

Before : A. S. Nehra & R. S. Mongia, JJ.

VIVEKA NAND SHIKSHA SAMITI,—Petitioner.

versus

STATE OF HARYANA ETC.,—Respondents.

Letters Patent Appeal No. 352 of 1992.

2nd June, 1992.

Haryana Private Colleges (Taking over the Management) Act, 1978—Ss. 2 & 3—Govt. Instruction No. 755-3/1-79-CII(2), dated 9th February, 1983—Government taking over private college—Administrator appointed for one year—Meanwhile election to the Governing Body held after notice to Government and M. D. University, Rohtak and in presence of nominee of Government—Newly constituted Governing Body requesting Government to hand over management—Refusal of—Teacher Union requesting continuance of Administrator—Government granting extension of one year—Order of extension is invalid—Presence of one nominee of University or of Government is sufficient to hold election valid—Newly constituted Governing Body has a right to be handed over management.

Held, that the State Government is legally bound to hand over the Management of the College alongwith the college property to the appellant which is newly elected Governing body of the college. The Governing body of the College was elected on July 27, 1991 in the presence of the nominee of the Government. Nominee of the government had intimated the Government that the election of the Governing body of the College was held in his presence and the election was valid. University was also informed to send its nominee at the time of election but the University did not sent its nominee at the time of election. Since the nominee of the University was not present at the time of election, therefore, it cannot be held in view of the instructions of the Government that the election of the Governing body is not valid. According to the instructions of the Government dated February 9, 1983, if the election is held in the presence of one nominee, still the election will be considered as valid election of the Governing body.

(Para 12)

Held, that the appellant is duly constituted Managing/Governing body of the College and, therefore, the appellant is entitled to take over the Management of the College alongwith the College property from the respondents.

(Para 13)

Held, that this Court under Art. 226 of the Constitution of India has very wide discretion in the matter of framing its writs to suit the exigencies of particular cases and a writ petition under Art. 226 of the Constitution cannot be thrown out simply on the ground that certain orders passed by the Government have not been challenged.

(Para 13)

Held, further, that the writ petition is competent and the learned Single Judge has erred in dismissing the writ petition on the ground that the Managing Committee of the College has not filed the writ petition.

(Para 13)

Letters Patent Appeal under Clause X of Letters Patent against the Judgment dated 15th January, 1992 passed by Hon'ble Single Judge Mr. Jawahar Lal Gupta in Civil Writ Petition No. 13184 of 1991.

R. K. Malik, Advocate, for the appellant.

R. C. Setia, Addl. A.G. Haryana, for Respondent No. 1.

Ajay Lamba, Advocate, for Respondent No. 2.

JUDGMENT

A. S. Nehra, J.

This appeal is directed against the judgment of the Single Judge dated January 15, 1992 by which the writ petition filed by the appellant was dismissed. Appellant Viveka Nand Shiksha Samiti, Nangal Chaudhary (hereinafter referred to as Society) is a registered society. Appellant Society authorised Shri Mala Ram, President of the Governing Body of the Viveka Nand College to file the writ petition under Article 226 of the Constitution of India for the issuance of a writ of *mandamus* to the respondents to handover the Management of Viveka Nand College, Nangal Chaudhary to the newly constituted Governing Body of Viveka Nand College Nangal Chaudhary.

(2) The Society runs a degree college in the name of Viveka Nand College, Nangal Chaudhary since 1987 Election of the Governing Body of Viveka Nand College was earlier held on April 3, 1988 and the term of the Governing Body was for three years. In the month of April, 1990. Government issued a show cause notice to the Management/President of the Governing Body of the College to show cause as to why the Management be not taken over by the Government. Since no reply was submitted, Government took over the Management of the College,—*vide* letter dated July 27, 1990 and no Administrator was appointed for a period of one year and in pursuance of appointment of the Administrator, he joined on August 7, 1990. The term of the Administrator expired on August 6, 1991.

