

Court No. - 32

Case :- WRIT - C No. - 8169 of 2025

Petitioner :- Committee Of Management Sheelchand Inter College

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Shivendra Kumar Gupta

Counsel for Respondent :- Alka Srivastava,C.S.C.,Hritudhwaj Pratap Sahi

Hon'ble Saral Srivastava,J.

1. Heard Sri H.N. Singh, learned Senior Counsel assisted by Sri Shivendra Kumar Gupta, learned counsel for the petitioner, and Sri G.K. Singh, learned Senior Counsel assisted by Sri Sankalp Narain, learned counsel for the respondents.

2. The petitioner through the present writ petition has assailed the order dated 15.02.2025 passed by respondent no.2-Regional Level Committee, Meerut Region, Meerut whereby respondent no.2 has rejected the election of petitioner's Committee of Management and has further directed the respondent no.3-District Inspector of Schools, Baghpat to hold the election of Committee of Management. The petitioner has also assailed the order dated 27.02.2025 passed by respondent no.3 by which the District Inspector of Schools has passed an order of Single Operation.

3. The brief facts of the case are that there is a College in the name of 'Sheelchand Inter College Aminagar Sarai, District Baghpat' (hereinafter referred to as 'College'), which is an educational institution, imparting education up to Intermediate Level and recognised under the U.P. Intermediate Education Act, 1921 and is within the purview of U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971.

4. There is a Scheme of Administration of the College according to which the management of the College is being run. The last election of the Committee of Management of the College was held on 18.08.2019 which was duly approved by the District Inspector of Schools, Baghpat by order dated 04.10.2019. The term of the Committee of Management of the College under the Scheme of Administration is three years and three months, therefore, the term of the Committee of Management of the College had expired on 17.11.2022.

5. It appears that the petitioner who was elected as the Committee of Management of the College in the election of 2019 had submitted a letter dated 17.01.2023 to the District Inspector of Schools informing him that there is a Resolution of Committee of Management dated 20.09.2022 for holding the election of the Committee of Management of the College. The Committee of Management in the said letter also proposed the name of three persons out of whom an Election Officer could be appointed. In the said letter, there was a reference to another letter sent before this letter to the District Inspector of Schools for the appointment of an Election Officer.

6. The District Inspector of Schools by letter dated 31.10.2023 appointed one Neeraj Kumar as Election Officer. According to the petitioner, Neeraj Kumar published an election programme. However, before he could conduct the election, he wrote a letter dated 23.12.2023 to respondent no.3 that since the term of the Committee of Management had expired, it was only the Authorized Controller who could hold the election of the Committee of Management.

7. On the letter dated 23.12.2023, the District Inspector of Schools on 29.12.2023 passed an order that by the Government Order 02.09.2008, the provision for appointment of Authorized Controller has been removed, and he by the said letter dated 29.12.2023 appointed one Smt. Hukum Singh, Assistant Teacher of Government Girls Inter College, Baghpat as 'Observer' and one Sushil Chaudhary as 'Election Officer'.

8. Pursuant to the said letter dated 29.12.2023, Sushil Chaudhary published the election programme, and the election was held on

21.01.2024, in which the petitioner's Committee of Management was elected and the signature of the petitioner's Committee of Management was attested by the respondent no.3 on 24.01.2024.

9. It appears that respondents nos.4 to 8 raised an objection with regard to the election dated 21.01.2024 on the ground that the election was not held by the valid electoral college inasmuch as the election ought to have been conducted by the list of General Body duly approved by the Assistant Registrar. Therefore, the election of the petitioner's Committee of Management is invalid. On the objection raised by respondents nos. 4 to 8, the matter was referred to the Regional Level Committee under the Government order dated 02.09.2008.

10. It has been informed that thereafter a writ petition was preferred by the respondents seeking a direction to the respondent no.2-Regional level Committee to decide the representation/objection of the respondents against the election dated 21.01.2024, and in compliance with the direction of this Court, the respondent no.2-Regional Level Committee proceeded to decide the objection of the respondents.

11. The Regional Level Committee by order dated 15.02.2025 rejected the election of the petitioner dated 21.01.2024 and directed for holding a fresh election on the ground that the list of General Body was not obtained from the office of Deputy Registrar. Therefore, the election was not held as per the direction issued by the District Inspector of Schools. The aforesaid order has been impugned in the present writ petition.

12. Sri H.N. Singh, learned Senior Counsel for the petitioner while challenging the impugned order has contended that the finding returned by the Regional Level Committee that the election of the petitioner was not conducted by the list of Electoral College/General Body issued by the Deputy Registrar is perverse and against the record since both the Election Officers namely, Neeraj Kumar and Sushil Chaudhary recorded in the minutes of the proceedings of election that certified list of members of General Body was obtained from the office of Deputy Registrar, and the election was held on the basis of that list. He submits that an objection with regard to the same was raised at the time of finalising the voter list

under the election programme and the objection of the respondents was rejected. He further submits that it is manifest from the record that 2019 election was held by the list of 58 members in which 8 members have expired, and the election dated 21.01.2024 was conducted by the list of 50 members of the General Body, therefore, Regional Level Committee without correctly appreciating the facts on record illegally returned a finding that petitioner's election was not conducted from the list obtained from the office of Deputy Registrar.

13. It is further submitted that two of the complainants namely respondent no.6-Janardan Gupta and respondent no.8-Mahendra Kumar had contested the election, and once they have lost the election, they are estopped in law from challenging the same.

14. To the aforesaid submission, Sri G.K. Singh, learned Senior Counsel for the respondents has contended that in the instant case, it is admitted on record that the last election of the Committee of Management took place on 18.08.2019 which was approved by the District Inspector of Schools by order dated 04.10.2019. According to him, the term of the Committee of Management of the College had commenced from the date of election i.e. 18.08.2019, and therefore, the three-year period shall come to an end on 17.08.2022. He submits that further the grace period of three months if also counted, the term of Committee of Management would be extended up to 17.11.2022.

