

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

**Special Appeal No. 92 of 2014**

Committee of Management Janta Inter College & others  
.....Appellants

**Versus**

State of Uttarakhand & others                      ..... Respondents

**With**

**Special Appeal No. 85 of 2014**

Committee of Management Smt. Shakuntala Shastri  
Ismarak Mahila Inter College & another  
.....Appellants

**Versus**

State of Uttarakhand & others                      ..... Respondents

**With**

**Special Appeal No. 84 of 2014**

Committee of Management Smt. Shakuntala Shastri  
Ismarak Mahila Inter College & another  
.....Appellants

**Versus**

State of Uttarakhand & others                      ..... Respondents

**With**

**Special Appeal No. 169 of 2014**

Committee of Management M.P. Hindu Inter College  
Ramnagar & another  
.....Appellants

**Versus**

State of Uttarakhand & others                      ..... Respondents

**With**

**Special Appeal No. 168 of 2014**

Committee of Management M.P. Hindu Inter College  
Ramnagar & another

.....Appellants

**Versus**

State of Uttarakhand & others

..... Respondents

**And**

**Special Appeal No. 170 of 2014**

Committee of Management M.P. Hindu Inter College  
Ramnagar & another

.....Appellants

**Versus**

State of Uttarakhand & others

..... Respondents

**Present:**

Mr. Paresh Tripathi, and Mr. C.K. Sharma, Advocate for the appellants.

Mr. Subhash Upadhyay, Chief Standing Counsel for the  
State/respondents.

**Coram:**     **Hon'ble Alok Singh, J**  
                     **Hon'ble Servesh Kumar Gupta, J**

**Hon'ble Alok Singh, J (Oral).**

Present appeals are preferred against the judgment and order passed by learned Single Judge of this Court dated 14.2.2014, whereby writ petitions were dismissed.

Since, in all the special appeals, identical questions of fact and law are involved and all appeals are arising out of one and common judgment, therefore, with the consent of learned counsel for the parties, all the appeals are heard together and are being disposed of by this common judgment.

By way of writ petitions, petitioners are assailing model scheme of administration prepared by the Department of Education, State of Uttarakhand, whereby the Management Committee of every institute, aided or unaided, is required to frame scheme of administration strictly as per the model scheme of administration prepared by the Department of Education.

The main question involved in the present petitions/appeals is – as to whether Department of Education has any jurisdiction under the provisions of Uttarakhand School Education Act, 2006 to frame model scheme of administration and to compel or ask every aided or unaided institute to frame fresh scheme of administration strictly in accordance with the model scheme of administration and to get it approved by the Education Department afresh.

Undisputedly, petitioners before us are different management committees of different institutes. Management Committee of the institute is constituted either by election or nomination as per the scheme of administration of the Society, running the institute, duly registered under the provisions of Societies Registration Act. All the institutes before us were recognized/approved by the Department of Education as per the Uttar Pradesh Intermediate Education Act, 1921. After the bifurcation of the State of Uttarakhand and creation of State of Uttaranchal (now Uttarakhand) on 9.11.2000, provisions of the U.P. Intermediate Education Act were being followed within the territory of Uttaranchal (Uttarakhand) too in view of Section 87 of the U.P. Reorganisation Act, 2000. After the enactment of Uttaranchal School Education Act, 2006, the U.P. Intermediate Education Act stood repealed within the territory of the State of Uttarakhand.

Let us now examine the main question involved in the present petitions.

