

(1996) 01 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 8611 of 1995

Committee of Management, Swasni Param Hans Unchattar
Madhyamik Vidyalaya, Deoria and Another

APPELLANT

Vs

Dy. Director of Education, Gorakhpur and Others

RESPONDENT

Date of Decision : 03-01-1996

Acts Referred:

Citation : (1996) 01 AHC CK 0048

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D. K. Seth, J.—In this case, the order, dated 4th of November, 1995 is impugned by the said order the election of the Managing Committee of the petitioner and the appointment of petitioner No. 2 as Manager of the School were cancelled after the order recognising the Committee of Management and authorising the signature of the Manager was stayed by order, dated 22nd March, 1995 which was challenged in writ petition No. 8611 of 1995. In the said writ petition, an interim order was passed on 31st March, 1995 to the extent that the payment of salary of the teachers and the staff shall be made by the District Basic Education Officer by single operation and all financial matters shall be handled either by the said officer or by some other officer authorised by him. The petitioner shall be continuing in respect of other administrative functions. It was provided in the said order that in the meantime, the District Basic Education Officer shall be free to conclude the enquiry in the matter after giving due notice to the parties. After the said order was passed, after giving notice to the parties, the District Basic Education Officer had passed the impugned order, dated 4th May, 1995 which is under challenge in writ petition No. 33360 of 1995.

2. Mr. Sahi appearing in support of both the petitions contends that so far as writ petition No. 33360 of 1995 is concerned, the order, dated 4th November, 1995 cannot be sustained on the ground that he has purported to decide the question of validity of the election and the membership of the society which is wholly

beyond the jurisdiction of the District Basic Education Officer, though he fairly conceded that the U.P. Basic Education Act does not contain any provision under which the District Basic Education Officer is authorised to decide the said question, but, however, the said question was gone into and decided in the case of Committee of Management of Sri Pyare Lal Shastri Junior High School Jajau, v. Basic Shiksha Adhikari, Agra, 1990(3) UPLBEC 1601. According to him, since there is no provision authorising the said Officer to determine the question of validity of the election, therefore, the said finding in the impugned order cannot be sustained. Relying on the said judgment, he contends that for the purpose of ascertaining as to whom the said officer has to authorise for the purpose of carrying on the day to day administration of the school, he may summarily decide the same. According to him, the remedy of the respondents is by way of a civil suit and the District Basic Education Officer cannot embark upon deciding those questions which fall within the jurisdiction of a Civil Court. While passing the said order, the officer had travelled beyond the scope and jurisdiction of the authority vested in him. He further contends that the said officer cannot decide the question of no confidence nor he can decide the question of membership. According to him, the said officer has no authority to pass any interim order or stay the order passed by him recognising the Committee of Management. Mr. Sahi contends further that the last election of the Committee of Management had taken place on 15th June, 1991. According to the Scheme of the Management of the said Institution, the life of the Managing Committee was five years. Subsequently Scheme of Management was modified according to the provisions of the U. P. Intermediate Education Act, 1921 which has since been approved wherein the life of the Committee of Management has been prescribed for the duration of the period of three years. The said new scheme of the Management has been approved by the appropriate authority, namely, the Deputy Director of Education. But however, the said school has not yet been recognised as High School or Intermediate School. According to him, as soon the new Scheme of the Management has been approved, the Committee of Management is to be governed by the said scheme. He further contends alternatively that the term of Management cannot be curtailed. Even if the new scheme has not been accepted, then also the Committee of Management elected on 15th June, 1991 is to continue till five years, namely, June 1996. Therefore, the authority of the petitioner cannot be withheld by the Committee of Management pursuant to the alleged no confidence motion which according to him was carried on not by the general body but by the Committee of Management. The old scheme of Management does not provide for passing any no confidence motion by the Committee of Management. According to him, since there is no provision for passing any no confidence motion, it is implied that only a General Body can do so. Inasmuch as it was the General Body who has elected the Manager, therefore, the General Body alone can recall him. He relies on the finding of the District Basic Education Officer wherein it has been found that the no confidence motion was passed by the Committee of Management. Therefore, the said no confidence motion is to be ignored and thus the petitioner is to continue as

Manager.

