

A

STATE OF U.P. AND ORS.

v.

COMMITTEE OF MANAGEMENT OF  
S.K.M. INTER COLLEGE AND ANR.

B

APRIL 6, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*U.P. Intermediate Education Act, 1921 :*

C

*Section 16-D(2)(3)(4). College—Management Committee—Mismanagement—Director's Notice for removal of deficiencies—Unsatisfactory explanation by management—Director's recommendation to takeover—Consideration of report by Govt. and passing of takeover order—Order held valid.*

D

*Constitution of India, 1950:*

*Article 226—While exercising its power High Court cannot act as appellate authority.*

E

*Administrative Law :*

*Administrative Authority—Duty to give reasons—Administrative authority is not required to record its reason as elaborately as Court :*

F

The Director of Education, Government of U.P. issued a show cause notice under section 16-D(3) of the U.P. Intermediate Education Act, 1921 to the respondent Committee calling upon it to remove certain irregularities and deficiencies highlighted in the Inspection Report and Audit Report submitted by the auditors - one departmental and another Government Audit Department. Since the respondent's explanation was found un-satisfactory and the Director was satisfied that the respondent-committee has committed misfeasance and malfeasance of the nature specified in Section 16-D(3), he referred the matter to the State Government recommending take over of the College. The Government on consideration of the Director's report found that the respondent-Committee has committed irregularities and consequently it passed an order dated July 19, 1986 appointing an Authorised Controller to take over the management of the respondent-college.

H

The respondents challenged this order before the High Court which held that the Government had not applied its mind to the fact and that the charges have not been established by reasoned order and therefore, the impugned order was vitiated by manifest error apparent on the face of the record. Against the decision of the High Court State preferred an appeal to this Court.

On behalf of the respondent-committee, it was contended that the requirement of recording reasons mentioned in sub-section (4) of section 16D has not been complied with. Recording of reasons is to lie preceded by consideration of the explanation followed by agreement or disagreement with the explanation submitted by the Management.

Allowing the appeal, this Court

**HELD : 1.** The administrative authorities are not required to record reasons as elaborately as an order by a Court. What is required is application of mind to the relevant facts placed before the administrative authority; short reasons that weighed with it to take action need to be recorded. The order at hand is an elaborate one and from the record it is seen that the Director had culled out material facts that emerged from the record. [215-A, B]

**2.** The High Court while exercising the power under Article 226 of the Constitution is not like an appellate authority to consider the dispute. It has to see whether the impugned order is based on records or whether the authorities have applied their own mind to the relevant facts. It is seen that clauses (v) and (vi) of sub-section (3) of Section 16D specifically enumerate the grounds which clearly applied to the facts in this case. Therefore, when the facts do exist on record and Government have applied their mind to those facts and came to the conclusion that from the facts so collected they were satisfied that the committee had contravened clauses (v) and (vi) of sub-section (3) of Section 16D, they have rightly exercised the power under sub-section (4) of section 16D. The High Court has traversed the controversy as a court of appeal and committed manifest error of law in interfering with the order. [215-F to H]

**3.** It could be seen from the explanation offered by the respondents that the properties were not properly managed and they set up title to the properties in themselves and mismanaged the properties, committed mal-

**A** feaſance and miſfeaſance and did not account for the funds collected. Under theſe circumſtances, the Committee ſhould not be allowed to be in the management of the Inſtitution. [216-A, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4851 of 1995.

**B** From the Judgment and Order dated 7.8.92 of the Allahabad High Court in C.M.W. No. 11217/86.

D.V. Sehgal, Nalin Tripathi and R.B. Misra for the Appellants.

**C** Raju Ramchandran, Aseem Mehrotra and A.P. Medh for the Respondents.

The following Order of the Court was delivered :

**D** Leave granted.

**E** The Director of Education, Government of U.P. issued on April 2, 1985 a show cause notice to the respondents under s.16-D(2) of the U.P. Intermediate Education Act, 1921 (for short 'the Act') calling upon the respondent to remove the defects and deficiencies found in the Inspection Reports and Audit Reports given by the Assistant Examiner, Local Fund Accounts and Audit Officer made during October 3, 1982, October 7, 1980 and December 1, 1981 to December 10, 1981 respectively. Since they had not been complied with notice under sub-section (3) thereof was issued on January 9, 1986 calling upon the management for the reasons mentioned therein, thus :

**F** "It is evident from above that there are serious irregularities in the school and hence notice is given under section 16D(3) of Intermediate Education Act. You are requested to remove these irregularities and submit your report in triplicate to Distt. Inspector of Schools, one copy direct to this office and one copy to Deputy Director of Education, Bareilly within 15 days of the receipt of this letter. If your reply is not received within the time prescribed, it will be considered that you have nothing to say and further action will be taken in the absence of your reply."

**H** Pursuant thereto, the respondents had furnished the explanation by his

letter dated February 11, 1986. The Government on consideration of the report submitted by the Director, found that the respondent had committed irregularities and for special and exceptional reasons, mentioned therein the Institution needed to be taken over for better management and to appoint an Authorised Controller for its management. Accordingly, an order came to be made on July 19, 1986. The Respondents filed writ petition in the High Court and the order was suspended. When writ petition came up for hearing, it was dismissed as withdrawn. Thereafter, another writ petition No. 11217 of 1986 was filed and the Court stayed the taking over the management. The writ petition was, ultimately, allowed by the High Court on August 7, 1992. Thus this appeal by special leave.

