

(2006) 05 AHC CK 0115

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 73192 of 2005

Committee of Management, Mohammad Hasan Inter College
and Dr. Abu Mohammad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 30
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16B, 16B(3), 16C,
16CC

Citation : (2006) 6 AWC 5729

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Ashok Khare and R.N. Yadav, for the Appellant; Shashi Nandan and I.R. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Ashok Khare, Senior Advocate assisted by Sri R. N. Yadav for the petitioners and Sri Shashi Nandan, Senior Advocate assisted by Sri I. R. Singh for the respondent No. 5 and the learned standing counsel. Counter and rejoinder affidavits have been exchanged between the contesting parties. With the consent of counsel for the parties the writ petition is being finally decided.

2. By this writ petition the petitioners have prayed for quashing the order dated 26.10.2005 passed by the Joint Director of Education, Varanasi Region, Varanasi holding that election of the Committee of Management claimed to have been held on 1.12.2002 is not recognised and Finance Officer and Account Officer, Regional Education Audit Organisation is appointed as Prabandh Sanchalak who is to conduct the election of the Committee of Management from the valid members of the society according to the Scheme of Administration within two months and hand over charge to newly elected Committee of Management after approval of

the competent authority. A mandamus has also been sought directing respondents not to interfere in the functioning of the petitioner No. 2 as Manager of the Institution.

3. Brief facts necessary for deciding the writ petition are:

Mohammad Hasan Inter College is a recognised institution under the provisions of U.P. Intermediate Education Act, 1921. The institution is also receiving grant in aid from the State Government. The institution is being run by a registered society namely Anjuman Islamia, Jaunpur registered under the Societies Registration Act, 1860. The institution is a minority institution recognised by the Education Department of the State. The institution is being run in accordance with the approved Scheme of Administration framed under the U.P. Intermediate Education Act, 1921 (hereinafter to be referred as "Act, 1921"). The election of Committee of Management is claimed to be held on 1.12.2002 in which the petitioner No. 2 is said to have been elected as Manager of the Institution. The papers regarding election were submitted to the District Inspector of Schools. The District Inspector of Schools vide an order dated 7.3.2003 attested the signatures of the petitioner No. 2 as Manager of the Institution recognising the election dated 1.12.2002. A writ petition No. 49709 of 2005 (Javed Ahamad and four Ors. v. District Inspector of Schools Jaunpur and Ors.) was filed in this Court challenging the order dated 7.3.2003 of the District Inspector of Schools recognising election dated 1.12. 2002. This Court vide its judgement dated 17.8.2005 allowed the writ petition and quashed " the order dated 7.3.2003. This Court directed the District Inspector of Schools to transmit the entire papers in respect of election dated 1.12.2002 to the Regional Committee which was directed to decide after being satisfied that:

1. Election meeting has been convened by the persons who had authority to convene the meeting and held election.
2. Persons who have participated in the election are valid members of the general body of the society.
3. Elections have been held strictly in consonance with the provisions as contained in the Scheme of Administration.
4. Petitioners Committee of Management filed an Special Appeal being Special Appeal No. 1021 of 2005 against the above judgement of the learned Single Judge. The Special Appeal was disposed of with only modification that till decision is taken by the Regional Committee the appellant Committee of Management shall continue to manage the affairs of the Institution. The Regional Committee was directed to decide the matter within a period of two months vide judgement of the Special Appellate Bench dated 2.9.2005. After the judgement of this Court the Regional Committee considered the matter and decided not to recognise the election dated 1.12.2002 and directed for appointment of Prabandh Sanchalak. The election was held not to be in accordance with the provisions of the Scheme of Administration. Finding was also recorded that the election

programme was not issued under the signature of the President and Manager. No notice of election was published in approved local news papers. Notice was not sent to the members by registered post. It was also found by the Joint Director of Education that the Scheme of Administration of the Institution has been amended vide order dated 25.1.1985 passed by the Deputy Director of Education, Varanasi Region, Varanasi. This writ petition has been filed challenging the aforesaid order dated 26.10.2005 issued by the Joint Director of Education.

5. Learned Counsel for the petitioners challenging the order of the Joint Director of Education made following submissions in support of the writ petition.

1. That the Scheme of Administration of the Institution has never been amended by the Deputy Director of Education. The Committee of Management of the Institution never approved the proposed amendment nor ever submitted amended scheme, hence the Deputy Director of Education had no jurisdiction to amend the Scheme of Administration vide order dated 25.1.1985.

