up rival elections also. Innumerable proceedings were initiated before different officers and authorities several writ petitions were filed. Some orders passed in writ petitions were challenged in special appeals. Couple of suits were also filed. The particulars of all the cases have been given in detail in the writ petition, counter affidavit, rejoinder affidavit, supplementary affidavit etc.(Thickness of the file is about 12 inches). However, it is not necessary to match that thoroughness in this judgment as the impugned order is not based thereupon and the Government has very wisely refrained from basing its order on the management dispute on the ground that it is sub-judice in the High Court.

9. A notice u/s 16-D(3) of the Act of 1921 had earlier also been issued on 29.4.2005 against the petitioners. The State Government dropped the proceedings through order dated 10.4.2006 on the basis of recommendation made by Director of Education dated 10.3.2006.

10. According to the petitioners on 3.2.2008 fresh elections of the Committee of Management were held in writ petition No. 2 was again elected as Manager.

Impugned Order

11. The order challenged through this writ petition has been passed by the State Government on 28.1.2011 u/s 16D(6) of UP. Intermediate Education Act 1921

copy of which is Annexure 35 to the writ petition. The order has been passed by Sri Jitender Kumar, Sanskrit, Secondary Education, Government of U.P. Lucknow. Through the said order Committee of Management of Kashiraj Mahavidyaleay Inter College Aurai, District Sant Ravi Das Nagar, Bhadoi has been superseded and Authorised Controller has been appointed which is Principal Government Inter College, Gyanpur, Sant Ravidas Nagar (Ex-officio). Section 16-D(6) is quoted below:

Where the Committee of Management of the concerned institution fails to show-cause within the time allowed under sub-section (5), or within such extended time as the State Government may, from time to time, allow or where the State Government is, after considering the cause shown by the Committee of Management, satisfied that any of the grounds mentioned in Clause(iii) or Clause (v) of sub-section (3) exists, it may, by order and for reasons to be recorded, appoint an Authorised Controller in respect of such institution and thereupon, the provisions of sub-section (4) shall mutatis mutandis apply.

Section 16-D(3)(iii) and (v) are quoted below:

(iii) any dispute with respect to the right claimed by different persons to be lawful office-bearers of the Committee of Management has affected the smooth and orderly administration of the institution concerned; or

(iv) the committee has persistently failed to provide the institution with such adequate and proper accommodation, library, furniture, stationery, laboratory equipment or other facilities as are necessary for the efficient administration of such institution; or

12. u/s 16-D(4) authorised controller can be appointed for two years. However, the period may be extended under the proviso to the said sub Section.

13. In the impugned order 12 charges have been considered. In para 6 of the order in a tabular form in the first Column serial number is mentioned, in the second column charge is mentioned, in the third column reply of the manager has been mentioned and in the last (fourth) column note/stand of the department has been mentioned.

14. Thereafter, in para 7 of the impugned order in one sentence it has been mentioned that in view of the above mentioned facts, State Government reaches to the conclusion that manager of institution has committed grave irregularities and in order to prevent misappropriation of fund, it was essential to immediately supersede the committee of management.

15. The first charge was regarding appointment of three Assistant teachers on the posts which fell vacant due to promotion. The reply of the manager was that the appointments were made in 1997 on ad hoc basis and D.I.O.S. had approved the appointment on the direction of the High Court and writ petitions for payment of salary of the teachers concerned were pending. The department admitted that salary was being paid in view of the High Court Order.

16. Second charge was that from the perusal of result of last 5 years it was clear that standard of teaching was falling and Principal and Manager were responsible for the same. Reply was that due to suspension of the Principal, Jai Narain Pandey from June 2002 to 2008 and due to shortage of teachers result was affected. The stand of the department was that the reply was not satisfactory and Manager could not escape the liability.

17. The third charge was regarding illegal appointment of three teachers in Junior Section meant for the girls. The reply of the management was that no new teacher had been appointed and the Principal without the knowledge of the management was taking the work of teaching separately from three teachers and on coming to know of the same, management suspended the Principal. The stand of the department was that in rural areas upto class 12 co-education was permitted under Intermediate Education Act 1921 Chapter VII Regulation 11, hence separate arrangement for teaching girl students was against the rules and that the assertion that management was not aware was wrong.

18. Fourth charge was that the previous Principal had misused the funds of development account and Rs. 40,000/- of caution money were wrongly transferred into sports account which was financial irregularity and even though Principal was responsible for that, however, no objection to that by the Manager was objectionable. Reply of the Management was that in the year 2000 Divisional Sports Competition was held in the college in question and due to lack of fund in the sport account after obtaining permission of D.I.O.S. Rs. 40,000/- were taken as loan from the caution money account and deposited in sports account. Stand of the department was that it was irregular.

19. The fifth charge was that at the time of inspection manager did not produce documents regarding donation. Reply of the manager was that Additional Director Education did not conduct any actual inquiry. The stand of the department was that according to the report of the Inquiry Officer dated 25.11.2009 Management did not cooperate in the inquiry.

20. The sixth charge was that Management dispute was sub-judice in the High Court. The reply of the Manager was that he was validly elected Manager. The stand of the department was that as dispute was pending in the High Court hence no comment would be made thereupon.

