
(2009) 09 AHC CK 0214
In the Allahabad High Court

Pickett Inter College

APPELLANT

Vs

D.I.O.S. and Others

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Constitution of India, 1950 — Article 30

Uttar Pradesh Intermediate Education Act, 1921 — Section 16D(14)

Citation : (2010) 2 AWC 1683

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—List has been revised.

2. Shri N.S. Chahar, learned Counsel for the petitioner has advanced his submissions on behalf of the petitioner and the learned standing counsel for the respondent Nos. 1 to. 4. In spite of an impleadment application having been filed and allowed by this Court on 28.3.2008, the respondent No. 5-Smt. Jaswanti Singh remains unrepresented. None has appeared on her behalf to assist the Court nor any counter-affidavit has been filed.

3. A counter-affidavit has been filed on behalf of the State, wherein the fact that the institution is a minority institution, has not been denied. The counter-affidavit does not disclose the source of power exercised on the basis whereof the committee has been superseded.

4. The writ petition has been filed challenging the order dated 16.12.2006, whereby the Regional Director of Education, Saharanpur Region, Saharanpur has appointed an Authorized Controller in the institution purporting to exercise powers on the ground that there are certain irregularities in the institution.

5. Shri Chahar, learned Counsel for the petitioner contends that the order is without jurisdiction inasmuch as minority institutions are exempted from such supersession and the protection guaranteed under Article 30 of the Constitution

of India obliges the respondents not to supersede the Committee of Management of a Minority Institution.

6. The fact that the petitioner is a minority institution has been clearly stated in paragraphs 3 and 4 of the writ petition, which has not been denied in the counter-affidavit of Shri Arvind Kumar, Associate District Inspector of Schools, Muzaffar Nagar filed on behalf of the respondent Nos. 1 to 4. Learned standing counsel has also not been able to point out any provision under the U.P. Intermediate Education Act, 1921 that may authorise the respondents to supersede the petitioner's Committee of Management and appoint an Authorized Controller. This fact was also taken notice at the time of granting interim relief by this Court on 5.1.2007.

7. Having heard learned Counsel for the parties and in view of the fact that no one has chosen to put up any defence on behalf of the respondent No. 5, there is no option for this Court except to dispose of the writ petition at this stage.

8. The only question which survives for determination is as to whether the Authorized Controller could have been appointed or not. The aforesaid legal question stands squarely answered in favour of the petitioner and Section 16D(14) of the U.P. Intermediate Education Act, 1921 recites clearly that the provisions of supersession do not apply in respect of minority institutions. The aforesaid statutory bar therefore prohibits the respondents from appointing an Authorized Controller.

9. There is yet another aspect of the matter. Even if it is presumed that the power exists to supersede a management under U.P. Act No. 24 of 1971, there also it is extremely doubtful as to whether such a power can be exercised in respect of a management of a Minority Institution protected under Article 30 of the Constitution of India.

10. In the instant case, the query made by the District Inspector of Schools is in relation to alleged irregularities of management and not with regard to default in payment of salary. The order of single operation was passed in public interest which is in violation of the provision of U.P. Act No. 24 of 1971 and therefore the same was stayed by this Court on 8.12.2006. The impugned order does not record any further persistent default of payment of salary so as to warrant supersession. It has been held in the case of Committee of Management, Sahid Sansmaran Inter College, Sherpur and Anr. v. Deputy Director of Education, Varanasi and Anr. 1993 ALJ 318, that it is for default in payment of salary as defined u/s 2(g) of the Act that such a power can be exercised u/s 6 of the 1971 Act. There is nothing contained in the impugned order reflecting any such default. A dispute about allegations of general nature relating to mismanagement or maladministration other than those as mentioned in the 1971 Act, cannot be made subject-matter of scrutiny u/s 6 of the 1971 Act. The order impugned is therefore unsustainable on this ground as well.

11. There is therefore no option for this Court except to allow the writ petition.

The impugned order dated 16.12.2006, passed by the respondent No. 4 is hereby quashed with costs on parties. Disposed of accordingly.