15. It is submitted that in the instant case, the election had been held on 21.01.2024 i.e. beyond the period of three years and three months, therefore, after the expiry of three years and three months, the petitioner's Committee of Management did not have any jurisdiction to hold the election and it is only Authorised Controller who is empowered to hold the election. It is further contended that in such view of the fact, even if without admitting that the impugned order is *per-se* illegal, this Court should refrain from interfering with the impugned order given the settled law that after the expiry of the term contemplated under the Scheme of Administration, the elected Committee of Management becomes *functus officio*, and it has no jurisdiction to hold the election and it is only

Authorised Controller who could hold the election. Accordingly, it is submitted that even if the impugned order is illegal, this Court may refuse to interfere with the impugned order inasmuch as the law is settled that this Court in the exercise of power under Article 226 of the Constitution of India should not permit an illegality to perpetuate.

16. Sri G.K. Singh, learned Senior Counsel for the respondents submits that he does not admit the fact that the election was conducted by the registered list of members obtained from the office of the Deputy Registrar. He submits that only a certified copy of the list of General Body was submitted on the basis of which, the election was held, and therefore, there is no illegality in the finding returned by the Regional Level Committee.

17. Sri G.K. Singh on the point that after the term of the Committee of Management expires, the Committee of Management becomes *functus officio* and it is only the Authorised Controller who is authorised to hold the election, has placed reliance upon the following judgements:-

(i). ***Committee of Management, Shri Krishna Inter College, Newari District Ghaziabad and Another Vs. District Inspector of Schools, Ghaziabad and Others 1991 (1) U.P.L.B.E.C. 646;***

(ii). ***Ram Kripal Singh and Other Vs. The Committee of Management, Uchchttar Madhayamik Vidyalaya Newarhiya and Others 1993 ESC 228;***

(iii). ***Prithvi Pal Tripathi and Others Vs. District Inspector of Schools and Others 1993 (1) U.P.L.B.E.C. 355.***

18. To the aforesaid submission of Sri G.K. Singh, learned Senior Counsel for the respondents, Sri H.N. Singh, learned Senior Counsel for the petitioner submits that under the Government Order dated 02.09.2008, the provision of appointment of Authorised Controller has been abolished and under the said Government Order, it is only District Inspector of Schools, who is authorised to hold the election. He further contends that even if there is no amendment in the Scheme of Administration incorporating the provisions contained in the Government Order dated

02.09.2008, that would not make any difference and it is only the procedure contemplated under the Government Order dated 02.09.2008 which is to be followed for holding the election.

19. Accordingly, he submits that since under the Government Order dated 02.09.2008, there is a procedure contemplated for holding the election which is to be adhered to, therefore, in the instant case, since the election had been conducted under the supervision of respondent no.3- District Inspector of Schools, therefore, Clause 8 of Scheme of Administration providing the procedure for appointment of Authorised Controller after the expiry of the term of the Committee of Management, would not be attracted in the present case. Thus, the election of the petitioner was in accordance with law.

20. He further submits that the Government Order issued under Article 166 of the Constitution of India has ingredients of legislative enactment and since there is no legislative enactment that covers the field on the subject under the Government Order dated 02.09.2008 and since Scheme of Administration has been approved by the Joint Director of Education, therefore, the provision contemplated under the Government Order dated 02.09.2008 would prevail. Thus, in the instant case, in view of the Government Order dated 02.09.2008, there was no necessity to appoint Authorized Controller nor the Authorised Controller after the issuance of the Government Order dated 02.09.2008 is eligible to hold an election of the Committee of Management. He further submits that respondent No. 2 has not directed for holding the election by the Authorised Controller rather it has directed the District Inspector of Schools to hold the fresh election.

21. Sri G.K. Singh, learned Senior Counsel for the respondents on the aforesaid submission of Sri H.N. Singh, learned Senior Counsel for the petitioner submits that the provision contained in the Scheme of Administration shall prevail till it has been amended in accordance with Section 16-A of the U.P. Intermediate Education Act, 1921. It is submitted that though it may have been provided under the Government Order dated 02.09.2008 that the provision of appointment of Authorised Controller is

being abolished, but till the amendment in the Scheme of Administration incorporating the procedure contemplated under the Government Order dated 02.09.2008 is accepted and incorporated by the Committee of Management and such amendment is duly approved by the Joint Director of Education under Section 16-A(5) of the U.P. Intermediate Education Act, 1921, the election has to be conducted as per the Scheme of Administration. Since the term of the Committee of Management has expired, therefore, under Clause 8 of the Scheme of Administration, it is only the Authorised Controller who is authorised to hold the election of the Committee of Management. In this respect, he has placed reliance upon the following judgements:

(i) ***Committee of Management, Shahid Mangal Pandey Inter College, Nagwa, District Ballia and Others Vs. State of U.P. and Others 1994 (2) U.P. L.B. E.C 1348.***

(ii) ***Committee of Management, Barni Jain Uchchattar Madhyamik Vidyalaya Dehradun Vs. State of U.P. and Others 1999 (1) E.S.C. 366 (All.)***

(iii) ***Yashoda Raj Kumari Kunjil and Others Vs. State of U.P. and Others 2010 (9) ADJ 361.***

22. Sri H.N. Singh, learned Senior Counsel for the petitioner submits that under the Scheme of Administration, it is the Joint Director of Education who has to appoint the Authorised Controller after the expiry of the term of Committee of Management and in the present case, the Joint Director of Education did not appoint any Authorised Controller. Accordingly, the petitioner's continued to manage and run the Committee of Management of the College, and hence the petitioner rightly requested the District Inspector of Schools to appoint Election Officer and thereafter, the election was held under the supervision of the District Inspector of Schools.

23. I have considered the rival submissions of the parties and perused the record.

24. The undisputed facts as emanate from the record are that the last election of the Committee of the Management of the College was held on 18.08.2019 which was approved by the District Inspector of Schools, Baghpat by order dated 04.10.2019.

25. According to the record, the petitioner's Committee of Management submitted a letter dated 17.01.2023 to the District Inspector of Schools intimating to him that the Committee of Management passed a Resolution on 20.09.2022 for holding the election of the Committee of Management of the College and they prayed for appointment of Election Officer. Out of the three names given in the said letter, the District Inspector of Schools by letter dated 31.10.2023 appointed one Neeraj Kumar as Election Officer. Neeraj Kumar published the election programme. However, he wrote a letter dated 23.12.2023 to respondent No. 3 that the term of the Committee of the Management has expired, therefore, the election should be conducted by the Authorised Controller.

