
(2010) 02 AHC CK 0157
In the Allahabad High Court

Janta Adarsh Inter College

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 02 AHC CK 0157

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The Committee of Management of Janta Adarsh Inter College, Kapsar, District Meerut (hereinafter referred to as the "Institution") through its Manager has filed this petition for setting aside the order dated 23rd December, 2009 passed by the Joint Director of Education, Meerut as also the Government Order dated 4th August, 2003. The petitioner has also sought a direction upon the respondents to permit the petitioner-Committee of Management to continue upto 21st October, 2013.

2. It is stated in the petition that the Institution is recognised under the provisions of the U.P. Intermediate Education Act, 1921 and receives grant in aid from the State Government. It has its own Scheme of Administration for managing the affairs of the Institution. Clause 8 of the Scheme of Administration provides that the term of the Committee of Management shall be three years but the office bearer shall continue for further period of one month but if within a period of three years and one month, newly elected Committee of Management does not take charge, then the term of the existing Committee of Management shall automatically come to an end and a Prabandh Sanchalak to be nominated by the Joint Director of Education who shall have the powers of the Committee of Management.

3. It is also stated that the Committee of Management in its meetings held on

6th June, 2004, 16th January, 2009 and the General Body in its meetings held on 16th June, 2004 and 13th February, 2009 resolved to amend various Clauses of the Scheme of Administration including Clause 8 which provides for term of the term of the Committee of Management of the Institution by extending it from three years to five years. The Joint Director of Education by his letter dated 23rd December, 2009 approved the amendments, but the amendment made in Clause 8 has been made operative for the Committee of Management elected subsequent to the resolution and will not apply to the tenure of the existing Committee of Management. The Joint Director of Education has passed an order on the basis of the communication dated 4th August, 2003 sent by the Director of Education (Madhyamik) U.P. Lucknow.

4. Sri N.L. Pandey, learned Counsel for the petitioner submitted that the Government Order dated 4th August, 2003 in so far as it imposes a restriction that any amendment relating to the term of the Committee of Management will be applicable for the elections held subsequently and not for the existing Committee of Management deserves to be set aside as any amendment in the Scheme of Administration of the Institution comes into effect immediately. In support of this contention he has placed reliance upon a Division Bench Judge of this Court in Committee of Management of M.M. I. Inter College, Nehtour, District Bijnor v. Deputy Director of Education and Ors. (1995) 1 UPLBEC 162 and an interim order passed by this Court on 29th September, 2003 in Writ Petition No. 44650 of 2003 (C/M, Kakori Shahid Intermediate College, Jalalabad v. State of U.P. and Ors.). He, therefore, submits that reliance placed by the Deputy Director of Education on the said Government Order while granting approval to the amendments made in the Scheme of Administration of the Institution by the order dated 23rd December, 2009 is not justified and the term of the present Committee of Management should be taken as five years instead of three years and one month and the Committee of Management should be allowed to continue upto 2013.

5. Learned Standing Counsel appearing for the respondents has, however, submitted that there is no infirmity in the restriction imposed in the Government Order dated 4th August, 2003 that any amendment made in the term of the Committee of Management should be made applicable only for the Committee of Management subsequently elected.

6. I have carefully considered the submissions advanced by the learned Counsel for the parties.

7. Challenge is to the communication dated 4th August, 2003 sent by the Director of Education, Lucknow to all the Joint Directors of Education regarding the approval to be granted to the amendments made in the term of the Committee of Management. The letter clarifies that approval to such amendments in the term of the Committee of Management shall be made operative only for the subsequent elections of the Committee of Management and not for the existing Committee of Management.

8. This issue was considered by a Division Bench of this Court in Committee of Management, Arya Kanya Inter College, Bulandshahar and Anr. v. State of U.P. and Ors. 2008 (10) ADJ 398 (DB) and the Court upheld the validity of the directions contained in the communication dated 4th August, 2003. It was observed:

Challenging the judgment and order of the Hon''ble Single Judge, learned Counsel for the appellant contends that the power to make amendments in the scheme of administration has been conferred u/s 16-A (5) of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the Act, 1921). Such amendments in the scheme of administration take effect from the date the amendments are approved by the Director of Education. The petitioner's Committee of Management which was elected in the year 2005 had proposed amendments in the scheme of administration, whereby the term of the elected Committee of Management has been changed from 3 years to 5 years during subsistence to its 3 years term. The amendments have infact been approved during the same period. However, the Regional Joint Director of Education has incorporated a totally unwarranted condition in the order of approval that such amendment in the scheme of administration (qua extension of the term) would take effect only in respect of the Committee of Management, which is elected subsequent to the approval of the amendments. It is contended that the letter of the Director of Education, U.P. at Allahabad dated 4th August, 2003 which provided that such amendments extending the term of the Committee of Management from 3 years to 5 years would take effect only in respect of the Committee of Management, which is elected subsequent to the date of approval of the amendments, is in excess to his statutory powers u/s 16-A(5). It is submitted that the Director of Education has no authority under the provisions of Act, 1921, to control the manner in which the amendments are to take effect.

