
(1998) 11 AHC CK 0083

In the Allahabad High Court

Case No : C.M.W.P.No. 10543 and 12992 of 1997

Rajendra Pal Singh

APPELLANT

Vs

District Inspector of Schools, Jalaun and others

RESPONDENT

Date of Decision : 11-11-1998

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16A(6)

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 13, 14

Citation : (1999) 1 AWC 456 : (1999) 1 UPLBEC 588

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant; Arun Tandon, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg, J.—The only point which arises for determination in the present two writ petitions is whether the District Inspector of Schools (for Short "D.I.O.S.") and for that matter, the Authorised Controller is empowered to enroll and induct new members of the society with a view to take part in elections to constitute a new Committee of Management in accordance with the Scheme of Administration, This controversy has cropped up in the wake of the following facts :

There is a registered society known as Gramin Siksha Prasar Samiti. Mayee, which established an institution initially known as Adarsh Junior High School. It was recognised and aided by the State Government. The said school was upgraded for imparting education up to High School. The School, thereafter came to be known as Adarsh Ucchatar Madhyamik Vidyalaya. Mayee. At the time of the formation of the society, there were 15 founder members out of whom 7 have died and at present only 8 founder members are in existence. There is a Scheme of Administration (for short "Scheme") in pursuance of which. 22 life members were inducted and thus the total membership of the society is 30 (22 life and 8

founder members). The terms of the Committee of Management under the Scheme is three years and its office bearers are to continue for a period of one month more. On the expiry of the period of 3 years and 1 month, the old Committee of Management ceases to exist. In the instant case, the term of the Committee of Management came to an end and in view of the provisions of Clause 8 of the Scheme. Shri Shiv Ratan Shuhla, Principal, Government inter College, Orai, Jalaun was appointed as Authorised Controller to manage the affairs of the institution for a period of 90 days w.e.f. 31-5.1996- It appears that the new Committee of Management could not be elected within the aforesaid period and the Authorised Controller continued to function as such in pursuance of the order, extending its term from time to time. The Authorised Controller initiated the enrolment of life members of the society at the instance of D.I.O.S. and ultimately, a final list of newly inducted members of the aforesaid society was sent by the Authorised Controller to the D.I.O.S. on 21.12.1996. It was contemplated that the new Committee of Management shall be elected with the participation of the newly enrolled 29 members. Rajendra Pal Singh, the petitioner in writ petition No. 10543 of 1997 who was the ex-manager of the erstwhile Committee of Management took an objection to it and made a representation to the D.I.O.S. taking the plea that only the elected Committee of Management or the general body of the society has the authority to induct new members of the society and that the Authorised Controller has no power or competence to enroll/enlist the new members.

2. It appears that the representation made by Rajendra Pal Singh fell on deaf ears of the authorities and they were bent upon in holding election to constitute new Committee of Management with the participation of new members. Rajendra Pal Singh has. therefore, filed Civil Misc. Writ No. 10543 of 1997 in which he has prayed that the order passed by the D.I.O.S. recognising the newly inducted members as the members of the society be quashed and the respondents as well as Returning Officer be directed to hold the election as per schedule only with the participation of 30 members of the society.

3. As a counter blast to the aforesaid writ petition, Shiv Pratap Singh has filed Civil Misc. Writ No. 12992 of 1997 which he has maintained that the newly enrolled members are entitled to participate in the election. It is prayed that the respondents be commanded not to hold the election on the basis of the list of 30 members furnished by the ex-manager Rajendra Pal Singh and that the Dy. Director of Education (for short "D.D.E.") be directed to decide the validity of the members after affording opportunity of hearing to the concerned parties before holding the fresh elections.

4. Counter and rejoinder-affidavits have been filed in both the writ petitions. Since common questions of law and facts are involved in the present two writ petitions, it is proposed to decide them together.

5. Heard Sri Ajit Kumar learned counsel appearing for the petitioner Rajendra Pal Singh, ex-manager, who is petitioner in Civil Misc. Writ No. 10543 of 1997 and

Sri Arun Tandon on behalf of Shiv Pratap Singh petitioner in Civil Misc. Writ No. 12992 of 1997, as well as learned standing counsel.

6. To begin with, it may be mentioned that the elections to constitute a new Committee of Management have already taken place on 30.3.1997 but the result of the elections has not been declared on account of interim orders passed by this Court. As said above, the controversy between the parties centres round the only question as to whether the new Committee of Management is to be elected with the participation of the original members of the society who are 30 in number (8 founder and 22 life members) or the members who have been enrolled by the Authorised Controller are also entitled to take part in the election as members of the society. This controversy again boils down to the basic question as to whether the Authorised Controller has the power and authority to enroll the new members of the society or not. The parties would swim or sink with the decision on the above point.