21. The seventh charge was that manager had misappropriated amount of Rs. 5,19,722/- from the Development Fund from 1996-97 till 2000-2001. Reply of the Manager was that Sri Jai Narayan Pandey suspended Principal (respondent No. 7 in this writ petition) had misappropriated the amount in collusion with the suspended clerk Sri Daya Shanker Singh and pursuant to the order passed in Special Appeal No. 326 dated 23.3.2005 inquiry was held and in view of the inquiry report dated 4.7.2005 in respect of this embezzlement Principal was suspended and decision for termination of services of Principal was taken. Stand of the Department was that Development fund was operated by Joint Signatures

of Manager and Principal hence only Principal was not responsible for the same. Reference to the report of A.D.M. Aurai and to a report of audit unit was also made. It was further mentioned that the manager could not prove that he was not involved. However, there was no finding that Manager had signed any such cheque.

22. The eight charge was regarding misuse of Rs. 59387/- of Development Fund. The stand of the Manager was that Head Clerk, Sri Rama Kant Shukla was retiring on 31.7.2001, hence, the suspended Principal, Sri Pandey in collusion with suspended clerk Sri Daya Shanker Singh, embezzled the amount and obtained signatures of R.K. Shukla. The stand of the department was that in the payment of the amount financial rules were not followed for which management was responsible.

23. Ninth charge was that a Class IV employee of the College Sri Parameshwar Rai should have retired in March 2001. However, he was paid salary of April 2001. The stand of the management was that suspended Principal, respondent No. 7, was responsible for the same. The stand of the department was that Manager must be responsible for the same.

24. The Charge No. 10 was that according to the report of Deputy Collector Aurai, about 200 meter boundary wall had been got demolished by the Manager. The case of the Manager was that the D.I.O.S. through letter dated 8.11.2007 asked for the property register. The principal through letter dated 13.12.2007 was directed to submit the necessary register in the office of D.I.O.S. and according to the letter of Principal the register was supplied on 17.12.2007. The Manager further stated that no boundary wall was got demolished. The stand of the department was that boundary wall was broken in order to provide ingress and outgress facility to a third person. However, no detail in that regard was mentioned.

25. The eleventh charge was that D.I.O.S. wrote a letter on 19.7.2007 to Police Station in Charge Bhadoi regarding embezzlement of Rs. 2 lakh by the Manager and pursuant to that F.I.R. had been lodged. The reply of the Manager was that in the police investigation, he had been exonerated and final report had been submitted and the matter was pending before Additional C.J.M.

26. The last and the 12th charge was that according to the confidential report of L.I.U. dated 3.4.2007 there was misappropriation of an amount of Rs. 10,00,000/- deposited in the development fund. The reply of the petitioner was that as had been stated in its reply under charge No. 11, one Prabhu Nath Giri had filed the complaint on 28.3.2007 and D.M. Sant Ravidas Nagar had got inquired the matter and thereafter D.I.O.S. sent his report on 10.7.2007 finding the allegation to be false. The case of the department was that L.I.U. had reported misappropriation. However, it was not mentioned that who had been indicated to be responsible for the misappropriation of Rs 10,00,000/- by L.I.U.

27. The impugned order is no order in the eye of law. The Secretary who passed

the order has not given any reason of his own. This is no way of passing quasi judicial or administrative order affecting rights of parties. Such orders must contain reasons and show application of mind. Mentioning the charges, case of the aggrieved party and the case of department in a tabular form does not amount to giving reasons. Against no charge the Secretary who passed the order has mentioned that he accepted the version of which party, either of the management or the department, and for what reason. The second major defect in the order is that it is not based upon any evidence/material. Even this much is not clear that what material was available on the file for perusal of the Secretary who passed the impugned order.

28. The allegation of the petitioner that minister concerned i.e. respondent No. 6, Sri Ragnath Misra, Secretary education is responsible for the action against the petitioner is not substantiated by any credible evidence. However, it appears that the Government is taking extra interest in the affairs of this College. The litigation in this High Court regarding appointments has been taken in respect of almost every recognised school and college in UP. In thousands of writ petitions appointments made by the management have been held to be illegal and set aside. If it is any ground to supersede the management and appoint the authorised controller then such exercise shall be done in respect of other high schools and intermediate colleges also which have done the same thing. Selective action smacks arbitrariness. Next time the Government shall be careful and try to remove this doubt.

29. Accordingly, writ petition is allowed. Impugned order is set aside and matter is remanded to the State Government to decide the same again positively within two months, provided that the petitioners do not seek a single adjournment, failing which Committee of Management of the college must be restored the control of the college. This time the decision must be based upon evidence and must contain the reasons.

30. In the impugned order some findings have also been recorded against the Principal respondent No. 7. Petitioners have also suspended the Principal respondent No. 7. The proposal of termination of respondent No. 7 is pending before U.P. Secondary Education Services Selection Board. The Board is directed to take a final decision very promptly and in case the Board decides/recommends the termination of Principal, consequent action by the State Government shall promptly be taken in accordance with law.