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Smt. Vimla Devi Pathak Vs. Deputy Director of Education, Agra and Others

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Court : Allahabad

Decided On : Sep-08-1997

Reported in : 1998(1)AWC262

Judge : S.P. Srivastava, J.

Acts : Uttar Pradesh Intermediate Education Act, 1921 - Sections 16A(7); Uttar Pradesh High School and intermediate Colleges (Payment of Salaries of Teachers and others Employees) Act, 1971; Constitution of India - Article 226; Uttar Pradesh High School and Intermediate Education Act

Appeal No. : C.M.W.P. No. 21942 of 1997

Appellant : Smt. Vimla Devi Pathak

Respondent : Deputy Director of Education, Agra and Others

Advocate for Def. : C.S.

Advocate for Pet/Ap. : S.N. Srivastava, Adv.

Judgement :

S.P. Srivastava, J.

1. The Shasni Vidyapith Inter College, Aligarh now situated in District Mahamayanagar is an educational institution which stands recognised under the

provisions of the U. P. Intermediate Education Act and the regulations framed thereunder. It has also been brought within the purview of the provisions of the U. P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (U. P. Act No. 24 of 1971).

2. The petitioner who claims to be the life member of the general body of the Society running and managing the institution has approached this Court feeling aggrieved by an order passed by the Deputy Director of Education (Secondary) whereunder while keeping a reference under Section 16A (7) of the U. P. High School and Intermediate Education Act before him, the interim order dated 13.5.1997 granted therein was put in abeyance fixing a date for the final disposal of the reference.

3. The petitioner has prayed for the quashing of the order passed by the Deputy Director of Education referred to above and has further prayed for a direction requiring the respondents not to interfere in the functioning of the Prabandh Sanchalak appointed by the Deputy Director of Education vide the interim order dated 13.5.1997.

4. I have heard Sri S.N. Srivastava, the learned counsel for the petitioner as well as Sri A. Kumar, learned counsel representing the contesting respondent and have carefully perused the record.

5. Learned counsel for the parties have jointly requested that this writ petition may be disposed of finally at this stage.

6. Considering the facts and circumstances and the nature of the controversy raised in this case, it seems to me that it is a fit case in which the writ petition may be finally disposed of at this very stage under the second proviso to Rule 2(1) of the Chapter XXII of the Rules of the Court.

7. The relevant facts shorn of details and necessary for the disposal of this case lie in a narrow compass.

8. There is no dispute that taking into consideration the rival claims set up by different Committees of Management claiming a right to run and manage the

institution, a dispute had arisen in the year 1990 which has not been finally disposed of as yet even though in the year 1993 and again in the year 1996, different fresh elections are alleged to have taken place which have given rise to rival claims by different Committees of Management asserting their right to run and manage the institution according to the scheme of administration approved for the institution. It is further not in dispute that Original Suit No. 185 of 1990 and Original Suit No. 243 of 1993 apart from the Original Suit No. 41 of 1995 and Original Suit No. 211 of 1996 are pending the controversy raised wherein is about the managerial dispute and that is yet to be decided. It is also not in dispute that in Original Suit No. 185 of 1990 and Original Suit No. 243 of 1991 Prakash Chandra Sharma who claims to be the Manager is a plaintiff and he is a defendant in Original Suit No. 211 of 1996. It is also not in dispute that in Original Suit No. 211 of 1996 wherein Prakash Chandra Sharma is defendant No. 2, the civil court vide its order dated 15.3.1996 had appointed Ramesh Chandra Sharma, Advocate as a receiver during the pendency of the suit but this order was challenged by the Committee of Management Shasni Vidyapith, district Aligarh, through its President. Although the aforesaid appellant was not a party in the Suit No. 211 of 1996, the aforesaid appeal was filed along with an application seeking leave to appeal. The first appeal from order directed against the order appointing a receiver being First Appeal from Order No. 153 of 1997 has been admitted on 31.1.1997 and on an application seeking interim relief the operation of the order passed by the civil court appointing the receiver has been stayed until further orders vide the interim order dated 31.1.1997 passed by the Division Bench.