26. On the aforesaid letter dated 23.12.2023, respondent no.3-District Inspector of Schools by order dated 29.12.2023 stated that the provision of appointment of Authorised Controller has been abolished by the Government Order dated 02.09.2008, and he by the said letter appointed one Sushil Chaudhary as Election Officer who, thereafter, published the election programme and held the election on 21.01.2024.

27. The question as to whether after the expiry of the term of the Committee of Management in view of Clause 8 of the Scheme of Administration, it is only the Authorised Controller who could hold the election, or whether after the issuance of Government Order dated 02.09.2008, the appointment of Authorised Controller under Clause 8 of Scheme of Administration on expiry of the term of the Committee of Management loses its existence, and the election is to be held in accordance with the Government Order dated 02.09.2008 was not raised before the Regional Level Committee.

28. However, the aforesaid question goes to the root of the matter. In case this Court concludes that the provisions contained in Clause 8 of Scheme of Administration shall remain in existence till the Scheme of

Administration is amended in accordance with the provision contained under Section 16-A (5) of the Act, 1921, the election after expiry of the term of Committee of Management is to be held as per Clause 8 of the Scheme of Administration by the Authorised Controller, and the procedure provided under the Government Order dated 02.09.2008 would neither prevail nor eclipse Clause 8 of Scheme of Administration, in such an event, the election conducted by the petitioner's Committee of Management, whose term had expired, would be null and void and it had no authority to hold the election. In such case, this Court is not obliged to enter into the legality of the impugned order since the very authority of the petitioner's Committee of Management to hold the election lacked jurisdiction, and the election conducted in such an event by the petitioner's Committee of Management is void. However, if the answer to the aforesaid question is 'negative, the Court will then proceed to enter into and consider the submission of learned Senior Counsel for the petitioner on the illegality committed by the authority in passing the impugned order.

29. Now, before proceeding to consider the aforesaid question, it is apt to reproduce Clause 8 of the Scheme of Administration of the College.

“8-प्रबन्ध समिति का कार्यकाल-

पदाधिकारी एवं समिति के सदस्यों का कार्यकाल तीन वर्ष का होगा । कार्य अवधि समाप्त हो जाने पर अगले तीन माह तक ही पदाधिकारी बने रह सकेंगे। यदि तीन वर्ष के बाद तीन माह के अन्दर नवचयनित समिति कार्यभार ग्रहण नहीं करती तो तीन वर्ष तीन माह बाद कालातीत समिति का कार्यकाल स्वतः समाप्त समझा जायेगा और सम्भागीय उप शिक्षा निदेशक द्वारा मनोनीत एक व्यक्ति प्रबन्ध संचालक कार्यरत माना जायेगा, जिसे प्रबन्धाधिकरण के पूर्ण अधिकार होंगे । वह प्रबन्ध संचालक नवचयनित समिति को शीघ्रातिशीघ्र कार्यरत करायेगा और यदि चुनाव नहीं हुआ है तो चुनाव कराकर चयनित समिति को कार्यरत करायेगा और यदि प्रबन्ध समितियों में अधिकार का दावा है तो जिसके पक्ष में सम्भागीय उप शिक्षा निदेशक का निर्णय हो, उसे कार्यरत करायेगा।”

30. The perusal of Clause 8 of the Scheme of Administration shows that the term of office bearers of the Committee of Management shall be three years. After the expiry of three years, the office bearers of the Committee of Management can continue for further three months. If the new Committee of Management does not take charge after the expiry of three years and three months, the term of the Committee of Management automatically expires after the period of three years and three months, the

Joint Director of Education shall appoint an Authorised Controller who shall possess all the powers and duties of Management. The Authorised Controller shall immediately handover the charge to the newly elected Committee of Management, and in case the new election has not taken place, he would conduct the election and shall ensure the handing over charge to the elected Committee of Management, in case there is a dispute with regard to the Committee of Management, the Authorised Controller shall ensure the charge to be handed over to the Committee of Management in whose favour the Joint Director gives the decision.

31. It is also apposite to reproduce the relevant Clause of Government Order dated 02.09.2008 on which reliance has been placed by the learned Senior Counsel for the respondents:-

“4- उक्त वर्णित स्थिति के प्रकाश में संस्था की प्रशासन योजना में प्रबन्ध संचालक की व्यवस्था को बनाये रखे जाने का कोई औचित्य प्रतीत नहीं होता है। शासन द्वारा संस्था की प्रशासन योजना में वर्णित प्रबन्ध संचालक की व्यवस्था को समाप्त करने तथा निम्नानुसार कार्यवाही करने का निर्णय लिया गया है:-

(1) जिन शैक्षिक संस्थाओं के अनुमोदित प्रशासन योजना में प्रबन्ध समिति के कालातीत होने की दशा में निर्वाचन एवं कार्यसंचालन हेतु प्रबन्ध संचालक नियुक्त किये जाने की व्यवस्था हो उसे संशोधित करते हुए प्रबन्ध संचालक रहने की व्यवस्था समाप्त कर दिया जायेगा, क्योंकि अशासकीय सहायता प्राप्त मान्यता प्राप्त माध्यमिक विद्यालयों में त्रुटियों/कमियों/अनियमितताओं की दशा में प्रबन्धतंत्र को अतिक्रमित किये जाने की व्यवस्था माध्यमिक शिक्षा अधिनियम-1921 एवं वेतन वितरण अधिनियम-1971 में पूर्व से ही विद्यमान है। यह कार्यवाही आगामी तीन माह में पूर्ण कर ली जाय।