The High Court evaluated the evidence and held that the Government had not applied their mind to the facts and the charges have not been established by reasoned order and that, therefore, the order was vitiated by manifest error apparent on the face of the record. On that basis, it quashed the impugned order.

The question, therefore, is whether the High Court was right in its conclusion that the impugned Government order was vitiated by error apparent on the face of the record. Section 16D(3) provides, *inter alia*, thus:

"The Director on receipt of the information or otherwise, if is satisfied that the Committee has substantially diverted, misapplied or misappropriated the property of the institution to its detriment or the affairs of the institution are being otherwise managed."

Where the Committee of management of the Institution fails to show case within the time allowed under s.3 or within such extended time as 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, authorise 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. Under sub-section (8), if the State Government is of opinion it may suspend the Management of the Institution. Under Explanation I, for removing doubts in that behalf, the statute declared that in computing

A the period of time specified in sub-section (4) or sub-section (6), 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.

B Thus it could be seen that the Director is required to satisfy himself that if the Committee commits any of the misfeasance or malfeasance enumerated in sub-section (3) of s.16D, the Director is empowered to issue show cause notice and on consideration of the material, together with any reply to the show cause notice, if the Director satisfied that the Management of the Institution requires to be taken over and needs an appointment of an Authorised Controller, he is required to refer the matter to the Government. The Government has to consider the matter and for reasons recorded for its satisfaction in that behalf is empowered to authorise an officer called Authorised Controller to take over the management of his College. The maximum period during which Authorised Controller is empowered to manage the Institution is five years. The period during which the order of take over is suspended by the High Court is to be excluded in computation of the maximum period of five years. Admittedly, in this case, period of five years has not been expired because of the suspension of the operation of the order right from its inception by the High Court.

E The question is whether clauses (v) and (vi) to sub-s. (3) of Section 16D have been satisfied on the facts of the case. We have seen that the Director had issued show cause notice on seven charges for diverse reasons stated in the reports submitted by the Auditors-one departmental and another of the Government Audit Department. The explanation given by the respondents was found to be not satisfactory. He submitted the report to the Government who on consideration of the facts emerged from the record and for special and exceptional reasons enumerated in the order, appointed the Authorised Controller to take over the Institution.

G Shri Raju Ramchandran, learned counsel for the respondents, has contended that the requirement of recording reasons mentioned in sub-s. (4) of s.16D has not complied with. Recording of reasons is preceded by consideration of the explanation followed by agreement or disagreement with the explanation submitted by the Management. Reasons recorded in that behalf would not constitute compliance of sub-s. (4) of s.16D. We are H afraid that we cannot agree with the contention. It is settled law that

administrative authorities are not required to record reasons as elaborately as an order by a Court. What is required is application of mind to the relevant facts placed before the administrative authority; short reasons that weighed with them to take action need to be recorded. It is seen that the order at hand is an elaborate one and from the record it is seen that the Director had culled out material facts that emerged from the record. In fact it was specifically stated about misappropriation of the funds; non-accounting of the poor boys fees collected from the students; fee collected for construction of the Science Block. The collections spread over six to seven years and yet the building was not completed. Failure to account the money and depositing it into the account, amounts to misappropriation. The existence of the properties is not disputed.

Section 2(d) of U.P. Educational Institutions (Prevention of Dissipation of Assets) Act, 1974, defines 'property' in relation to an institution and it includes all immovable properties belonging to or endowed wholly or purely for the benefit of the institution, including lands, buildings and all other rights and interests arising out of such property as may be in the ownership, possession, power or control of the Management. It is not in dispute that the extensive land of about 52 bighas, 15 bighas, 11 bighas and six acres belong to the institution and the income said to have been derived from the vast land appears to be very meagre which would indicate that the management thereof does not appear to be on sound lines. Non-realisation of proper income derivable from the properties and their mismanagement would call for action.

It is settled law that the High Court exercising the power under Article 226 of the Constitution is not like an appellate authority to consider the dispute. It has to see whether the impugned order is based on records or whether the authorities have applied their own mind to the relevant facts. It is seen that clauses (v) and (vi) of sub-s.(3) of s.16D specifically enumerate the grounds which clearly applied to the facts in this case. Therefore, when the facts do exist on record and Government have applied their mind to those facts and came to the conclusion that from the facts so collected they were satisfied that the Committee had contravened clauses (v) and (vi) of sub-s.(3) of s.16D, they have rightly exercised the power under sub-section (4) of s.16D. We are of the view that the High Court has traversed the controversy as court of appeal and committed manifest error of law in interfering with the order.

A It could be seen from the explanation offered by the respondents that the properties were not properly managed and they set up title to the properties in themselves and mismanaged the properties, committed malfeasance and misfeasance and did not account for the funds collected. It is true that in 1991, fresh elections were held pursuant to which new management came into office and its term also has expired by afflux of time. As no new elections were conducted, old one is continuing the management. In 1986 when show cause notice was issued, Onkar Singh was the Manager. After the elections, his son Munedra Pal Singh is continuing as the Manager. In other words, the family is in the management of the Committee.

C Under these circumstances, we are of the view that the Committee should not be allowed to be in the management of the Institution. Accordingly the Authorised Controller is directed to immediately take over the management of the Institution and set right the running of the Institution on proper lines; then conduct the elections within the period prescribed under the Act and hand over the management to the newly elected body.

The appeal is accordingly allowed, the writ petition stands dismissed.  
No costs.

T.N.A.

Appeal allowed.