9. The petitioner has alleged that she had been elected as an office hearer in the year 1990 in an election held on 25.2.1990. The tenure of the Committee of Management under the provisions contained in the Scheme of Administration approved for the institution is only three years and one month. It is also stated in the writ petition that a dispute had been raised in regard to the election held on 25.2.90 and the matter had been referred under Section 16A (7) of the Act by the District Inspector of Schools on 2.5.90. During the pendency of the reference, in view of the interim order passed in Original Suit No, 185 of 1990, the reference could not be decided and the period of tenure of the Committee of Management expired. The District Inspector of Schools purporting to act in accordance with the

orders issued by the civil court in Original Suit No. 185 of 1990 and Original Suit No. 243 of 1991 attested the signatures of Sri Prakash Chandra Sharma vide his order dated 26.5.1992 and as is apparent from the order dated 3.1.1995 passed by the District Inspector of Schools Sri Prakash Chandra Sharma was allowed to function as the Manager. Since the reference could not be decided and the period of tenure of the Committee of Management elected in the year 1990 had come to an end and a fresh election is alleged to have taken place on 7.2.93. In view of the rival claims, again the matter relating to the election of 1993 was referred for consideration before the Deputy Director of Education. The reference could not be decided and again fresh elections were held on the expiry of the tenure of the Committee of Management in the year 1996. In this election also rival claims were set up by different Committees and the matter is under consideration before the Deputy Director of Education.

10. It will be obvious from the above that at present the petitioner does not claim to be an office bearer of any Committee of Management which has raised a claim for recognition as a duly elected Committee of Management entitled to ran and manage the institution. She has filed the writ petition in the capacity of a life member of the general body of the Society, The learned counsel for the contesting respondent has urged that since the petitioner is not directly affected, this writ petition filed by her is not maintainable, and it is not a fit case for any interference by this Court at her instance. Learned counsel for the petitioner has however urged that the petitioner has a right to challenge the impugned order as, she, being a life member has sufficient interest in the matter relating to running and managing of the institution by a proper person/Authority.

11. In support of his submission, the learned counsel for the contesting respondent has placed reliance upon the decision in the case of Indian Sugar Mills Association, through its President Hari Raj Swarup v. Secretary, Government of U. P. Labour Department and others rendered by a Full Bench of this Court in AIR 1951 (38) All 1. In the aforesaid decision, it was clearly indicated that only those persons whose interests are directly affected by a Statute or an order can apply for redress under Article 226 of the Constitution of India. It was clarified that it is the interest of the applicant which must be directly affected and the powers in the

extraordinary jurisdiction envisaged under Article 226 of the Constitution of India should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him.

12. In this case, none of the affected office bearers alleged to have been elected constituting the Committee of Management for running and managing the institution have chosen to avail the extraordinary remedy envisaged under Article 226 of the Constitution of India seeking the quashing of the impugned order as sought for by the petitioner. Really affected party having not approached this Court, I do not find the present one to be a fit case for the intervention of equity at the instance of the petitioner specially when the petition is directed against an interlocutory order.

13. Further what I find is that under the impugned order, the District Inspector of Schools has observed that Prakash Chandra Sharma had been allowed to function as the Manager. This fact is also home out from the order of the District Inspector of Schools dated 3.1.1995, a true copy of which has been filed as Annexure 2 to the writ petition which indicates that the signatures of Prakash Chandra Sharma had been attested as the duly elected Manager on 26.5.92 and he has been allowed to function continuously. Even the order passed by the District Inspector of Schools dated 4.1.1997 and issued on 4.2.97, a true copy of which has been filed as Annexure CA 10 to the counter-affidavit indicates that the signatures of Prakash Chandra Sharma had been attested recognising him as the Manager on 4.2.1997.

14. In the aforesaid circumstances, considering the fact that the reference itself is going to be decided shortly, the previous arrangement which was being continued by the District Inspector of Schools which has been restored vide the impugned order does not require any interference by this Court.

15. From the evidence and materials brought on record, however, what I find is that the question in regard to the granting or withholding of the recognition to a duly elected Committee of Management for running and managing an educational institution which stands recognised under the provisions of the U. P. High School

and Intermediate Education Act is left undecided by the District Inspector of Schools as well as the Deputy Director of Schools on one pretext or the other for a considerably long period. The granting or withholding of recognition to a Committee of Management under the provisions of the U. P. High School and Intermediate Education Act and the regulations framed thereunder is only for the administrative purpose and an order granting recognition to a Committee of Management as a duly elected Committee of Management in accordance with the scheme of administration approved for an educational institution is always subject to the decision given by a civil court of competent jurisdiction. Unless prohibited by a civil court of competent Jurisdiction, the District Inspector of Schools or the Deputy Director of Education cannot refuse to accord recognition to a Committee of Management which claims to have been duly elected in accordance with the provisions contained in the scheme of administration approved for the institution. I must hasten to add that while granting or withholding a recognition as indicated above, the District Inspector of Schools or the Deputy Director of Education has to act taking into account the factors as indicated by this Court in its decision in the case of Committee of Management, Aley Ahmad Girls Inter College and another v. Deputy Director of Education and others. Civil Misc. Writ Petition No. 10869 of 1996, decided on 15.11.1996

