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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 899/2016 & CM Nos.3943/2016, 17872/2016,
35514/2017

MANAGING COMMITTEE, VIDYA BHAWAN
GIRLS SENIOR SECONDARY SCHOOL Petitioner
Through: Mr. D. Verma, Adv.

versus

DIRECTOR OF EDUCATION & ORS Respondents
Through: Mr. Devesh Singh, ASC(Civil)-
GNCTD with Ms. Sukriti
Ghair, Adv. for R-1
Mr. Baldev Krishan, Secy.VBG
Edu. Society in person
Mr. Hitendra Nahata, Mr.
Manish Gupta and Mr. Rohit
Tomar, Advs. for R-7
Mr. Rajender Kr. Tyagi,
OSD(DOE)

+ W.P.(C) 1239/2016, Cav.127/2016, CM Nos.5440-5441/2016,
17871/2016, 35515/2017

MANAGING COMMITTEE OF VIDYA BHAWAN GIRLS
SENIOR SECONDARY SCHOOL THROUGH: ITS
MANAGER AND ANR Petitioners
Through: Mr. Rakesh Tikku, Sr. Adv. with
Ms. Jyotsna Mehta and
Ms. Gayatri Misra, Advs.

versus

LT GOVERNOR OF NATIONAL CAPITAL TERRITORY
OF DELHI AND ORS Respondents
Through: Mr. Devesh Singh, ASC(Civil)-
GNCTD with Ms. Sukriti
Ghair, Adv. for R-1

Mr. Hitendra Nahata, Mr.
Manish Gupta and Mr. Rohit
Tomar, Advs. for R-6
Mr. D. Verma, Adv. for R-7
Mr. Rajender Kr. Tyagi, OSD
(DOE)

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T
11.09.2019

1. These two writ petitions challenge the same order, dated 27th January, 2016, passed by the Hon'ble Lieutenant Governor (hereinafter referred to as "the Hon'ble LG"), disposing of three appeals, being

(i) Appeal No. 176/2015 filed by the Managing Committee, Vidya Bhawan Girls Senior Secondary School (hereinafter referred to as "the School"), through its Chairperson Amrit Mohini Suri, under Section 20(4) of the Delhi School Education Act, 1973 (hereinafter referred to as "the DSE Act"), against Order dated 7th September, 2012, passed by the Special Director of Education (Act-II), Government of NCT of Delhi,

(ii) Appeal No. 197/2015, filed by the Managing Committee of the School, through its Manager P. S. Pabbi, and by the Vidya Bhavan Girls Education Society (hereinafter referred to as "VBGES"), under Section 20(4) of the DSE Act, against Order, dated 15th July, 2015, passed by the Special Director of Education (Act-II), GNCTD, and

(iii) Appeal No. 204/2015, filed by the Vidya Bhavan Girls School, Delhi Society (hereinafter referred to as “the 1948-Society”), through its Secretary Manish Gupta, under Sections 3 and 20(4) of the DSE Act, against Order, dated 21st July, 2015, passed by the Deputy Director of Education (DDE).

2. It may be mentioned, here, that the school, which was established, initially, as the “Vidya Bhavan Girls School, Delhi” metamorphosed, with the passage of time, into the “Vidya Bhavan Girls Higher Secondary School” and, later, to the “Vidya Bhawan Senior Secondary School”. For ease of reference, this judgement would use the expression “the School”.

3. A recapitulation of the facts is essential, at the outset.

The Facts

4. The School was established, in 1942, by one Ms. Sanyal who, on 26th May, 1948, also established the 1948-Society, duly registered with the Registrar of Joint Stock Companies, under the name of the “Vidya Bhawan Girls School, Delhi”.

5. Land, for running the School, was allotted, to the 1948-Society, by the Land and Development Office (L & DO) on 23rd December, 1960 and, later, on 13th July, 1971 and 9th March, 1978.

6. The School was granted recognition, by the Assistant Director of Education, Delhi State, on 9th December, 1950 and, on 9th May, 1975 the Scheme of management of the School was duly approved by the Directorate of Education (hereinafter referred to as “DoE”), in accordance with Section 5 of the DSE Act.

7. A second Society, namely the VBGES, came to be registered with the Registrar of Societies, on 31st August, 1978.

8. On 13th November, 1982, the Deputy Education Officer, Zone-27, District West, wrote to the Registrar of Societies, drawing his attention to the fact that the VBGES was receiving 95% grant-in-aid from the DoE. As there appeared to be a dispute, regarding the membership of the VBGES, the Deputy Education Officer required the Registrar of Societies to supply a certified copy of the members of the VBGES, as well as of its office bearers. A reading of the said letter indicates that it proceeds on a premise that the School was being run by the VBGES.

9. Matters continued thus till, on 21st January, 2008, P. S. Pabbi wrote to the Chairman of the “Managing Committee” of the School, stating that, owing to personal reasons, he was not in a position to continue as Manager of the School, and was tendering his resignation.

10. On 23rd July, 2010, a Show Cause Notice was issued, to the Manager/Principal of the School, by the DoE, highlighting various complaints, received against the management of the School, regarding

alleged irregularities in malpractices, and calling upon the School to show cause as to why action be not taken against it, under Section 24(4), read with Section 20 of the DSE Act.