(2) शैक्षिक संस्थाओं में जहां मा० न्यायालयों के आदेश के अनुपालन में प्रबन्ध संचालक नियुक्त किये गये हों, उन मामलों में मा० न्यायालय के अग्रेतर आदेश के उपरान्त ही कार्यवाही की जायेगी लेकिन जिन संस्थाओं में प्रशासन योजना के अन्तर्गत प्रबन्ध संचालक नियुक्त किये गये हैं, उन संस्थानों में कार्यरत प्रबन्ध संचालक द्वारा आगामी तीन माह के अन्दर प्रबन्ध समिति का नियमानुसार गठन कराकर प्रभार हस्तांतरित कर दिया जाय।

माध्यमिक विद्यालयों में आदर्श प्रशासन योजना

(3) प्रबन्ध समिति का कार्यकाल समाप्त होने के तीन माह पूर्व ही चुनाव कराये जाने की प्रक्रिया प्रारम्भ कर दी जाय। जिला विद्यालय निरीक्षक संस्थाओं की प्रबन्ध समितियों के गठन की नियमित समीक्षा करें तथा जिन प्रबन्ध समितियों का कार्यकाल समाप्ति के निकट हों, उन्हें चुनाव कराये जाने हेतु नोटिस जारी करें।

(4) प्रबन्ध समिति के चुनाव हेतु संस्था अधिकारी द्वारा पर्यवेक्षक की माँग किये जाने पर जिला विद्यालय निरीक्षक द्वारा अधिकतम 07 दिन के अन्दर प्रबन्ध समिति के चुनाव कार्य हेतु पर्यवेक्षक नामित कर दिया जाय।

(5) प्रबन्ध समिति का कार्यकाल समाप्त हो जाने तथा समयान्तर्गत चुनाव नहीं सम्पन्न कराये जाने पर जिला विद्यालय निरीक्षक की संस्तुति के आधार पर माध्यमिक शिक्षा अधिनियम की धारा 16 (डी) के अन्तर्गत कार्यवाही सुनिश्चित की जाय।

कृपया उक्तानुसार कार्यवाही सुनिश्चित करायी जाय।”

32. Now, Clause 4(1) of the Government Order dated 02.09.2008 provides that those educational institutions in which the Scheme of Administration stipulates for appointment of Authorised Controller on the expiry of the term of Committee of Management, the said provision shall be amended and provision of appointment of Authorised Controller shall be abolished and this process shall be completed within a period of three months.

33. Clause 4(3) provides that the process of holding a fresh election should be commenced before the expiry of three months from the date of expiry of the term of the Committee of Management. It further provides that the District Inspector of Schools shall review the constitution of the Committee of Management and shall issue notice to those Committee of Management whose term is going to expire.

34. Clause 4(4) provides that the District Inspector of Schools shall appoint an 'Observer' within seven days from the date the Committee of Management sought the Observer from the District Inspector of Schools.

35. Clause 4(5) provides that if the term of the Committee of Management has expired and the election has not been held, the District Inspector of Schools shall ensure the initiation of proceeding as per Section 16-D of the Act, 1921.

36. Section 16-A of the Act, 1921 provides for a Scheme of Administration. The reliance has been placed on Section 16-A (5) of the Act, 1921 which deals with the amendment in the Scheme of Administration, therefore, Section 16-A (5) of the Act, 1921 is being reproduced herein below:-

“16-A. Scheme of Administration....

(5). The Scheme of Administration of every institution shall be subject to the approval of the Director and no amendment to or change in the Scheme of Administration shall be made at any time without the prior approval of the Director:

Provided that where the Management of an institution is aggrieved by an order of the Director refusing to approve an amendment or change in the Scheme of Administration, the State Government, on the representation of the Management, may, if it is satisfied that the proposed amendment or change in the Scheme of Administration is in the interest of the institution, order the Director to approve of the same, and thereupon the Director shall act accordingly.”

37. Section 16-A (5) clearly stipulates that any amendment or change in the Scheme of Administration can be made at any time only with the prior approval of the Director. The State Government in the exercise of its power under Section 2 (dd) of the Act, 1921 issued a notification by which, all the Regional Joint Director of Education were conferred powers of Regional Deputy Director of Education. The Notification No.1014/15.7.1998, published in U.P. Gazette, Extra, Part 4, Section (Ka), dated 17th March, 1998 is extracted herein below:-

"In exercise of the powers under clause (dd) of Section 2 of the Intermediate Education Act, 1921, U.P. Act No. II of the 1921) the Governor is pleased to authorise all the Regional Joint Directors, Education to perform all the duties of Regional Deputy Director, Education under the said Act."

38. This Court in the case of ***Committee of Management, Baheri Education Society Baheri, Bareilly and Others Vs. Director of Education (Secondary), U.P. Lucknow and Others (2001) 2 U.P.L.B.E.C. 1107*** has held that from the date of notification, the Regional Joint Director of Education became entitled to approve or disapprove or amend the Scheme of Administration.

39. Since after the amendment by Notification No.1014/15.7.1998, published in U.P. Gazette, Extra, Part 4, Section (Ka), dated 17th March 1998, the power to grant approval to amend or change in the Scheme of Administration is with the Regional Joint Director of Education, therefore, wherever in the judgement the word 'Director' has been mentioned, the same may be read as 'Regional Joint Director of Education'.

40. Now, the question that arises for consideration is whether after the issuance of Government Order dated 02.09.2008, the provision of abolition of the post of Authorised Controller is deemed to have been incorporated under the Scheme of Administration and the election has to be held as per Clause 4 of the Government Order dated 02.09.2008 or there cannot be any amendment in the Scheme of Administration without following the due procedure contemplated under Section 16-A (5) of the Act 1921.

41. In the context of the present case, Section 16-CCC is also relevant which is being reproduced herein below:-

“[16-CCC. (1) Where in relation to any institution, the Scheme of Administration has been or deemed to have been approved under Section 16-A, or Section 16-B or Section 16-C, at any time before the commencement of the Intermediate Education (Amendment) Act, 1980, and such Scheme of Administration is inconsistent with the provisions of this Act, the Director shall send, within a period of [three years] from such commencement, a notice to such institution suggesting any alteration or modification therein and requiring the institution to submit a fresh Scheme of Administration or to amend or alter the existing Scheme.

(2) While making any suggestion in the Scheme of Administration under sub-section (1), the Director shall give his reasons therefore and shall also afford an opportunity to the institution to make a representation within such period as may be specified in the notice.

