



**Reserved**

**A.F.R.**

**Chief Justice's Court**

**Civil Misc. Writ Petition No. 46320 of 2004**

Yashoda Raj Kumari Kunjil

vs.

State of U.P. and others

**AND**

**Civil Misc. Writ Petition No. 34450 of 2001**

Committee of Management,  
Uchattar Madhyamik Vidyalaya Samiti  
Sukhpura District Ballia and another

vs.

Director of Education (Secondary), U.P. Lucknow and others

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Counsel for the petitioners: Sri P.S. Baghel, Sr. Advocate,  
Sri N.L. Pandey, Advocate  
Sri V.K. Singh, Advocate  
Sri G.K. Singh, Advocate  
Sri Pankaj Mishra, Advocate &  
Sri Siddharth, Advocate.

Counsel for the respondents: Sri M.C. Chaturvedi, CSC &  
Sri Dr. Y.K. Srivastava, SC

**Hon'ble Ferdino I. Rebello, CJ**

**Hon'ble V.K. Shukla, J**

Management had preferred this petition to challenge the appointment of respondent no. 7 as Principal of the institution by transfer. At the relevant time, there was no Committee of Management

and a Prabandh Sanchalak had been appointed. The appointment of Prabandh Sanchalak has been upheld by a learned Single Judge and the same was affirmed by a learned Division Bench. When the matter came up for hearing, the learned Judge by his order dated May 23, 2002 noted the judgment of another learned Single Judge in the case of **Narendra Kumar v. State of U.P. and others**, 2002 (46) ALR 301, which had taken the view that under Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921, it is provided that the post of Principal in a institution can also be filled by transfer from another college, where the person sought to be transferred was appointed after selection by the Board, but such transfer is permissible only with the consent of the Management of both the institutions.

It was further observed that according to the Note at the end of Regulation 61(2) of Chapter III of the aforesaid Regulations “management” has been defined to include “the managing committee” or the officer or authority in whom the management is vested which means that the management for the purpose of giving consent for transfer, would include the “Prabandh Sanchalak”. The learned Judge after considering the issue was pleased to record in paragraph 9 of the judgment as to why he is in disagreement with the interpretation given in **Narendra Kumar (supra)**. The reasons cited are as under:-

“(a) A 'Prabandh Sanchalak' under the Scheme of Administration is appointed for specific purpose, after expiry

of terms of Committee of Management for holding elections. He holds a temporary position to carry out the object for which he has been appointed by the Deputy Director of Education. He, therefore, cannot perform the essential functions of management which includes the appointment of Principal by transfer.

(b) The word 'such person' or 'authority' in whom the powers of management and conducting of function have been vested means a manager or in his absence, a person nominated by the Committee of Management. In Regulations 55 to 61, the word 'Committee of Management' has been used and that note (1) has been provided in Regulation 61 (1) to clarify that word 'Committee of Management' means a person or authority authorised by the management. A Prabandh Sanchalak, is no doubt, appointed under the Scheme of Administration, but he is a nominee of the Deputy Director of Education. He cannot, therefore, be a person in whom the Committee of Management have been vested the powers to manage and control the institution.

(c) A person appointed for specific purpose, namely, to hold election, cannot be entrusted with all the functions, particularly, the essential function of management which includes the appointment of Principal.

(d) A Principal is not only head of institution but is also responsible for ethos and aspirations of educational institution established by a society. Such a person cannot be imposed upon the institution, and that his appointments, without consent of Committee of Management, will amount to violating the right of the Committee of Management to establish and manage the institution.”

2. In view of that, a reference has been made to a Division Bench of this Court.

3. At the hearing of these petitions, various counsels have submitted their submissions in support of the view taken by the reference Judge. It has been argued that the sole purpose of appointing a Prabandh Sanchalak is to get the election held and to let a duly constituted Committee of Management to be in power. The Prabandh Sanchalak, appointed under the Scheme of Administration cannot be a substitute of the Committee of Management and the sole object of such appointment, is to get the election held within a time bound framed and to have a duly elected Committee of Management to come in power. It is, therefore, submitted that if it is held that the Prabandh Sanchalak is having all powers of the Committee of Management, this would be in violation of Articles 14 and 19 of the Constitution of India. Reliance for that purpose is placed on a judgment, in the case of **Smt. Damyanti Naranga vs. The Union of India and others**, 1971 (1) S.C.C. 678. At the outset, we may mention that the vires of the provisions by which the Prabandh Sanchalak is to be appointed is not the subject matter of a challenge before us.