16. It may be noticed that in its decision in the case of Committee of Management, Aley Ahmad Girls Inter College and another v. Deputy Director of Education and others, Civil Misc. Writ Petition No. 10869 of 1996, decided on 15.11.96, this Court had observed that the provisions contained in the Scheme of Administration have to be interpreted in a pragmatic manner and the construction should be a purposeful construction to effectuate the object and purpose sought to be achieved under the scheme. A state of vacuum has to be avoided in a case where either on account of default of the outgoing Committee of Management or on account of the default on the part of the Regional Deputy Director of Education in appointing a Prabandh Sanchalak, a new Committee of Management is not elected. In that event, unless the outgoing Committee of Management is not deemed to be functional till the appointment of the Prabandh Sanchalak, a state of vacuum will come into existence which will not be either in the interest of the institution or in the public interest. An election held by the Committee of

Management recognised by the District Inspector of Schools which may be termed as an outgoing Committee of Management, which election had been held prior to the appointment of a Prabandh Sanchalak, if, found to have been held in accordance with law in a meeting of the general body of the institution lawfully held in the sense that it was properly convened, properly constituted and properly conducted deserves recognition for the administrative purposes.

17. It may further be noticed that as pointed out by this Court in its decision in the case of Committee of Management, Sukh Nandan Inter College. Math Mohammadpur, Mau v. State of U. P. and others. Civil Misc. Writ Petition No. 31629 of 1996, decided on 15.11.1996, it had been pointed out that while considering the question relating to the granting or withholding of recognition to a Committee of Management, it is incumbent upon the District Inspector of Schools to ensure that the dispute in regard to the claim for recognition as a duly elected Committee of Management authorised to run and manage the institution is a real dispute which requires a decision. He is not to act merely as a transmitting office or transmitting agency which is required to transmit the_ papers received by it showing election of two different Committees of Management claiming recognition as duly elected Committee of Management for running and managing the College, to the Regional Deputy Director of Education. He has to apply his mind to find out whether the claims are genuine or sham or ex facie fake or manufactured for the purpose of giving a show of dispute. In case the District Inspector of Schools comes to the conclusion that ex facie the rival claim is liable to be ignored being based on fictitious proceedings or proceedings initiated or conducted by persons who have no authority for the purpose at all or the proceedings relating to the election stand vitiated on account of some patent defect or error in following the procedure prescribed under the approved scheme of administration, it is always open for him to refuse cognizance of such an election as it is not expected that he will make a wholly uncalled for reference. It is only in those cases where there is a genuine and a real dispute and two views are possible that the District Inspector of Schools has to stop at that stage and refer the dispute for decision to the Regional Deputy Director of Education. The rationale of the enquiry which the District Inspector of Schools is required to make in this connection is obvious because the law does not contemplate rank-out-sider to meddle with the Management of the

Institution.

18. In case, therefore, ex facie, it appears that the office bearers of a rival Committee of Management could not be treated to be validly inducted members or could not be deemed to have any right to participate in any election or hold any office in the Committee of Management or the facts brought on record indicate that their claim has an origin in fraud or misrepresentation and their possession or control of the affairs of the institution if any, cannot be taken to be in accordance with the law indicating their status to be that of rank trespassers, such claim is liable to be ignored altogether. It must be emphasised that any delay either on the part of the outgoing Committee of Management or on the part of the Deputy Director of Education in the matter of bringing into existence a machinery to run and manage the institution whether it be the newly elected Committee of Management or a Prabandh Sanchalak has got to be avoided in public interest or even the institutional interest.

19. In view of my conclusions indicated hereinabove, no justifiable ground has been made out for any interference in the impugned order at the instance of the petitioner while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India.

20. However, the Deputy Director of Education, the respondent No. 1 is directed to ensure that the matter in regard to the granting or withholding of the recognition to the Committee of Management duly elected and entitled to run and manage the institution is decided after affording an opportunity to the rival Committee of Management of being heard taking into consideration the observations made hereinabove.

21. The Deputy Director of Education, respondent No. 1 shall ensure that the aforesaid matter is finally decided within a period not later than six weeks from the date of production of a certified copy of this order before the said authority.

22. The writ petition is disposed of finally in terms of the above.

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