(3) The Director shall consider any representation made in accordance with sub-section (2) and may approve the Scheme of Administration in its original form or subject to any alteration or modification suggested under sub-section (1) or with any other changes as may appear to him to be just and proper:

Provided that where the Director proposes to make any new alteration or modification in the Scheme of Administration, he shall give an opportunity to the institution to make a representation within such period as may be specified by him.]”

42. At this stage, it would be apt to reproduce paragraph nos.4 to 6 of the judgement of ***Shahid Mangal Pandey Inter College (supra)*** cited at Bar by learned Senior Counsel for the respondents in respect of the procedure to be adopted for amendment in the Scheme of Administration:-

“4. Having heard the learned counsel for the parties, I am of the opinion that the order passed by the Regional Deputy Director of Education is not sustainable in law. The finding that the disputed election was not valid is based on the finding that the Scheme of Administration approved vide letter dated 29-3-1962 stood amended automatically on the basis of the notice dated 6-2-1985. A reading of Section 16-A of the U.P. Intermediate Education Act, 1921 (in short the Act) would show that every recognised institution shall be managed in accordance with the approved Scheme of Administration framed under and in accordance with Sections 16-A, 16-B and 16-C of the Act. It may be noticed that Sections 16-A, 16-B and 16-C were inserted by U.P. Act No.35 of 1958. Scheme of Administration of every institution, as provided in Section 16-A (5), shall be subject to the approval of the Director and no amendment to or change in the Scheme of Administration shall be made at any time without prior approval of the Director. The management of an institution is no doubt entitled to challenge the order passed by the Director of Education refusing to approve, amend or change the Scheme of Administration suggested by the management, by way of appeal to the State Government as comprehended by proviso to sub-section (5) of Section 16-A of the Act. But no amendment or change in the Scheme of Administration shall be made without prior approval of the Director who shall be bound to approve, amend or change the Scheme of Administration as per order of the State

Government, if any, passed under the proviso to sub-section (5) of Section 16-A, Section 16-B of the Act visualises that in case of an institution already recognised at the commencement of U.P. Intermediate Education (Amendment) Act, 1958, a draft Scheme of Administration shall be prepared and submitted to the Director for his approval in accordance with Section 16-C within six months from the said commencement and in all other cases alongwith an application for recognition. In the instant case the institution was already recognised at the date of commencement of the U.P. Act No.35 of 1958. The Regional Deputy Director of Education exercising power of the Director seems to have issued a show-cause notice to the management of the institution on 6-2-1985 suggesting therein certain amendments to be made in the already approved Scheme of Administration. It appears that the management of the institution neither altered or modified the Scheme of Administration as required by the show cause notice dated 6-2-1985 nor did it file any objection as provided in Section 16-CCC of the Act. The question that arises for consideration is whether the amendment suggested by the Director vide show cause notice dated 6-2-1985 would be deemed to have been automatically made in the already approved Scheme of Administration. In my opinion, a conjoint reading of Section 16-A, Section 16-B (3), 16-C, 16-CCC read with Section 16-D (3) (vii) of the Act would make it abundantly clear that the amendment or modification suggested by the Director either under Section 16-C or under Section 16-CCC would not automatically be deemed to have been made in the already approved Scheme of Administration. The only way to get the suggested amendments or modifications made in the already approved Scheme of Administration is to appoint Authorised Controller under sub-section 3 (vii) read with sub-section (4) of Section 16-D of the Act and to get the suggested alterations or amendments made in the approved Scheme of Administration through the Authorised Controller, but so long as the Scheme of Administration is not so amended, the already approved Scheme of Administration would continue to be operative except in so far as it is inconsistent with the principle laid down in the third schedule as provided in Section 16-CC of the Act. The already approved Scheme of Administration, in so far as it is inconsistent with the principle laid down in the third schedule, shall automatically cease to be inoperative.

5. The Regional Deputy Director of Education has, in the instant case, not recorded any finding that the disputed election was held in accordance with such provisions of Scheme of Administration as may have been inconsistent with the principle laid down in third Schedule read with Section 16-C of the Act. Mere finding that the election in question was held in accordance with the amended Scheme of Administration was not enough to invalidate the election in absence of a finding that the election was held in accordance with such provisions of the already approved Scheme of Administration as were inconsistent with the principle laid down in Section 16-CC of the Act. In my opinion, therefore, the order passed by the Regional Deputy Director of Education is not sustainable in law.

6. It may be observed that Regulation 15 of Chapter I of the Regulation made under the U.P. Intermediate Education Act, 1921 prescribes a time schedule, within which the draft Scheme of Administration is either to be approved or returned to the management with suggestions, if any, for alteration or modification under Section 16-C (1) of the Act and Regulation 16 prescribes the period of three months from the date of receipt of the communication of the Director during which the management may file representation against the suggested alterations or modifications in the Scheme of Administration. But nothing contained in

the Act or the Regulations suggests any automatic amendment of the already approved Scheme of Administration as per alterations or modifications suggested by the Director.”

43. Further, it would also be apt to reproduce paragraphs nos.9 to 15 of the judgement of this Court in the case of **Committee of Management, Barni Jain Uchchattar Madhyamik Vidyalaya (supra):-**

“9. A perusal of the said provision indicates that in a case where Scheme of Administration has been or deemed to have been approved under Section 16-A or Section 16-B, or Section 16-C, before the commencement of the Intermediate Education (amendment) Act, 1980 and such scheme is inconsistent with the provisions of that Act the Director shall send within a period of three years from such commencement a notice to such institution suggesting alteration or modification. It has also been provided that the Director is to require the institution to submit a Scheme of Administration or to amend or alter the existing scheme. The Director is required to give reason for such suggestion and also to afford an opportunity to the institution to make a representation within a time specified in the notice. The law requires the Director to consider any representation and empowers the Director to approve the Scheme of Administration in its original form or subject to any alteration or modification or with any other changes as may appear to him to be just and proper. For making such new alteration or modification in the Scheme, the Director is required to give an opportunity to the institution to make a representation.