It is then pointed out that Regulation 61, which deals with transfer of Principals which include teachers follows other Regulations and the transfer is to be followed step by step and in case Prabandh

Sanchalak is appointed, all other Regulations would be undone. Insofar as model Scheme of Administration is concerned, it is pointed out that the Committee of Management has to pass resolution and on failure, the power is with the Director of Education to observe the procedure under section 16-B of the Inter Mediate Education Act to recommend for making appointment of administrator. It is then argued that this Court has held that the Prabandh Sanchalak has no right to enroll the members and not only that, this view on similar facts and question of law, the Supreme Court has held that the administrator appointed under the Cooperative Societies Act, has no power to enroll members. Reliance has been placed on various judgments of this Court.

It is further submitted that a literal and plain interpretation sought to be given that the Prabandh Sanchalak (Authorized Controller) is the substitute of the Committee of Management, cannot be accepted for arriving to a conclusion that the Authorized Controller has the power of giving consent under Regulation 58 for the transfer of the a Principal as the said nomination in the place of the Committee of Management is not self imposed. It is, therefore, submitted that as such the Note appended with the Regulation 61 cannot be exhaustive and the same must be construed in such manner to make it meaningful and the exercise of power should be judged on the ground of 'indispensability' and a purposive construction is preferable to the literal construction. The Note, therefore, it is submitted to Regulation 61, is only to enable

the Authorized Controller to exercise such powers of the Committee of Management which are required for the discharge of routine administrative control of the institution.

4. Counsel for the State and other Counsel opposing the reference, refer to the provisions of Section 16-D of the U.P. Intermediate Education Act (hereinafter referred to as the Act), the provisions of Section 6 of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (hereinafter referred to as the Payment of Salaries Act, 1971 and the Regulations framed under the Act. They submit that the provisions for appointment of an Authorized Controller is provided under Section 16-D(3) of the Act. Once the Authorized Controller is appointed, the Authorized Controller shall, to the exclusion of the management and subject to the directions if any, of the Regional Deputy Director, Education exercise all the powers and perform all the functions of the management, including management of the properties belonging to or vested to the institution, and in particular, operate singly the bank account. On the expiry of the term of the Committee of Management and if no elections are held for the new Committee, then the Deputy/Joint Director of Education has the authority to appoint a Prabandh Sanchalak, who shall hold elections for installing a new Committee. The power to be exercised by the Authorized Controller is dealt with under Section 16-DD of the U.P. Intermediate Education Act, and it enjoins that such

Controller shall have all such powers and authority, which the Committee of Management would have. That the Authorized Controller can exercise power of the management is made clear by Section 16-DD by which such Controller manages the institution and its properties. However, considering Section 16-D (9), the Authorized Controller appointed under sub-section (4) or sub-section (8) has no power to transfer any immovable property belonging to the institution (except by way of letting from month to month in the ordinary course of management) or to create any charge thereon (except as a condition of receipt of any grant-in-aid for the institution from the State Government or Government of India). It is thus submitted that the Prabandh Sanchalak can exercise all the powers of the Management except those specifically excluded.

5. Sri G.K. Singh, learned counsel has further submitted as to why the view taken in **Narendra Kumar (supra)** is the correct view. It is pointed out that in the Notes to Regulation 61, it has been mentioned that for the purpose of the Chapter which is Chapter-III "Management" means a Committee of Management or a person in whom the power of managing the institution is vested. Chapter III contains provisions for conditions of service including appointment, probation, confirmation and promotion. In other words, the Authorized Controller can exercise all the powers conferred upon him under Chapter III. The question of enrollment or exclusion of members are not powers conferred on the

Authorized Controller on his appointment under Section 16-D of the Act.

6. The question for considerations may be formulated in terms of the directions issued by the reference Judge.

(I) Whether the consent of Prabandh Sanchalak appointed by Joint Director of Education under Clause 7 of the Scheme of Administration for holding election given by him under Regulation 58 of Chapter III of Regulation made under the Intermediate Education Act, 1921 for transfer of a Principal to the institution amounts to consent of the 'Committee of Management' as provided in proviso (1) to Regulation 61(1) of the Regulations as above ? and

(II) Whether the interpretation given by learned Single Judge in favour of such consent given by Prabandh Sanchalak to be valid by interpreting proviso (1) to Regulation 61(1), in *Narendra Kumar v. State of U.P. and others*, is correct.

7. We must for the purpose of understanding the issue refer to Section 16-D of the Act, which reads as under:-

**“16-D. Inspection of recognized institution and removal of defect.--**

(1) The Director may cause a recognized institution to be inspected from time to time.