11. After the aforesaid Show Cause Notice had been issued, the DoE inspected the School on 26th July, 2010, and communicated, to the Manager of the School, the report of the inspection, on 31st July, 2010.

12. On 7th August, 2010, a reply, to the aforesaid Show Cause Notice dated 23rd July, 2010, was tendered by P. S. Pabbi, purportedly in his capacity as Manager of the School.

13. It may be mentioned, here, that there is an averment, in para 15 of W.P. (C) 1239/2016 (filed by the Managing Committee of the School through P. S. Pabbi), that, on 26th September, 2010, consequent to a proper election, a new governing body of the VBGES, and a new Managing Committee of the School took over and commenced functioning. The said para further asserts that the then existing Managing Committee of the School, headed by Som Nath Vij as its Chairman, had been duly recognised by the DoE on 22nd February, 2011. However, Manish Gupta, as Respondent No 6 in the said writ petition has, in the corresponding para in his counter-affidavit, denied these averments as “misconceived”, and has asserted, rather, that the management of the School was with the DoE and that, even when the management of the School was taken over by the DoE, it was so taken

over from Amit Rana, who was, then, the Chairperson of the Managing Committee of the School.

14. It appears that, on 7th October, 2010, a further reply, to the Show Cause Notice dated 23rd July, 2010 *supra*, was submitted on behalf of the School; however, no copy of the said reply is forthcoming on the record of any of the writ petitions, though a reference to the said reply is contained in the Order, dated 7th September, 2012, which came to be passed by the DoE and to which reference would be made hereinafter.

15. On 22nd February, 2011, the DoE wrote to the Principal of the School, nominating its nominees, and the nominees of the Advisory Board, on the Managing Committee of the School, in accordance with Rule 59(1)(b)(iv) and (v) of the DSE Rules. It may be noted that sub-clause (iv) of Rule 59(1)(b) of the DSE Rules contemplates inclusion, in the managing committee of the School, of “two other persons (of whom one shall be woman), who are, or have been, teachers of any other school or of any college, to be nominated by the Advisory Board”, and clause (v) contemplates inclusion of “two members, to be nominated by the Director, of whom one shall be educationist and the other an officer of the Directorate of Education, not below the rank of the principal of a higher secondary school”. The letter also required the School to submit, in the office of the DoE, the latest list of members of the Managing Committee of the School, including the above said nominees.

16. The response, to the aforesaid communication, dated 22nd February, 2011, of the DoE, was provided by P. S. Pabbi, as Manager of the School, *vide* letter dated 28th February, 2011. The list of members of the Managing Committee of the School, as provided in the said letter, indicated the Chairman of the Managing Committee to be Som Nath Vij, and the Manager to be P. S. Pabbi.

17. In response to a communication, from the Education Officer, requiring the school to provide the signatures of the Head of the School and its Manager, Archana Tuli wrote, on 15th November, 2011, to the Education Officer, in her capacity as Head of the School, appending, to the said letter, her signature, as Head of the School and the signature of Manish Gupta as the Manager of the School.

18. On 25th November, 2011, Manish Gupta, as Manager of the School, wrote to the Education Officer, enclosing, with the letter, a list of the Managing Committee of the School, to be forwarded to the Accounts Officer (C/ND) for the purposes of disbursement of grant-in-aid.

19. Archana Tuli moved this Court, around this time, by way of W.P. (C) 288/2012, against the DoE. This writ petition was disposed of, by this Court, *vide* Order dated 30th November, 2012, recording the concession, on the part of the learned counsel appearing for the DoE, to the effect that the DoE would accept the salary/ pay bills from the school, after deposit of 5% share by the management, and would disburse salaries to the employees of the school. This, however, was expressly “without prejudice” to the rights and contentions of the

respondent “and without admitting the right of the present management to be recognised”.

20. Following on this order, the Assistant Director of Education wrote to the Registrar of Societies (hereinafter referred to as “ROS”), on 28th February, 2012, pointing out that the Managing Committee of the School was under dispute and, as the Managing Committee was, by virtue of Rule 59(2)(q) of the DSE Rules, subject to the control of the trust and the society, by which the School was run, the Registrar of Societies was requested to clarify as to the genuine Governing Body of the Society running the School, so that a decision could be taken by the DoE.

21. In yet another writ petition (W.P.(C) 4241/2012) against, *inter alia*, the School, initiated by Prem Malhotra, a teacher, a learned Single Judge of this Court, noting the fact that there were, at the time, three contesting managements of the School, directed, *vide* Order dated 30th April, 2012, the DoE to take over the management of the School with immediate effect. This order was, however, carried, in appeal, by the School, to the Division Bench of this Court, by way of LPA 348/2012, which was disposed of, *vide* judgement dated 21st May, 2012, with a direction to the Administrator, i.e. the Hon’ble LG, to take a decision on the Show Cause Notice dated 23rd July, 2010 *supra*, within one week. In the event of the decision of the Hon’ble LG being in favour of taking over the School, liberty was reserved, to the School, to challenge the decision in accordance with law.

22. On 26th June, 2012, the Hon'ble LG granted approval for taking over the School. Following thereupon, *vide* Order dated 20th July, 2012, the Special Director of Education took over the management of the School, with immediate effect, for two years, in exercise of the powers conferred by Section 20(1) of the DSE Act.