10. The aforesaid indicates clearly that there is no provision for deeming a modification for making no representation by the institution concerned. It is apparent that the law requires that the Director is required to give reason and afford opportunity to the institution to make a representation and is also to consider such representation. While indicating such duties of the Director the expression "shall" has been used. The law thereafter empowers the Director to approve the Scheme and in doing this the Statute uses the expression "may approve". Therefore, it is clear that there must be a positive Act of the Director for approval of the Scheme either in its original form or subject to any alteration or modification. This is the power given to the Director which the Director may exercise. In such circumstances, the aforesaid law cannot be interpreted that if the institution does not make representation, the modification stands.

11. In this connection, it is further important to note that if any further change is felt to be just and proper by the Director, he is required to give a further opportunity to the institution to make a representation. This provision also supports that there could not be any automatic modification of the existing approved Scheme by applying any deeming provision.

12. The difference of language in Section 16-CCC, with the language of Section 16-CC indicates that in the later clear language has been used for deeming provision. Therefore, in the absence of such a provision and there being no reason for presuming existence of such a deeming clause, a Scheme already approved cannot be deemed to have been modified in the present facts. A specific requirement of approval by the authority concerned for any modification of existing Scheme also negatives the contention in support of such deeming provision.

13. The law in this connection has been framed in a manner that in case there is no approved Scheme of Administration the authorities were

empowered to make the institution to have a Scheme of Administration duly approved and in case of default of the Committee of Management appropriate powers have been provided for getting such a Scheme applicable. In such a case power for taking action in accordance with sub-section (3) of Section 16-D, has been provided in Section 16-B. But while modifying an existing Scheme of Administration similar power has not been provided in Section 16-CCC of the Act. But it goes without saying that if the institution commits default by not complying with the requirements of modification or alteration, the authorities are having ample power to take action against the erring Committee of Management.

14. In view of the aforesaid, it can be concluded that there was no deeming provision for implementation of modification under Section 16-CCC, and, therefore, the impugned orders at Annexures 2 and 3 are not tenable as the modified Scheme is still not there and, therefore, there cannot be any violation thereof.

15. With regard to exercise of power by the Deputy Director of Education, I find that the said notification dated 23.8.1970, was issued in respect of specified existing section before introduction of 16-CCC. Therefore, there cannot be any presumption that the said notification applied to Section 16-CCC. The respondents have not been able to produce any further notification of similar nature empowering the Deputy Director of Education to Act on behalf of the Director in exercise of power under Section 16-CCC.

44. Under Section 16-A (5) of the Act, 1921, no amendment in the Scheme of Administration can be made without prior approval of the Director.

45. Section 16-CCC (1) of the Act, 1921 contemplates a procedure for amendment in the Scheme of Administration where the Scheme of Administration is inconsistent with the provisions of the Act, 1921. In such a case, the Director shall send within a period of three years from such commencement a notice to such institution suggesting any alternation or modification therein and requiring the institution to submit a fresh Scheme of Administration or to amend or alter the existing Scheme.

46. Section 16-CCC (2) of the Act, 1921 provides that the Director while making any such suggestion in the Scheme of Administration under sub-section (1) shall give his reasons therefor and shall also afford an opportunity to the institutions to make representation within such period as may be specified in the notice.

47. The Director, thereafter, under sub-section (3) of Section 16-CCC shall consider any representation made in accordance with sub-section (2)

and may approve the Scheme of Administration in its original form or subject to any alternation or modification suggested under sub-section (1) or with any other changes as may appear to him to be just and proper.

48. The proviso to Section 16-CCC (3) provides that where the Director proposes to make any new alteration or modification in the Scheme of Administration, he shall give an opportunity to the institution to make a representation within such period as may be specified by him.

49. So reading of Section 16-CCC suggests that the provision contemplated for making the amendment, alternation, or changes in the Scheme of Administration under said section authorises the Director to give notice to the Committee of Management for making change, alternation, or amendment in the Scheme of Administration for bringing the same in consonance with the provision of the Act, 1921, and on such notice being given by the Director, the Committee of Management shall submit a representation and the Director after affording opportunity to the Committee of Management may approve the Scheme of Administration in its original form or subject to any alteration or modification suggested under sub-section (1).

50. The Act, 1921 does not contemplate any deeming provision under which any amendment suggested by the Government by issuing a Government Order is deemed to have been incorporated or implemented in the Scheme of Administration.

51. This Court in the aforesaid judgments has categorically held that there could not be any automatic modification of the existing approved Scheme by applying the deeming provision. Though Clause 4 of the Government Order dated 02.09.2008 provides for the abolition of the post of Authorised Controller, a perusal of Clause 4 does not suggest that there is any deeming provision under which the provision of the abolition of the post of Authorised Controller is incorporated automatically under the Scheme of Administration.

52. Reading of the last line 'यह कार्यवाही आगामी तीन माह में पूर्ण कर ली जाय' of Clause 4(1) in the Government Order dated 02.09.2008 clearly suggests

that the procedure with regard to the abolition of the post of Authorised Controller should be completed within three months. In the instant case, there is nothing on record to indicate that any procedure for amending the Scheme of Administration to be consistent with the provisions contained in the Government Order dated 02.09.2008 has been undertaken in accordance with Section 16-A (5) read with Section 16-CCC of the Act, 1921. The aforesaid extracted line also suggests that the provision of the abolition of the post of Authorised Controller is not incorporated automatically.

53. The matter can be viewed from another angle. Section 16-A (5) of the Act, 1921 stipulates a procedure for making any amendment in the Scheme of Administration.

54. Section 16-CCC of the Act, 1921 also provides that if the Scheme of Administration is inconsistent with the Act, 1921, the Director may issue notice to the Committee of Management, and may follow the procedure contemplated under Section 16-CCC for bringing the Scheme of Administration consistent with the Act, 1921.

55. Once, the Act, 1921 stipulates procedure under Section 16-A (5) & Section 16-CCC for making alteration or amendment in the Scheme of Administration, it cannot be held that after issuance of the Government Order, para 4 of the Government Order dated 02.09.2008 is deemed to have been incorporated and become part of the Scheme of Administration, and the provision of appointment of Authorised Controller is abolished. Perhaps for this reason, the Government Order also stipulates in the last line of Clause 4(1), which has been extracted above, that the procedure for incorporation of the abolition of the post of Authorised Controller provided by the said Government Order may be completed within three months.

