
(2004) 08 AHC CK 0205

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34210 of 2004

Committee of Management, Lok Manya Tilak Inter
College, Iskil, Jhansi through its Manager

APPELLANT

Vs

State of U.P. & Ors.

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A(5)

Citation : (2004) 08 AHC CK 0205

Hon'ble Judges : Arun Tandon, J

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri M.D. Singh "Shekhar", learned counsel for the petitioner, Sri I.M. Kushwaha, learned counsel for the respondent No. 5 and learned Standing Counsel for the respondent Nos. 1 to 4.

2. Committee of Management of Lok Manya Tilak Inter College, Iskil, Jhansi through its Manager, Sri Prahlad Singh Verma has filed this writ petition against the order passed by the Regional Joint Director of Education, Jhansi Mandal, Jhansi dated 30th July, 2004 whereby under Clause 8 of the approved scheme of administration he has appointed a Prabandh Sanchalak in the institution for holding fresh elections of the Committee of Management as the term of the earlier Committee of Management has since expired.

3. On behalf of the petitioner it is contended that the said order passed by the Regional Joint Director of Education is patently illegal inasmuch the last elections of the Committee of Management had taken place on 23rd July, 2000, the term prescribed under the amended scheme of administration was three years with a grace period of one month, therefore, it would expire on 23rd August, 2003. Prior to the expiry of the term of the Committee of Management, on a resolution passed by the Committee of Management, the Joint Director of Education vide order dated 28th July, 2003 had approved the amendment in the Clause 8 of the scheme of administration providing for extension of the term of the Committee of

Management from three years to five years.

4. It is, therefore, contended that the term of the Committee of Management extended on 28th July, 2004 would continue till 22nd July, 2001 with a grace period of one month under Clause 8 of the amended scheme of administration. In support of the said contention the petitioner has placed reliance upon the clause 8 of the scheme of administration and the order passed by the Joint Director of Education dated 28th July, 2003, which has been enclosed as Annexure No. 2B to the writ petition.

5. It is contended on behalf of the respondents that the order passed by the Joint direction of Education is strictly in accordance with law and the amendment in Clause 8 providing for extension of the term from three years to five years with a grace period of one month as approved by the Joint Director of Education vide order dated 28th July, 2003 would apply to the Committee of Management, which is elected subsequent to the said amendment being approved by the Joint Director of Education, it cannot be read in any manner to extend the term of Committee of Management, which was elected earlier for a term of three years, the term whereof has already expired.

6. On behalf of the respondent No. 5 various contentions have been raised for the purposes of alleging that the Committee of Management has harassed the respondent No. 5, who is working as Principal of the institution.

7. For appreciation the controversy raised in the present writ petition and as contended by the petitioner, it is necessary to refer to the Clause 8 of the scheme of administration as it stood prior to the amendment. Amended Clause 8 of the scheme of administration is quoted herein below:

Prabandh Samiti ka karyakal

Padadhikari avam Samiti ke sadasyon ka karyakal teen varsh hoga. Kayrya avadhi samapt ho janey par agley ek mash tak hi oadadhikari baney rah sakengeev. Yadi teen varsh ke bad ak mah ke andar nav chaynit Samiti karyabhar grahan nahin karti to teen varsh ek mah bad kalateet Samiti ka karyakal swatah samapt samjha jayega aur sambhagiya upshiksha nideshak drawar manonit ek vyakti prabandh sanchalak karyarat mana jayega. Jisey prabandhadhikaran key purn adhikar hongey. Vah Prabandh Sanchalak nav chaynit Samiti ko shighratishighra karyarat kareyaga aur yadi chunav nahi hua to chunao karekey chaynit Samiti ko karyarat karegeyaga aur yadi Prabandh Samitiyon meyn adhikar ka daba hai to jiskey paksh main sambhgiya up Shiksha nidesha ka nirnay ho oosey karyarat kareyaga.?

8. It is not in dispute that the elections of the Committee of Management, which had taken place on 23rd July, 2000 were held strictly in accordance with the scheme of administration as it stood on the said date including Clause 8. It is apparently clear that the term prescribed was three years with a grace period of one month wherein the office bearers of the Committee of Management alone

were permitted to continue work in the institution, and not the entire Committee of Management.