23. This order, dated 20th July, 2012, was impugned, by the School, before this Court, by way of W.P.(C) 4517/2012. The said writ petition was disposed of, *vide* Order dated 7th August, 2012, recording the undertaking, of the Deputy Director of Education, to ensure that a speaking order would be passed, on the issue of takeover of the School, within two weeks, till which time the Order, dated 20th July, 2012 *supra*, would remain in abeyance.

24. In compliance with the said undertaking, a speaking Order was passed, by the Special Director of Education, on 7th September, 2012. The order noted the fact that different warring groups, claimed to be members of the Managing Committee of the School and, in view thereof, opined that, in the interests of the students studying in the School, it was imperative that the management of the School be taken over by the DoE. As such, the decision, to take over the management of the School for two years, under Section 20(1) of the DSE Act, was reiterated.

25. On 28th December, 2012, the 1948-Society wrote to the DoE, requesting that the School be inspected. In deference to the said request, the School was inspected, by an Inspection Committee of the

DoE, which submitted its Inspection Report, dated 12th March, 2013. The said Report is of relevance only to the extent that it records that, on the date of inspection, i.e. 24th January, 2013, Archana Tuli was Head of the School.

26. P. S. Pabbi, purportedly representing the Managing Committee of the School, filed Appeal No. 295/2012, before the Hon'ble LG, challenging the Order, dated 20th July, 2012, of the Special Director of Education. This appeal was dismissed, by the Hon'ble LG, *vide* Order dated 30th October, 2013, by opining that, in the interests of the students studying in the School, no occasion arose, to interfere with the decision, of the DoE, to take over the School, and that this would abide till the dispute, regarding the rightful Society, authorised to manage the School, was taken by the competent court.

27. On 6th April, 2011, Archana Tuli, representing herself as Head of the School, wrote to the DoE, objecting to P.S. Pabbi holding himself out to be the Manager of the School, pointing out that he had submitted his resignation from the School on 21st January, 2008, and that the said resignation had been approved in the meeting of the Managing Committee/Governing Body. The DoE was, therefore, requested to take action to ensure that Mr. Pabbi did not continue to represent himself as Manager of the School.

28. On 28 April, 2014, the VBGES wrote to the DoE, asserting that, after the VBGES had come into being, the powers of the erstwhile Managing Committee of the School came to vest in the VBGES.

29. On 15th July, 2014, the 1948-Society wrote to the DoE, insisting that the School was being run smoothly by it, and requesting, therefore, that this management of the School, which had been taken over by the DoE, be restored to it.

30. *Vide* Order dated 27th July, 2014, the period, for which the management of the School was taken over by the DoE, was extended till 20th July, 2015.

31. On 8th August, 2014, the 1948-Society again wrote, to the Registrar of Societies, requesting that the registration of the VBGES which, according to it, was a fraudulent body, be cancelled. The VBGES submitted a counterpoint representation, on 9th October, 2014, to the Hon'ble LG, requesting that the management of the School be restored to it, pointing out that it was the VBGES which had responded to the Show Cause Notice dated 23rd July, 2010 *supra*.

32. It is amply clear, from a reading of the above sequence of facts, that there was no love lost, between the various entities, each of whom who claimed itself to be the duly authorised and legally constituted Managing Committee, to manage the affairs of the School. In this scenario, on 16th February, 2015, the Registrar of Societies (hereinafter referred to as “the ROS”) passed an Order, on the complaint that had been made, to it, by Manish Gupta, representing the 1948-Society, i.e. M/s. Vidya Bhawan Girls School, against the VBGES. The ROS noted that, while the 1948-Society contended that

the VBGES was a fraudulent society, which had been registered by borrowing the name from the 1948-Society, with ulterior motives, the VBGES contended, *per contra*, that the 1948-Society had been amalgamated with the VBGES and was, therefore, not in existence any longer. The ROS framed the following issues, as arising for its consideration:

“1. Whether M/s VBGS is amalgamated with VBGES or not?

2. The subject matter of the dispute is to ascertain which is the real society running a school namely M/s. Vidya Bhawan Girls Sr Secondary School, located at New Rajinder Nagar, Delhi which is/was taken over by the Directorate of Education as per the orders of the Hon’ble LG of Delhi has informed by the representatives of both the parties.”

33. The ROS, in its Order dated 16th February, 2015 *supra*, reasoned thus:

(i) Under Section 12 of the Societies Registration Act, 1860, which dealt with amalgamation, it was only if the following three ingredients were cumulatively fulfilled, that one society could be said to have been amalgamated with another:

(a) The Governing Body of the allegedly succeeding society could submit the proposition for amalgamation to the members of the society, and could convene a special meeting for the consideration thereof, but no such proposition would be carried into effect unless such a report was delivered or sent by post to every member of the Society, ten days in advance of the date of special

meeting convened by the Governing Body, for the consideration thereof.

(b) Such proposition had to receive the consent, by notes, of three-fifth of the members, delivered in person, or by proxy.

(c) It had further to be confirmed by the votes of three-fifths of the members present at the second special meeting, convened by the Governing Body, at an interval of one month after the first meeting.

(ii) The VBGES had not, however, produced any original membership register, minute book, Memorandum of Association or Rules and Regulations, or any original Certificate of Registration. On this aspect, the representative of VBGES claimed that all original records of the VBGES were lying in the school, which was under the custody of the DoE, consequent to its having been taken over.