56. This Court also while considering the Government Order dated 02.09.2008 held in paragraph 25 of the judgment in the case of *Yashoda Raj Kumari Kunjil (supra)* that the provision of Scheme of Administration cannot be overridden by the Government Order till the

amendment is undertaken. The relevant extract of paragraph no.25 of the said judgement is reproduced herein below:-

“25...From a reading of the aforesaid directions, it is therefore, clear that efforts are to be made to see that the Scheme of Administration which provide for appointment of Prabandh Sanchalak are suitably amended. Till that amendment is undertaken it will apply and the provisions of the Schemes cannot be overridden by Government Orders. The aforesaid Government Order, therefore, has absolutely no bearing insofar as the present reference is concerned. We agree with the submission of Advocate G.K. Singh.”

57. Thus, for the reasons given above, this Court does not find any merit in the submission of learned Senior Counsel for the petitioner that after issuance of the Government Order dated 02.09.2008, the post of Authorised Controller is removed, and the election is to be held as per the provision contained in the Government Order dated 02.09.2008.

58. Now coming to the question as to whether once the term of the Committee of Management has expired, the Committee of Management becomes *functus officio*, and it is only the Authorised Controller who is empowered to hold the election. In this respect, it would be apt to reproduce paragraph no.14 of the judgement of this Court in the case of ***Committee of Management, Shri Krishna Inter College (supra)***:-

“14. A Division Bench of this Court in Committee of Management v. Deputy Director of Education, 1986 ALJ 88 has laid down that after the term of the committee of management had expired, its office-bearers cannot legally convene and hold a meeting for electing new committee of management. According to the case, set up by the respondents themselves the term of the committee of management, as mentioned before, came to an end in January 1990 and after January, 1990 Sri Dharm Prakash Tyagi or any other person was not legally entitled to convene a meeting for holding the election. The election held on 15-7-1990 was absolutely void ab initio and District Inspector Schools had no jurisdiction to approve such a committee of management. That apart, the District Inspector of Schools should not have passed impugned order without giving reasonable opportunity of being heard to the petitioners who claims to be rival committee of management and were also having stay order granted by this Court on 30.07.1990, the impugned is absolutely without jurisdiction and liable to be set aside.”

59. In this connection, it would also be apt to reproduce paragraph no.3 of the judgement of this Court in the case of ***Ram Kripal Singh (supra)***:-

“3. The law laid down by the learned Judge on this point having been overruled by a Division Bench of this Court in the case of Malkiyat Singh (supra) has ceased to be effective and no action can be taken in pursuance thereof. The result is that the committee of management,

which is alleged to have been elected on 5-5-1986 ceased to exist with effect from 4-6-1989 and thereafter no election can be held by such committee. Thereafter, the only authority who is entitled to hold election of the committee of management of the college is the Prbandh Sanchalak, who is to be appointed by the Deputy Director of Education."

60. Paragraph no.6 of the judgement of this Court in the case of **Prithvi Pal Tripathi (supra)** is also reproduced herein below:-

"6. The submission of the learned counsel for the appellant is based upon the presumption that a valid election was held on 20th November, 1988. The Deputy Director of Education by order dated 25th September, 1991 has recorded a categorical finding of fact that none of the Committees of Management as claimed by the two rival Committees of Management, was validly elected. The appellant No. 1 was claiming himself to have been elected as Manager on 20th November, 1988. He did not file any writ petition challenging the findings recorded by the Deputy Director of Education, Surendra Mani Tripathi, claiming himself to have been elected as Manager on 20th November, 1988 filed writ petition challenging the order of the Deputy Director of Education by which he had permitted the appellant No.1 to hold fresh election. On the findings recorded by the Deputy Director of Education that no Committee of Management was duly elected on 20th November, 1988, the period of the Committee of Management which was elected on 3rd November, 1985 expired on 2nd December, 1988 and thereafter no validly elected Committee of Management existed. The period of Committee of Management is three years and one month under the Scheme of Administration. The right to hold the election of the Committee of Management and who will hold such election, is contained in the Scheme of Administration which is quoted below (translated in English) :-

"The term of the office bearers and members of the Committee of Management shall be three years. After the expiry of this period the officer bearers may continue for further one month. In case after the expiry of three years and within one month if duly constituted Committee of Management does not take charge, the term of the Old Committee of Management shall automatically come to an end and the person appointed by Regional Deputy Director of Education shall be entitled to function....

Under the Scheme of Administration the Old Committee of Management was not entitled to function after the expiry of three years and one month and this follows that the Old Committee of Management was not entitled to hold the election and it was only the Authorised Controller appointed by the Regional Deputy Director of Education who was entitled to run and manage the affairs of the institution and he alone could hold the election of the Committee of Management. This question also came up for consideration before this Court in Committee of Management Sri Gandhi Inter College v. Deputy Director Education, Meerut, 1989 ALJ 214. The Court held that if on inquiry the Regional Deputy Director of Education comes to conclusion that the election for constituting the Committee Management was held after the expiry of term of Previous Committee Management, such an election would be illegal."

61. Sri H.N. Singh, learned Senior Counsel for the petitioner though has contended that in the present case, the process of the election had been

set in motion before the expiry of the term of Committee of Management i.e. before three years three months inasmuch as the Committee of Management had passed a Resolution on 20.09.2022 for holding the election of the Committee of Management of the College which was duly intimated to the District Inspector of Schools as is evident from the letter dated 17.01.2023 wherein it is mentioned that another letter had also been submitted to the District Inspector of Schools for appointment of Election Officer, and the fault was on the part of the District Inspector of Schools for not appointing Observer for conducting the election, therefore, the petitioner cannot be faulted for not holding the election within the term of Committee of Management.

