
(2009) 07 AHC CK 0210
In the Allahabad High Court

Committee of Management Khalsa Inter College, Noorpur,
District Bijnor and another

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Citation : (2009) 07 AHC CK 0210

Hon'ble Judges : Vineet Saran, J

Final Decision : Allowed

Judgement

Vineet Saran. J.

1. Heard Sri Ashok Khare, learned Senior counsel along with Sri K.M. Asthana, learned counsel for the petitioner as well as learned Standing Counsel appearing for Staterespondents no. 1 to 3 and Dr. R.G.Padia, learned Senior counsel along with Sri P.Padia, learned counsel appearing for the contesting respondent no.4 and have perused the record. With consent of the learned counsel for the parties, this writ petition is being disposed of at this stage without calling for a counter affidavit.

2. The undisputed facts of this case are that the last elections of the Committee of Management was held on 3.2.2005. The term of the Committee of Management was three years. During such period, the scheme of administration of the Committee of Management was amended to the effect that the term of the Committee of Management would be 5 years, instead of 3 years. The same was granted approval by the Joint Director of Education on 13.9.2007. However, by an order dated 16.1.2008 the District Inspector of Schools held that the amendment in the scheme of administration would come into effect from the next elections, meaning thereby the Committee of Management elected on 3.2.2005 would not continue for a period of 5 years but would continue only for a period of 3 years. The said order was challenged in another writ petition, in which initially an interim order was granted but the said writ petition was ultimately dismissed on 27.5.2009. Thus, the term of the elected Committee of

Management in which the petitioner no.2 was elected as Manager has already come to an end.

3. The scheme of administration provides that after the term of three years plus one month has expired, the next election of the Committee of Management would be held only by the authorized controller to be appointed by the Joint Director of Education and such authorized controller would be from amongst the office bearers of the outgoing Committee of Management. "Office bearer" has been defined to mean as President, Vice President, Manager, Deputy Manager, Treasurer and Auditor. The Respondent no.4 was undisputedly a member of the Committee of Management but was not an office bearer of the outgoing Committee of Management. After the passing of the judgment by this Court on 27.5.2009 the Joint Director of Education has, by means of the impugned order dated 23.6.2009, appointed the Respondent no. 4 as the authorized controller. Consequently his signatures have been attested on 26.6.2009 by the District Inspector of Schools. Challenging the same, this writ petition has been filed.

4. The submission of the learned counsel for the petitioner is that the said order of appointment of Respondent no.4 as authorized controller, who was not an office bearer of the outgoing Committee of Management, is itself illegal and thus he could not have been appointed as authorized controller and conduct the elections of the Committee of Management. The provision in the scheme of administration with regard to appointment of authorized controller is absolutely clear as the same provides that it is only an office bearer of the outgoing Committee of Management who can be appointed as the authorized controller. The parties do not dispute the fact that the Respondent no.4 was not an office bearer of the outgoing Committee of Management. As such, in my view, the appointment of Respondent no.4 as authorized controller could not have been made.

5. Accordingly, the impugned order dated 23.6.2009 passed by the Joint Director of Education as well as the consequential order dated 26.6.2009 passed by the District Inspector of Schools deserve to be set aside and are quashed.

6. Learned counsel for the parties have, at this stage, jointly stated that the Joint Director of Education may appoint a fresh authorized controller, who may be an officer of the State Government. It has been stated that there was a dispute regarding holding of elections earlier also and a Division Bench of this Court vide its order dated 11.8.2004 passed in Special Appeal No. 946 of 2004 directed the District Magistrate, Bijnor to either hold the elections himself or nominate any other officer not below the rank of Additional Divisional Magistrate to look after the affairs of the Committee of Management and hold the elections within three months. In pursuance thereof the election of the Committee of Management was held on 3.2.2005. The parties counsel consent that similar directions may be issued for holding the elections of the Committee of Management this time also.

7. Accordingly, with consent of the learned counsel for the parties it is directed

that the Joint Director of Education shall request the District Magistrate, Bijnor to appoint an officer, not below the rank of Sub Divisional Magistrate, as authorized controller to manage the affairs of the institution and to hold the elections of the Committee of Management after finalising the voter's list, as expeditiously as possible, but not later than three months from the date of appointment of such officer as authorized controller. It is made clear that the officer appointed by the District Magistrate shall perform all duties of election officer as well as manage the affairs of the Committee of Management till such period the elected Committee of Management takes charges.

8. This writ petition stands allowed to the extent indicated above. No order as to cost.