(2) The Director may direct a management to remove any defect or deficiency found on inspection or otherwise.

(3) If on the receipt of information or otherwise, the Director is satisfied that--

(i) the Committee of Management of an institution has

failed to comply with the judgment of any court or any direction made under this Act or any other law for the time being in force; or

- (ii) the Committee has failed to appoint teaching staff possessing such qualifications as are necessary for the purpose of ensuring the maintenance of academic standard in the institution or has appointed or retained in service any teaching or non-teaching staff in contravention of the provisions of this Act or the regulations; or
- (iii) any dispute with respect to the right claimed by different persons to be lawful office-bearers of the Committee of Management has affected the smooth and orderly administration of the institution concerned ; or
- (iv) the Committee has persistently failed to provide the institution with such adequate and proper accommodation, library, furniture, stationery, laboratory equipment or other facilities as are necessary for the efficient administration of such institution; or
- (v) the Committee has substantially diverted, misapplied or misappropriated the property of the institution to its detriment or has transferred any property in contravention of the provisions of the Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974; or
- (vi) the draft of the Scheme of Administration has not been submitted within the time allowed therefor under Section 16-B, or that the management of the

institution is being conducted otherwise than in accordance with the Scheme of Administration or the affairs of the institution are being otherwise mismanaged ; or

(vii) the Scheme of Administration in relation to an institution, approved before the commencement of the Intermediate Education Act and the management of the institution has failed to alter or modify it within a reasonable time despite notice under Section 16-CCC;

he may refer the case to the Board for withdrawal of recognition of such institution, or issue notice to the Committee of Management to show cause within thirty days from the date of receipt of such notice why an order under sub-section (4) should not be made.

(4) Where the Committee of Management or an institution fails to show cause within the time allowed under sub-section (3) or within such extended time as per the Director may, from time to time allow, or where the Director, is after considering the cause shown by the Committee of Management, satisfied that any of the grounds mentioned in sub-section (3) exists, he may, recommend to the State Government to appoint an Authorised Controller for that institution, and thereupon, the State Government may, by order, for reasons to be recorded, authorize any person (hereinafter referred to as the Authorised Controller) to take over, for such period not exceeding two years, as may be specified, the management of such institution and its properties :

Provided that if the State Government is of opinion that it is expedient so to do in order to continue to secure the

proper management of the institution and its properties, it may, from time to time, extend the operation of the order, for such period, not exceeding one year at a time, as it may specify, so however, that the total period of operation of the order, including the period specified in the initial order, but excluding the period specified in sub-section (8), does not exceed five years :

Provided further that if at the expiration of the said period of five years, there is no lawfully constituted Committee of Management of the institution, the Authorised Controller shall continue to function as such, until the State Government is satisfied that a Committee of Management has been lawfully constituted.

(5). If on the receipt of information or otherwise, the State Government is of opinion that in relation to an institution, the ground mentioned in clause (iii) or clause (v) of sub-section (3) exists, and that the interest of the institution calls for immediate action, it may, notwithstanding anything contained in the said sub-section, issue notice to the management of such institution to show cause within fifteen days from the date of receipt of such notice why an Authorised Controller be not appointed in respect of such institution.

(6) Where the Committee of Management of the concerned institution fails to show cause within the time allowed under sub-section (5), or within such extended time as the State Government may, from time to time allow, or where the State Government is, after considering the cause shown by the Committee of Management, satisfied that any of the grounds mentioned in clause (iii) or clause (v) of sub-

section (3) exists, it may, by order and for reasons to be recorded, appoint an Authorised Controller in respect of such institution, and thereupon, appoint an Authorised Controller in respect of such institution, and thereupon, the provisions of sub-section (4) shall, *mutatis mutandis* apply.

(7) Every notice issued by the Director under sub-section (3) on or before the service of the notice referred to in sub-section (5) and not finally disposed of on the date of such service shall with effect from the said date, be deemed to have been placed in abeyance :

Provided that nothing contained in this sub-section shall be deemed to prevent the Director to take action upon grounds other than those mentioned in clause (iii) and (v) of sub-section (3) in case the notice issued by the State Government under sub-section (5) is discharged.

(8) If the State Government is of opinion that immediate suspension of the Committee of Management is also necessary or expedient in the interest of the institution concerned, it may, while issuing notice under sub-section (5), by order and for reasons to be recorded, suspend the Committee of Management and make such arrangement as it thinks proper for managing the affairs of the institution pending the order that may subsequently be made under sub-section (6):

Provided that the suspension shall not remain in force for more than six months from the date it becomes effective.

