
(2006) 11 AHC CK 0101
In the Allahabad High Court

Executive Committee, Sarvodaya Shiksha Samiti	APPELLANT
Vs	
State of Uttar Pradesh	RESPONDENT

Date of Decision : 27-11-2006

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 6(3)

Citation : (2006) 7 AWC 7377

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Judgement

S.N. Srivastava, J.—This writ petition is directed against the order dated 4.11.2006, passed by the Joint Director of Education, Gorakhpur Region, Gorakhpur appointing Prabandh Sanchalak to hold election of the Committee of Management on the ground that three years term has already expired and no election of Committee of Management has taken place.

2. Heard learned Counsel for the parties.

3. Learned Counsel for the petitioners urged that according to Scheme of Administration, the office bearers elected under the Bye-laws of the Society will be the office bearers of the Committee of Management also. He further urged that according to Bye-laws of the Society, the term of the Committee of Management is three years and it may be extended for three months after expiry of three years term in case fresh election is not held after three years, but the office bearers will continue till fresh election takes place. It was also urged that under the provisions of the Bye-laws of the Society there is a provision of appointing authorized controller, but no authorized controller could be appointed in the facts of the present case as ingredients required for appointing authorized controller are not attracted. Lastly, it was urged by the learned Counsel for the petitioners that the impugned order is liable to be quashed.

4. In reply to the same, learned Counsel for the caveator while relying upon a Five Judges Full Judgment reported in (2005) 1 UPLBEC, Committee of

Management, Pt. Jawahar Lal Nehru Inter College, Bansgaon, District Gorakhpur and Anr. v. Deputy Director of Education, Gorakhpur Region, Gorakhpur and Ors., urged that if term of petitioners' Committee of Management has expired and petitioners' Committee of Management is not in existence, the impugned order was rightly passed appointing authorized controller, who is competent to hold election. Petitioner No. 2 is not entitled to work as Manager of the Committee of Management after expiry of term of three years and three months.

5. Carefully considered arguments of learned Counsel for the parties and also carefully gone through the materials on record.

6. From materials on record, it transpires that election of the Committee of Management has taken place 11.6.2000 in which a Committee of Management was elected for the term of three years. Assistant Registrar, Societies and Chits, Gorakhpur Division, Gorakhpur vide his order dated 20.12.2001 held aforesaid election invalid against which Writ Petition No. 742 of 2002 was filed. During pendency of which fresh election has taken place on 3.3.2002. This Court by a judgment dated 6.6.2003 passed in Writ Petition No. 742 of 2002 finally decided that the election dated 11.6.2000 was rightly held and Committee of Management elected pursuant to that election is entitled to continue and to hold fresh election in accordance with the bye-laws since the term of the committee of management with going to expire on 11.9.2003. It transpires from the record that the committee of management has sent letters to the District Inspector of Schools, Gorakhpur to appoint Observer to hold fresh elections, but the District Inspector of Schools did not appoint any Observer to hold fresh election of the Committee of Management on the ground that three years term of the Committee of Management has already expired and the Special Appeal is pending in which an order to maintain status quo has been passed. It appears from the record that no election has taken place though the term of the Committee of Management was only upto 11.9.2003. It further appears from the record that another Writ Petition No. 51806 of 2006, Narendra Dev Rai v. State of U.P. and Ors. was also filed in which this Court by an order dated 26.9.2006 permitted petitioner of that writ petition to file a fresh application for appointing Prabandh Sanchalak and the Regional Director of Education was directed to pass appropriate order on such application within two weeks from the date of application. Joint Director of Education passed the impugned order appointing Prabandh Sanchalak to hold election of Committee of Management and rejected claim of the petitioners to continue to hold charge till fresh elections are held.

7. Under the Scheme of Administration read with Bye-laws, the term of the Committee of Management is three years and it could continue up to three months more. Learned Single Judge while deciding Writ Petition No. 742 of 2002 has also held in the judgment that term of the Committee of Management is upto 11.9.2003, hence Committee of Management is not in existence thereafter. In the facts of the case, this Court is in agreement with the contention of learned Counsel for Caveator that the judgment of Five Judges' Full Bench (Supra) is

applicable in the present case according to which, whether there is any provision under the Scheme of Administration or not, the Authorized Controller could be appointed in case term of the Committee of Management came to an end. Relevant Paragraph of the Judgment of the Full Bench of this Court is being reproduced below:

38 (3) Where the Regional Deputy Director of Education finds that the election of both the rival Committees are invalid, he is not required to decide the question of actual control to recognize one or the other Committee of Management, and instead he shall, where the Scheme of Administration provides for appointment of an Administrator (Prabandh Sanchalak), appoint an Administrator with the direction to hold elections expeditiously in accordance with the Scheme of Administration, and where there is no such provision in the Scheme of Administration he shall appoint an Authorised Controller who shall expeditiously hold elections to the Committee of Management and shall manage the affairs of the institution until a lawfully elected Committee of Management is available for taking over the Management.

8. In view of the above, the first argument of learned Counsel for the petitioners that authorized controller could not be appointed as it could only be appointed u/s 16-D(4) of the U.P. Intermediate Education Act, u/s 6(3) of the U.P. High School and Intermediate (Payment of Salary to Teachers and other Employees) Act or under the bye-laws or Scheme of Administration as none of the ingredients of any provision are attracted in appointing Authorised Controller by the impugned order is not accepted in view of admitted fact that term of the petitioners' committee of Management has already expired on 11.9.2003 and no fresh election has taken place thereafter. In these undisputed facts as the term of the Committee of Management has come to an end and despite there being no provision under the Scheme of Administration to appoint Authorized Controller, Authorised Controller could be appointed.

9. Learned Counsel for the petitioners then urged that Prabandh Sanchalak means Administrator and no appointment of Authorised Contorller could be made and appointment of Authorized Controller in present case by the impugned order is vitiated in law.

10. In the facts of the present case, where the Authorized Controller could be appointed, authorized controller so appointed could be termed as Prabandh Sanchalak, who may hold fresh election of the Committee of Management in accordance with the Scheme of Administration read with bye-laws.

11. Lastly, learned Counsel for the petitioners urged that the office bearers of the committee of management will continue till fresh election takes place.

12. Considering the facts of the case, as Bye-laws as well as the Scheme of Administration permit office bearers to continue till fresh election takes place, this Court is of the firm view that the appointment of the Authorised Contorller/ Prabandh Sanchalak was rightly made by the impugned order, who shall hold

fresh election in accordance with the Scheme of Administration read with bye-laws as early as possible, but not beyond three months from the date of production of a certified copy of this order. Till fresh election takes place, the office bearers of the Committee of Management shall continue to manage day-to-day affairs of the Institution, but they will not discharge any function of Committee of Management. Petitioners shall handover all the relevant records of the Society and the Committee of Management to the Authorized Controller/Prabandh Sanchalak for holding fresh election by the Authorized Controller/Prabandh Sanchalak as directed above and shall not interfere in the process of election.

13. With above observations and directions, writ petition is finally disposed of.