62. Though, the letter dated 17.01.2023 states that earlier also a letter was sent in this connection, but the date on which the earlier letter was sent is not mentioned in the said letter. The aforesaid letter also does not suggest that the earlier letter was written seeking the appointment of an Election Officer. The record reflects that the letter was sent on 17.01.2023 and no other letter which was sent before the said letter to the District Inspector of Schools was brought on record to indicate that the process of election had been set in motion by the Committee of Management before the expiry of its term.

63. In such view of the fact, it cannot be presumed that the process of election had been set in motion by the petitioner's Committee of Management for holding new election before the expiry of its term. Since the letter dated 17.01.2023 was written much after the expiry of the term of the Committee of Management, therefore, the aforesaid argument of learned Senior Counsel for the petitioners is misconceived.

64. Since this Court has held that without following any proper procedure, no amendment can be incorporated in the Scheme of Administration, therefore, after the expiry of the term of three years and three months, the petitioner's Committee of Management becomes *functus officio* and does not have the power to hold the election. Even the Government Order dated 02.09.2008 on which huge reliance has been placed by the learned Senior Counsel for the petitioner suggests that under

Clause 4(5) of the Government Order, once the term of the Committee of Management has expired, the proceedings under Section 16-D of the Act, 1921 has to be initiated, therefore, even the Government Order dated 02.09.2008 does not authorise the Committee of Management to hold the election after the expiry of its term.

65. Since the petitioner has approached this Court under Article 226 of the Constitution of India, the law is settled that even if the order is illegal, this Court can refuse to interfere with an order that will permit an illegality to perpetuate.

66. In the present case, the question as to whether the Committee of Management could hold the election after the expiry of its term is a question that goes to the root of the jurisdiction of the authority of the Committee of Management to hold an election after the expiry of its term, therefore, this Court deemed it proper to deliberate on the aforesaid question.

67. This Court for the reasons given above, finds that the petitioner's Committee of Management after the expiry of its term did not have jurisdiction to hold the election, and it is only the Authorised Controller who is authorised under Clause 8 of the Scheme of Administration to hold the election.

68. Therefore, this Court does not deem it proper to consider the other contentions of the learned Senior Counsel for the petitioner with respect to the illegality in the impugned order. Consequently, this Court does not deem it fit to interfere with the impugned order for the reasons stated above in the exercise of power under Article 226 of the Constitution of India.

69. In this respect, it would be apposite to refer to the judgement of this Court in the case of *Jitendra Pal Vs. The Committee of Management, Kanya Kalyan Gurukul Shiksha Sansthan Uchchattar Madhyamik Vidyalaya, Muzaffar Nagar and Others 1950-91 (3) A.I.E.C. 33*. In the aforesaid case, the learned Single Judge interfered with an order which amounts to review of earlier order passed by the Regional Inspectress of

Girls School, but the aforesaid order of learned Single Judge was set aside by the Division Bench on the ground that the original order was illegal. This Court affirmed the order passed by the Regional Inspectress of Girls School reviewing its earlier order even though the Regional Inspectress of Girls School did not have power to review its order. Paragraphs nos. 6 to 10 of the judgement are reproduced herein below:-

“6. In this connection reference may be made to the case of Committee of Management, SKI College v. District Inspector of Schools, reported in 1991 All LJ 201, wherein it has been held in paragraph 14 (following the decision in Committee of Management v Deputy Director of Education, 1986 ALJ 88 that after the term of the Committee of Management had expired its office bearers cannot legally convene and hold a meeting for electing a new Committee of Management. We are in respectful agreement with the said decision given by Hon'ble R. A. Sharma, J. reported in 1991 All LJ 201, and accordingly we hold that the election held on 4-11-88 was wholly without jurisdiction. In accordance with clause (8) of the Scheme of Administration only the Prabandh Sanchalak appointed by the Deputy Director of Education could hold the election.

7. Since the election held on 4-11-88 was wholly null and void the election held on 4-11-1991 by the Committee of Management is also null and void.

8. In her order dated 27-8-90 the Regional Inspectress of Girls Schools has stated that her earlier order dated 6-12-1988 was obtained by concealment of the correct position. Hence, she rightly recalled the order dated 6-12-1988, and we uphold her order dated 27-8-1990 as well as the order of the Deputy Director of Education dated 30-8-1990. As regards the view of the learned Single Judge that the Regional Inspectress of Girls Schools had no power to review her earlier order, we are of the opinion that since the election of 4-11-1988 was wholly null and void and consequently the order of the Regional Inspectress of Girls Schools dated 6-12-1988 was also vitiated, the order of the Regional Inspectress of Girls Schools dated 27-8-1990 had done substantial justice in the case, and called for no interference under Article 226 of the Constitution.

9. Consequently, we set aside the judgment of the learned Single Judge dated 18-11-1991 and uphold the order of the Regional Inspectress of Girls Schools dated 27-8-1990 as well as the order of the Deputy Director of Education dated 30-8-1990 with this modification that the Prabandh Sanchalak shall hold the election to the Committee of Management within two months from the date of production of a certified copy of this judgment before him. Since an apprehension has been expressed by the respondent's Counsel that Ganga Saran Sharma, who was appointed as Prabandh Sanchalak under the order of the Deputy Director of Education dated 30-8-1990, may not act fairly, we direct that the Deputy Director of Education may appoint some other gentleman as a Prabandh Sanchalak, within a week of the production of a certified copy of this order before him. Both the learned Counsel are agreed on this.

10. As such, the Special Appeal is allowed. The judgment of the learned Single Judge dated 18-11-1991 is quashed, Parties will bear their own costs.

70. Thus, for the reasons given above, the writ petition lacks merit and is hereby **dismissed** with no order as to costs.

71. Since, this Court has held that after the expiry of the petitioner's Committee of Management, the petitioner's Committee of Management did not have the power to hold fresh election, and election can be conducted only by the Authorised Controller under Clause 8 of the Scheme of Administration, therefore, this Court directs the Joint Director of Education of concerned Region to appoint Authorised Controller in the College within a period of one month from the date of production of certified copy of this order. The Authorised Controller is further directed to hold the election of the Committee of Management within a period of two months from the date he assumes the charge of Authorised Controller.

Order Date:-24.3.2025

Sattyarth/Mohit