2. That the amended Scheme of Administration dated 25.1.1985 was never enforced in the institution.

3. The petitioners institution being minority institution no provision can be made in the Scheme of Administration for appointment of Prabandh Sanchalak on expiry of term of Committee of Management.

4. The appointment of Prabandh Sanchalak in the minority institution is against the provisions of Section 16-D of the Act, 1921.

6. Learned Counsel for the petitioners has placed reliance on the judgment of this Court (1994) 2 UPLBEC 1348 Committee of Management, Shahid Mangal Pandey Inter College, Nagwa, District Ballia and Ors. v. State of Uttar Pradesh and Ors.

7. Learned Counsel for the respondents refuting the submissions of counsel for the petitioners submitted that the Scheme of Administration was duly amended by the order of Deputy Director of Education dated 25.1.1985 in exercise of powers given u/s 16-CC of the Act, 1921. It is submitted that before amending the Scheme of Administration notice was given to the Committee of Management along with proposed amendment which notice having not been replied by the Management, the Deputy Director of Education was within his power to approve the amendment. The Scheme of Administration after being amended automatically becomes applicable to the Institution. It is submitted that the Manager of the Institution received the amended Scheme of Administration and never challenged the amendment dated 25.1.1985. The Deputy Director of Education has rightly appointed the Prabandh Sanchalak after having held that the election dated 1.12.2002 is not in accordance with law. By appointment of Prabandh Sanchalak the rights of minority are not taken away. Learned Counsel for the respondents placed reliance on the judgment of this Court 1985 UPLBEC

1595 Committee of Management of Kisan Uchchatar Madhyamik Vidyalaya. Bulandshahar v. Deputy Director of Education, Division-1. Meerut and Ors. and Kaushalya Kanya Inter College and Others Vs. State of U.P. and Others,

8. I have considered the submissions raised by the counsel for the parties and perused the record.

9. First and second submissions being inter- related are taken together. The question to be considered is as to whether the approved Scheme of Administration of the Institution was amended by order dated 25.1.1985 or not ? Before considering the above submission it is necessary to take a note of relevant provisions pertaining to the Scheme of Administration. Section 16-A provides that there shall be a Scheme of Administration for every Institution which shall amongst other matters provide for constitution of Committee of Management, Section 16-B provides for Institution already recognised at the date of commencement of the Intermediate Education (Amendment) Act, 1958, submission of draft Scheme of Administration and its approval by the Director. Section 16-C provides for approval of the draft Scheme of Administration submitted u/s 16-B or suggestion of any alteration or modification by the Director. Section 16-CC and 16-CCC have been added in the Act by U.P. Act 1 of 1981. Sections 16-CC and 16-CCC are quoted below:

16-CC. Scheme of Administration in relation to any institution,-- The Scheme of Administration in relation to any institution, whether recognised before or after the commencement of the Intermediate Education (Amendment) Act, 1980, shall not be inconsistent with the principles laid down in the Third Schedule.

16- CCC. Suggestion by Director regarding alteration or modification in the Scheme of Administration,--

(1)Where the relation to any institution, the Scheme of Administration has been or deemed to have been approved u/s 16-A, or Section 16-B or Section 16-C, at any time before the commencement of the Intermediate Education (Amendment) Act, 1980, and such Scheme of Administration is inconsistent with the provisions of this Act, the Director shall send, within a period of three years from such commencement, a notice to such institution suggesting any alteration or modification therein and requiring the institution to submit a fresh Scheme of Administration or to amend or alter the existing Scheme.

(2) While making any suggestion in the Scheme of Administration under Sub-section (1), the Director shall give his reasons therefore and shall also afford an opportunity to the institution to make a representation within such period as may be specified in the notice.

(3) The Director shall consider any representation made in accordance with Sub-section (2) and may approve the Scheme of Administration in its original form or subject to any alteration or modification suggested under Sub-section (1) or with any other changes as may appear to him to be just and proper:

Provided that where the Director proposes to make any new alteration or modification in the Scheme of Administration, he shall give an opportunity to the institution to make a representation within such period as may be specified by him.

10. By UP. Act I of 1981 Third Schedule was also added in the Act, 1921. Third Schedule contains the principles on which approval to a Scheme of Administration shall be accorded. Third Schedule is quoted below:

Third Schedule (See Section 16-GG)

Principles on which approval to a Scheme of Administration shall be accorded.

