

1 All. C/M Sri Ishwar Maharaj Uchchatar Madhyamik Vidyalaya Inter College, Agra & Anr. Vs. 305 State of U.P. & Ors.

stated/disclosed as to the date when the land in question was encroached upon by the private respondent and when the wall was constructed. It is only stated in the application that the petitioner is living at Mumbai and in her absence, the neighbour/private respondent has occupied the land in question. The details & identification of the land in question has neither been given in the writ petition nor in the application filed before the District Magistrate and the application as well as the writ petition is lacking the factual foundation for initiation of proceedings under the Act of 2007.

36. It is further to be noted that third party has already created a boundary on the land in question and, as such, there prima facie exists a dispute, which is required to be considered and decided by the court of competent jurisdiction and the District Magistrate in exercise of Rule 21, would not have the power to decide the dispute between petitioner and the private respondent, who is third party in respect of title and ownership of the land in question and the aforesaid would require the evidence to be led by the parties before the court of competent jurisdiction.

37. The petitioner in the present writ petition has prayed for direction to the District Magistrate to demolish the illegal encroachment over the petitioners adjoining land and handover the possession in favour of the petitioner. While considering the aforesaid prayer, it was imperative on the part of the petitioner to have laid the factual foundation with regard to right, title or interest of the petitioner in the property in question, in the writ petition. The

direction as prayed by the petitioner can only be issued where the petitioner shows that he has any right, title or interest in the property in question. In the writ petition neither any document has been produced to indicate the right, title or interest nor the pleadings in this respect has been provided in the writ petition.

38. In view of the aforesaid, the present writ petition lacks merit and is dismissed.

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**(2022)01ILR A305**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 03.12.2021**

**BEFORE**

**THE HON'BLE MRS. MANJU RANI**  
**CHAUHAN, J.**

Writ C No. 30240 of 2021

**C/M Sri Ishwar Maharaj Uchchatar**  
**Madhyamik Vidyalaya Inter College, Agra**  
**& Anr. ...Petitioners**

**Versus**

**State of U.P. & Ors. ...Respondents**

**Counsel for the Petitioners:**

Sri Saurabh Singh, Sri Amit Saxena (Sr. Advocate), Sri Rohit Upadhyay

**Counsel for the Respondents:**

C.S.C.

**A. Committee of Management – Election dispute – Rival claim – Order for single operation was passed by D.I.O.S. – No reason recorded – Effect – Held, it is settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. (Para 16)**

**B. Constitution of India – Article 14 & 21 – Principle of natural justice – No opportunity of hearing was given – Effect – Held, the D.I.O.S. has passed the impugned order behind the back of the petitioners without affording any opportunity of hearing to the petitioners, which is clearly in violation of principle of natural justice, which is the requirement of Articles 14 and 21 of the Constitution of India. (Para 23)**

**Writ petition allowed. (E-1)**

**List of Cases cited :-**

1. Committee of Management, Raja Tej Singh Vidyalaya Aurandh, Mainpuri Vs District Inspector of Schools, Mainpuri; 2000 0 Supreme (All) 32
2. Committee of Management of Rajendra Prasad Intermediate College, Bareilly Vs DIOS, Bareilly & anr.; 1990(1) UPLBEC 189
3. Committee of Management Ramroop Singh Dhanraj Singh Intermediate College, Fatehpur Vs DIOS Fatehpur & ors.; 2000 (2) UPLBEC, (Summary) 54
4. Committee of Management Gandhi Smarak Inter College, Jainganj, Agra Vs DIOS Agra; 2001(1) UPLBEC 1347
5. Babu Triloki Singh Inter College Vs St. of U.P. & ors.; 2020(9) ADJ 192
6. Kumari Shrilekha Vidyarthi & Ors. Vs St. of U.P. & ors.; AIR 1991 SC 537
7. Life Insurance Corporation of India Vs Consumer Education & Research Centre; (1995) 2 SCC 480
8. Mahesh Chandra Vs Regional Manager, U.P. Financial Corporation & ors.; AIR 1993 SC 935
9. U.O.I. Vs. M.L. Capoor; AIR 1974 SC 87
10. St. of W.B. Vs Atul Krishna Shaw & anr., 1991 (Suppl.) 1 SCC 414
11. S.N. Mukherjee Vs U.O.I.; AIR 1990 SC 1984
12. Krishna Swami Vs U.O.I. & ors.; AIR 1993 SC 1407