*Explanation I.--* For the removal of doubts, it is hereby declared that in computing the period of time specified in sub-section (4) or sub-section (8), the time during which the operation of the order was suspended by the High Court in

exercise of the powers under Article 226 of the Constitution shall be excluded.

*Explanation II.*-- Nothing in sub-section (4) or sub-section (6) shall preclude the State Government from revoking of appointment of an Authorised Controller appointed under any of the said provisions.

(9) Nothing in this section shall be construed to confer on the Authorised Controller appointed under sub-section (4) or sub-section (8), the power to transfer any immovable property belonging to the institution (except by way of letting from month to month in the ordinary course of management) or to create any charge thereon (except as a condition of receipt of any grant-in-aid for the institution from the State Government or Government of India).

(10) Any order made under this section shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or in any instrument (including any Scheme of Administration) relating to the management and control of the institution or its property :

Provided that the property or the institution and any income therefrom shall continue to be applied for the purposes of the institution as provided in any such instrument.

(11) The Director may give to the Authorised Controller such directions as he may deem necessary for the proper management of the institution or its properties, and the Authorised Controller shall carry out those directions.

(12) No order made by the Board withdrawing recognition in pursuance of a reference made under sub-section (3) and no order made or direction given under this section by the

Director or the State Government shall be called in question in any court, and no injunctions shall be granted by any court in respect of any action taken or to be taken in pursuance of any power conferred by or under this section.

(13) The powers conferred by this shall be in addition to, and not in derogation of any powers conferred on the State Government or the Authorised Controller under any other law for the time being in force.

(14) Nothing contained in sub-section (3) to (13) shall apply to all institutions established and administered by a minority referred to in clause (1) of Article 30 of the Constitution of India.”

8. Also relevant is Section 6 of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971, which reads as under:-

**“6. Enforcement of provisions and direction.--(1)**

Where the Inspector on the basis of an inspection of an institution or its records or otherwise is satisfied that its management has committed default in complying with any direction given under section 4 or with any provision of section 3 or section 5, he may recommend to the Regional Deputy Director, Education, that action be taken against the institution under sub-section (2).

(2) On receipt of recommendation under sub-section (1) the Regional Deputy Director, Education, may call upon the management to comply with the said direction or provision or to show cause within a week why the management should not be superseded.

(3) Where the management fails to comply as aforesaid or to show-cause, or the Regional Deputy Director, Education, considers the cause shown to be insufficient, he may by order supersede the management for such period not exceeding one year as may be specified in the order, and authorize any person (hereafter referred to as the Authorised Controller) to take over the management of the institution for the said period.

Provided that the Regional Deputy Director, Education, may where he considers it necessary or expedient so to do,--

*(i) extend the said period from time to time, so, however, that the period so extended does not exceed five years in the aggregate ; or*

*(ii) revoke the order at any time:*

Provided further that nothing in clause (ii) of the preceding proviso shall bar the passing of a fresh order under this section.

(4) On an order being made under sub-section (3) the Authorised Controller shall, to the exclusion of the management and subject only to the directions if any, of the Regional Deputy Director, Education, the Director or the State Government, exercise all the powers and perform all the functions of the management, including management of the property belonging to or vested to the institution, and in particular, operate singly the bank account referred to in section 5 :

Provided that nothing in this section shall be construed to confer on the Authorised Controller the power to transfer any such property (except by way of letting from

month to month in the ordinary course of management) or to create any charge thereon (except as a condition of receipt of any grant-in-aid of the institution from the State Government).

(5) Any order made or direction given under this section shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or instrument relating to the management and control of the institution (including any scheme of administration) or relating to the property belonging to or vested in the institution.

9. To complete the narration, we may also refer to the Note (1) of Regulation 61 of the Regulations Under Intermediate Education Act where the expression 'delegated' has to be read as 'vested' as agreed by the learned counsel for the parties. So read, it reads as under:-

“Notes-(1) for the purposes of this chapter “Management” means a Committee of Management or person to whom power of managing the institution has been vested.”

10. Before answering the issue, let us examine the judgements relied upon on behalf of the counsel supporting the view taken by the reference Judge.

11. In **S.K. Mishra and another vs. District Inspector of Schools, Orai and another**, [(1996) 2 UPLBEC 896], the learned Judge took the view that the Authorized Controller for holding election of management committee of the institution, cannot induct new members as appointing

new members is beyond his jurisdiction.