Every Scheme of Administration shall,--

- (1) provide for proper and effective functioning of the Committee of Management;
- (2) provide for the procedure for constitution of the Committee of Management by periodical elections;
- (3) provide for the qualifications and disqualifications of the members and office-bearers of the Committee of Management and the term of their offices;

Provided that no such Scheme shall contain provisions creating monopoly in favour of any particular person, caste, creed, or family;

- (4) provide for the procedure of calling meetings and the conduct of business of such meetings;
- (5) provide that all the decisions shall be taken by the Committee of Management and powers of delegation, if any, shall be limited and clearly defined;
- (6) ensure that the powers and duties of the Committee of Management and its office-bearers are clearly defined;
- (7) provide for the maintenance and security of property belonging to the institution and also for the utilisation of its funds and for the regular checking and auditing of accounts.

11. In the present case after insertion of clause 16-CCC and Third Schedule in the Act the Deputy Director of Education who had been delegated the power of Director to approve the amendment in the Scheme issued notice to the Management on 8.8.1981 and 8.2.1984 asking the Management to amend the Scheme accordingly and submit for approval but no response having been received from the Institution, the Deputy Director of Education passed an order on 25.1.1985 amending the scheme as per the amendment forwarded along with the letter. Copy of the order dated 25.1.1985 has been filed as Annexure C.A.1 to the counter affidavit. The Joint Director of Education in the impugned order held that the Scheme of Administration has been amended by the Deputy Director of Education by order dated 25.1.1985. The petitioner himself has filed a

copy of order dated 17.2.1993 of the Deputy Director of Education V Region, Varanasi by which order a Prabandh Sanchalak was appointed. In the said order the Deputy Director of Education has noted that the Scheme of Administration of the Institution has been amended vide order dated 25.1.1985 in accordance with Section 16-CC (Third Schedule) of the Act. There is sufficient material on record to hold that the Deputy Director of Education vide his order dated 25.1.1985 amended the Scheme of Administration of the Institution to conform with the Third Schedule of the Act as referred to in Section 16-CC of the Act. The submission of the petitioners that the Scheme was never enforced, has also to be considered. There is no denial of the passing of the order dated 25.1.1985 by the Deputy Director of Education. The said order was also referred to in the earlier order of the Deputy Director of Education dated 17.2.1993 appointing the Prabandh Sanchalak. The submission of the counsel for the petitioners is that in pursuance of the order dated 17.2.1993 of the Deputy Director of Education consequential order was also passed by the District Inspector of Schools on 6.7.1993. Against the order dated 17.2.1993 the Committee of Management filed writ petition No. 6140 of 1993 in which no interim order appears to be passed by this Court. However, subsequently writ petition No. 25226 of 1993 challenging the consequential order dated 6.7.1993 was filed in which this Court granted interim order on 20th July, 1993. Subsequently the District Inspector of Schools vide order dated 10.8.1994 directed the Prabandh Sanchalak to hand over charge to the Committee of Management. The District Inspector of Schools also observed in the order that the Institution being minority institution, the scheme amended in 1985 is not applicable. In the writ petition filed against the order dated 17.2.1993 or against the consequential order dated 6.7.1993 there is no adjudication by this Court holding that the amended Scheme of Administration dated 25.1.1985 is not applicable on the petitioners institution. The letter dated 10.8.1994 is a letter written by the District Inspector of Schools who has expressed his opinion that the amended Scheme of Administration is not applicable. The Scheme of Administration has been approved/ amended by the Deputy Director of Education. There is no order of the Deputy Director of Education nor any such order has been referred or brought on the record holding that the amended Scheme of Administration is not applicable on the petitioners institution. Thus from mere observation of the District Inspector of Schools in withdrawing the Prabandh Sanchalak appointed in 1993, it cannot be held that the amended Scheme of Administration is not applicable on the petitioners institution. The letter dated 10.8.1994 of the District Inspector of Schools refers some letter of the Deputy Director of Education dated 28.7.1994 which has not been brought on the record. Thus there is no adjudication by the competent authority nor there is any decision of the Court that the amended Scheme of Administration is not applicable on the petitioners institution. Thus the submission of the petitioners counsel cannot be accepted that the amended Scheme of Administration has not been enforced. Moreso, in the impugned order itself the amended Scheme of Administration dated 25.1.1985 has been relied and used for appointing the Prabandh Sanchalak.

