

(2010) 07 AHC CK 0014

In the Allahabad High Court

Case No : C.M.W.P. No. 56433 of 2009

Committee of Management, Dharma Samaj Society Inter
College and Sanskrit Pathshala and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 25(1), 25(2), 4
Uttar Pradesh State Universities Act, 1973 — Section 2(13), 58(2)

Citation : (2010) 07 AHC CK 0014

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Advocate : Prabhakar Awasthi, for the Appellant; Anoop Trivedi, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Dilip Gupta, J.—This petition has been filed by the Committee of Management of Dharma Samaj Society Inter College and Sanskrit Pathshala, Aligarh and Suresh Chandra Agrawal (Asha India) claiming to be its Secretary for setting aside the order dated 8th October, 2009 passed by the Deputy Registrar, Firms Societies and Chits, Agra (hereinafter referred to as the "Deputy Registrar") by which the list of office bearers and members of the Committee of Management of the Society for the year 2009-10 with O. P. Agarwal as President and Dinesh Kumar Agarwal as Secretary has been registered. The Petitioners have also sought a direction upon the Deputy Registrar to register the list of office bearers and members of the Petitioner-Committee of Management of the Society for the year 2009-10 with Suresh Chandra Agarwal (Asha India) as the Secretary.

2. Dharma Samaj Society Inter College and Sanskrit Pathshala, Aligarh (hereinafter referred to as the "Society") is a Society registered under the provisions of the Societies Registration Act, 1860 (hereinafter referred to as the

"Act"). The said Society, which has its own Bye-Laws, runs the Dharma Samaj Degree College and also Dharma Samaj Inter College, Aligarh. Though the dispute in the petition relates to the elections held on 18th June, 2009 for constituting the Committee of Management of the Society and the order dated 8th October, 2009 passed by the Deputy Registrar for registering the list of office bearers and members of the Committee of Management of the Society for the year 2009-10 on the basis of this election, but it will be appropriate to refer, in short, to the earlier disputes that had engaged the rival groups in litigations.

3. A dispute about the office bearers and members of the Committee of Management of the Society arose in the year 1994. Two sets of rival elections were submitted before the Assistant Registrar, Firms Societies and Chits, Agra (hereinafter referred to as the "Assistant Registrar"). In one election held on 3rd July, 1994, Om Prakash Agrawal claimed to have been elected as the President and Hari Shanker Agrawal as the Secretary, while in the other election held on 13th July, 1994, K. C. Singhal claimed to have been elected as the President and Ram Bharose Lal Agarwal as the Secretary. The Assistant Registrar referred the dispute to the Prescribed Authority u/s 25(1) of the Act, which by its order dated 11th August, 1997 accepted the claim of K. C. Singhal as President and Ram Bharose Lal Agarwal as Secretary/Manager of the Committee of Management of the Society on the basis of the elections held on 13th July, 1994. However, the effect and operation of the aforesaid order dated 11th August, 1997 was stayed by the Prescribed Authority itself on 13th August, 1997 and subsequently by the order dated 27th August, 1997, the Prescribed Authority set aside its earlier order dated 11th August, 1997. This order dated 27th August, 1997 was challenged by Ram Bharose Lal Agarwal in Writ Petition No. 28712 of 1997 which was allowed by the judgment and order dated 24th November, 1997 with a direction to the Prescribed Authority to decide the matter afresh in accordance with law.

4. Subsequently, on the basis of a joint application filed by the two rival factions, the Prescribed Authority passed an order on 9th December, 1998 directing the Deputy Registrar to take appropriate steps for holding elections for constituting the Committee of Management of the Society. Pursuant to the aforesaid directions issued by the Prescribed Authority, the Deputy Registrar initiated proceedings for conducting the elections but Suresh Chandra Mittal claiming himself to be the Secretary-cum-Manager of the Society filed an application before the Prescribed Authority for recalling its order dated 9th December, 1998 and the Prescribed Authority passed an order that the order directing the parties to initiate the election process may remain stayed. However, fresh elections were held on 21st January, 1999 in which Mishri Lal Garg claimed to have been elected as the President and Suresh Chandra Agarwal (Asha India) as the Secretary of the Committee of Management of the Society. Ramesh Chandra Agrawal, however, set up a rival claim.