13. Institute of Chartered Accountants of India Vs L.K. Ratna & ors.; (1986) 4 SCC 537

14. Board of Trustees of the Port of Bombay Vs Dilipkumar Raghavendranath Nadkarni & Ors.; AIR 1983 SC 109

15. Rameshwari Devi Vs St. of Raj. & ors.; AIR 1999 Raj. 47

16. Vasant D. Bhavsar Vs Bar Council of India & ors.; (1999) 1 SCC 45

17. M/s. Indian Charge Chrome Ltd. & Anr. Vs U.O.I. & ors, 2003 AIR SCW 440

18. Secretary, Ministry of Chemicals & Fertilizers, Government of India Vs CIPLA Ltd. & ors.; (2003) 7 SCC 1

19. U.O.I. & anr. Vs International Trading Co. & anr.; (2003) 5 SCC 437

20. Raj Kishore Jha Vs St. of Bihar & ors.; (2003) 11 SCC 519

21. St. of Uttranchal Vs Sunil Kumar Negi; 2008 (4) ALJ 226,

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Sri Amit Saxena, Senior Advocate assisted by Sri Saurabh Singh, learned counsel for the petitioners, Sri Shailendra Singh, learned Standing Counsel for the State-respondents.

2. The present writ petition has been filed by the petitioner for quashing the impugned order dated 31.07.2021 passed by the District Inspector of Schools, Agra (D.I.O.S.) under Section 5 (1) of the payment of Salaries Act, 1971 (hereinafter referred to as "Act 1971), for single operation of the Account of the College. He has also prayed for a mandamus directing the respondents not to interfere in the peaceful functioning of the petitioner's institution in accordance with law.

3. Brief facts of the case is that Sri Ishwar Maharaj Inter College, Nagla Teja, Agra is a recognized and aided intermediate institution, which is governed by the provisions of the Intermediate Education Act, 1921 and the regulations framed thereunder. There is an approved scheme of administration of the institution wherein the term of the Committee of Management is four years. The Committee of Management has constantly being recognized as the validly constituted committee and the last undisputed elections were held on 15.04.2012 and the term of the committee of management was to expire on 15.05.2016.

4. Before expiry of the aforesaid term, a rival claim was setup by one Mr. M.D. Dwivedi and after several litigations, the elections of both the rival groups were discarded by the respondent no.2, i.e. Regional Education Committee, Agra Region, Agra, vide order dated 29.12.2016, wherein a direction was given to hold a fresh elections. However, after reconsideration of the matter, the respondent no.2 vide its order dated 28.11.2018 upheld the validity of the elections of the petitioner's committee of the management, which were held on 17.04.2016. After several litigations, it was ultimately the elections of petitioners' committee of management, which was taken to be valid elections and, therefore, the petitioners' committee of management was managing the affairs of the institution.

5. Since the term of petitioners' committee of management, which was recognized on 17.04.2016, was to expire on 17.04.2020, hence the proceedings were initiated for holding of elections on the date

fixed, i.e. 19.04.2020, which was later postponed to 05.07.2020 due to Covid-19. The elections were held on 05.07.2020 and the results were declared on the same date, wherein the petitioner no.2 was again elected as Manager of Committee of management and entire papers pertaining to the elections were submitted in the office of respondent no.3 on 10.07.2020. Surprisingly, the order dated 02.07.2020 was received by the petitioner, which records that the elections of petitioners' committee of management held in the year 2012 and 2016 was found to be valid and the petitioners' committee was in effective control of the institution. By the said order, a direction has been issued to the D.I.O.S. to hold fresh elections within a period of three months as the term of the committee of management has expired on 16.04.2020. The aforesaid order has been passed in compliance of the order dated 28.02.2019 passed in Writ -C No. 3551 of 2019, wherein several directions were issued. However, the Court had declined to interfere with the order dated 28.02.2019 vide which the respondent no.2 had upheld the validity of elections of the petitioners' committee of management, which were held on 17.04.2016. Thereafter, the aforesaid order dated 02.07.2020 was challenged by the petitioners by means of Writ C No.15879 of 2020, wherein vide order dated 12.10.2020, the Court had passed the following order:-

*"Heard Shri Amit Saxena, learned Senior Advocate for the petitioner.*

*Challenge in the writ petition is to an order dated 22.07.2020 passed by the respondent No. 2, Regional Committee, Agra, Region Agra, which was seized of the matter pursuant to order of remand passed*

by the High Court on 28.02.2019, requiring two issues, pertaining to the election of the petitioners Committee of Management held in the year 2016 which issues had not been dealt with while upholding the elections.

