

(1992) 11 AHC CK 0111
In the Allahabad High Court
Case No : Special Appeal No. 462 of 1992

Prithvi Pal Tripathi and Another	Vs	APPELLANT
District Inspector of Schools and Others		RESPONDENT

Date of Decision : 06-11-1992

Acts Referred:

Limitation Act, 1963 — Section 15(1)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A(7)

Citation : (1993) 2 AWC 1028

Hon'ble Judges : M.K. Mukherjee, C.J.; Sudhir Narain, J

Bench : Division Bench

Advocate : R.N. Singh and A.P. Sahi, for the Appellant; S.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—Aggrieved by an order of the Deputy Director of Education dated 25th September 1991, by which he permitted the Appellant No. 1 to hold election, the Respondent No. 3 tiled writ petition No. 30135 of 1991. One Dayashankar Tiwari. claiming himself to have been elected as Assistant Manager in the Committee of Management of the institution in question and asserting that he had been working as Manager (officiating on the date when the petition had been filed), also filed writ petition No. 33272 of 1991 against the same order of the Deputy Director of Education dated 25th September 1991. The learned Judge of this Court allowed both the writ petitions by a common Judgment dated 12th August 1992. The Appellants have filed the present Special Appeal against this order.

2. The facts in brief are that there is an institution known as Rastriya Intermediate College Sujanganj, district Jaunpur. It is a recognised Institution under the provisions of U.P. Intermediate Education Act. 1921 (in short the Act). The Committee of Management is constituted in Accordance with the Scheme of Administration. An election of the Committee of Management of the Institution

was held on 31-1-1983 and in the said election Prithvi Pal Tripathi, Appellant No. 1, was elected as Manager. There was no dispute regarding his selection. On 20th November 1988 election of the Committee of Management took place each of the two rival Committees of Management claimed that they were duly elected members of the committee. Both claimed that the election had taken place on 20-11-1988. Prithvi Pal Tripathi claimed that he was the elected Manager and Surendra Mani Tripathi claimed to be duly elected Manager of the Committee of Management. The District Inspector of Schools attested the signature of Prithvi Pal Tripathi on 2-12-1988. Surendra Mani Tripathi filed writ petition No. 23825 of 1988 challenging the aforesaid order of the District Inspector of Schools. This Court allowed the writ petition on 1-12-1989 holding that as there was dispute between the two rival Committees of Management, the District Inspector of Schools should have referred the matter to the Deputy Director of Education for his decision as contemplated u/s 16-A(7) of the Act. The dispute was referred to the Deputy Director of Education by the District Inspector of Schools. He by order dated 25th September 1991 decided the matter and held that none of the Committees of Management was validly elected on 20th November 1988 and directed that fresh election should take place and for this purpose he authorised Prithvi Pal Tripathi, Appellant No. 1, to hold the election as he was in effective control of the Committee of Management.

3. On 22nd October 1991 this Court passed the following interim order in the writ petition:

List on 26-10-1991.

In the meantime, Sri K.K. Dwivedi, learned Counsel for Respondent No. 2, may file counter affidavit.

In the meantime, no election shall be held

This interim order was extended from time to time and by order dated 4th December 1991 it remained operative till 13-12-1991. As after 13th December, 1991 the interim order was not operative, the Appellant No. 1 took steps for holding election of the Committee of Management and finally the election of the Committee of Management was held on 23rd February 1992. Sri Jai Prakash Tiwari, Appellant No. 2 claimed that he was elected as Manager. In the said election and on the same day his signature is alleged to have been attested by the District Inspector of Schools as Manager.

4. The learned Judge by judgment dated 12th August, 1992 held that the term of the Committee of Management was three years and one month and as the said period had expired, the Committee of Management had no authority under the Scheme of Administration to hold the election and it was only the Authorised Controller duly appointed by the Deputy Director of Education who could hold the election. The writ petition was accordingly allowed and a direction was given to the Deputy Director of Education Vth Region, Varansi to appoint an Authorised Controller to hold the election of the Committee of Management for running and

managing the affairs of the Institution.

