
(2010) 08 AHC CK 0410
In the Allahabad High Court

Gramudyogik Inter College and Others	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 02-08-2010

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16A(7), 16CC, 16D

Citation : (2010) 08 AHC CK 0410

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dilip Gupta, J.—Writ Petition No. 1901 of 2010 has been filed for setting aside the decision taken by the Regional Level Committee on 11th December, 2009 by which the order dated 13th February, 2009 passed by the District Inspector of Schools, Fatehpur approving the elections of the Committee of Management of the Gramudyogik Inter College, Ashok Nagar, Bharsawan, Fatehpur (hereinafter referred to as the "Institution") held on 8th February, 2009 with petitioner No. 2-Nand Kishore Verma as Manager, has been set aside and a recommendation has been made for appointment of an Authorised Controller u/s 16-D of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "Act"). A further direction has been issued that till the dispute about the membership of the General Body of the Society is not resolved by the Assistant Registrar, Firms, Societies and Chits, Allahabad (hereinafter referred to as the "Assistant Registrar") and fresh elections are not held under the supervision of the District Inspector of Schools, the salary account of the Institution shall be operated singly.

2. Writ Petition No. 40072 of 2010 has been filed for setting aside the order dated 30th June, 2010 passed by the District Inspector of Schools by which, pursuant to the decision taken by the Regional Level Committee on 11th December, 2009, permission has been granted to Amit Kumar Shukla to perform all the administrative works in accordance with Clause 7 of the Scheme of

Administration of the Institution till the Authorised Controller is appointed or the Committee of Management takes charge after the fresh elections are held.

3. In the elections of the Committee of Management of the Institution held on 27th September, 2001, petitioner No. 3-Kashi Prasad Mishra was elected as the President while respondent No. 5-Amit Kumar Shukla was elected as the Manager. The term of the Committee of Management of the Institution under Clause 7 of the Scheme of Administration of the Institution is three years but the office bearers can continue in office till the successors are elected. It is stated that though petitioner No. 3, as the President of the Committee of Management of the Institution, repeatedly issued directions to the Manager of the Institution to hold fresh elections after the expiry of the three years but such elections were not held and so the District Inspector of Schools by the order dated 3rd July, 2007 directed the President to initiate process of elections. The President then issued directions to the Manager but despite such directions, elections were not held. The District Inspector of Schools, therefore, made recommendation to the Joint Director of Education for appointment of an Authorised Controller and an order for single operation of the salary account of the Institution was also passed on 27th September, 2007. Subsequently, petitioner No. 3 as the President of the Committee of Management of the Institution, exercising powers under Clause 15 of the Scheme of Administration of the Institution, called a meeting of the General Body and the General Body fixed 8th February, 2009 for holding fresh elections. The election programme was sent to all the members of the General Body and a request was also made to the District Inspector of Schools to appoint an Observer. The District Inspector of Schools appointed J.S. Kushwaha, Lecturer in the Government Inter College, as an Observer for the election and the elections were held on 8th February, 2009 in which petitioner No. 2-Nand Kishore Verma was elected as the Manager and petitioner No. 3-Kashi Prasad Mishra was re-elected as the President. The District Inspector of Schools then approved the elections and attested the signatures of petitioner No. 2-Nand Kishore Verma as the Manager.

4. However, the outgoing Manager Amit Kumar Shukla, respondent No. 5, filed a representation before the Secretary, Government of U.P. mentioning therein that the elections of the Committee of Management of the Institution were held on 7th February, 2009 in which he was elected. The Secretary referred the matter to the Joint Director of Education who by the order dated 3rd March, 2009 held that the attestation of signatures of petitioner No. 2-Nand Kishore Verma by the District Inspector of Schools was not correct and restored the status quo ante as was existing prior to 13th February, 2009 which is the date on which the signatures of petitioner No. 2 were attested by the District Inspector of Schools.

