

(1989) 07 AHC CK 0010

In the Allahabad High Court

Case No : Civil Misc. Application No. nil of 1988 in Civil Misc. Writ Petition No. 8944 of 1988

Ram Achal Dube and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-07-1989

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16D(4)

Citation : (1989) 2 AWC 1312

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : S.N. Singh and R.N. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—This is an application on behalf of the Authorised Controller, Sri Kashi Raj Mahavidyalaya, Aurin, District Varanasi, to vacate the interim stay dated 11-8-1988, directing Respondent No. 5, the Authorised Controller, Sri Kashi Raj Mahavidyalaya, Aurin, District Varanasi, to hand over charge of the office of the Committee of Management, to Petitioner No. 1, who was Secretary-cum-Manager and Sri Shambhu Nath Misra, Petitioner No. 2, Principal of the institution, within six weeks, or to show cause.

2. Consequent upon that order, a counter affidavit has been filed showing cause, and in para 9 of the counter affidavit filed by Sri Virendra Pratap, Principal of the College, it has been disclosed that the term of the Authorised Controller can be extended even beyond five years.

3. Learned Counsel for the Petitioner urged that in view of Section 16-D(4) of the U.P. Intermediate Education Act, 1921, (for short the Act), it is obvious that the maximum period for which the Authorised Controller could be ordered to operate or to handle the affairs of the institution, is five years. Hence beyond five years the Authorised Controller has no power to continue as such. In the present case,

vide Annexure-1 to the petition, it appears that the Authorised Controller is continuing since 4-10-1977, i.e. for the last about 12 years.

4. Learned Standing Counsel on the other hand, urged that the Authorised Controller is to continue as stated" in para 9 of the Counter affidavit, as the irregularities in the institution have not been corrected.

5. Having heard the learned Counsel for the parties, I am of the view that as the statutory requirement of Section 16-D(4) read with First Proviso added thereto, is that the maximum period for Authorised Controller is for five years. This period could be in the initial stage for two years as provided u/s 16-D(4). Thereafter the proviso, which is to create exception, the period is for one year which may be extended at a time. However, the total period should not be beyond five years.

6. In the Second Proviso to Section 16-D(4) of the Act, it has been provided that even though beyond five years the term of the Authorised Controller could be extended, but that would be only when the State Government is satisfied that the Committee of Management has not been lawfully constituted. In the counter affidavit there is no such averment that the Committee of Management was not lawfully constituted. In para 11 of the counter affidavit it has been stated that the Petitioner's Committee of Management is not in effective control.

7. Having perused the record, I am of the view that it is manifest that five years term has expired, beyond which the Authorised Controller could not be permitted to operate, as it is the statutory provision under Sub-section (4) of Section 16-D and the First Proviso added thereto, that period could be extended only when the State Government is satisfied that the Committee of Management is not lawfully constituted. In the counter affidavit no such averment has been made, rather it has been stated that the Petitioner's Committee of Management is not in effective control, which obviously appears to be correct. It is, therefore, evident that as the Authorised Controller was there, the Committee of Management could not be in effective control. Nothing has been stated in the counter affidavit to the effect that the Petitioner's Committee of Management was not lawfully constituted.

8. Under the circumstances, the present application to vacate the interim stay is rejected. Petitioner No. 1 appears to be the Secretary-cum-Manager and Petitioner No. 2 appears to be Principal of the institution. In spite of the fact that the Respondents were directed to comply with the interim Mandamus or to show cause, they neither have shown cause properly, nor have satisfied the Court that the Petitioners are not entitled to the Mandamus claimed for.

9. In view of the premises aforesaid, the Respondents are directed by a writ of Mandamus to hand over the charge of the office of the Committee of Management to Petitioners within a period of one month from the date a certified copy of this order is furnished before them. In case the Respondents fail to comply with the order, it shall be assumed that they have committed wilful disobedience of the orders of this Court, and for that it shall be open to

Petitioners to initiate appropriate proceedings.

10. In the result, the application to vacate the interim stay is rejected. The Petitioner's application dated 17-11-1988 to hand over the charge of office of the Committee of Management to the Petitioners in pursuance of the orders of this Court dated 11-8-1988 is allowed.