3. Mr. Shukla, on the other hand, appearing for the respondents, contends that the School is still a Junior High School and it has not been recognised as Intermediate or High School. There are but only 24 members in the General Body and according to him, these 24 members had taken the no confidence motion and it is not the Committee of Management. The last election was held on 15th June, 1991. Since the School has not yet been upgraded, therefore, the same cannot be governed by the new scheme which is applicable to the Intermediate School and not to a Junior High School. So far as the School remains a Junior High School, the same cannot be governed by the scheme which is meant for governing an Intermediate School. After the no confidence motion was taken by the General Body consisting of 24 members on 29th January 1995, the relevant papers were forwarded to the District Basic Education Officer on 5th February, 1995 while those papers were also forwarded to the Assistant Registrar of Firm, Societies, and Chits on 17th February, 1995. Whereas the purported election was alleged to have taken place on 19th February, 1995 with help of 25 new members excluding the original 24 members by petitioner No. 2 alleging that those 25 members were enrolled in 1990 whose membership was ratified in the meeting of the General Body held on 19th February, 1995 in which the election had taken place. He has relied on the said order, dated 4th November, 1995 and pointed out that the membership of 25 new members were ratified on 19th February, 1995 in the General Meeting in which those 25 members had elected the petitioner No. 1 on the same date. According to him, as soon Mr. Shukla's client came to learn about the recognition of petitioners 1 and 2, they approached the District Basic Education Officer and pointed out that the recognition was obtained through fraud. Thereupon the order of stay was issued. According to him, if fraud is alleged, in that event, the District Basic Education Officer is entitled to undo an action which he had undertaken on account of certain fraud exercised on him.

4. Admittedly, under the original scheme of management the life of the Committee of Management was five years. So far as the election held on 15/6/1991 is concerned is not under challenge. If five years allowance is given the life of the said managing committee is due to expire on 14/6/1996. Therefore, there cannot be any question of recognising any new Committee of Management. According to Mr. Sahi the Scheme of Management has been altered or modified according to U. P. Intermediate Education Act, 1921 with a view to recognise the said school as High School. Admittedly, the school has not yet been recognised as High School. Therefore even if the scheme of administration is modified according to U. P. Intermediate Education Act, such a scheme of administration would govern the High School and not the Junior High School, which comes within the purview of U. P. Basic Education Act. Therefore, by no stretch of imagination it can be said that new scheme of administration could be applied in respect of management of the Junior High School. In that view of the matter during the life span of the earlier Committee of Management it is not possible to

hold any election, that too by some person other than the Committee of Management. In the present case it is alleged that there are 24 members of the society. Whereas the alleged election held by the petitioner cannot be said to be valid, that too with the help of "25" new members other than existing "24" members presupposes something suspicious. That too on the face of the fact that this new "25" members were shown to have been enrolled in 1990 but their membership was ratified on 1921995 in the general meeting in which the said "25" members had been present as general member and had elected simultaneously on the said 1921995 alleged new Committee of Management. This clearly indicates the falsity of claim made by the petitioner that writ large on the face of the facts disclosed. Inasmuch as new "25" members whose membership was not ratified till 1921995 cannot ratify their own membership themselves even before they become member of the concerned society while keeping "24" old members completely outside the said meeting. It is really inconceivable that not a single member out of "24" old members would be present in the said meeting held on 1921995. It is also very difficult to believe that the persons enrolled in 1990 could be ratified only on 1921995 while there had been another election by the general body on 1561991, on which date membership of the said "25" persons could be ratified. Even then the said "25" new members had never claimed any right and they have never surfaced until 1921995. Therefore, there is a little doubt that the alleged Committee of Management elected on 1921995 in which the petitioners claims to be elected manager appears to be rank outsider, particularly when they claimed to be elected in the background, referred to above, on the basis of scheme of administration, which is meant for application in the High School and not in the Junior High School.

5. As has been rightly submitted by Sri Sahi that the Basic Education Officer, though the statute is silent about the authority to decide the question with regard to election, yet it can decide the question with whom he has to deal for the purposes of disbursement of salary paid under the Payment of Salaries Act (Act No. 24 of 1979). For the purposes of deciding as to who is in of active control of the management of the institution and for such purpose though he may go into the question of election incidentally but he cannot act as the election tribunal for deciding the validity of the election. By now it is established principle of law that the authority though can incidentally go into the questions of election for the purposes of deciding effective actual control over the management but it cannot act as a election tribunal usurp the jurisdiction of a civil court, in this regard. But while deciding the question of election incidentally the authority is confined only to the extent to look into as to whether a person claiming to be the Committee of Management is a rank outsider or not.