Similar view was also taken in **Rajendra Pal Singh vs. District Inspector of Schools, Jalaun and others**, 1999 (1) A.W.C. 456. The learned Judge observed that the power to enroll members is that of the Society and that being so a Society, an Authorized Controller cannot enroll new members. The right to enroll is a part of the fundamental right of an association under Article 19 (1) (C) of the Constitution of India. The learned Division Bench in **Ranbir Singh vs. District Inspector of Schools, Jalaun at Orai and others**, [(2000) 1 UPLBEC 518] was again pleased to reiterate that proposition holding that the District Inspector of Schools (Authorized Controller) has no power to induct life members during course of management of institution. He is not substitute of Committee of Management or General Body of Society or Body.

Our attention is also invited to the judgment of the Supreme Court in **K. Shantharaj & Anr. vs. M.L. Nagaraja & Ors**, JT 1997 (5) SC 680. In the context of the Karnataka Co-operative Society Act, which conferred powers for appointment of Administrator considering Section 30 and 30-A of that Act, the Supreme Court was pleased to uphold the view taken by the High Court that the Administrator appointed under the statute to conduct elections, should be confined within the parameters set under the relevant provisions of the Act, Rules and Bye-laws and that would not include power to enroll new

members.

This view was reiterated by the Supreme Court in **Jt. Registrar of Cooperative Societies, Kerala vs. T.A. Kuttappan and others**, (2006) 6 S.C.C. 127.

12. Section 16-D had come up for consideration in **Committee of Management of Kisan Uchhtar Madhyamik Vidyalaya and another vs. Deputy Director of Education, Division-1, Meerut**, 1986, AWC 133. In that case an Administrator was appointed and was directed to hold fresh elections for constituting the Committee of Management. That was challenged by including a challenge to the amended Scheme of Administration. The term of expiring members and officers of the Committee of Management were to continue to hold office till their successors were elected. The Scheme was amended whereby on the expiry of the period, the members could hold office only for a period of one month more and in case no new Committee was appointed, the term would come to an end automatically and the Deputy Director of Education had to appoint a Prabandh Sanchalak who had to take immediate step to hold election for constituting the Committee of Management and in the meanwhile exercise full powers of the Committee of Management for managing the institution. One of the contentions raised was that the modification in the scheme was illegal. In that context, the learned Division Bench considered the issue and after noting the section noted that there is no conflict between the

Scheme and the provisions contained in Section 16-D.

We are also not prepared to read in Section 16-D of the Act any implication that the legislature intended to completely rule out a provisions being made in the Scheme for proper and efficient administration and management of an institution in contingencies not covered by Section 16-D of the Act.

In the **Managing Committee of Adarsh Intermediate College Achhalda, District Etawah vs. Deputy Director of Education, IVth Region, Allahabad**, [1986 UPLBEC 405], the issue for consideration was an Authorised Controller had been appointed during the period he was empowered to constitute the Selection Committee as envisaged by Section 16-F of the Act. The Controller invited applications according to rules and held interview for the posts and candidates were selected. On the appointments made by the Authorized Controller, the Committee of Management on coming into power passed a resolution taking a decision to terminate the services of all the nine teachers who had been appointed by the Selection Committee constituted by the Authorized Controller. On behalf of the contesting respondent, it was contended that the Selection Committee was properly constituted. The Authorised Controller had all the power of the Committee of Management and he could constitute the Selection Committee to make fresh appointment of teachers and lecturers if there are vacancies and the same being approved by the District Inspector of Schools, the same

cannot be set aside when the Committee of Management comes in power. We reproduce paragraph 6, which reads as under:-

“After hearing the counsel for the parties, we are of the opinion that the petitions is devoid of merits. The first point which falls for our consideration is as to whether the Authorised Controller can constitute the Selection Committee as envisaged by Section 16-F of the Act, Suffice it to say that under Section 16-D of the Act when the Committee of Management failed to remove the defects and deficiencies found on inspection or otherwise, the Authorized Controller could be appointed by the State Government under sub-section (4) of Section 16 and the Authorised Controller took over charge of the Management and worked accordingly for two years and in view of the first proviso to sub-section (4) such period of the Authorised Controller would not last longer than five years. It is, therefore, obvious that for five years, or for any terms the Authorized Controller remained in power, he had all the powers of the Committee of Management and hence he could very well constitute the Selection Committee if there were vacancies to be filled in.”

(emphasis supplied)

The Division Bench, therefore, took the view that when the Authorised Controller remains in power, he has all the power of the Committee of Management.