(iii) The Proceedings register, produced by VBGES reflected that the name of M/s Vidya Bhawan Education Trust was to be replaced by Vidya Bhawan Education Society.

(iv) There was nothing on record in the file, or in the Proceedings Register, regarding any resolution, for amalgamation of the 1948-Society with VBGES, under Section 12 of the Societies Registration Act.

(v) Neither was there any agenda item, in the Proceedings Register, regarding amalgamation of the said societies. Rather, the Proceedings Register reflected merger of a Trust, with the name “Vidya Bhawan Education Society”, rather than “Vidya Bhawan Girls Education Society”.

(vi) Though the 1948-Society had produced the original membership register, no original register was produced by VBGES, to substantiate its claim.

(vii) The 1948-Society had, on the other hand, produced the original Certificate of Registration, dated 26th May, 1948, the original Membership Register, the original Minutes Book, commencing 1948, the original Lease Deed of the land allotted for setting up the School in 1959 and 1977, as well as a copy of the resolution, dated 6th August, 2012, submitted to the Punjab National Bank, stating that Manish Gupta was the Secretary of the Society and authorised signatory to the Bank Account. This was corroborated by the inspection report, dated 12th March, 2013, of the DoE and the Order, dated 30th October, 2013, of the Hon’ble LG.

On the basis of the above material, the ROS held that the 1948-Society was an independent society, established in 1948-1949, separate and distinct from the VBGES, which was established in 1978, and that there had been no amalgamation of the former society with the latter. No opinion was expressed, however, regarding the claim of the 1948-Society, for restoration, to it, of the management of

the School, as this did not fall within the province of jurisdiction of the ROS.

34. Following, and consequent, upon the passing of the above Order, dated 16th February, 2015, by the ROS, the 1948-Society wrote, on 24th February, 2015, to the DoE, requesting that, in view of the specific finding, of the ROS, regarding the absence of any amalgamation, of the 1948-Society with the VBGES, having ever taken place, the management of the School be returned to it. This request was reiterated *vide* letter dated 25th May, 2015 and 24th August, 2015.

35. As against this, the VBGES also represented, to the DoE, on 9th June, 2015, 17th June, 2015 and 14th July, 2015, requesting that the management of the School be restored to it.

36. The period, for which the management of the School had been taken over by the DoE was extended till 20th July, 2016, *vide* Order dated 15th July, 2015, passed by the Special DoE.

37. On 21st July, 2015, the DoE wrote to the VBGES, rejecting the request, of the latter, for restoration of the management of the School, as the management had been taken over, consequent to orders passed by the Hon'ble LG.

38. Three appeals were preferred, before the Hon'ble LG, with (i) the Managing Committee of the School, through its Chairperson Amrit

Mohini Suri, preferring Appeal No. 176/2015, against the Order dated 7th September, 2012 *supra*, passed by the Special DoE, (ii) the VBGES through its Manager P. S. Pabbi, preferring Appeal No. 197/2015, challenging the Order, dated 15th July, 2015 *supra*, passed by the Special DoE, and (iii) the 1948-Society, through Secretary Manish Gupta, preferring Appeal No. 204/2015, challenging the Order, dated 21st July, 2015 *supra*, passed by the Deputy Director of Education (DDE).

39. All these appeals stand disposed of, *vide* the impugned Order, dated 27th January, 2016, passed by the Hon'ble LG. After reproducing the submissions advanced, before him, by all parties, the Hon'ble LG concludes the impugned order, thus:

"I have considered the submissions made by all the sides and have also gone through the case files. Earlier also the present matter had come before this Court, wherein while disposing of the appeal case no. 295/2012 *vide* order dated 30.10.2013, it had been observed that the dispute between different groups, were claiming to be the real Society/ Management for taking control of the management of the appellant school, had been adversely affecting the interest of the nearly 1700 girl students belonging to weaker section of the society and teachers of the school. Vide the said order it had been further ordered that till the dispute regarding the rightful society/management of the school is decided in the Competent Court, the administration of the school shall be looked after by the Education Department.

Now the appellant in case no 204/2015 has placed on record a copy of order dated 16.02.2015 passed by the Special Commissioner of Industry/Registrar of Societies on the complaint filed by Shri Manish Gupta, Secretary M/s Vidya Bhawan Girls School (Registration No. S-341) wherein it has been held that "M/s Vidya Bhawan Girls School, Delhi (Registration No. S-341) is an independent society established in the year 1948-49 and is a separate and distinct

from M/s Vidya Bhawan Girls Education Society (S-9630) established in the year 1978. No amalgamation as per our records has ever taken place.” The said order had been passed at the instance of the appellant in case no 204/2015 and admittedly had not been challenged by the other two appellants herein.

I am of the view that the matter of the management has been resolved finally and the stage has come to hand over the management of the school to its rightful owner. I, therefore, set aside the impugned orders and the Director of Education is directed to take steps to restore the management of the school to M/s Vidya Bhawan Girls School (Registration No S-341), through its Secretary Shri Manish Gupta.”

40. It is important, at the outset, to appreciate the scope of the Order dated 16th February, 2015, passed by the ROS, and the Order dated 27th January, 2016, passed by the Hon’ble LG, as these two orders constitute, essentially, the subject matter of challenge in these writ petitions.