6. This is the consistent view of this Court, as has been laid down in the case of Sudhir Kumar Pathak v. Regional Deputy Director of Education, 1984 (2) UPLBEC 910 wherein it has been held that inquiry under Section 16A (7) of the Act is not final and is subject to the decision of the Court of competent jurisdiction. While

deciding such question he has to follow the guideline contained in the explanation which requires him to have regard as to who had control over the funds, affairs of the institution and receipt of the income of the property and also the scheme of administration. But he cannot act like the election tribunal to investigate and decide the validity of the election of office bearers instead it merely confers power in him to decide as to who should be deemed to be in actual control of the affairs of the institution. By reason of this decision the power to investigate about the election has been totally negated. But that view has not been followed in a latter decision which on the contrary holds the view that the question of election can also be gone into incidentally. Reference may be made to the case of Committee of Management of Subhash Uchchar Madhyamik Vidyalaya Rajapur Mawana, Meerut v. Deputy Director of Education, Meerut, 1985 (1) UPLBEC 241, which lays down, "besides except incidentally the question about the correctness or otherwise of the election, said to have been held, cannot be gone into by the Deputy Director of Education even when he is examining the position under Section 16A (7) of the Intermediate Education Act." But then while considering the question of effective control under Section 16A (7) of the Act except incidentally with a view to decide the question of effective control the validity of the election cannot be gone into.

7. In the case of Sankatha Prasad Srivastava v. Deputy Director of Education, Gorakhpur, 1985 (1) UPLB EC 751, it has been held that the Deputy Director of Education cannot act as a substitute for the Civil Court while examining the question of effective control for determining the validity or otherwise of the election but can find out as to who was, prima facie entitled to be in effective control. The ratio of this inquiry is obvious because the law does not contemplate a rank outsider to meddle with the management of the institution. The question of validity of the election is subject to ultimate decision of the Civil Court. The Deputy Director of Education is to examine this aspect only in summary manner. He has to determine the question of effective control in accordance with the statutory guideline provided in Section 16A (7) of the Act and cannot on the basis of his opinion about the validity of his election without anything more than to take the view as to who was entitled to manage the Institution. This view has been followed in the case of Maharshi Sukhdeo Vidyalaya Shukartal (Junior High School) Morna, Muzaffarnagar v. The Regional Deputy Director of Education, 1 Region, Meerut, 1985 (2) UPLBEC 1053, wherein it has been held that the scope of inquiry regarding the validity of election of the Managing Committee is very limited. The Deputy Director of Education is not expected to make as detailed inquiry and function like an election tribunal. He has only to prima facie satisfy himself about the validity of the election. If the managing committee, has been elected after due notice to the members entitled to vote in accordance with the register maintained by the former committee of management, according to the rules and the election has been held in accordance with the approved Scheme of Administration the managing committee shall be deemed to have been duly elected. It is not necessary to go into further details. If a party wants to contest

the validity of election on other grounds, the regular suit is the remedy.

8. The same view is shared in the case of Committee of Management, Sarvodaya Inter College v. District Inspector of Schools, Deoria, 1991 (2) UPLB EC 1019, in which it has been laid down that while determining actual and effective control of the affairs of the institution, however, it is not barred if incidentally questions about the correctness or otherwise of the election said to have been held, may be gone into by the Deputy Director of Education. Though, however, he may not lay the main thrust to decide the validity of the election.

9. In the case of Committee of Management, Uchcharat Madhyamik Vidyalaya Newaria, District Jaunpur v. Deputy Director Education, Vth Region, Varanasi, 1992 (1) UPLBEC 327, the same view is taken viz. that while deciding the question of recognition, he had of course the power to consider the validity of election incidentally.

10. The same view has been expressed in the case of Committee of Management, Janhitkari Inter College v. Deputy Director of Education, 1994 (1) UPLBEC 590, namely, while recording a finding on this question incidentally he can examine the validity of election so held but he cannot decide that point as the main issue in the case.

11. In the case of Committee of Management, Shahid Mongol Pandey Inter College Nagwa District Ballia v. State of U. P., 1994 (2) UPLBEC 1348, it has been held : "it is true that actual control within the meaning of subsection (7) does not admit of actual control by the rank outsider and that being so the validity of the election has necessarily and incidentally to be gone into by the Regional Deputy Director of Education. But finding on the question of validity alone will not serve the purpose. The Regional Deputy Director of Education ought to have addressed himself on the question of "actual control" of the affairs of the institution and gone into the question of validity of the election only incidently.

12. In Committee of Management Shri Ram Nirajan Inter College Kajgaon Jaunpur v. Deputy Director of Education, VRegion Varanasi, 1995 (2) UPLBEC 928 it has been held that while adjudicating on the question of effective control, "Simultaneously the question of validity of the election of the Committee of Management may be looked into. But the prime consideration for such adjudication is to find out actual and effective control over the affairs of the management and the committee.