7. The Committee of Management is constituted to run an institution. It has been made obligatory under the provisions of Section 16A of the Intermediate Education Act, which was inserted by U. P. Act No. 35 of 1958. It provides for a Scheme of Administration for every institution, whether recognised before or after the commencement of the said Act. The Scheme of Administration has to, inter alia, provide for constitution of Committee of Management vested with the authority to manage and conduct the affairs of the institution. There are regulations framed under the Intermediate Education Act, 1921, contained in part 2A, Chapter I, dealing with the Scheme of Administration. Powers, duties and functions of the Committee of Management have been prescribed in Regulation 13. Approval to the Scheme of Administration is accorded under Regulation 14. Sub-section (6) of Section 16A provides that every recognised institution shall be managed in accordance with the Scheme of Administration. Admittedly, there is a Scheme of Administration of the society, which runs the institution. Clause 7 of the Scheme provides the procedure for the enrollment of the members of the general body. Certain conditions have been laid down for acquiring the membership. If the Committee of Management does not approve the membership of a particular person, the matter is to be put up for consideration before the general body. If the general body confers the status of membership on a particular person, he will be treated as a member and if general body turns down the proposal to accept a particular person as a member, the draft of membership fee furnished by him shall be returned. The decision of the general body in the matter is final. Clause 8 of the Scheme provides for the term of the Committee of Management. After the expiry of the term of 3 years and 1 month, the committee shall cease to function. If elections are not held within the prescribed time, the DDE concerned has been authorised to nominate a person of his choice as Authorised Controller who shall have full rights to manage the affairs of the institution. It shall be the duty of the Authorised Controller to ensure that the elections to constitute the new Committee of Management are held without any delay and that the new committee is fully

saddled with all expedition. The term of the Authorised Controller comes to an end no sooner the newly constituted Committee of Management takes over.

8. Sri Ajit Kumar learned counsel for Rajendra Pal Singh, ex-manager, urged that a bare reading of these two clauses of the Scheme makes it clear that the Authorised Controller has no authority to exercise power of enrolling the members as his duty simply is to manage the affairs of the institution till such period a new Committee, of Management comes into being. Sri Arun Tandon repelled the above submission and maintained that the authorised controller steps into the shoes of the Committee of Management and all the powers which are vested in a Committee of Management are exercisable by the Authorised Controller. According to him, powers of various office bearers and the members of the Committee of Management are to be concentrated for being exercised in one man, who is termed as Authorised Controller. I find it difficult to agree with Sri Arun Tandon on the point. Democracy is the signature tune of our Constitution. It is life and blood of all our institutions. The concept of democracy is the central ideal in constituting the elected Committees of Management of the various recognised educational institutions. The Authorised Controller is appointed in certain specified circumstances, such as. where the elected body is working against the interest of the institution ; it is squandering and eating away the resources of the society ; it is guilty of misfeasance and non-feasance in running the institution or where a void has come into being on account of expiry of the term of the elected Committee of Management. There are certain situations when the term of the elected body has come to an end and the new body has not come into being. To fill up this yawning gap. some arrangement has to be made so that the smooth functioning of the institution may not be hampered. It is to fill up this void or vacuum that the appointment of an Authorised Controller has been contemplated. The position of the Authorised Controller, therefore, is that of a care taker who has to remain in office as a stop-gap arrangement. The primary duty of the Authorised Controller is to ensure that the new Committee of Management, after due elections, is saddled. During this interregnum, the Authorised Controller has to perform the ordinary duties with a view to ensure smooth running of the affairs of the institution and to perform the various day-to-day functions. Certainly an Authorised Controller cannot be treated as an alter-ego of the Committee of Management. It is also not synonymous to the Committee of Management. The Authorised Controller cannot surrogate himself to the position of a Committee of Management. He is merely a substitute of the Committee of Management to perform a specific and limited role and to remain in office till the duly elected Committee of Management comes into being. At best, it can be said that he possesses a reflected glory of the Committee of Management. A reflection cannot take place of the original object. An Authorised Controller though is a substitute or alternative to fill up the gap, cannot take such steps as would alter the composition of the society itself. The basic structure of the society cannot be changed by him by enrolling the new members who may not be acceptable to the original founder and life members of

the society. It is not expected that an Authorised Controller by virtue of his being in office for a short period and that too, to meet certain contingency, shall thrust or impose upon the original members the newly enrolled members, who may or may not be acceptable to the society. Enrolment of members is a sensitive task and may sometimes alter the basic structure and complexion of the society. This act of the Authorised Controller may run counter to the original aims and objects and the wishes of the original members of the society.