41. The ROS has, in his Order dated 16th February, 2015, only adjudicated on the issue of whether there had, or had not, been an amalgamation, of the 1948-Society with the VBGES. He has answered this issue in the negative, reserving, in the process, liberty, to the parties, in the following terms:

“With regard to other disputes raised by the Complainant regarding restoration of the school, they are at liberty to move the competent authority as this does not fall within the jurisdiction of the undersigned.”

42. The Hon’ble LG, for his part, was hearing appeals against the Order, dated 7th September, 2012, passed by the special DoE, taking over the management of the School, and the subsequent orders, dated

15th July, 2015 and 21st July, 2015, extending the period of takeover. The Hon'ble LG discontinued the takeover of the School, and restored the management of the School to the 1948-Society through its Secretary, Manish Gupta. The grievance, of the various petitioners, before the Hon'ble LG, insofar as it pertains to the decision to take over the management of the School, therefore, no longer survives. The scope of judicial review, over the order of the Hon'ble LG is, therefore, limited to examining whether the Hon'ble LG was, or was not, justified in handing over the management of the School to the 1948-Society through Secretary Manish Gupta. Needless to say, each of the petitioners, in these two writ petitions, asserts that the management of the School ought to have been handed over to it.

43. Detailed submissions, on these writ petitions, and the issues raised therein, have been advanced before me, by Mr. D. Verma, on behalf of the 1948-Society, Mr. Rakesh Tiku, learned Senior Counsel, on behalf of the VBGES, Mr. Santosh Kumar Tripathi, learned Additional Standing Counsel, on behalf of the DoE and Mr. Hitendra Nahata on behalf of Manish Gupta.

44. Mr. D. Verma, appearing for the 1948-Society has contended, essentially, that the Hon'ble LG had erred in directly handing over of the possession of the School to a specified individual, i.e. Manish Gupta, purportedly an office bearer of the 1948-society. It is pointed out that whereas, in the communication, dated 25th November, 2011, addressed to the Education Officer, Manish Gupta has represented himself as the Manager of the School, he has, in his appeal before the

Hon'ble LG, as well as in the pleadings before this Court, purported to be the Secretary of the 1948-Society. Mr. Verma, has also taken exception to the Hon'ble LG directing restoration of the School to Manish Gupta, by name, merely because the Order, dated 16th February, 2015 *supra*, passed by the ROS, had been placed on record by him. It is further pointed out, relying, for the said purpose, on the judgements of this Court in ***Prakash v. G.N.C.T.D., (2006) 89 DRJ 492*** and ***Supreme Court Bar Association v. The Registrar of Societies, 2012 SCC Online Del 6415***, that the ROS has no power to adjudicate on *inter-se* disputes between the members of the rival managements of a society, which could only be decided by a competent civil court, under Section 13 of the Societies Registration Act. Mr. Verma, draws attention to the Order, dated 30th October, 2013 *supra*, passed by the Hon'ble LG, in which it had been specifically held that the dispute, as to the rightful authority to manage the School, was required to be adjudicated by a competent court. It was, therefore, it is argued, entirely incomprehensible as to how the Hon'ble LG could recognise the claim of Manish Gupta, to the management of the School. Mr. Verma, also endorses the finding, of the ROS, as contained in the Order dated 16th February, 2015 *supra*, that the requisite material, evidencing amalgamation of the 1948-Society with the VBGES, as required by Section 12 of the Societies Registration Act, was not forthcoming. For all these reasons, the 1948-Society, represented by Mr. Verma, prays that the impugned Order, dated 27th January, 2016, insofar as it directs restoration of the management of the School to Manish Gupta, be set aside, and the

management of the School be restored to the 1948-Society, through its Chairperson Amrit Mohini Suri.

45. Mr. Rakesh Tikku, learned Senior Counsel appearing for the VBGES objected to the very filing of Appeal No. 176/2015, by Amrit Mohini Suri, before the Hon'ble LG, pointing out that the said appellant was never in the picture, and did not file any appeal, under Section 20(4) of the DSE Act, challenging the order of takeover, dated 7th September, 2012. He further sought to place reliance on the stand adopted by the DoE, which expressed doubts regarding the bona fides of the 1948-Society, and faulted the Hon'ble LG for not having taken, into consideration, the response of the DoE. He pointed out that the reply, to the Show Cause Notice, dated 7th August, 2010 *supra*, was signed by P. S. Pabbi, as Manager of the School. According to Mr. Tikku, the one and only Managing Committee, approved by the DoE, as per its communications dated 22nd February, 2011 and 28th February, 2011, was the Managing Committee in which P.S. Pabbi was Manager. It was highlighted that the requirement of constituting a Managing Committee was mandatory, under Rule 59 of the DSE Rules. Mr. Tikku castigated the Order, dated 16th February, 2015, of the ROS, as completely illegal and unwarranted, resulting, as it did, in the revival of a defunct society, after a gap of about 35 years. It was pointed out that the said decision had been arrived at, in the absence of the original file of the 1948-Society. Various other submissions, to indicate control, having been exercised by the VBGES, were also advanced. Repeated emphasis was laid, by Mr. Tikku, on the fact that the DoE had, in its submissions, effectively disowned the 1948-

Society, as being anywhere in the picture after 1978, whereafter, according to the stand of the DoE, the School was run by the VBGES. According to Mr. Tiku, the DoE was the best authority to opine on the issue, and its opinion was, therefore, entitled to great respect.