12. Much reliance has been placed by the counsel for the petitioner on the judgement of this Court in Committee of Management, Shahid Mariqal Pandey Inter College, Nagwa, District Ballia and Ors. v. State of Uttar Pradesh and Ors. (supra). In the aforesaid case the Institution was already recognised. After U.P. Act 1 of 1981, a show cause notice dated 6.2.1985 was issued by the Deputy Director of Education suggesting certain amendments to be made in the already approved Scheme of Administration. The institution neither altered or modified the scheme nor filed any objection. One of the questions raised in the case was as to whether the amendment suggested by show cause notice dated 6.2.1985 has been deemed to have been automatically made. The Court held that the amendment suggested by the Director would not automatically deemed to have been made. Following was held in paragraph 4:

In the instant case the institution was a/ready recognised at the date of commencement of the U. P. Act No. 35 of 1958. The Regional Deputy Director of Education exercising power of the Director seems to have issued a show cause notice to the management of the Institution on 6.2.1985 suggesting therein certain amendments to be made in the a/ready approved Scheme of Administration. It appears that the management of the institution neither altered or modified the Scheme of Administration as required by the show cause notice dated 6.2.1985 nor did it file any objection as provided in Section 16-CCC of the Act. The question that arises for consideration is whether the amendment suggested by the Director vide show cause notice dated 6.2.1985 would be deemed to have been automatically made in the already approved Scheme of Administration. In my opinion, a conjoint reading of Section 16-A, Section 16-B(3), 16-C, 16-CCC read with Section 16-D(3)(vii) of the Act would make it abundantly clear that the amendment or modification suggested by the Director either u/s 16-C or u/s 16-CCC would not automatically be deemed to have been made in the already approved Scheme of Administration.

13. In the present case the amendment in the Scheme is not supported only by show cause notice issued by the Deputy Director of Education for amending the scheme. In the present case after giving two show cause notice dated 8.8.19981 and 8.2.1984 the Deputy Director of Education passed an order dated 25.1.1985 approving the amendment. Thus the above noted observations of the Court have no application in the facts of the present case. However, in the same paragraph following observations were also made by the Court:

The only way to get the suggested amendments or modifications made in the already approved Scheme of Administration is to appoint Authorised Controller under Sub-section (3) (vii) read with Sub-section (4) of Section 16-D of the Act and to get the suggested alterations or amendments made in the approved Scheme of Administration through the Authorised Controller, but so long as the Scheme of Administration is not so amended, the already approved Scheme of Administration would continue " to be operative except in so far as it is inconsistent with the principle laid down in the third schedule as provided in

Section 16-CC of the Act. The already approved Scheme of Administration , in so far as it is inconsistent with the principle laid down in the third schedule , shall automatically cease to be inoperative.

14. The Court in the above case held as quoted above, that the only way to get the suggested amendments or modifications made in already approved Scheme of Administration is to appoint the authorised controller under Sub-Section 3 (vii) read with Sub-section (4) of Section 16-D of the Act and to get the suggested alterations or amendments made in the approved Scheme of Administration through the Authorised Controller. The present case is a case of minority institution whereby by virtue of Section 16-D(14) the provisions of Section 16-D(3) to (13) are not applicable. The question thus is as to whether for the minority institution there can never be amendment in the Scheme of Administration in accordance with the principles laid down in Third Schedule in case the Committee of Management does not accept the amendments suggested by the Director. From perusal of the Scheme of the Act, 1921 it is clear that the provisions of Section 16-A, 16-B, 16-C, 16-CC and 16-CCC are applicable on every recognised institution. There is no indication in the Scheme of the Act that the minority institution is excluded from applicability of the aforesaid provisions. The principles laid down in Third Schedule has been added to provide for constitution of Committee of Management by periodical elections and the provisions providing for effective functioning of the Committee of Management, qualifications and disqualifications of the members and office-bearers of the Committee of Management. These provisions of Third Schedule are for better and effective management of the institution which can very well apply on the minority institution also. Can the amendment in the Scheme to conform with Third Schedule will be dependent on the wish and will of the management of minority institution , Can it be said that if the minority institution does not accept the proposed modification and alteration there is no jurisdiction in the Director to amend the Scheme"? If the submission is accepted that if the Management refuses to accept the amendment , the Director is powerless the entire purpose and object of the Third Schedule shall be defeated. Thus it cannot be said that for minority institution amendment in the Scheme of Administration cannot be made by the Director even after giving show cause notice. The provisions of Section 16-D(3) to (13) not being applicable to the minority institutions the observations made by this Court in the above quoted paragraph 4 of the judgement are not attracted while considering the question of amendment in the minority institution. Hence the said above judgment cannot be said to be an authority for proposition that in minority institution the scheme cannot be amended if the Committee of Management does not accept such amendment.

15. Now remains the last submission of the petitioners" counsel that the Scheme of Administration cannot contain any provision for appointment of the Prabandh Sanchalak and any such provision violates the rights of the minority guaranteed under Article 30 of the Constitution of India.