13. The Committee of Management of Pyarelal Shastri Junior High School Jajau via Fatehpur Sikri, District Agra v. Basic Shiksha Adhikari Agra, (supra) wherein it has been held, "There is no provision by virtue of which the District Basic Education Officer has been authorised to determine the question as to the validity of an election for the purpose of running an institution."

14. So far as the decision in the case of Jaswant Singh v. District Inspector of Schools, 1980 UPLBEC 43, cited at the bar does not have any application, in the

facts and circumstances of the present case, in as much as in the said case it was held that the District Inspector of Schools does not have jurisdiction to adjudicate upon the claim made by the rival managing committee, each one of them asserted to have been duly elected and to give final decision thereon. No such power has been conferred on him either by the U. P. Intermediate Education Act or by High School and Intermediate Colleges (Payment of Salaries of Teachers and Employees) Act, 1971 the jurisdiction to decide such dispute rest with the Civil Court. The District Inspector of Schools only can make summary inquiry on administrative level for the purpose satisfying himself as to who, according to him, are validly elected office bearers of the institution. In the present case on the face of the facts disclosed, the claim of the petitioners cannot be taken to the level of rival committee claiming to be elected. The inquiry reveals as has been held earlier that the petitioner is rank outsider and in order to decide such question it is not necessary even to go to the Civil Court which can be decided on summary inquiry. Though, however, decision so given may be subject to the decision, if the said cause is taken to the Civil Court, if any decision thereon. The present decision is a decision only for the purpose, as has been indicated above b it subject to any decision of the Civil Court, if the petitioner brings the action in the Civil Court at any future date.

15. Here in this case there is no doubt that on the face of the facts disclosed the petitioner and his committee of management is rank outsider. Therefore the recognition granted on the basis of the petitioners' claim and authorisation of signature, pursuant thereto was void ab initio. Therefore, I am unable to accept the contention of Sri Sahi that the Basic Education Officer has no jurisdiction to grant interim order and stay operation of the recognition already granted. If the recognition is obtained illegally by a person such person cannot claim equity and has no right to object to such a situation. It was by the mechanism of the petitioner that such a situation was brought about which does not speak good of the petitioner and indicates that he had come with unclean hands. It is also equally accepted proposition that if some wrong order has been passed on account of being misled either by misrepresentation or by fraud or otherwise in that event the officer has every authority to recall such an order and undo the illegality. Over and above on the facts and circumstances of the present case the recognition cannot be granted and the Committee of Management of the petitioner cannot be recognised and, therefore, the alleged recognition was non eat in the eye of law and, therefore I am unable to persuade myself to agree with the contentions of Mr. Sahi that the order staying the recognition is bad.

16. I am also unable to agree with the contentions of Sri Sahi that the Basic Education Officer cannot go into the question of no confidence motion against the petitioner inasmuch as the petitioner has not challenged no confidence motion. On the other hand he had sought to rely on the recognition granted to the Managing Committee other than the managing committee managing the affairs of Junior High School. He is not claiming to be the manager of the other Managing Committee. On the other hand he is claiming to be the Manager of the

new Managing Committee elected by the new "25" members on 29/2/1995, therefore, he cannot dispute the question of no confidence motion. Rather by reason of his action in having fresh election with the help of "25" members and seeking recognition of the Managing Committee so elected on 19/2/1995, he had rather accepted no confidence motion and thereby estopped from challenging the same.

17. Moreover while deciding the question as to who is in effective control when the Basic Shiksha Adhikari enters into the question of election incidentally for the purpose of finding out that no rank outsider is recognised in such exercise, the decision on the question of no confidence motion is also incidental one in view of peculiar facts and circumstances of the present case. The interpretation of the expression "incidental" though has been sought to be explained but it is very difficult to deny as to which incidental. This question depends on the facts of each individual case and differ from each given circumstances. Though in the facts and circumstances of the present case this question clearly is incidental one but it may not be so in different facts and circumstances of the case. Then again the said no confidence motion which was taken on 29/1/1995 was forwarded to the District Basic Education Officer on 5/2/1995 as well as to the Assistant Registrar of Firms Societies and Chits on 17/2/1995 but the petitioner has not challenged the same. However I am not expressing any opinion on the same. The District Basic Education Officer or the Assistant Registrar Firms Societies and Chits will be free to act upon the said resolution, dated 29/1/1995 on the basis of papers forwarded to them by the respondent Managing Committee on 5/2/1995 and 17/2/1995 respectively in accordance with law.

18. In the result both these writ petitions cannot be sustained and, as such, are dismissed. There will be, however, no order as to costs.