Analysis and conclusion

46. A perusal of the facts, as set out herein above, discloses that the VBGES had earlier preferred Appeal No. 295/2012, specifically challenging the Order, dated 7th September, 2012 *supra*, passed by the Special DoE, taking over the management of the School. This appeal was dismissed, by the Hon'ble LG, *vide* Order dated 30th October, 2013 *supra*. The concluding, and operative, paragraph of the said Order, dated 30th October, 2013, reads thus:

“I have considered the submissions made by both sides and the applicants and have also gone through the case file. I feel that dispute between different groups, were claiming to be the real Society/Management for taking control of the management of the appellant school would adversely affect the interest of the nearly 1700 girl students belonging to weaker section of the society and teachers of the school. I am, therefore, of the opinion that till the dispute regarding the rightful society/Management of the school is decided in the Competent Court, the administration of the school shall be looked after by the Education Department. I, therefore, find no ground to interfere with the impugned order. The same is upheld and the appeal is dismissed.”

47. This order was never challenged, by the VBGES, either by way of an appeal or by way of any other cognate proceeding. Strictly speaking, therefore, the very maintainability of Appeal No. 197/2015, as preferred by the VBGES, challenging the order extending the time

of takeover of the School, may be questionable. However, for better or for worse, the Hon'ble LG entertained the said appeal, which has culminated in the passing of the impugned Order dated 27th January, 2016. The decision taken on 30th October, 2013, no longer continues to have effect, as the Hon'ble LG has brought to an end, the "takeover" of the School by the DoE. The VBGES claims, in the present writ petition preferred by it [W.P.(C) 1239/2016], to be aggrieved by the consequent direction, of the Hon'ble LG, to hand over the management of the School to Manish Gupta. There can be no doubt that this grievance constitutes an entirely fresh cause of action, against which the VBGES would be entitled to maintain a writ petition before this Court.

Competence of the ROS, or the DoE, to adjudicate on the claims of the rival managing committees/societies:

48. Section 13 of the Societies Registration Act provides as under:

"13. Provision for dissolution of societies and adjustment of the affairs. – Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and if not, then as the governing body shall find it expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of the original civil jurisdiction of the district in which the Chief building of the society situate; and the Court shall make such order in the matter as it shall deem requisite:

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at the general meeting convened for the purpose:

Provided that whenever any Government is a member of, or contribute to, or otherwise interested in any society registered under this Act, such society shall not be dissolved without the consent of the Government of the State of registration.”

49. On the competence of the ROS to adjudicate on the claims of rival societies, Vikramajit Sen, J. (as he then was) has, in *Prakash v. G.N.C.T.D., 2006 (89) DRJ 492*, clearly held, following an earlier decision, qua of a Division Bench of this Court in CWP 2369/1995 (*Sarvardeshik Arya Pratinidhi Sabha v. Registrar of Societies*), that the ROS has no role to play in the adjudication for determination of internal disputes, which would include questions pertaining to which faction or party is legitimate. It was observed that the parties had the unfettered right to file a suit, if they were so advised.

50. Even otherwise, in facts as involved as those arising in the present case, any adjudication, of the claims of the rival factions/committees/societies, for management of the School, would involve detailed examination and analysis of evidence, which would necessarily fall within the pale of jurisdiction of a competent civil court. Neither the ROS, nor the DoE – or, in appeal, the Hon’ble LG – has, adversely, ventured into this labyrinth. In fact, in the earlier order, dated 30th October, 2013 *supra*, passed by the Hon’ble LG in Appeal No. 295/2012, preferred by the VBGES, challenging the Order, dated 7th September, 2012 *supra*, of the Special DoE, taking over the

management of the School, it has specifically been observed that, *till the dispute regarding the rightful society/management of the school is decided in the competent court*, the administration of the School would be looked after by the DoE. This order, as already observed hereinabove, was accepted by the VBGES which, consequently, acknowledged the legal position that the dispute, regarding the rightful society/management to manage the affairs of the School, necessarily required adjudication by a competent civil court.

51. Viewed in this background, it is apparent that the decision, of the Hon'ble LG, in the impugned Order, dated 27th January, 2016, to hand over the management of the School to the 1948-Society, through Sh. Manish Gupta, is only in the nature of an interim arrangement, till the rival claims, of the 1948-Society and the VBGES, as well as the *inter se* claims between Amrit Mohini Suri and Manish Gupta, are adjudicated by the competent civil court, and the exact identity of the Society, which ought to manage the affairs of the School, is delineated and determined.

52. One may refer, in this context, to the judgement, of the Division Bench of the High Court of Allahabad in ***Committee of Management of Bundelkhand College, Jhansi v. State of U.P., 1982 UPLBEC 531***, which held that an order of the revocation of appointment of the authorised controller and handing over of the management of the appellant college, in that case, to one of the rival sets of committees, which claimed its right to such management, was merely a tentative order, and that the aggrieved committee had a right to agitate its

grievance in the civil court or in any other forum. In the said case, the representations of both rival committees, claiming management of the college, were considered, and an order was passed in favour of one of the rival committees, which was held, by the Division Bench of the High Court, to be tentative, subject to the decision of the civil suit or any other remedy which was available to the other committee, which was not giving the charge of management.

