
(2017) 07 AHC CK 0009
In the Allahabad High Court
Case No : 28218 of 2017

C/M Inter College and another

APPELLANT

Vs

State of U.P. and 8 Others

RESPONDENT

Date of Decision : 04-07-2017

Acts Referred:

Citation : (2017) 07 AHC CK 0009

Hon'ble Judges : Manoj Misra

Bench : Single Bench

Advocate : Siddharth Khare, Ashok Khare, Bheem Singh

Judgement

1. Heard Sri Ashok Khare, learned senior counsel assisted by Sri Siddharth Khare, for the petitioners; learned Standing Counsel for the respondents 1 to 5; and Sri G.K. Singh, learned senior counsel assisted by Sri Bheem Singh, for the respondents 6 to 9; and have perused the record.
2. Considering that there is no factual dispute in respect of the ground on which this order is being passed, this Court does not consider it necessary to invite counter affidavit from the respondents and therefore with the consent of learned counsel for the parties, this petition is being finally decided.
3. The present petition assails an order dated 22.6.2017 passed by Regional Level Committee by which the approval accorded to the election of the Committee of Management of Inter College, Kanauna, Bulandshahar has been set aside and an Authorized Controller has been appointed in the institution.
4. Briefly stated the relevant facts of the case are that in respect of Inter College, Kanauna, Bulandshahar, which is a recognized and aided Intermediate College, governed by the provisions of U.P. Intermediate Education Act, 1921 and the Regulations framed thereunder, election of its Committee of Management took place on 6.12.2014 which was approved by the District Inspector of Schools by order dated 9.2.2015. The committee functioned for about two years, post approval, where after, in the month of May 2017, certain complaints were made

by respondents 6 to 9 in respect of validity of its election. The matter as regards validity of election came for consideration by the Regional Level Committee. The Regional Level Committee appointed an Associate District Inspector of Schools, Bulandshahar for holding an enquiry into the legality of the election. Upon which, it appears, the Associate District Inspector of Schools, proceeded to hold an enquiry, after giving notice to the petitioner. Thereafter, the Associate District Inspector of Schools, submitted a report dated 15.6.2017 to the Regional Level Committee in respect of certain issues that vitiated the election. Upon which, the Regional Level Committee proceeded to annul the election held on 6.12.2014 as well as the order approving the same dated 9.2.2015.

5. It is the case of the petitioners that after submission of report by the enquiry officer to the Regional Level Committee, the Regional Level Committee did not give any notice to the petitioners and copy of the enquiry report was also not supplied and straight away impugned order dated 22.6.2017 was passed annulling the election held on 6.12.2014 as well as the approval accorded to the said election on 9.2.2015.

6. Learned counsel for the petitioners has assailed the order dated 22.6.2017 on the following grounds: (a) that the order is in violation of the principle of natural justice inasmuch as it places reliance on an enquiry report dated 15.6.2017 which was not supplied to the petitioners and no opportunity was provided to the petitioners to submit response to the said enquiry report, otherwise also, before taking a decision on the said enquiry report, no show cause notice was given to the petitioners despite the fact that the petitioners had been in office for over two years; and

(b) that the grounds on which the election has been annulled are not legally sustainable.

7. It has been submitted that two grounds have been taken to hold that the election dated 6.12.2014 was invalid. The first ground is that the members who had participated in the electoral process had not been properly enrolled in accordance with the provisions of the scheme of administration and therefore their participation in the electoral process had vitiated the election. The second ground is that the members of the Committee of Management were related to each other and therefore they could not have been elected.

8. In respect of the first ground, on which the election has been declared illegal, learned counsel for the petitioners has submitted that according to the view taken by the Regional Level Committee members could have been enrolled only by taking membership fee from them in bank draft whereas the newly enrolled members, who participated in the electoral process, had been enrolled by accepting membership fee from them in cash, which was against Clause 7 of the Scheme of Administration. It has been submitted that while holding as above, the Regional Level Committee lost sight of Clause 4 of the Scheme of Administration which enables payment of membership fee in cash. It has been

submitted that had opportunity been provided to the petitioners to respond to the enquiry report, the petitioners could have pressed Clause 4 of the Scheme of Administration into service to satisfy the authority that such members were lawfully inducted.

9. In respect of the second ground, on which the election dated 6.12.2014 has been annulled, learned counsel for the petitioners submitted that the elected members of the Committee of Management are not related to each other and therefore the view taken in the order impugned is factually incorrect and not legally sustainable.

10. It has thus been submitted that the order impugned deserves to be set aside and the matter needs to be remanded back to the Regional Level Committee to accord fresh consideration after giving opportunity to the petitioners to submit a reply to the enquiry report.

11. Per Contra, Sri G.K. Singh, learned senior counsel who has appeared on behalf of the respondents 6 to 9, submitted that no doubt there appears to be some conflict between Clause 4 and Clause 7 of the Scheme of Administration but Clause 7 of the Scheme of Administration specifically deals with the procedure to be adopted for enrollment of members of the general body and therefore specific provision has to prevail over the general provision. Moreover, there is a decision of a Division Bench of this Court (Shiv Nath Singh and others v. State of U.P. and others: 2008 (9) ADJ 540) that where the Scheme of administration provides that membership fee is to be obtained only through bank draft, then such provision has to be taken as mandatory and any violation of the provision would render the membership illegal. It has been submitted that Clause 4 of the Scheme of Administration does not specify that membership fee can be paid either in cash or by bank draft but it only says that it can be paid by "nagad bank draft". It has been submitted that since Clause 7 provides for specific procedure, the ambiguous Clause 4 should be read subject to the provisions of Clause 7 and as such if the Regional Level Committee has placed reliance on Clause 7, then the decision of the Regional Level Committee can not be faulted.