Sections 29, 30, 31 and 32 of the Uttaranchal School Education Act, 2006 read as under :

*“29-Scheme of Administration-(1) Notwithstanding anything in any law, document, or decrees or order of a Court of other instrument there shall be Scheme of administration (hereinafter referred to as the Scheme of Administration) for every recognized institution, which shall be submitted along with the application for recognition for the sanction of the Director. The Scheme of Administration shall amongst other provide for the constitution of Committee of Management (hereinafter called the Committee of Management) vested with authority to manage and conduct the affairs of the institution. The Head of the institution and two teachers, thereof, who shall be selected by rotation according to seniority in the manner to be prescribed by Regulations, shall be ex-officio members of the Committee of Management with a right to vote.*

*(2) No member of the Committee of Management shall either attend a meeting of the committee or exercise his right to vote wherever a charge concerning his personal conduct is under discussion.*

*(3) The Scheme of Administration shall also describe subject to any Regulations, the respective powers, duties and functions of the Head of the Institution and Committee of Management in relation to the institution.*

*(4) Where more than one recognized institution is maintained by a body or authority, there shall be separate Committee of Management for each institution*

*unless otherwise provided in the Regulations for any class of institution.*

*(5) The Scheme of Administration of every institution shall be subject to the approval of the Director and no amendment to or change in the Scheme of Administration shall be made at any time without the prior approval of the Director.*

*Provided that where the Management of an institution is aggrieved by an order of the Director refusing to approve an amendment or change in the Scheme of Administration, the State Government, on the representation of the Management, may, if it is satisfied that the proposed amendment or change in the Scheme of Administration is in the interest of the institution, order the Director to approve of the same, and thereupon the Director shall act accordingly.*

*(6) Every recognized institution shall be managed in accordance with the Scheme of Administration framed under and in accordance with sub-section (1) to sub-section (5) and Section 30 and 31.*

*(7) Whenever there is dispute with respect to the Management of an institution, persons found by the Regional Additional Director of Education upon such enquiry as is deemed fit to be in actual control of its affair may, for purpose of this Act, be recognized to constitute the Committee of Management of such institution until a Court of competent jurisdiction directs otherwise:*

*Provided that the Regional Additional Director of Education, shall, before making an order under this sub-section, afford reasonable opportunity to the rival claimants to make representations in writing.*

*Explanation- In determining the question as to who is in actual control of the affairs of the institution, the Regional Additional Director of Education shall have*

*regard to the control over the funds of the institution and over the administration, the receipt of income from its properties, the Scheme of Administration approved under sub-section (5) and other relevant circumstances.*

*30- Scheme of Administration not to be inconsistent with the Schedule- The Scheme of Administration in relation to any institution, whether recognized before or after the commencement of this Act shall not be inconsistent with the principles laid down in the First Schedule.*

*31-Scheme of Administration to be Presented for sanction before the Director- (1) Where in relation to any institution, the Scheme of Administration has been or deemed to have been approved under Section 29 at any time before the commencement of the this Act and such Scheme of Administration is inconsistent with the provisions of this Act, the Institution shall submit, within a period of Six months from such commencement, a fresh Scheme of Administration Consistent with the principles laid down in the first schedule for the approval of the Director.*

*32-Requirement of Amendment or Alteration in the Scheme of Administration- (1) While making any suggestion in the Scheme of Administration submitted under Section 29 or 31 the Director shall send, within such period of time as may be prescribed , a notice to such institution suggesting any alternation or modification therein and requiring the institution to submit a fresh Scheme of Administration or to amend or alter the existing Scheme.*

*(2) While making any suggestion in the Scheme of Administration, the Director shall give his reasons*

*therefore and shall also afford an opportunity to the institution to make a representation within such period as may be specified in the notice.*

*(3) The Director shall consider any representation made in accordance with sub-section (2) and may approve the Scheme of Administration in its original form or subject to any alternation or modification suggested under sub-section (1) or with any other changes as may appear to him to be just proper.*

*Provided that where the Director proposes to make any new alternation or modification in the Scheme of Administration, he shall give an opportunity to the institution to make a representation within such period as may be specified by him.*

*(4) Subject to the provisions of this Act, the Director shall, within such period of time as may be prescribed, either approve the Draft Scheme of Administration submitted under Section 29 or section 31, or suggest any alternation or modification in the Scheme of Administration.*

*Provided that if the Director does not suggest any alteration or modification in the Draft Scheme of Administration within the period of time prescribed by regulations the draft Scheme of Administration shall be deemed to have been approved.”*

A bare perusal of Section 29 of the Act would demonstrate that every institution seeking recognition shall submit along with the application for recognition for sanction of the Director scheme of administration to demonstrate how to constitute the committee of management and how affairs of the institutions shall be managed. If society is running more than one recognized institution, there shall be separate committee of management for each institution.