(3) The Society decided to hold the election on July 27, 1991 and for that purpose a returning-cum-Presiding Officer was appointed. Returning-cum-Presiding Officer wrote a letter on July 13, 1991 to

the Dean Colleges, Development Council, M.D. University, Rohtak stating that the Society had decided to hold the election of the Governing Body, that he had been appointed as returning-cum-Presiding Officer to hold the election; and that a copy of the election programme was being sent to him and the Dean was requested to send his nominee at the time of election so that the election could be held according to the programme. A copy of the letter was also sent to the Director, Higher Education, Haryana with a prayer that nominee be sent at the time of election. In pursuance of the request made by the Returning-cum-Presiding Officer, the Director Higher Education Haryana appointed the Principal, Government College Narnaul as an Observer at the time of election which was to be held on July 27, 1991 at 10.00 a.m. and the Principal was directed to send his report to the effect whether the election had been held properly as per rules immediately. Election of the Governing Body was held on July 27, 1991 and the nominee of the Government informed the Director Higher Education Haryana that the election of the Governing Body was held at the time fixed in the programme and the election held was valid. It was further stated by the Principal that the election has been held in accordance with law and the report of the election in original was sent to the Director Higher Education.

(4) In spite of the request made by the Returning-cum-Presiding Officer to the University to send their nominees, University did not send its nominee at the time of election. Government of Haryana has issued instructions of February 9, 1983 regarding the presence of the nominee at the time of election of Governing Body of Private Colleges. The instructions issued by the Government read as under :—

“From

The Director Education, Haryana, Chandigarh.

To

All Governing Bodies of Private Colleges of the State.

Memo No. 755-3/1-79-CII(2), dated Chandigarh the 9th February, 1983.

Subject :

Regarding the presence of the nominees at the time of election of Governing Body of Private Colleges.”

It has been brought in the notice of the Government that according to the instructions if the nominee of the

University is not present at the time of election of the Managing Committee then the General Body has to postpone the election to some dates and due to this reason general body has to face great difficulties because in the absence of the nominee the election is not considered as valid and due to this reason great difficulties were faced.

By taking into consideration this difficulty Government has decided that at the time of the election alongwith nominee of the University the nominee of the Government be also summoned and if election has been held in the presence of one nominee still the election will be considered as valid.

It has further been decided that nominee of the Government will be present who is the representative of the Government in the Governing body of the college.

Therefore, whenever any date and time is fixed in the election of the Management the nominee of the University alongwith the nominee of the Government may be informed well in time. Acknowledgement be sent.

Sd/-

Deputy Director Higher Education for Director
Higher Education, Haryana."

According to the instructions at the time of election, if election has been held in the presence of one nominee the election will be considered as valid.

(5) The Society requested the Government to handover the Management to the newly constituted Governing body. The President of the Governing body also requested the Government that the Management of College be handed over to the newly constituted Governing body but instead of handing over the Management, respondent No. 1 has extended the term of the Administrator. It was further contended that the action of the respondent not to hand over the Management to the newly constituted Governing body on July 27, 1991 is illegal, unjust, arbitrary and contrary to the provisions of the Haryana Private College (Taking over of the

Management) Act, 1978. The relevant Sections 2 and 3 of the Act are reproduced below for ready reference :—

2. "In this Act unless the context otherwise requires,—

- (a) 'Administrator' means an Officer appointed by the State Government to take over the management of a college;
- (b) 'College' means an institution which is not run by the Central Government the State Government or a local authority which is recognised by the provisions of the Kurukshetra University Act, 1956; or admitted to the privileges of the Maharishi Dayanand University under the provisions of the Maharshi Dayanand University Act, 1975.
- (c) 'College property' means all moveable and immoveable property belonging to or in the possession of a college and all other rights and interests in or arising out of such property, and includes land, building and its appurtenances, play grounds, hostels, furniture, books apparatus, maps, equipment utensils, cash, reserve funds, investment and bank balances.
- (d) 'managing committee' means the body of individuals entrusted with the management of a college;
- (e) 'minority College' means a college established and administered by a minority having the right to do so under clause (1) of Article 30 of the Constitution; and
- (f) 'president' in relation to a college, means the person by whatever name called, who is entrusted with the management of the affairs of the college immediately before taking over the management under this Act.