13. We may also refer to a judgment of Full Bench of this Court in

**Committee of Management and another vs. Deputy Director of Education**, 1980 AWC 399. When the matter came up for hearing before the Division Bench, it was urged that paragraph 21 (B) of the Scheme, which provide for appointment, was illegal and ultra-vires of the provisions of the Act and the Scheme framed under the Act, which must strictly be in accordance with Sections 16-A, B and C and none of them contemplated a provision being made in a Scheme for replacement of a duly elected Committee of Management under orders passed by the Deputy Director of Education either by an administrator or by election of another Committee of Management. Section 16-D of the Act provides exhaustively the situations under which and the manner in which a Committee of Management can be superseded or suspended and replaced by an administrator or another Committee of Management. On behalf of the State it was contended that Section 16-D was not concerned with the situations when there was dispute with regard to existence of a valid Committee of Management or a dispute to two rival committees claiming Committee of Management. Reliance was placed on various judgement and that was the subject matter of the reference. Though the question has not been framed, after considering the scheme and various provisions, the Full Bench was pleased to observe as under:-

“... There are, however, observations contained in the judgments which might give rise to the contention that in no

event can a provision be made in a Scheme for an administrator being appointed or other arrangement being made to manage the affairs of a recognized institution, except in accordance with section 16-D of the Act. If these judgments intended to lay down any such proposition, we respectfully disagree. A mere perusal of section 16-D of the Act discloses that it only deals with a situation where a duly elected Committee of Management does exist or is in any case recognized as such and yet it is mismanaging the affairs of the institution. Sub-section (2) of section 16-D as a condition precedent for passing of orders under the subsequent sub-sections requires the Director to direct the management to remove any defect or deficiency found on inspection or otherwise. It is only when the management fails to comply with directions made under sub-section (2) that steps contemplated by the subsequent sub-sections can be taken. Section 16-D in our opinion, had no relevance where the existence of a valid Committee of Management itself is in doubt or there is a dispute between two rival bodies contending to be the duly elected Committee of Management. If the views taken by C.D. Parekh, J. in *D. A. V. Inter College Board, Meerut v. State of U.P.* have been rightly expressed in *Prabandha Samiti T.J.P. Arya Kanya Inter College, Etawah*, we are in agreement with him.”

14. These judgements, therefore, would take the view that Scheme of Administration can provide for appointment of Authorised Controller and that would include the powers of the Managing Committee. It appears that these judgments were not placed for consideration before

the learned Single Judge who made the reference in the matter in the case of **Committee of Management, Uchchattar Madhyamik Vidyalaya Samiti, Sukhpura (supra)** nor were they considered by the learned Single Judge in **Narendra Kumar (supra)** when he decided the said issue.

15. We may now independently consider as to whether there is any reason for us to defer from the view taken by the learned Division Benches or whether the points based on which the learned Single Judge made a reference can be considered for taking a view different from the view taken in **Narendra Kumar (supra)** and the Division Benches that we have referred to earlier. We may briefly note the scheme of the provisions. Under the provisions of the Act, even if a Society runs more than one institutions, all institutions are to have their own Scheme of Administration and separate Committees of Management. However, there are some institutions which are run by the local bodies. Such kind of institutions are given certain exemptions under section 16-H of the Act. Those institutions are not supposed to have a Scheme of Administration as required under section 16-A. There is no Committee of Management to manage such kind of institutions. They are normally managed by the Executive Officers of the Local Body. The words i.e. person or authority in whom the powers of the management are vested takes care of this situation. There can also be a situation where a Committee of Management of an institution is superseded and an

Authorized Controller / Administrator / Prabandh Sanchalak is appointed to manage the affairs of the institution. In that case, they have to perform the functions of the management as provided under Chapter-III of the Regulations, which deals with the conditions of service of the head of an institution, teachers and employees of a recognized institution. Considering Note-I which is appended to Regulation 61, the Authorised Controller or the Prabandh Sanchalak has been empowered to perform the functions of the management.

16. Regulations 55 to 61 of Chapter-III of the Regulations framed under U.P. Intermediate Education Act, 1921 provide for transfer of teachers and Heads of the institutions from one college to another. The aforesaid transfer can be made with the consent of the committees of management of both the colleges i.e. the college from which the teacher or the Head of the institution is seeking transfer and the college to which he wants to go.

17. Note-I clearly provides that for the purpose of this Chapter i.e. Chapter-III which deals with service conditions of teachers and other employees of the institutions, the term management would mean the Committee of Management of the institution or a person or an authority in whom the power to manage the institution and to perform its functions is vested.