5. This order dated 3rd March, 2009 passed by the Joint Director of Education was challenged by the petitioners in Writ Petition No. 23337 of 2009. This petition was allowed by the judgment and order dated 29th July, 2009 which is as follows:

This petition seeks the quashing of the order dated 3rd March, 2009 passed by the Joint Director of Education, Allahabad Region, Allahabad by which he has put in abeyance the order dated 13th February, 2009 passed by the District Inspector of Schools and has also directed that the position as is existed prior to the passing of the said order shall be restored.

It is the contention of Sri P.N. Saxena, learned Senior Counsel for the petitioner that the said order dated 3rd March, 2009 was passed without giving any show cause notice or opportunity to the petitioners and in any case the Joint Director of Education did not have any jurisdiction to pass the said order.

This Court by an interim order dated 5th May, 2009 directed that the operation of the impugned order dated 3rd March, 2009 passed by the Joint Director of Education shall remain stayed. Subsequently on 25th May, 2009, the Court made it clear that the said interim order shall not prevent the Joint Director of Education in deciding the election dispute in case he so decides.

It is stated by Sri R.B. Singhal, learned Senior Counsel appearing for the respondent-Committee of Management that the Regional Level Committee has heard the matter and has reserved its orders. In the counter affidavit it has been admitted that show cause notice was not given to the petitioners before passing the impugned order.

The order dated 3rd March, 2009 passed by the Joint Director of Education, therefore, cannot be sustained and is, accordingly, set aside. It is made clear that the Court has not examined as to whether the Joint Director of Education has the jurisdiction to pass the order.

The writ petition is, accordingly, allowed.

6. The Regional Level Committee, while deciding the matter on 11th December, 2009, made the following observations and directions:

1. In the elections of the Committee of Management of the Institution held on 11th August, 2001, Amit Kumar Shukla was elected as the Manager.
2. The District Inspector of Schools had sent the communication dated 15th December, 2008 to the Assistant Registrar for verification of the list of members of the General Body. The Assistant Registrar informed the District Inspector of Schools by the letter dated 13th January, 2009 that the dispute about the membership of the General Body is pending before him and he shall give information after the dispute is decided.
3. The District Inspector of Schools appointed an Observer for the holding of the elections of the Committee of Management of the Institution on 8th February, 2009.
4. In the elections held on 8th February, 2009 Kashi Prasad Mishra was elected as the President and Nand Kishore Verma was elected as the Manager of the Committee of Management.

5. The District Inspector of Schools has informed that the elections were held from the same list of members of the General Body from which the elections were earlier held in 2001.

6. The District Inspector of Schools attested the signatures of Nand Kishore Verma as the Manager by the order dated 13th February, 2009 and the order for single operation of the salary account was also recalled on 20th February, 2009.

7. It is claimed by Amit Kumar Shukla that the elections of the Committee of Management of the Institution were held on 7th February, 2009 and proceedings were sent to the District Inspector of Schools on 9th February, 2009.

8. Thus, when two sets of elections were held, the District Inspector of Schools should have referred the matter to the Regional Level Committee u/s 16-A(7) of the Act but that was not done.

9. The District Inspector of Schools was aware of the fact that the dispute about the membership of the General Body of the Society was pending before the Assistant Registrar.

10. The order dated 8th February, 2009 passed by the District Inspector of Schools for attestation of the signatures of petitioner No. 2-Nand Kishore Verma, therefore, deserves to be set aside and fresh elections should be held under the supervision of the District Inspector of Schools after the list of members of the General Body is finalised by the Assistant Registrar but till then salary account should be operated singly. Recommendation for appointment of an Authorised Controller u/s 16-D of the Act should also be made.

7. Sri P.N. Saxena, learned Senior Counsel for the petitioners submitted that the elections of the Committee of Management of the Institution were held on the basis of a valid list of members of the General Body and in the presence of the Observer appointed by the District Inspector of Schools and, therefore, the District Inspector of Schools committed no infirmity in approving the elections. It is also his submission that infact no elections were held on 7th February, 2009 in which Amit Kumar Shukla claims to have been elected and it is only to create a dispute that such a claim has now been made.