16. It is true that the Article 30 of the Constitution of India gives two fold rights to the minority, firstly to establish institutions of their choice and to administer the said institutions. Section 16-D of the Act which empowers the State Government to appoint Authorised Controller to take over the management of a private recognised institution is not made applicable to the minority institutions. This is to protect their right of minority guaranteed under Article 30 of the Constitution of India. The Authorised Controller appointed u/s 16-D is a Controller which supersedes the Committee of Management and the said Controller is appointed for a period of two years which can be extended to five years and in the event no lawfully constituted Committee comes into being the said Controller can continue even thereafter. The appointment of the authorised Controller takes away the entire right of the management from minority hence the said provisions have been made inapplicable to the minority.

17. The provisions of the appointment of the Prabandh Sanchalak under the Scheme of Administration stands on different footing. The appointment of the Prabandh Sanchalak is made in the event the newly elected Committee of Management does not take charge after the expiry of three years and one month. Thus in the event the term of Committee of Management expires and no election is held the Prabandh Sanchalak can be appointed. It has also been held by this Court that the provisions of the Scheme of Administration can be resorted to for appointment of the Prabandh Sanchalak when there is no validly elected Committee of Management. Present is the case in which election set up by the petitioners Committee of Management on 2.12.2002, has not been recognised. The Deputy Director of Education recorded finding that the said election has not been held in accordance with the Scheme of Administration. The notice of the election was not issued by the President and Manager as required. The notice has not been published in the news papers duly approved by the District inspector of Schools. Notice was also not sent by registered post. The Joint Director of Education has taken into consideration other relevant material facts for coming to the conclusion that the election dated 2.12.2002 cannot be recognised. The findings recorded by the Deputy Director of Education for not recognising the election is based on objective considerations of relevant materials which need no interference by this Court under Article 226 of the Constitution... The election having not been recognised by the competent authority the management cannot be allowed to remain in vacuum. The provisions making for stop gap arrangement to authorise an independent person to conduct the election of the Committee of Management and to take charge to duly recognised committee cannot be said to be a provision interfering with the right of management of the minority. The Prabandh Sanchalak conducts the election by the members of the society themselves. The choice of the members to elect the committee is in no manner hindered by election conducted by the Prabandh Sanchalak. In the present case while appointing the Prabandh Sanchalak the Joint Director of Education has directed the Prabandh Sanchalak to conduct the election within two months hence the Prabandh Sanchalak is not akin to Authorised Controller

appointed u/s 16-D to supersede the management and step into shoes of the management for a period of two years or more. Regulating the management which does not impinge upon the right to administer the institution by minority. have been held to be reasonable regulatory provisions validly made applicable to the minority institution also. The rights under Article 30 of the Constitution of India of the minority institutions to administer the institution has been considered by eleven Judges constitution Bench in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, The apex Court in the aforesaid judgment after noticing earlier constitution Bench judgment of the apex Court in Re: Kerala Education Bill AIR 1958 SC 956 and The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, laid down following in paragraph 122:

122. The learned Judge then observed that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of these institutions. Recognizing that the right to administer educational institutions could not include the right to maladminister, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation " must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it". (SCC p.783. Para 92). It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. Thus, in our view, is the correct approach to the problem.

18. The apex Court in the said judgment has held that a balance has to be kept between the two objectives that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish or administer their educational institutions. The provisions which are reasonable requirement for purposes of ensuring the standard of excellence of the institution, cannot be said to be impinged the rights of the minorities. In the present case I am considering only the provisions of Scheme which provides for appointment of Prabandh Sanchalak to conduct the election of the Committee of Management. When there is no recognized management in the minority institution, an order of the Joint Director of Education appointing Prabandh Sanchalak for conducting the election by the valid members of the society and to install the said management is for better administration of the institution by lawfully elected Committee and cannot be said to take away any right of

management to choose their committee. Thus the order of the Joint Director of Education appointing Prabandh Sanchalak to conduct the election cannot be held to be an order violating any of the rights of minority institution under Article 30 of the Constitution. The third and fourth submission of the counsel for the petitioner thus also cannot be accepted.

19. Although the Joint Director of Education vide order dated 26.10.2005 directed the Prabandh Sanchalak to conduct the election within two months, an interim order was passed on 5.12.2005 directing that the fresh election for constituting the new Committee of Management be not held. In view of this, it is necessary to direct the Prabandh Sanchalak to conduct the election of the Committee of Management of the institution as per order dated 26.10.2005 within two months from the date of production of a certified copy of this order.

20. Subject to above the writ petition is dismissed. Parties shall bear their own costs.