9. The society, as a matter of fact, is a compendious name of a group of persons who have voluntarily agreed to join for furtherance of their certain objects. The right to form a society, as envisaged in Article 19 of the Constitution, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admitted in the Association. This aspect of the matter came to be considered by the Apex Court in the case of *Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others*, , in which the provisions of Hindi Sahitya Sammelan Act, 1962 came to be considered, vis-a-vis, right of the members of a registered society known as Hindi Sahitya Sammelan. which was constituted for the development of Hindi and its propagation throughout the country. It was held that any law, which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. The Hindi Sahitya Sammelan Act, it was observed, does not merely regulate the administration of the affairs of the original society ; what it does is to alter the composition of the society itself. The result of this change in composition is that the members who voluntarily formed the association are now compelled to act in that association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of association itself clearly interferes with the right to continue to function as members of the association, which was voluntarily formed by the original founders. The Act, it was held, violates the rights of the original members of the society to form an association guaranteed under Article 19(1)(c) of the Constitution of India. Reliance was placed on the earlier decision in *O.K. Ghosh and Another Vs. E.X. Joseph*, , in which the Apex Court accepted the principle that the Government servant who may have formed an association could not be compelled to resign from it by imposition of a condition of recognition of the association by the Government and that if the Government servants are required to cease to be members that would be a violation of the right under Article 19(1)(c). *G. K. Ghosh's* case, thus supports the view that the right to form an association includes the right to its continuance and any law altering the composition of the association compulsorily will be breach of the right to form an association. In *State of Madras Vs. V.G. Row*, , it was observed that the word "form", therefore, must refer not only to the initial commencement of the association but also to the continuance of the association as such.

10. An inspiration may be drawn from the aforesaid decisions of the Apex Court to come to the conclusion that the act of the Authorised Controller who is

appointed to meet certain exigencies, to enroll new members, clearly violates the rights of the original founder and life members of the society, inasmuch as, the new members, imposed upon the society by the Authorised Controller may not be acceptable to them. The fundamental right of the original members to form an association or society, which takes within its sweep, to continue the association is undoubtedly infringed by the unwarranted act of the Authorised Controller and, therefore, has to be termed as bad in law.

11. The view which I am taking in the present case, does not stand in isolation. It is fortified by an earlier decision of this Court in *B. S. AT. Samiti, Roorkee and another v. District Magistrate, Haridwar and another*. 1995 (2) HVD 169, in which the question was whether the State Government or the District Magistrate or for that matter, the D.I.O.S. have the legal right to pass orders and issue directions for enrolling persons of their choice on the persons who themselves want to become the members of the general body of the Maha Sabbha to be enrolled as members in spite of the fact that the Society/Maha Sabha does not accept them nor accept their proposal to become members. The answer was given in negative and it was observed that unless there was any such provision which compels the society and its members to accept the persons as members by statutory law, no such enrolment is legally possible and if it is made by any statute, that would be in violation of Article 19 of the Constitution. Somewhat more precise and direct authority is to be found in another decision of this Court in *S. K. Misra and another v. District Inspector of Schools and another* 1996 (2) UPLBEC 896. Paragraphs 5 and 6 of the report read as follows :

"5. It is an established principle that when there is no validly elected Managing Committee or when there is doubt or dispute with regard to the eligibility or entitlement of a particular group of body to manage a society particularly when it relates to run an educational institution in order to obviate impuses or void created thereby authorised controller is appointed or sometimes the District Inspector of Schools is allowed to carry on the Management of the Institution as a stop gap measure with a view to hold the election and handover the charge. It is also an accepted preposition that such authorised controller or the District Inspector of Schools has to hold the election according to the scheme of administration governing the association or the institution.

6. There is no doubt that the authorised controller can never be treated as substitute for the Management Committee of the general body of an Association. The Authorised Controller is not appointed within the scheme of the Administration of the institution. He is appointed by reason of statutory provisions only to fill up the void and restore the Management of the Institution according to the scheme of admission by directing him to hold the election. The Authorised Controller is not given power by reason whereof he can induct members in an association of persons or bring about changes in the structure of the association much to the charge in and prejudice of the members."

Somewhat similar view has been taken by Hon^{ble} A. Chakravorly, J., in his

decision dated 18.9.1997 rendered in Civil Misc. Writ Nos. 17181 of 1996 and 19617 of 1996.

12. In view of the above discussion, my firm view is that the Authorised Controller is not competent or authorised to enroll or induct new members of the society. It is beyond his powers to enroll the new members. As a matter of fact, such a course is not warranted by the very nature of the stop-gap arrangement to run the affairs of the institution by the Authorised Controller in the absence of the elected Committee of Management. In the instant case, the Authorised Controller has usurped the powers of the Committee of Management or of the general body of the society by enrolling new members. The enrolment of the members by the Authorised Controller being against the provisions of law, is of no consequence. He cannot tilt the balance of the society one way or the other by enrolling the new members. Therefore, member-ship of the persons, newly enrolled by the Authorised Controller, has to be ignored. They could not have taken part in the elections to constitute the new Committee of Management.

13. In the result. Civil Misc. Writ No. 10543 of 1997 succeeds while the other Writ Petition No. 12992 of 1997 falls. Allowing Civil Misc. Writ No. 10543 of 1997, it is directed that the result of the elections held on 30.3.1997 to constitute new Committee Management shall be declared without taking into consideration the participation of the newly enrolled members by the Authorised Controller as their enrolment itself was illegal. It is held that the original 30 members of the society (8 founder and 22 life members) had the right to take part in the election process.

14. Civil Misc. Writ No. 12992 of 1997 is dismissed. In the circumstances of the case, no order as to costs is made.