Section 30 of the Act provides that scheme of administration shall not be inconsistent with the principles laid down in First Schedule of the Act of 2006. As per Sections 31 and 32 of the Act, every scheme of administration, already been approved under the old Act, before commencement of 2006 Act shall be deemed to have been approved under Section 29 of 2006 Act unless same is found to be inconsistent with the principles of First Schedule of 2006 Act. If any provision of the approved scheme of administration or proposed scheme of administration seeking recognition is found inconsistent with the principles of First Schedule of 2006 Act, the Director shall point out to the Society inconsistency therein and shall ask the institute either to remove the inconsistency from the existing scheme of administration or to furnish fresh scheme of administration removing the inconsistency. While pointing out the inconsistency, Director shall assign reasons thereof. Having received such notice from the Director, institution either shall carry out the amendment and furnish the amended scheme of administration within six months or shall show cause demonstrating that infact no provision of Scheme of Administration is inconsistent. If Show Cause is furnished, Director shall give opportunity of being heard and thereafter either shall approve the notice or shall withdraw the same or shall alter the same. No amendment or change in the scheme of administration shall be carried out without the prior permission of the Director of Education. Decision of the Director to carry out change or amendment in the scheme of administration or refusal to carry out such amendment or change can be assailed before the State Government, and decision of State Government on the subject shall be final.



No provision of the 2006 Act provides or authorizes the Director or the Education Department of the State of Uttarakhand to frame model scheme of administration and to compel every institute, aided or unaided, to furnish fresh scheme of administration strictly in term of the model scheme of administration for approval.

Moreover, we fail to find out any provision in the Act of 2006, whereunder old scheme of administration duly approved can be totally ignored and institute can be asked to furnish fresh scheme of administration for approval. Rather Section 31 of the Act provides otherwise, which mandates that earlier scheme of administration duly approved before commencement of 2006 Act shall be deemed to have been approved under the 2006 Act unless ofcourse some inconsistency with the principles of First Schedule of 2006 Act are pointed out by the Director, which are required to be removed by notice under Section 32 of the Act.

In view of the discussions made hereinabove, we hold that model scheme of administration is without jurisdiction; scheme of administration duly approved before commencement of the 2006 Act shall be deemed to have been duly approved under the 2006 Act. If any provision of the duly approved scheme of administration is found to be inconsistent with the First Schedule of the 2006 Act, committee of management running the institute shall be put to notice under Section 32 of the Act to remove the inconsistency from the provision of scheme of administration. We further hold that if the institute is put to notice to remove the inconsistency, the institute shall either remove the inconsistency and furnish the amended scheme of administration for approval by Director within six months or shall be at liberty to satisfy the Director

that in fact there is no inconsistency and the notice is not correct. If noticee furnishes its reply, noticee shall be heard before taking final decision on the notice.

In SPA No. 168 of 2014 and SPA No. 170 of 2014, Authorized Controllers have been appointed having observed that elections were not held as per the provisions of new model scheme of administration. In view of the fact that we have held that the model scheme of administration is without jurisdiction, orders of the Education Authorities not approving the election and appointing the Authorized Controller do not sustain in the eyes of law and stand quashed.

All the writ petitions and special appeals stand disposed of accordingly.

CLMA No. 2820 of 2014 also stands disposed of accordingly.

Let copy of this judgment be placed on each connected files.

**(Serves Kumar Gupta, J.)**                      **(Alok Singh, J.)**  
27.02.2015

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