9. In view of the aforesaid legal position, it cannot be disputed that the term of the Committee of Management i.e. three years would expire on 22nd July, 2003 itself.

10. According to the petitioner in view of the amendment proposed in the said clause 8 of the scheme of administration, the Joint Director of Education by means of the order dated 28th July, 2003 has been pleased to permit the petitioner Committee of Management to make amendment in the scheme of the administration for extending the term of the Committee of Management under Clause from three years to five years.

11. Under Section 16A (5) of the Intermediate Education Act, no amendment in the scheme of administration shall be made at any time without prior approval of the Director of Education. The power conferred upon the Director under Section 16A(5) has been delegated to the Joint Director of Education and the same is not in dispute. In view of the Section 16A (5), it is mandatory that any amendment in the scheme of administration can take effect only from the date, it is approved by the Joint Director of Education. The provision of Section 16A(5) are mandatory in nature and only after statutory approval is obtained from the Joint Director of Education, in respect of the amendment, the same can be said to have been enforced for all legal purposes. Since on 28th July, 2003 the Joint Director of Education has approved the amendment in Clause 8 of the scheme of administration of the petitioner institution whereby the term has been extended from three years to five years, the amended term would become applicable only from the said date.

12. It is not in dispute that the last elections of the Committee of Management had been taken place on 23rd July, 2000 and the period of three years provided under Clause 8. At the time the said elections were held, was three years, the period whereof would expire on 22nd July, 2003. The provisions under Clause 8 of the scheme of administration providing for the grace period of one month for continuance of the office bearers for the purpose of managing the institution, cannot be read in any manner to suggest that the term has been extended for one month or the term of the Committee of Management is three years and one month. The provisions for continuance of office bearers for a further period of one month (grace period) on the face of it, does not provide for extension of the term of all the members of the Committee of Management. The grace period granted is confined to the office bearers of the Committee of Management only. In such circumstances, it cannot be successfully pleaded that the term of the petitioner Committee of Management was three years and one month. The amendment in Clause 8 cannot infuse life in the Committee of Management, the term whereof had already expired on the date amendment was approved by the Joint Director of Education. In such circumstances the petitioner cannot claim to continue as lawful Committee of Management of the institution on the basis of

the amendment approved on 28th July, 2003. Subsequent to the expiry of its term on 22nd July, 2003, the Committee of Management elected on 23rd July, 2000 has as such become Kalateet on 22nd July, 2003 irrespective of the amendment, which has specifically been approved by the Regional Joint Director of Education on 28th July, 2003.

13. It is further contended on behalf of the petitioner that since the resolution for amending the scheme of administration was passed in the year 2001 and all relevant papers were submitted to the authority concerned for grant of approval to the proposed amendment. Delay in grant of approval cannot be made a ground for appointment of the Prabandh Sanchalak in the institution.

14. The contention raised on behalf of the petitioner does not appeal to the Court, if there had been delay in approval of the amendment proposed by the petitioner to amend the Clause 8. It was always open to the petitioner to approach the Higher Authority or the Court of Law for seeking redressal in respect of the delay. The petitioner cannot be permitted to plead that because of the delay in granting the approval to the proposed amendment, it should be presumed that the amendment has been approved from the date it was sent to the Joint Director of Education.

15. In the Opinion of the Court, having regard to the mandatory requirements of the provision of Section 16A(5) the only possible conclusion, which should be drawn is that the scheme of administration shall be deemed to be amended in the eyes of law only from the date the amendment proposed has been approved by the Joint Director of Education. This Court as such is not inclined to interfere with the order passed by the Joint Director of Education dated 30th July, 2004 appointing Prabandh Sanchalak in the institution as that the term of the Committee of Management has expired. It is provided that the Prabandh Sanchalak appointed in the institution shall hold fresh elections of the Committee of Management from amongst valid members within a period of six weeks from the date a certified copy of this order is produced before him in accordance with the provisions of scheme of administration applicable.

16. The writ petition is, accordingly, dismissed. No order as to costs.