3. Power to take over management of colleges :—

- (1) Whenever the State Government, on receipt of a report from the University concerned or otherwise, is satisfied that the managing committee or president of a College has—
 - (a) neglected to perform or persistently made default in the performance of duties and functions imposed on it under the Kurukshetra University Act, 1956, or

the Maharishi Dayanand University Act, 1975 for the statutes, ordinances and regulations made thereunder; or

- (b) failed to carry out any order passed or directive issued by the State Government or any order passed by the Director under the Haryana Affiliated Colleges (security or service) Act, 1979; or
 - (c) exceeded or abused its or his powers, and that it is expedient in the interest of college education to take over the management of such college, the State Government may, after giving the managing Committee or the president of such college, a reasonable opportunity of showing cause against the proposed action and after considering the reply, if any, made by the managing committee, or the President of such college, as the case may be, make an order for taking over the management of such college by an Administrator, for a period not exceeding three years, as it may deem fit.
- (2) Whenever the management of any college is taken over under sub-section (1) every person in charge of the Management of such college immediately before its Management is taken over, shall deliver the possession of the College property to the Administrator.
- (3) After taking over the management of a College under this Section, the Administrator shall exercise all the powers of the managing committee and the president;
- (4) During the period, the College remains under the management of an Administrator :—
- (a) the Managing Committee and the President shall cease to exercise powers and functions of management over the affairs of the college as long as the Management vests in the Administrator;
 - (b) the service conditions of the employees of the college who were in employment immediately before the date on which the management was taken over, shall not be varied to their disadvantage;

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- (c) All educational facilities, which the college had been affording immediately before such management was taken over, shall continue to be afforded;
 - (d) the College fund, pupils fund; management fund and any other existing fund shall continue to be available to the Administrator for being spent for the purpose of the college.
 - (e) without prejudice to the generality of the provisions of sub-section (3) of Section 3 of the Act, no decision or resolution of the Management Committee made after the date of the show cause notice issued under sub-section (1) of section 3 shall be given effect to unless approved by the Administrator; and
 - (f) the Administrator shall report to the State Government all such decisions and his orders thereon and it shall be open to the State Government to confirm, modify or reverse the order of the Administrator.
- (5) The State Government at any time before the expiry of the period for which the management of the college is taken over and shall, on the expiry of the period for which the management of a college is taken over, hand over the Management alongwith the college property to the duly constituted Managing Committee of the College."

(6) Written Statement on behalf of respondent No. 1 has been filed by the Deputy Secretary Education. In para 6 of the written statement, it has been stated that the Administrator,—*vide* memo No. 5062, dated July 22, 1991 intimated the Government that the Lecturers of the college are fearing harassment at the hands of previous management and the development of the college will cease if the present arrangement is discontinued and that the Administrator recommended the extension of the term of the Administrator. It has been further mentioned that the teachers Union of the College had made representation requesting the Government for extension of the term of the Administrator because the newly elected management is not interested in the welfare of the college and huge amount collected from the people of the area for the construction of college building will not be properly utilised and therefore, in view of the report of the Administrator, the Government had decided to extend the term of the Administrator.

(7) Averments made in para 7 of the writ petition to the effect that the Government was asked to send its nominees have been admitted in written statement. Averments made in para 8 of the writ petition to the effect that the election was held on July 27, 1991 and the nominee of the Government has reported that the election was held properly and in accordance with law has also been admitted by respondent No. 1. In para 8 of the written statement, it has been stated that the election of the Governing body is totally different issue and has no concern with the taking over of the administration. Averments made in para 9 of the writ petition to the effect that if at the time of election if nominee of the Government or nominee of the University is present then the election will not be invalid merely because one nominee either of the University or of the Government is not present, have also been admitted in the written statement. But it has been further submitted in para 9 of the written statement that the election of the Managing Committee is not relevant for extension of the term of the Administrator. It has been further averred in para 10 of the written statement that the Government carefully considered the request of the Governing body for handing over the Administration of the College and had come to the conclusion that the new Governing Body is headed by the person against whom there were serious allegations on account of which the Administration of the College was taken over earlier, that the staff of the College and notable person of the area, as per report of the Administrator, had represented that the affairs of the College would greatly suffer if the present arrangement was discontinued; that the Government has given careful consideration to all the aspects of the matter and has come to the conclusion that college education will greatly suffer if charge was handed over to the Management; and that therefore, the term of the Administrator has been extended. Legal averments made in para 11 of the writ petition have been denied.

