

Riaz UddIn Vs. State of U.P. and ors.

Riaz UddIn Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/486065

Court : Allahabad

Decided On : Nov-13-2003

Reported in : 2004(1)AWC857

Judge : M. Katju and ;Umeshwar Pandey, JJ.

Acts : Uttar Pradesh Intermediate Education Act, 1921 - Sections 16AA

Appeal No. : Special Appeal No. 1171 of 2003

Appellant : Riaz Uddin

Respondent : State of U.P. and ors.

Advocate for Def. : Anil Bhushan, Adv. and ;S.C.

Advocate for Pet/Ap. : A.P. Sahi, ;G.K. Singh and ;S.A. Azmi, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

M. Katju and Umeshwar Pandey, JJ.

1. Heard learned counsel for the parties.

2. This special appeal has been filed against the interim order dated 6.11.2003 passed by the learned single Judge.
3. The controversy is regarding the Committee of Management of Islamia Inter College, Ferozabad.
4. Under the ' Scheme of Administration, the term of office of the Committee of Management is three years from the date of election. In the present case, respondent No. 6, Ghulam Nabi, who is the Manager, was elected on 24.5.2001 and this was approved by the Regional Committee headed by the Joint Director of Education on 31st August, 2001.
5. Under Clause 7 of the Scheme of Administration, the term of the Committee of Management is three years (copy of which is enclosed as Annexure-4 to the writ petition),
6. It is mentioned therein that 'the term of office-bearers and members V (a) and (c) other than ex officio members shall be three years from the date they are chosen, provided that the term of every office bearer shall be deemed to have continued till his successor is chosen. The term of the ex officio members shall be governed by the Regulations of the Act.'
7. There is no provision in Scheme of Administration for passing of vote of no-confidence against the members of the Committee of Management. Also there is no statutory provision in the U. P. Intermediate Education Act or any other statute to this effect.
8. It has been contended by the learned counsel for the appellant that the no-confidence motion was passed against the respondent No. 5 on 31.8.2003, and it was also affirmed by the general body of the society on 8.9.2003.
9. In our opinion, such no confidence motion is wholly null and void and has not legal effect, at all. Only, if there is a provision for passing a no-confidence motion, can a no-confidence motion be legally passed. There is no inherent power to pass a no-confidence motion. For example, under the Representation of the People Act, there is no provision for passing a motion of no-confidence against an elected

Member of Parliament, and hence the term of the member will continue as long as that Parliament exist.

10. The term of a Member of Parliament can therefore, not be curtailed by passing a motion of no-confidence, even if passed by a majority of the voters in the constituency. Some statutes contain a provision for a motion of no-confidence e.g., the U.P. Panchayat Raj Act, U. P. Municipalities Act, U. P. Kshetra Panchayat and Zila Panchayat Adhiniyam etc. Hence, wherever there is a provision for passing a motion of no-confidence it can certainly be passed, but where there is no such provision a no confidence motion legally cannot be passed at all, and if passed, will be null and void.

11. For the reasons given above, this appeal is dismissed and it is observed that the respondent No. 5 shall continue on the post till the period prescribed under Clause 7 of the Scheme of Administration expires. Writ Petition No. 49451 of 2003 is allowed. The order impugned in this writ petition is quashed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com