
(2004) 10 AHC CK 0057

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44898 of 2004

Padam Nayan Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-10-2004

Acts Referred:

Intermediate Education Act, 1981 — Section 16, 16CC

Citation : (2005) 5 AWC 4338

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : R.N. Yadav, for the Appellant; C.S.C., for the Respondent

Judgement

Arun Tandon, J.—Heard Sri R.N. Yadav on behalf of the petitioner and Learned Standing Counsel on behalf of respondent Nos. 1 to 5.

2. Petitioner Padam Nayan Gupta, claiming himself to be the live members of the Committee of Management of Smith Inter College, Ajmatgarh, district Azamgarh, has filed this petition for writ of mandamus directing the respondents to deliver the charge of the post of Manager of the institution to the petitioner in compliance of the order passed by the Deputy Director of Education dated 21.11.1991 and in accordance with the scheme of administration of the institution as was then applicable.

3. I have heard counsel for the parties and have gone through the records of the writ petition.

4. Smith Inter College Ajmatgarh, Azamgarh is an institution recognized under the provisions of the Intermediate Education Act. It is not in dispute that in the said institution, because of litigation pending between the parties in various civil courts, an authorized controller was appointed on 1.12.1976 under order of the Deputy Director of Education, Gorakhpur. The said authorized controller continues to manage the institution even today i.e. after more than 28 years.

5. According to petitioner, maximum period prescribed under Intermediate Education Act for continuance of Authorized Controller is 5 years and therefore the said Authorized Controller is under legal obligation to handover the charge to the Committee of Management of the institution.

6. So far as the continuance of the Authorized Controller in the institution for last more than 28 years is concerned, this Court sees little or no justification for such a continuance. Authorized Controllers are appointed in certain contingency for fixed period, under the Intermediate Education Act it is neither legally permitted nor justified that an Authorized Controller should manage the institution for such a long time to be I premises 28 years in the present case.

7. In such circumstances, the grievance of the petitioner that the Authorized Controller should be asked to immediate handover the charge of the institution, is legally justified. However, the question still survive as to whom the charge should be handed over by the Authorized Controller.

8. On the basis of the provisions of the scheme of administration as were approved prior to 1981, Sri Shashi Bhushan Gupta was the life Manager. It is also an admitted position that Sri Shashi Bhushan Gupta has since expired. The petitioner on the basis of his being real brother of Sri Shashi Bhushan Gupta is now claiming to have become life Manager.

9. In the opinion of the Court, such a plea is not sustainable, nor it is legally permissible in view of the amendment incorporated in the Intermediate Education Act by U.P. Act No. 1 of 1981. By U.P. Act No. 1 of 1981 Section 16-CC has been added amongst other provisions in the Intermediate Education Act, which reads as follows :-

"The Scheme of Administration in relation to any institution, whether recognized before or after the commencement of the Intermediate Education (Amendment) Act, 1980, shall not be inconsistent with the principles laid down in the Third Schedule."

10. Schedule-III, which has been added to the Intermediate Education Act in Clauses 2 and 3 provides as follows:-

11. From the aforesaid statutory provisions, it is apparently clear that the concept of life Manger/life office bearers of Committee of Management of recognized Intermediate Colleges has been done away with. Every scheme of administration of a recognized Intermediate College must contain a provision for periodical elections and should also provide specific term for said elected office bearers.

12. In view of the aforesaid change brought about in the Intermediate Education Act, the scheme of administration relied upon by the petitioner, which provides for life manager, admittedly runs contrary to the aforesaid statutory provisions and as such has become unenforceable nor the petitioner can claim any right on the basis of the said scheme of administration. At this stage reference may also

be had to the provisions of Section 16(b), which provides that every institution, which has already been recognized under the provisions of the Act, shall submit a scheme of administration, in accordance with the Section 16(c), to the Director for his approval. The Director in turn is required to ensure that the scheme of administration so submitted is in conformity with the provisions of the Act.

13. In view of the aforesaid provisions, there being no valid elected Committee of Management in the institution, it is provided that the Director of Education/ Regional Joint Director of Education shall prepare a draft scheme of administration in accordance with the provisions of Section 16-CC read with Schedule-III to the said Act and shall require the Authorized Controller to convene a meeting of the general body for approval of the same. After the scheme of administration is so approved (subject to amendments as may be proposed) by the general body, which constitute the Committee of Management of the institution, the Regional Joint Director of Education shall ensure that fresh elections are held in accordance with the aforesaid approved scheme of administration immediately thereafter and the authorized controller appointed in the institution hands over charge to the newly elected Committee of Management immediately.

14. The entire exercise, as aforesaid, may be completed by the Regional Joint Director of Education preferably within a period of three months from the date a certified copy of this order is filed before him.

15. With these observations, writ petition stands disposed of.