53. Seen in juxtaposition with his earlier Order dated 30th October, 2013, it is apparent that the Hon'ble LG has, in the impugned Order dated 27th January, 2016, restored the management of the School to the 1948-Society, through its secretary Manish Gupta, only as an ad interim arrangement, which would necessarily be subject to a resolution, of the merits of the rival claims, of the competing committees, by a competent civil court, should any of the parties elect to avail such a remedy.

54. The present proceedings do not, therefore, require this Court to venture, even tentatively, into the arena of the rival claims of the 1948-Society, vis-à-vis the VBGES. This court is only required to adjudicate, in these writ petitions, on whether (i) the Order, dated 16th February, 2015, of the ROS, holding that there had been no amalgamation, of the 1948-Society with the VBGES, and that both societies were independent of each other, and (ii) the Order, dated 27th January, 2016, of the Hon'ble LG, insofar as it has handed over the management of the school, "to M/s Vidya Bhawan Girls School

(Registration No S-341), through its Secretary Sh. Manish Gupta”, are sustainable, in law and on facts, or not.

55. The ROS has, in his Order dated 16th February, 2015 *supra*, proceeded on the premise that the requisites of Section 12 of the Societies Registration Act, which deals, *inter alia*, with amalgamation of societies, were not fulfilled, in the present case, so as to make out a case of amalgamation of the 1948-Society with the VBGES. Section 12 of the Societies Registration Act reads as under:

“12. Societies enabled to alter, extend or abridge their purposes. – Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society;

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at the second special meeting convened by the governing body at an interval of one month after the formal meeting.”

56. Clearly, Section 12 of the Societies Registration Act contemplates the following steps, to be carried out and completed, before one society can amalgamate with another:

- (i) submission, by the governing body of the society, of the proposition to the members of the society in a written or printed report,
- (ii) convening of a special meeting for the consideration of the proposition, according to the regulations of the society,
- (iii) delivery, or dispatch, by post, of the report, to every member of the society, at least ten days prior to the aforesaid special meeting,
- (iv) agreement, to the proposition, by the votes of three-fifths of the members, delivered in person or by proxy, and
- (v) confirmation, thereof, by the votes of three-fifth of the members present at the second special meeting convened by the governing body, one month after the 1st special meeting.

57. Though Section 12 of the Societies Registration Act uses the word “may”, it has been held in, *inter alia*, ***State of U.P. v. Joginder Singh, AIR 1963 SC 1618*** and ***Textile Commission of Govt of India v. Shri Jagdish Process Pvt Ltd, (1977) 2 SCC 579***, that, where the discretion conferred by the use of the word “may”, on a public authority, is coupled with an obligation, the discretion should be construed to mean a command. Applying this principle, the process and procedure, stipulated by Section 12 of the Societies Registration Act, for amalgamation of societies, has strictly to be followed. It is also trite that, where the law prescribes a particular manner in which an act is to be done, that act has to be done in that manner, or not done

at all. [Ref. *Taylor v. Taylor*, (1875) 1 Ch. D. 426 and *Nazir Ahmed v. King Emperor*, L.R. 63 I.A. 372] *Sans* implicit compliance, with the procedure stipulated in Section 12 of the Societies Registration Act, therefore, there can be no amalgamation of societies, as correctly held by the ROS in the Order, dated 16th February, 2015 *supra*.

58. It may be noted, here, that, in *Anil Nanda v. Escorts Ltd*, (2009) 156 DLT 697 (DB), a Division Bench of this Court held that, as, against an order of amalgamation of societies, passed under Section 12 of the Societies Registration Act, no remedy was available, under the said Act, any party, aggrieved by such order, would have to file a civil suit. I see no reason why the same principle would not apply, where the decision of the competent authority – the ROS, in the present case – is that no amalgamation had taken place. It appears difficult, to me, for a writ court to examine whether amalgamation of two societies had, or had not, taken place, the exercise necessarily involving exhaustive and comprehensive analysis of evidence.

59. Insofar as the challenge, by the VBGES, to the Order, dated 16th February, 2015 *supra*, of the ROS, is concerned, suffice it to state that there is no averment, either in the writ petition filed by the VBGES [W.P. (C)1239/2016], or in the written submissions filed consequent to the conclusion of hearing in court, to the effect that the procedure, contemplated by Section 12 of the Societies Registration Act, was followed, so as to result in amalgamation of the 1948-Society with the VBGES. Nor, it may be noted, is there any document, or other material, on record, evidencing any intention or animus, on the part of

the 1948-Society, to amalgamate with the VBGES, so as to result in transfer of the entrustment of the management of the School, hithertofore being managed by the 1948-Society, to the VBGES.

60. I see no reason, therefore, to interfere with the Order, dated 16th February, 2015 *supra*, passed by the ROS, which holds, correctly, that there is no evidence of amalgamation, at any point of time, of the 1948-Society with the VBGES. The said decision is, therefore, upheld in its entirety.

61. The only issue that survives for consideration is whether the Hon'ble LG was justified in handing over the management of the School to the 1948-Society through its Secretary Shri Manish Gupta, in the Order dated 27th January, 2016. As already noted hereinabove, the competing claims, of the 1948-Society, vis-à-vis the VBGES, would have to be thrashed out, in appropriate civil proceedings, which are necessary, if a definitive and final decision, regarding the Managing Committee, or society, which is duly competent and authorised to administer the affairs of the School, is to be arrived at. Having held that there was no necessity of continuing the decision to take over the management of the School, the Hon'ble LG decided to hand over the management of the School to the 1948-Society, through its Secretary Manish Gupta. It is important to note that the impugned Order, dated 27th January, 2016, does not hand over the management of the School to Manish Gupta in his personal capacity, but has directed handover of the School to the 1948-Society, acting through its Secretary Manish Gupta. This is a subjective decision, arrived at,

by the Hon'ble LG, and cannot be said to suffer from arbitrariness or perversity, in any manner.