...

The Regional Joint Director of Education by means of the order dated 3rd September, 2007 approved the amendments so proposed in the scheme of administration with the condition that the said extension of the term of the Committee of Management would be applicable only in respect of the elections, which will take place subsequent to the amendments so approved. Reference in the letter has been made to the letters of the Director of Education, U.P. at Allahabad dated 30th March, 1998 and dated 4th August, 2003, wherein it has been provided that amendments in the scheme of administration for the purposes of extension of the term of the Committee of Management, if approved, shall take effect only in respect of the Committee of Management, elections whereof are held subsequent to the date of resolution of the Committee of Management proposing the amendments in the scheme of administration.

...

We, therefore, arrive at a conclusion that the Director of Education, while

approving the amendments in the scheme of administration, is entitled to impose fair and just conditions. It is within his competence to provide that if any existing Committee of Management seeks amendments in the clause provided for the term of the elected office bearers (in the facts of the present case 3 years to 5 years), then while approving such amendments in the scheme of administration, it is always open to the Director of Education to provide that such extension of term (3 years to 5 years) would be applicable only in respect of the Committee of Management, which is elected subsequent to the date of resolution of the Committee of Management proposing amendment. Such condition imposed by the Director of Education cannot be said to be arbitrary or unfair. The condition so imposed would be within his statutory competence and within the framework of the power as conferred by Section 16-A(5) of 1921 Act.

...

Even otherwise, we feel that it is appropriate and it is fitness of things that the Committee of Management, which is elected in accordance with the provisions of the scheme of administration must be permitted to continue only for the term, which was applicable at the time of the elections. The extension of the term so provided by seeking permission of its own term and by suggesting amendments in the scheme of administration cannot be approved of by this Court and therefore, we have little hesitation to hold that the provision as contained in the circular/letter of the Director dated 4th August, 2003 as also in the condition imposed in the order of the Regional Joint Director of Education dated 3rd September, 2007, while approving the amendments in the scheme of administration with the extended term applicable only in respect of Committee of Management, which are elected subsequent to the date of the approval order, is fair and just. Such orders do not warrant any interference in equitable jurisdiction under Article 226 of the Constitution of India.

The judgments relied upon by the learned Counsel for the parties do not have any application in view of the circular of the Director. Therefore, it is not necessary for this Court to refer to any of the aforesaid judgments relied upon by the parties. The amendments incorporated in the scheme of administration qua extension of the term of the elected Committee of Management has to be approved of along with condition as provided for under the circular/order of the Director of Education dated 4th August, 2003.

9. The judgment rendered in M.M.I. Inter College (supra) was considered by the Division Bench in the aforesaid judgment in Committee of Management (supra) and it was observed that it has no application in view of the Circular dated 4th August, 2003. It needs to be pointed out that in M.M.I. Inter College (supra) the term of the Committee of Management, according to the Scheme of Administration, was to continue till the newly Committee of Management is elected. The Scheme of Administration was amended in 1989 to bring it in conformity with the provisions of the U.P. Intermediate Education Act, 1921. Since the Scheme of Administration was amended to bring it in conformity with

the Act, the contention that the amendment in the term of the Committee of Management will apply to the subsequent elections and not to the existing Committee of Management was repelled and it was held that the amendments will apply with immediate effect.

10. Learned Counsel for the petitioner has, however, placed reliance upon a judgment of a learned Judge of this Court in Committee of Management, Bhartiya Adarsh Inter College Vs. State of U.P. and Others, in support of his contention that the amendments come into effect immediately. This judgment in the case of Committee of Management, Bhartiya Adarsh Inter College (supra) is not only contrary to the Division Bench judgment of this Court in Committee of Management, Arya Kanya Inter College, Bulandshahr (supra) but has also been explained by another learned Judge of this Court in Committee of Management, Devraha Baba Inter College, Deoria and Anr. v. Regional Joint Director of Education, 7th Region, Gorakhpur and Ors. reported in 2005 (4) ESC 2692.

11. The contention of learned Counsel for the petitioner, therefore, cannot be accepted.

12. There is, therefore, no merit in the petition. It is, accordingly, dismissed.