12. He, however, does not dispute that the petitioners were not provided any opportunity to respond to the report submitted by Associate District Inspector of Schools which forms basis of order passed by Regional Level Committee. He also does not dispute that the Regional Level Committee has not accorded consideration to Clause 4 of the Scheme of Administration. He has also not disputed that the elected members of the Committee of Management are not related to each other. He, however, submits that the impugned order turns on membership dispute, which turns on interpretation of the provisions of the scheme of administration, therefore, the issue is a pure question of law which may be finally settled by this court.

13. I have given thoughtful consideration to the submissions of learned counsel for the parties.

14. In Clause 4 of the scheme of administration, as enclosed with the petition, the relevant part, interpretation of which is involved, provides as follows: "Jo Vyakti Ek Saath 1000/- Rupaye Nakad / Bank Draft Ke Roop Mein Sansthan Ko De Ga Sabha ka Sanrakshak Aajiwan Sadasya Maana Jayega". The respondent counsel also supplied a copy of the scheme in which the relevant part extracted above is same except that after Rupaye Nakad, there is no slash (/).

15. Clause 7 of the scheme of administration provides for a detail procedure as to how a member would be enrolled. It provides that membership fee would have to be provided by Bank Draft in the name of the Manager. The membership fee will be given to the Treasurer. Thereafter, the Treasurer would forward it to the President. Thereafter, the membership claim shall be considered in the next meeting of the Committee. If the Committee does not accept, then an appeal would lie before the General Body and the decision of the General Body would be final. It is provided that upon acceptance by the Committee, the person subscribing to the membership shall be treated as member from the date of the Draft and if it is not accepted then the draft would be returned.

16. A perusal of the two clauses noticed herein above suggest that there is discrepancy in the two clauses in respect of the mode of payment of membership fee, inasmuch as, Clause 4 of the Scheme of Administration gives an option for the mode of payment by using the words "Nagad / Bank Draft" (or Nagad Bank Draft as claimed by respondents) whereas Clause 7 provides only for Bank Draft.

17. As to what would be the import of the statement made in Clause 4 of the Scheme of Administration that membership can be obtained by payment of membership fee by "nagad / bank draft" (or Nagad Bank Draft as claimed by respondents) is an aspect which required consideration before the membership claim could be discarded.

18. Whenever there is discrepancy between two clauses of one document then a question may arise as to which clause would prevail over the other as also whether in a given set of facts, the clause placing onerous condition is to be considered mandatory or directory. At this stage it would be apposite to refer to the observations of the apex court in the case of U.P. SEB v. Shiv Mohan Singh, (2004) 8 SCC 402 where, in paragraph 109, it was observed as follows: "It is now a well-settled principle of law that if the language used in a statute is capable of bearing more than one construction, the true meaning thereof should be selected having regard to the consequences resulting from adopting the alternative constructions. A construction resulting in hardship, non-fulfilment of the purpose for which the statute has been brought in force should be rejected and should be given that construction which avoids such results."

19. As to whether in a given case a clause has to be considered mandatory or directory may depend on facts of each case, particularly when there are conflicting clauses. In such cases, at times, it may be appropriate to consider what practice had prevailed in the past, inasmuch as a post facto interpretation,

giving precedence to one clause over the other, may cause serious prejudice to already vested rights and may upset a long standing practice.

20. Annulling membership of a member by a post facto interpretation of certain clauses of a scheme of administration, particularly when there are inconsistent clauses in the scheme of administration, may cause severe consequences affecting rights of a member who may have innocently subscribed to the membership. Therefore whether those onerous conditions are to be taken mandatory or directory would have to be examined on the background facts of each case and as such the plea of the learned counsel for the respondents 6 to 9 that the issue of membership, in the given set of facts, is a pure question of law is unacceptable.

21. No doubt a Division Bench of this Court in a case cited by learned counsel for the respondents have held that such a clause would have to be taken as mandatory but in the said decision there was no other inconsistent clause as there appears in the present case.

22. As admittedly, the Regional Level Committee has adopted a novel procedure of referring the enquiry to a third person and thereafter acting on the enquiry report, this Court is of the view that such procedure could have been adopted only when the adverse enquiry report had been supplied to the affected party for eliciting its response.

23. In view of the admitted position, that decision was taken without supplying inquiry report to the petitioner to enable him to respond to it as also that clause 4 of the scheme of administration has not been considered while passing the impugned order, this Court is of the view that the decision taken by the Regional Level Committee on the validity of the election stands vitiated. Accordingly, this Court considers it appropriate to set aside the order dated 22.6.2017 passed by Regional Level Committee and remit the matter back to the Regional Level Committee to take a fresh decision on the issue after supplying a copy of the enquiry report to the petitioners and obtaining response from the petitioners thereupon.

24. The order dated 22.6.2017 passed by Regional Level Committee is set aside. To facilitate expeditious consideration of the issue by the Regional Level Committee it is hereby provided that the petitioners shall furnish a certified copy of this order upon the Regional Joint Director of Education, Meerut Region, Meerut within a period of three weeks from today. Upon receipt of certified copy of this order, the Regional Joint Director of Education, Meerut Region, Meerut shall supply copy of the enquiry report to the petitioners within a period of one week thereafter and shall provide two weeks time to the petitioners to submit response to the aforesaid enquiry report. After receiving response from the petitioners, the Regional Level Committee shall examine the matter and take an appropriate decision preferably within a period of four weeks thereafter in accordance with law after considering submissions of both sides. If any response

is submitted by the petitioners to the enquiry report then it shall be submitted in sufficient number of copies so that the respondents 6 to 9 would have opportunity to obtain a copy for submission of their reply.

25. The petition stands allowed to the extent indicated above.