(8) Administrator Dr. Mahavir Singh, I.A.S., respondent No. 2, has filed written statement and has raised nine preliminary objections stating that the writ petition is liable to be dismissed for non-joinder of parties; that Maharshi Dayanand University, Rohtak, is a necessary party that the University has not been impleaded with *mala fide* intentions; that election to the Governing Body was controlled, monitored and approved by the University; and that proper procedure was not followed for holding the election. The other eight preliminary objections raised by the Administrator are

frivolous. Therefore, these are not being reproduced in the judgment.

(9) On merits, it has been stated by respondent No. 2 in the written statement that the election process could not be initiated *suo moto* by the Society by appointing the Returning Officer; that the University was not informed about the election and that, in the absence of the University nominee election is invalid. Other pleas raised in the written statement of respondent No. 1 have been reiterated by respondent No. 2 in his written statement. Alongwith the written statement, Administrator has annexed Annexure R. 2/5 which reads as under :—

“MAHARSHI DAYANAND UNIVERSITY ROHTAK.

No. CB-VI/91/7415

Dated 15th October, 1991.

To

The Administrator,
Vivekanand College, Nangal Chaudhary.

Sub : Supply of information.

Dear Sir,

With reference to your letter No. VNC/91/1360, dated 14th October, 1991 regarding certain clarification about the elections of the Governing Body, I am desired to inform you that :—

1. It is the Society running the College to start with the process of elections of the office bearers of Governing Body.
2. The society, as mentioned above appoints a Returning Officer for conducting the elections.
3. The elections held on 27th July, 1991 in the absence of University Observer was not valid.
4. The University had not approved the elections of 27th July, 1991 which was not held in accordance with the University rules [Statute-38 Clause 25(i) of the University Calender Volume I].

5. Copy of the statute 38 of University Calender Volume I is attached herewith.
6. The University was informed just a couple of days prior to the elections but sufficient time was not given for appointment of University Observer. Any election of the Governing Body without the presence of University Observer cannot be approved by the University.

Yours faithfully,

Sd/-xx

Assistant Registrar (College) for
DEAN College Dev. Council.

DA/As above.

In para 6 of the letter which has been reproduced above, addressed to respondent No. 2 by the University, it has been stated that the University was informed just a couple of days prior to the election but sufficient time was not given for appointment of University Observer.

(10) Mr. R. K. Malik, counsel for the appellant, has submitted that the Governing Body/Managing Committee of the College was duly constituted on July 27, 1991, when the election was held in the presence of the nominee of the Government; that the nominee of the Government has informed the Government on July 30, 1991, that the election of the Governing Body of the College was valid and it was held in accordance with law; and that, therefore, in view of the provisions of Section 3(5) of the Act, which reads as under :

“3(5) :—The State Government may, at any time before the expiry of the period for which the management of the college is taken over and shall, on the expiry of the period for which the management of a college is taken over, hand over the Management along with the college property to the duly constituted Managing Committee of the College.”

the appellant is entitled to take over the Management of the College along with the College property from the Administrator because the provisions of Section 3(5) of the Act is mandatory.

(11) Mr. Ajay Lamba, learned counsel for the Administrator has submitted that the Administrator,—*vide* Memo No. 5062 dated July 22, 1991, had intimated the Government that the Lecturers of the College are fearing harassment at the hands of the previous Management and the development of the College will cease if the present arrangement is discontinued. He has further submitted that the Administrator had recommended the extension of the term of the Administrator to the Government and that the Teachers' Union of the College had made representation on July 30, 1991, requesting for the extension of the term of the Administrator, because the newly elected Management was not interested in the welfare of the College and huge amount collected from the people of the area for the construction of the building would not be properly utilised. It has been further submitted by the learned counsel for the Administrator that the Government has extended the term of the Administrator on October 1, 1991,—*vide* Annexure R-4 for one year, i.e., from July 27, 1991 to July 26, 1992 and, since this order passed by the Government has not been challenged by the appellant in the writ petition therefore, the writ petition filed by the appellant is liable to be dismissed on this ground alone. It may be pointed out that the appointment of the Administrator beyond July 27, 1991 was extended till further orders by the Government on August 30, 1991,—*vide* Annexure R-2/6.