*The operative portion of the impugned order directs a fresh election to be held while upholding petitioners election of 2016.*

*It is contended that the election of the 2016 were held on 17.04.2016. The term of Committee of Management was 4 years. Therefore fresh election was notified for 19.04.2020 but could not have been held on account of the lockdown.*

*It is contended that an advertisement was actually published that the elections were to be held on 05.07.2020 but while passing the impugned order, this aspect has not been adverted to. In any case, the elections have been duly held and the papers have been forwarded for necessary action. Under the circumstances, the direction for holding fresh elections is unjustified.*

*It has also been stated that the no election scheduled has been notified till date.*

*Matter requires consideration.*

*Learned Standing Counsel may file a counter affidavit within three weeks.*

*Counsel for the petitioner will have one week thereafter to file a rejoinder affidavit.*

*List this petition for admission/ final hearing immediately after 4 weeks.*

*Until further orders, directions contained in the impugned order for holding fresh elections to the Committee of Management, shall remain stayed."*

6. Pursuant to the aforesaid order dated 12.10.2020, since holding of fresh elections in the institution were stayed, the petitioners' committee of management as

validly elected on 17.04.2016, is still managing the affairs of the institution.

7. Surprisingly, the respondent no.3, i.e. the D.I.O.S., Agra has passed the impugned order dated 31.07.2021, whereby he has directed the single operation of accounts of the petitioners' institution.

8. Mr. Amit Saxena, Senior Advocate assisted by Mr. Saurabh Singh, learned counsel for the petitioners submits that the order passed by the District Inspector of School, Agra dated 31.07.2021 directing single operation of bank accounts of the petitioners' institution is in violation of principal of natural justice, as there is no whisper as on which date the petitioner has been afforded opportunity of hearing to the petitioner. In support of the aforesaid submission, the learned counsel for the petitioners has placed reliance upon a judgment of this Court in the case of **Committee of Management, Raja Tej Singh Vidyalaya Aurandh, Mainpuri-Appellant Vs. District Inspector of Schools, Mainpuri-Respondents** reported in **2000 0 Supreme (All) 32**, wherein it has been held as follows:

*"29.....no order for single operation of accounts can be passed without reasonable opportunity to the Committee of Management....."*

9. Learned counsel for the petitioners further submits that the impugned order dated 31.07.2021 is without jurisdiction and not sustainable in the eye of law as Section 5 of the Act, 1971, provides that the D.I.O.S. is empowered to pass an order for single operation, if there is any difficulty in disbursement of the salary to the teaching and non-teaching staff of the institution. Neither any such complaint is

there before the D.I.O.S. in this regard nor any reason has been indicated in the impugned order, showing any difficulty in disbursement of salary of staff of the institution.

10. Learned counsel for the petitioner has placed reliance upon the judgments of this Court reported in **1990(1) UPLBEC, page 189; Committee of Management of Rajendra Prasad Intermediate College, Bareilly Vs. DIOS, Bareilly and another, 2000 (2) UPLBEC, (Summary) 54; Committee of Management Ramroop Singh Dhanraj Singh Intermediate College, Fatehpur Vs. DIOS Fatehpur and others, 2001(1) UPLBEC, Page 1347; Committee of Management Gandhi Smarak Inter College, Jainganj, Agra Vs. DIOS Agra and 2020(9) ADJ 192; Babu Triloki Singh Inter College vs. State of U.P. and Ors.**, wherein it has been held that an order of single operation of accounts could be passed by the D.I.O.S. under Section 5(1) of the Act, 1971, where the difficulty has arisen in disbursement of salary of the staff of the institution due to any default of the Management. The order for single operation of accounts could not be passed without providing opportunity of hearing to the Committee of Management.

11. Mr. Shailendra Singh, learned Standing Counsel does not dispute the fact that the impugned order dated 31.07.2021 has been passed without affording opportunity of hearing to the petitioners.

12. Counsel for the parties agree that the writ petition may be disposed of finally

at this stage without calling for a counter affidavit specifically in view of the order proposed to be passed today.

13. In order to appreciate the contentions advanced by learned counsel for the parties, it would be appropriate to refer to the relevant provisions of Section 5(1) of the Payment of Salaries Act, 1971, which is reproduced below: -

**"5. Procedure for payment of salary in the case of certain institutions. -**

(1) The management of every institution shall, for the purpose of disbursement of salaries to its teachers and employees, open [in a Scheduled Bank or a Cooperative Bank] a separate account to be opened jointly by a representative of the management and by the Inspector or such other officer as may be authorised in that behalf:

*Provided that after the account is opened, the Inspector may, if he is, subject to any rules made under this Act, satisfied that it is expedient in the public interest so to do, instruct the bank that the account shall be operated by the representative as the management alone, and may at any time revoke such instruction :*

*Provided further that in the case referred to in the provision to subsection (2), or where a difficulty arises in the disbursement of salaries due to any default of the management, the Inspector may instruct the Bank that the account shall be operated only by himself or by such other officer as may be authorised by him in that behalf and may at any time revoke such instruction."*

14. As per the requirement of the above Section 5(1) of the Act 1971, an

order of single operation of the accounts could be passed by the D.I.O.S. where the difficulty has arisen in disbursement of salary of the staff of the institution due to any default of the management.