5. The learned Counsel for the Appellants urged that the Committee of Management was duly elected on 20-11-1988. The Appellant No. 1 was entitled to hold the election within three years and one month from the said date. The election could not take place within that period because this Court had restrained holding of the election and in case the period during which the injunction order was operative is excluded, the fresh election which had taken place on 23rd February 1992 shall be valid. It was submitted that this period should be excluded firstly on the principles of law as laid down u/s 15 (1) of the Limitation Act, 1963 and secondly on the principle that No party should suffer on account of any order passed by the Court. (*Actus curiato neminem gravabit*).

6. The submission of the learned Counsel for the Appellant is based upon the presumption that a valid election was held on 20th November 1988. The Deputy Director of Education by order dated 25th September 1991 has recorded a categorical finding of fact that none of the Committees of Management as claimed by the two rival Committees of Management, was validly elected. The Appellant No. 1 was claiming himself to have been elected as Manager on 20th November 1988. He did not file any writ petition challenging the findings recorded by the Deputy Director of Education Surendra Mani Tripathi, claiming himself to have been elected as Manager on 20th November, 1988, filed writ petition challenging the order of the Deputy Director of Education by which he had permitted the Appellant No. 1 to hold fresh election. On the findings recorded by the Deputy Director of Education that no Committee of Management was duly elected on 20th November 1988 the period of the Committee of Management which was elected on 3rd November, 1985 expired on 2nd December 1988 and thereafter no validly elected Committee of Management existed. The period of Committee of Management is three years and one month under the Scheme of Administration. The right to hold the election of the Committee of Management and who will hold such election, is contained in the Scheme of Administration which is quoted below (translated in English):

The term of the office bearers and members of the Committee of Management shall be three years. After the expiry of this period the office bearers may continue for further one month. In case after the expiry of three years and within one month if duly constituted Committee of Management does not take charge the term of the old Committee of Management shall automatically come to an end and the person appointed by Regional Deputy Director of Education shall be entitled to function...

Under the Scheme of Administration the old Committee of Management was not entitled to function after the expiry of three years and one month and this follows that the old Committee of Management was not entitled to hold the election and it was only the Authorised Controller appointed by the Regional Deputy Director of Education who was entitled to run and manage the affairs of the institution and he alone could hold the election of the Committee of

Management. This question also came up for consideration before this Court in Commutes of Management Sri Gandhi Inter College v. Deputy Director Education Meerut 1989 ALJ 214 The court held that if on inquiry the Regional Deputy Director of Education comes to conclusion that the election for constituting the Committee of Management was held after the expiry of term of previous Committee of Management, such an election would be illegal.

7. Similar view was expressed In Committee of Management Sri Krishna Inter College, Nibari, Ghaziabad v. District Inspector of Schools Ghaziabad 1991 AWC 313.

8. The next submission of the learned Counsel for the Appellants was that the Deputy Director of Education was to record a finding as to which rival Committee of Management was In effective control of the affairs of the institution as contemplated u/s 16-A(7) of the Act, and the Deputy Director of Education has recorded a finding that as the Appellant No. 1 was in effective control of the affairs of the institution, he was entitled to hold the election.

9. The term of the Committee of Management cannot be treated to have been extended by remaining in its effective control and that will not empower such Committee of Management to hold election after the expiry of the term of the Committee of Management as provided under the Scheme of Administration The validity and term of the Committee of Management has to be determined in accordance with the provisions contained in the Scheme of Administration. As it has been found that the term of the Committee of Management had expired on 2nd December, 1988, the Appellant No. 1 was not entitled to hold any election after the said period. The Deputy Director of Education has recorded a finding that the election held on 20th November, 1988 was invalid. The Appellant No. 1, therefore, was not entitled to hold the election afresh.

10. In the result, this appeal fails and is accordingly dismissed. However, there shall be no order as to costs.