18. In case, an Authorized Controller is appointed either under Section 16-D of the Act or under Section 6 (3) of Payment of Salaries

Act, 1971, there is no dispute that he can perform all the functions of the management which are required to be performed by a Committee of Management under Chapter-III.

19. The dispute if any, is with regard to the power of an Administrator / Prabandh Sanchalak who has been appointed under the Scheme of Administration. As noted earlier, the argument on behalf of the Committees of Management has been, that an Administrator / Prabandh Sanchalak is appointed only for a limited purpose, i.e. to hold the elections of the Committee of Management. A perusal of the model Scheme of Administration which has now been made applicable to almost all the colleges would show that in case election of a Committee of Management are not held within the period prescribed or stipulated period it becomes defunct and the management of the college would be taken over by the Prabandh Sanchalak appointed by the Regional Deputy Director of Education who shall have all the powers of the management as per the Scheme of Administration. There is further responsibility fastened on him to ensure that fresh elections are held and a new Committee of Management takes over. He is there as a Prabandh Sanchalak by virtue of his appointment made under the Scheme of Administration. The Scheme of Administration has to be framed considering Sections 16-B, 16-C and 16-CC of the Act. The power to give consent to a transfer does not flow only from the Scheme of Administration. That power is given to the Prabandh Sanchalak

under the statutory Regulations which clearly provides that whosoever is authorized to perform the functions of the management will also have the power to give the consent to a transfer.

20. The area of dispute which has been canvassed is that in case it is held that a Prabandh Sanchalak or an Administrator has all powers of the managing committee, it also means that he has power to enroll members. This is not supported by Chapter-III of the Regulations as no power has been conferred on the Authorised Controller to admit members or expel members. As held by the Supreme Court in **Smt. Damyant Naranga vs. The Hindi Sahitya Sammelan**, AIR 1971 (SC) 966, such a provision if provided, would clearly be violative of Article 19 (1) (c) of the Constitution of India. Therefore, while exercising powers of the management under Chapter-III of the Regulations, the Authorised Controller or an Administrator cannot exercise powers to enroll or remove members. This limitation on the powers of the Authorised Controller can be considered in the context of Section 16-D (9) of the Act whereby he has no power to dispose of or eliminate the property. Thus where the Committee of Management under Chapter-III of the Regulation exercises powers, all those powers can also be exercised by the Prabandh Sanchalak, unless excluded.

21. We now consider the reasons given by the learned Judge for referring the matter.

The First reason considered by the learned Single Judge is that a

Prabandh Sanchalak under the Scheme of Administration is appointed for a specific purpose of holding of election. This in our opinion would be clearly inconsistent with the powers conferred on the Authorised Controller both under the scheme and the statutory provisions. All that can be said is that holding of election is one of the function or duty conferred on the Authorised Controller. The learned Single Judge, therefore, while referring the matter was not right in saying that the Prabandh Sanchalak is appointed for a limited purpose, i.e. for holding of fresh election. The appointment of the Prabandh Sanchalak is for the interregnum when there is no Committee of Management. If it is held that the Prabandh Sanchalak during his period cannot discharge the powers of Chapter-III, it would lead to chaos in the administration of the institution. As mentioned earlier, the Prabandh Sanchalaka under Chapter-III has to deal with service condition of teachers and employees which include appointment, promotions, grant of leave initiation of disciplinary proceedings, maintenance of character roll etc. If the view taken by the learned Single Judge is accepted, the Authorised Controller will not be able to discharge such functions. This will be contrary to principles of the Scheme and provisions of the Act and Regulations.

22. The Second reason given by the learned Single Judge is that the words “such person or authority in whom the powers of the management have been vested” means a Manager or in his absence a

person nominated by the Committee of Management. The words “authorized by the management” are not there in the Note in question. It simply says a person or authority in whom the powers of the management are vested. It no where says that powers vested in them by the management. Such powers could be vested by the management or by the State Government or the Regional Deputy Director of Education or even under the Rules as in the case of Executive Officers where a college is managed by Local Bodies. If the view taken by the learned Single Judge is accepted, this would mean rewriting the rule which was never intended.

23. The Third reason given is that the Prabandh Sanchalak / Administrator who has been appointed for specific purpose cannot be entrusted with all the functions particularly the essential functions of the management which includes appointment of a Principal and the Fourth reason is that a Principal is not only Head of the Institution but is also responsible for the ethos and aspirations of an educational institution established by a society. Such a person cannot be imposed upon the institution and that his appointment without consent of the Committee of Management will amount to violating the rights of the Committee of Management to establish and manage the institution.