15. From bare reading of the impugned order dated 31.07.2021, it is apparently clear that the petitioners have not been afforded any opportunity of hearing before passing the impugned order, as there is no whisper in order, as to on which date the petitioners have been called upon to set up his case with regard to any complaint made against him. Perusal of the impugned order dated 31.07.2021 goes to show that the D.I.O.S. has not mentioned that the petitioners' committee of management has defaulted in making payment to the staff (teaching or non-teaching) and there is no complaint to that effect also.

16. So far as the second submission made by the learned counsel for the petitioners is concerned, this Court may record that it is settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In **Kumari Shrelekha Vidyarthi & Ors. Vs. State of U.P. & Ors.**, reported in AIR 1991 SC 537, the Apex Court has observed as under:-

*"Every such action may be informed by reason and if follows that an act un-informed by reason is arbitrary, the rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that "be you ever so high, the laws are above you." This is what a man in power must remember always."*

17. In **Life Insurance Corporation of India Vs. Consumer Education and Research Centre**, reported in (1995) 2 SCC 480, the Apex Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. *"Duty to act fairly"* is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. Same view has been reiterated by the Apex Court in **Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation & Ors.**, reported in AIR 1993 SC 935; and **Union of India Versus M.L. Kapoor**, reported in AIR 1974 SC 87.

18. In **State of West Bengal Vs. Atul Krishna Shaw & Anr.**, 1991 reported in (Suppl.) 1 SCC 414, the Apex Court observed that *"giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review."*

19. In **S.N. Mukherjee Vs. Union of India**, reported in AIR 1990 SC 1984, it has been held that the object underlying the rules of natural justice is to prevent mis-carriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

20. In *Krishna Swami Vs. Union of India & Ors.*, reported in AIR 1993 SC 1407, the Apex Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. The Court further observed that "*reasons are the links between the material, the foundation for these erection and the actual conclusions. They would also administer how the mind of the maker was activated and actuated and there rational nexus and syntheses with the facts considered and the conclusion reached. Lest it may not be arbitrary, unfair and unjust, violate Article 14 or unfair procedure offending Article 21.*"

21. Similar view has been taken by the Apex Court in *Institute of Chartered Accountants of India Vs. L.K. Ratna & Ors.*, (1986) 4 SCC 537; *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni & Ors.*, AIR 1983 SC 109. In *Rameshwari Devi Vs. State of Rajasthan & Ors.*, AIR 1999 Raj. 47. In *Vasant D. Bhavsar Vs. Bar Council of India & Ors.*, (1999) 1 SCC 45, the Apex Court held that an authority must pass a speaking and reasoned order indicating the material on which its conclusions are based. Similar view has been reiterated in *M/s. Indian Charge Chrome Ltd. & Anr. Vs. Union of India & Ors.*, 2003 AIR SCW 440; *Secretary, Ministry of Chemicals & Fertilizers, Government of India Vs. CIPLA Ltd. & Ors.*, (2003) 7 SCC 1; and *Union of India & Anr. Vs. International Trading Co. & Anr.*, (2003) 5 SCC 437.

22. The Apex Court in the case of in *Raj Kishore Jha vs. State of Bihar*

*and Ors. Reported in (2003) 11 SCC 519* and in the case of *State of Uttranchal Vs. Sunil Kumar Negi reported in 2008 (4) ALJ. 226*, has held that reason is the heartbeat of every conclusion and without the same, it becomes lifeless.

23. So far as the first submission made by the learned counsel for the petitioners is concerned, this Court may record that the D.I.O.S. has passed the impugned order behind the back of the petitioners without affording any opportunity of hearing to the petitioners, which is clearly in violation of principle of natural justice, which is the requirement of Articles 14 and 21 of the Constitution of India.

24. The D.I.O.S. has failed to consider that the petitioners' committee of management is still functioning and managing the affairs of the institution in the light of orders of this Court.

25. In view of the above, the order dated 31.07.2021 passed by the District Inspector of Schools, Agra being contrary to the provision of Section 5 (1) of the Act 1971 and without providing any opportunity of hearing to the petitioners, is arbitrary, illegal and is liable to be set aside.

26. Accordingly, the present writ petition is allowed. The impugned order dated 31.07.2021 passed by the D.I.O.S., Agra is hereby quashed.

27. No order as to cost.

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