
(2005) 05 AHC CK 0053

In the Allahabad High Court

Case No : C.M.W.P. No's. 43326 and 44460 of 1998 and 39207 of 2003

Sabhajeet Pandey and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-05-2005

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A(7), 16D

Citation : (2005) 6 AWC 5251 : (2005) 3 ESC 2082

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : H.S.N. Tripathi and Saroj Kumar Pandey, for the Appellant; R.B. Singhal, I.R. Singh, Pradeep Verma, Mohan Yadav, Sandeep Mukherjee, S.P. Singh, Manju Chauhan and Rajneesh Kumar Srivastava, for the Respondent

Final Decision : Allowed

Judgement

D.P. Singh, J.—Pleadings are complete and Counsels agree that it may be disposed off finally.

2. Janta Junior High School, Anapur, Dashrathpur in district Jaunpur is a duly registered society. It runs an Intermediate College in the name and style of Dwarika Prasad Higher Secondary School, Jaunpur. The Society and the Institution have a common committee of management whose term, according to the scheme of administration, is three years. The last undisputed elections were held on 8.8.1993 wherein Mata Prasad and Deotadeen Pandey were elected as President and Manager. The term of the aforesaid committee of management was to expire on 7.9.1996, therefore, the petitioner held the elections on 1.9.1996 wherein petitioner No. 2 Sabhajeet Pandey was elected as Manager and Raj Narain Mishra as President. While in another election held on 1.9.1999 Dewta Din was elected as Manager. The papers having been submitted by both the committees to the District Inspector of Schools, he referred the rival claims u/s 16-A(7) of the U.P. Intermediate Education Act, 1921 to the Deputy Director of Education. The Deputy Director of Education by an order dated 15.7.1997 held

that none of the two committees were validly elected and, as such, it appointed the District Inspector of Schools as the Prabandh Sanchalak for holding the elections of the new committee of management on the basis of the list of 121 members. This order was challenged in writ petition No. 24998 of 1997 by Devtadeen. Meanwhile, the committee headed by Sri Sabhajeet Pandey petitioner No. 2, approached the Assistant Registrar, Firms, Societies and Chits which renewed the registration certificate in his favour and registered the name of the office bearers vide order dated 19.1.1998. This order of the Assistant Registrar was also subjected to challenge in writ petition No. 4267 of 1998.

3. The two petitions were connected and after exchange of pleadings were heard together and were dismissed vide order dated 1.9.1998, whereby upholding the order of the Assistant Registrar dated 19.1.1998 and permitting the Prabandh Sanchalak to hold the elections on the basis of the existing list of 121 members of the society. While finalising the voter list, the District Inspector of School sought direction of the Joint Director who passed an order on 28.11.1998 for holding the election from the list of sixty members which order was subjected to challenge in writ petition No. 43326 of 1998 and on 17.12.1998 an interim order was passed that the elections be held in accordance with the directions of the High Court dated 1.9.1998 and the results be declared but the recognition should not be granted till 15.1.1998. This injunction remained in force till February, 1998. Another writ petition No. 44460 of 1998 was filed against the aforesaid order of Joint Director of Education dated 28.11.1998 but no interim order of stay was passed.

4. It appears that the election was held on 29.12.1998 on the basis of the list of 121 members, wherein petitioner No. 2 was elected as the manager. However, Sri Deotadeen Pandey held a separate election on 29.12.1998 on the strength of 60 members. It is then alleged that after expiry of the term of the committee of management fresh elections were held under the supervision of the Authorised Controller, from the approved existing voter list of 121 members on 13.11.2002 in which again the petitioner No. 2 was elected as manager and the entire record was sent to the Joint Director, who vide order dated 15.3.2003 attested the signatures of petitioner No. 2, while the District Inspector of Schools also attested the signatures on 9.4.2003. However, vide order dated 16.4.2003, the District Inspector of Schools restrained the management, and so also the Prabandh Sanchalak from administering the institution which was modified by an order dated 19.4.2003 permitting the Prabandh Sanchalak to manage the institution. The petitioner approached the Joint Director of Education complaining about the letter dated 16.4.2003 who vide his order dated 2.5.2003 sought an explanation from the District Inspector of Schools as to how such an order was passed in spite of the fact that the claim of the petitioner has been accepted by the Regional Committee on the recommendation of the District Inspector of Schools. This forced the District Inspector of Schools to pass an order dated 14.7.2003 again attesting the signature of the petitioner. It is alleged that on 8.8.2003 the petitioner was orally restrained by the District Inspector of Schools