62. It cannot be said that there was no material, before the Hon'ble LG, on the basis whereof it was possible for him to arrive at a subjective decision that Manish Gupta was, in fact, the Secretary of the 1948-Society, or that the reins of the school could be handed over to the 1948-Society, acting through him as its secretary. A reading of the Order, dated 16th February, 2015, of the ROS, indicates that Manish Gupta was the authorised signatory, competent to act as Secretary, on behalf of the 1948-Society and operate its Bank account. Reference has also been made, in the said order, to the minutes of the meeting, dated 24th December, 2011, of the 1948-Society, authorising Manish Gupta to act as its Secretary. Additionally, the list of members of the Managing Committee of the School, dated 21st December, 2012 and countersigned by the Education Officer, Zone-28, also indicated Manish Gupta to be the Manager in the Managing Committee of the School. The complaint, dated 8th August, 2014, whereupon the ROS passed the Order dated 15th February, 2015 *supra*, was also addressed by Manish Gupta as Secretary of the 1948-Society. The invitation, dated 28th December, 2012, to the DoE, to visit the School, was also addressed by Manish Gupta, as authorised signatory of the School. The Inspection Report, dated 12th March, 2013, issued by the inspecting committee of the DoE, indicated that, on 24th January, 2013, when the school was inspected, Archana Tuli was present in the school as its HOS. This fact, viewed in conjunction with the letter dated 15th November, 2011, addressed by Archana Tuli, to the

Education Officer, indicated Archana Tuli to be the head of the School, and Manish Gupta to be its Manager, also indicates that Manish Gupta was, at the time, the Manager of the School. Three specimen signatures, each, of Archana Tuli, as the HOS, and of Manish Gupta, as the Manager of the School, were also enclosed with the said letter. The letter, dated 25th May, 2015, addressed to the Secretary (Education), GNCTD, for restoration of the School to the 1948-Society was also addressed by Manish Gupta, as Secretary of the said Society, on the letterhead of the Society.

63. There was, therefore, ample material on record, on the basis whereof the decision, of the Hon'ble LG, to hand over the management of the School to the 1948-Society, through its Secretary Manish Gupta, could be justified. While this Court reiterates that, in entering these observations, it is not intending to pronounce, definitively or finally, on the merits of the competing entitlements, of the 1948-Society, vis-à-vis the VBGES, to manage the School, it is clear that the decision, of the Hon'ble LG, to hand over the reins of the School to the 1948-Society, through Manish Gupta, as its Secretary, cannot be said to be suffering from any such manifest arbitrariness, irrationality, illegality or perversity, as would warrant interference by this Court, in exercise of the extraordinary and discretionary jurisdiction, vested in it by Article 226 of the Constitution of India.

64. Before parting with this judgement, I deem it appropriate to allude to the written submissions, filed by the DoE before the Hon'ble

LG, on which the VBGES places great reliance. The following averments find place therein:

“Till 2010 Vidya Bhawan Girls Education Society was running the School smoothly. 2010 became the turning point in the history of the School and Vidya Bhawan was never the same again, *all due to one and only one mastermind, courtesy Ms Archana Tuli (Suspended HOS), who manipulated people and situations only to fulfil her selfish motives.*

It is also important to note that the internal conflict between the so-called authentic Society VBGS (S-341) is more than evident by the chairperson and the Secretary has filed separate Appeals each claiming the right for restoration or is this too is a result of connivance that the chances of winning had doublefaulted and the existence of VBGES (S-341) was more than evident? *One is a complete loss of words to the extent of cunningness and shrewdness of all the people involved is concerned.*

But one thing is for sure that as per the information in the Directorate is concerned Amrit Mohini Suri or Manish Gupta or Amit Rana who have been the faces of VBGS (S-341) during the last year are all outsiders and *have been planted by Ms Archana Tuli who in her sheer desperation to ensure the return to the school, hatched a plot straight out of a potboiler thriller.*”

(Emphasis supplied)

The italicized portion of the written submissions of the DoE, *supra*, denude the stand of the DoE, in these proceedings, of all credibility. I say no more.

65. The challenge, to the decision of the Hon’ble LG, in the impugned Order, dated 27th January, 2016, to hand over the management of the School to the 1948-Society, through its Secretary Manish Gupta, therefore, fails. Needless to say, however, this decision

would remain subject to the outcome of adjudication, if any, by a competent civil court, on the competing claims, to management of the School, as ventilated by the 1948-Society and the VBGES.

66. Subject to the cautionary caveat entered in para 64 hereinabove, therefore, this Court is of the view that no occasion arises, for interference, in the exercise of the jurisdiction vested, in this Court, by Article 226 of the Constitution of India, either with the Order dated 16th February, 2015, of the ROS, or the Order dated 27th January, 2016, of the Hon'ble LG.

67. Subject to the above observations, these writ petitions are, therefore, dismissed with no as to costs.

SEPTEMBER 11, 2019
HJ

C.HARI SHANKAR, J