8. Sri Ashok Khare, learned Senior Counsel appearing for Amit Kumar Shukla has, however, urged that the said respondent was elected as the Manager of the Committee of Management of the Institution in the elections held in 2001 and under the Scheme of Administration of the Institution, the office bearers shall continue till the successors are elected and so if the Regional Level Committee has not approved the elections held in the year 2009, the said respondent shall continue as the Manager and the District Inspector of Schools committed no infirmity in passing the order dated 30th June, 2010 which has been impugned in Writ Petition No. 40072 of 2010. It is also his submission that Amit Kumar Shukla has been performing the functions of the Manager and no interference is required at this stage, particularly when in the election held on 7th February, 2009 he has

again been elected as the Manager.

9. I have considered the submissions advanced by learned Senior Counsel for the parties.

10. The parties do not dispute that the earlier elections of the Committee of Management of the Institution were held on 27th September, 2001. Under Clause 7 of the Scheme of Administration of the Institution, the term of the Committee of Management is three years but the office bearers can continue in office till the successors are elected. Fresh elections were not held immediately after the expiry of the aforesaid period of three years and both the sides claim that fresh elections were held in 2009. According to the petitioners the elections were held on 8th February, 2009 under the supervision of the Observer appointed by the District Inspector of Schools, while according to the respondent-Amit Kumar Shukla, fresh elections were held on 7th February, 2009 though in the absence of any Observer appointed by the District Inspector of Schools. The Regional Level Committee has not approved the elections of the petitioner-Committee of Management held on 8th February, 2009 on the ground that the list of members of the General Body was in dispute before the Assistant Registrar and it is only from a valid list of members of the General Body that a fresh election can be held. Though the Scheme of Administration of the Institution may provide that an office bearer can continue in office till his successor is elected but in the present petition, as noticed hereinabove, the last elections of the Committee of Management of the Institution were held on 27th September, 2001 and the period of three years expired way back in September, 2004. The District Inspector of Schools has permitted the Manager elected in the election held in 2001 to perform functions since the Regional Level Committee has not approved the elections of the petitioner-Committee of Management of the Institution held in 2009.

11. A Full Bench of this Court in paragraph 37 of the judgment rendered in Committee of Management, Pt. Jawahar Lal Nehru Inter College, Gorakhpur Region and Another Vs. Deputy Director of Education and Others, observed as follows:

The scheme of the Act provides for Management of the educational institution by a validly elected Committee of Management, in terms of the Scheme of Administration u/s 16-A, which u/s 16-CC is not to be inconsistent with the principles laid down in the Third Schedule. The Committee of Management exercise important statutory functions under the Act and the U.P. Act of 1971. It has been given powers to make ad hoc appointments on Class III posts, determination of seniority, notification of vacancies to the District Inspector of Schools, preparation and submission of salary bills etc. It is also entrusted with the Government funds, for the purposes of maintenance and payment of salaries. Where the persons are not found to be validly elected office-bearers, they cannot be allowed to manage and administer the institution only on the ground that they are in actual physical control over the affairs of the institution. In the

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

12. The Full Bench has clearly observed that when the Regional Level committee finds that the elections have not been validly held then, in such circumstances, whether the Scheme of Administration provides for appointment of a Prabandh Sanchalak or not, an Authorised Controller is required to be appointed to hold the elections and manage the affairs of the Institution until a lawfully elected Committee of Management is available for taking over the management.

13. In such circumstances, when more than nine years have lapsed after the holding of the last elections in 2001 and in order to ensure that a Committee of Management of the Institution is constituted from a valid list of members of the General Body, it is provided that the Joint Director of Education shall forthwith appoint an Authorised Controller in the Institution who shall manage the affairs and hold the elections of the Institution from a valid list of members expeditiously, preferably within a period of two months. If the Assistant Registrar determines the list of members of the General Body, the Authorised Controller shall hold the elections from the said list after inviting objections but if the Assistant Registrar does not finalise the list within four weeks from today, then the Authorised Controller shall himself determine the list after inviting objections so that the elections can be held within the stipulated time.

14. The decision taken by the Regional Level Committee on 11th December, 2009 and the order dated 30th June, 2010 passed by the District Inspector of Schools, Fatehpur are, accordingly, set aside and the writ petitions are allowed to the extent indicated above.