(12) After hearing the counsel for the parties, we find force in the arguments raised by Mr. R. K. Malik, counsel for the appellant, that the State Government is legally bound to hand over the Management of the College along with the college property to the appellant which is newly elected Governing body of the college. The Governing body of the College was elected on July 27, 1991 in the presence of the nominee of the Government. Nominee of the Government had intimated the Government that the election of the Governing body of the College was held in his presence and the election was valid. University was also informed to send its nominees at the time of election but the University did not send its nominee at the time of election. Since the nominee of the University was not present at the time of election, therefore, it cannot be held in view of the instructions of the Government that the election of the Governing body is not valid. According to the instructions of

the Government dated February 9, 1983, Annexure P 4 if the election is held in the presence of one nominee still the election will be considered as valid election of the Governing body. Therefore, respondents are legally bound to hand over the Management of the College and property of the College to the appellant. We find no force in the contention raised by Shri Ajay Lamba, learned counsel for respondent No. 2 that the development of the college will cease if the present arrangement is discontinued because the newly elected Management is not interested in the welfare of the college and huge amount collected from the people of the area for construction of the building of the College will not be properly utilised. In case this argument of the learned counsel for respondent No. 2 is accepted that will amount to prejudging the functioning of the Governing body. It has not been allowed to take over the Administration of the College by the Administrator. In para 6 of the written statement filed on behalf of respondent No. 1, it has been stated that "newly elected Management is not interested in the welfare of the college". This averment of respondent No. 1 in para 6 has established a fact that fresh election has been held on July 27, 1991, of the Governing Body of the College. Respondent No. 2, who is an Administrator appointed by the Government, is not entitled to raise plea that the election held on July 27, 1991, in the absence of the University nominee, is invalid. Respondent No. 2 has contested this case in such a manner as if he has got a legal right to remain Administrator of the College till further orders.

(13) The appellant is duly constituted Managing/Governing Body of the College and, therefore, the appellant is entitled to take over the Management of the College along with the College property from the respondents. The learned counsel for the appellant, has further submitted that the learned Single Judge has erred in law in dismissing the writ petition of the appellant on the ground that the appellant had not challenged the order dated August 30, 1991, by which the term of the Administrator had been extended till further orders. He has further submitted that the term of the Administrator was extended on October 1, 1991,—*vide* Annexure R-4, after the appellant had filed writ petition and, since the appellant was entitled to take over the Management from the respondents after the election, therefore, the appellant was not bound to challenge the order of the State Government dated August 30, 1991. He has further submitted that even if the appellant has not challenged the order of the Government dated October 1, 1991, and August 30, 1991,

this Court under Article 226 of the Constitution of India has very wide discretion in the matter of framing its writs to suit the exigencies of particular cases and a writ petition under Article 226 of the Constitution of India cannot be thrown out simply on the ground that the orders dated October 1, 1991 and August 30, 1991 passed by the Government has not been challenged in the writ petition. In support of his arguments, he has relied upon *Ude Singh v. State of Haryana and others* (1). Learned counsel for the appellant has further submitted that the Single Judge has erred in law in dismissing the writ petition of the appellant on the ground that the Managing Committee of the College has not filed the writ petition. Admittedly, Viveka Nand Shiksha Samiti (a registered Society) has filed the writ petition through Shri Mala Ram, President of the Governing Body of the appellant College, Nangal Chaudhary. Since the Society has authorised Shri Mala Ram, President of the Governing Body of the College, to file the writ petition, therefore, writ petition is competent and the learned Single Judge has erred in dismissing the writ petition on the ground that the Managing Committee of the College has not filed the writ petition.

(14) We also find force in the contention of the learned counsel for the appellant that the High Court under Article 226 of the Constitution of India certainly has wide powers and there is no reason why a High Court should not frame its writs "to suit the exigencies of particular cases" wherein a proper writ or direction has not been prayed for quashing the order of the Government dated October 1, 1991 and August 30, 1991 contained in Annexure R-4.

(15) In view of our above-mentioned discussion, this appeal is allowed and the judgment passed by the learned Single Judge on 15th January, 1992 is set aside. The writ petition filed by the appellant is allowed. The orders dated 1st October, 1991 (Annexure R-4) and 30th August, 1991 (Annexure R-2/6) are quashed. The respondents are directed to hand over the management of the College along with the property of the College to the appellant forthwith. No order as to costs.

R.N.R.

(1) 1972 P.L.J. 20.