As noted earlier, the Prabandh Sanchalak is not appointed only for specific purpose of holding elections but for discharging also other functions. That reason, therefore, is also not supportable.

Insofar as the issue of Principal is concerned the Committee of Management has got absolutely no choice at all. In this regard it is pertinent to mention that previously under the U.P. Intermediate Education Act 1921 appointments on the post of teachers and heads of institutions were made as per the procedure laid down under section 16-E of the Act. The constitution of the selection committee was provided in Section 16-F. The selection committee in respect of a head of an institution was to consist of-

- (i) President or any member of the Committee of Management nominated by the Committee.
- (ii) Any other Member of the Committee of Management.
- (iii) 03 Experts nominated by the Regional Deputy Director of Education.

In the case of a teacher the constitution of the Committee of Management was as follows:

- (i) President or any Member of the Committee.
- (ii) Head of the institution.
- (iii) 03 Experts nominated by the District Inspector of Schools.

Section 16-E (8) further provided that in case the Committee of Management did not agree with the recommendations made by the selection committee it could refer the matter together with the reasons for such disagreement to the Regional Deputy Director of Education whose decision in the matter was final.

The aforesaid provisions are no longer applicable in view of the entire process of selection having been substituted and provided for under U.P. Secondary Education Services Selection Board Act, 1982. There is no choice left with the Management at all. A candidate recommended by the Board has to be given appointment by the Management in so far as direct recruitment is concerned. In case of promotion the names of all the eligible teachers are to be forwarded to the Regional Committee concerned and the promotion is to be made on the basis of seniority subject to rejection of unfit. Here also there is no choice left with the Management. Transfer is also a mode of appointment. A person who is permanently functioning as Head of an institution or as a teacher can be transferred from one college to another. Such a person is there by virtue of his selection by the Board. Therefore, the Hon'ble Single Judge is not right in saying that a Principal could not be appointed without the consent of the Committee of Management which otherwise does not have a choice in the matter. Recommendations are made by the Board on the basis of the merit of the candidate and not on the basis of the choice of the Management. Committee of Management cannot say that it wants a particular candidate as a Principal. In such a situation it would not make a difference if the consent is given by the Prabandh Sanchalak in place of the Committee of Management.

24. A question can be raised that in case the Committee of

Management does not have a choice then what was the need of taking its consent in the cases of transfer. The aforesaid provision has been made to look after situations where for example there are some disciplinary proceedings going on against a particular Principal or a teacher and in order to get over the aforesaid situation he wants to leave that college and to go on transfer to another college, in such a situation the Committee of Management or the person who is authorised to manage the affairs of the college would not grant his consent and would see to it that the proceedings which have already been initiated against the persons concerned, are allowed to come to their logical end.

25. Reference was also made to a Government Order. Sri G.K. Singh, Advocate in his submissions, has dealt with the circular as under:-

“(i) Wherever there is a provision for appointment of a Prabandh Sanchalak/Administrator in the Scheme of Administration in the event of the Committee of Management becoming defunct such a provision should be removed as there was ample power under the Act to supersede a Management in case of mismanagement under the existing law.

(ii) Where a Prabandh Sanchalak had been appointed pursuant to orders passed by the Hon'ble Courts, there action should be taken only after the final orders are passed by the Courts. However, where a Prabandh Sanchalak had been appointed under the Scheme of Administration and was continuing since long, efforts should be made to get

new elections held within a period of three months.

(iii) All efforts should be made to see that the election process is started three months prior to the term of the Committee of Management coming to an end.

(iv) Upon a request made by the Management the District Inspector of Schools should appoint an observer within a period of seven days.

(v) In case elections are not held within the period prescribed by the Committee of Management, recommendation for superseding Management under Section 16-D should be made.”

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

26. From the above discussion, therefore, it would be clear that once an Authorised Controller / Prabandh Sanchalak / Administrator is appointed, such a person will exercise all powers conferred by the Scheme of Administration and in addition the powers conferred by the various Acts, Regulations and the Rules.

27. For the aforesaid reasons, we affirm the view taken in **Narendra**

**Kumar (supra).** The reference is answered accordingly.

Registry to place the matter before the appropriate Bench for disposal of the petitions on merits.

Date:8<sup>th</sup> September, 2010

RK

(F.I. Rebello, CJ)

(V.K. Shukla,J)