from functioning and when he complained to the Joint Director of Education, he was confronted with an order dated 23.7.2003 whereby he appointed a new Authorised Controller and he was also able to lay his hands on a consequential order of the District Inspector of Schools dated 24.7.2003. Both these orders are under challenge in writ petition No. 39207 of 2003. These orders were based on an order dated 1.7.2003 which the petitioner could not obtain. However, during the pendency of the petition, an amendment application incorporating the order dated 1.7.2003 has been allowed and the original order dated 1.7.2003 is also under challenge.

5. The aforesaid three writ petitions are connected together but for convenience sake, writ petition No. 39207 of 2003 shall be the leading petition.

6. Heard learned Counsel for the parties in all the writ petitions.

7. Learned Counsel for the petitioner has firstly urged that the Joint Director did not have any power under the Act or the Rules or the Regulations to appoint any Prabandh Sanchalak and the only power referable was u/s 16D wherein the State Government is the only authority to make such an appointment.

8. However, learned Counsel for the respondent has urged that the power of appointment of a Prabandh Sanchalak is provided in the scheme of administration and since no recognised and legal election had taken place within a period of three years, the Joint Director of Education had rightly appointed the Prabandh Sanchalak. He has further urged that the alleged election of the petitioner could not be recognised by the authorities unless permitted by this Court in view of the order dated 17.12.1998 passed in writ petition No. 43326 of 1998 and the election on the strength of the list of 121 members was illegal in view of the order of the Joint Director of Education dated 18.11.1998.

9. The power of appointment of an Authorised Controller is provided u/s 16D of the Act, however, such an order can only be passed after a due show cause notice providing opportunity to the management and the order has to be based on the grounds mentioned in the provision. Though the State Government has the power to suspend the Committee of Management after issuing a show cause, no such step was taken in the present case. Perusal of the impugned order shows none of the grounds mentioned are referable to Section 16D. In any view, it is the State Government which can pass orders appointing the Authorised Controller and the Joint Director of Education does not have such jurisdiction under the said section. So far as the power of appointment of Prabandh Sanchalak is concerned, that power is exercisable on the grounds that no election within the specified period has been held by the outgoing Committee of Management. The specific allegations made against the State officials with regard to exercising the powers under the influence of the other party have not been denied. This petition has remained pending for more than two years but yet no counter-affidavit has been filed by the State respondents. It is apparent from the facts noticed above that the Committee of Management of the petitioner elected

on 1.9.1996 have been duly recognised and which was the outgoing Committee which had again conducted the elections on 29.12.1998 under the aegis of the District Inspector of Schools in pursuance of the directions of the Court dated 1.9.1998. Thus it was the valid Committee which conducted the present elections, therefore, it cannot be said that the Joint Director of Education could have exercised the powers under the scheme of administration.

10. The contention of the learned Counsel for the respondents that the elections on the strength of list of 121 members was illegal, cannot be countenanced. The directions given by the Deputy Director of Education on 15.7.1997 was upheld by the learned single Judge of this Court in his order dated 1.9.1998. The Deputy Director of Education in its order had directed the District Inspector of Schools to hold fresh elections on the basis of the existing list of 121 members. This order of the learned Single Judge was challenged in Special Appeal No. 805 of 1998, but it was rejected by the Division Bench on 13.5.2004.

11. Counsel for the petitioner has then urged that the impugned order was passed without notice or opportunity and even the orders were not endorsed to it, though it was a duly recognised committee. The argument is worth accepting. Firstly, because as the order is not attributable to the exercise of power under the scheme of administration, any order passed against a person which visits him with evil consequences could only be passed after reasonable opportunity. Secondly, the reasons given in the order are highly vague and no specific details have been provided therein.

12. For the reasons given hereinabove, this petition succeeds and is allowed and the impugned orders dated 1.7.2003, 23.7.2003 and 24.7.2003 are hereby quashed. No order as to costs.