5. The Assistant Registrar by the order dated 12th November, 1999 approved the

Committee of Management of the Society with K. C. Singhal as the President and Ram Bharose Lal Agarwal as the Secretary on the basis of the elections held in 1994 but by the order dated 26th November, 1999, the Assistant Registrar registered the list of office bearers and members of the Committee of Management of the Society for the year 1999-2000 with Suresh Chandra Agarwal (Asha India) as the Secretary and Mishri Lal Garg as the President. The Registrar, however, by the order dated 25th March, 2000 stayed the order dated 26th November, 1999 passed by the Assistant Registrar and subsequently the Assistant Registrar passed an order on 27th March, 2000 making ineffective his earlier order dated 26th November, 1999. These two orders dated 25th March, 2000 and 27th March, 2000 were challenged in Writ Petition No. 18254 of 2000 in which an interim order was passed on 18th April, 2000 staying the effect and operation of these two orders dated 25th March, 2000 and 27th March, 2000.

6. Writ Petition Nos. 18254 of 2000 and Writ Petition No. 29694 of 2001, which had been filed for challenging the order dated 25th July, 2001 passed by the Vice-Chancellor of the University recognising the Committee of Management of the Degree College with K. C. Singhal as the Manager, were decided by the common judgment and order dated 31st October, 2003 which is as follows:

From a perusal of the order dated 26th November 1999 it appears that the Assistant Registrar had not taken into consideration the earlier order dated 12th November, 1999 wherein he had recognized the Committee of Management headed by Dr. K. C. Singhal. The order dated 26th November, 1999 was passed without giving any show cause notice or any opportunity of hearing to the rival faction headed by the group of Dr. K. C. Singhal. From the record, it also appears that the Assistant Registrar had not given any notice or any opportunity of hearing to the Petitioners while passing the order dated 12th November, 1999. In this view of the matter, the order dated 12th November, 1999 as also the order dated 26th November, 1999 cannot be sustained. Thus, the order dated 25th March, 2000 passed by the Registrar calls for no interference as the Registrar had only directed the Assistant Registrar to give an opportunity of hearing to the parties and re-decide the matter which does substantial justice to the parties. In this special background of the matter, the Court declines to interfere with the order dated 25th March, 2000. However, it sets aside the order dated 12th November, 1999, filed as Annexure 26 to the writ petition. Since the order dated 18th April, 2000 was passed by the Assistant Registrar when this Court in Civil Misc. Writ Petition No. 18254 of 2000 had stayed the operation of the order dated 27th March, 2000 and the said order had been passed without giving any opportunity of hearing to the parties, the order dated 18th April, 2000 is also set aside.

Now, the question remains as to whether the order dated 25th July, 2001 passed by the Vice Chancellor can be said to be justified or not. He has relied upon the order dated 18th April, 2000 passed by the Assistant Registrar which order had already been stayed by the Assistant Registrar himself vide order dated 10th

July, 2001. Even otherwise, the said order dated 18th April, 2000 had been set aside by this Court by this judgment. In this view of the matter, the order dated 25th July, 2001 passed by the Vice Chancellor cannot be sustained and is hereby set aside.

In view of the foregoing discussion, Civil Misc. Writ Petition No. 18254 of 2000 succeeds in part and Civil Misc. Writ Petition No. 29694 of 2001 is allowed. The orders dated 12th November, 1999, filed as Annexure 26 to the Civil Misc. Writ Petition No. 18254 of 2000 and the order dated 25th July, 2001, filed as Annexure 36 to the Civil Misc. Writ Petition No. 29694 of 2001 are set aside. The Assistant Registrar is directed to give an opportunity of hearing to the parties and to decide the matter afresh in accordance with law within six weeks from the date a certified copy of this order is filed before him. After the matter is decided by the Assistant Registrar, the Vice Chancellor shall take a final decision in the light of the decision of the Assistant

Registrar.

(Emphasis supplied)

7. Pursuant to the aforesaid order passed by the Court on 31st October, 2003, the Assistant Registrar passed an order dated 21st January, 2004 registering the list of office bearers of the Committee of Management of the Society for the year 2001-02 with Suresh Chandra Agarwal (Asha India) as the Secretary and also issued directions for supplying the renewal certificate of the Society to Suresh Chandra Agrawal (Asha India). This order was challenged in Writ Petition No. 5208 of 2004 in which an interim order was passed on 11th February, 2004 staying the effect and operation of the order dated 21st January, 2004 and it was further directed that in the meantime, status quo may be maintained. This petition was, however, dismissed on 24th October, 2007 as having become infructuous by lapse of time.

8. In the meantime, an Authorized Controller was also appointed in the Degree College by the State Government u/s 58(2) of the U.P. State Universities Act, 1973 (hereinafter referred to as the "1973 Act") and the term of the Authorized Controller was extended from time to time.

9. After the dismissal of Writ Petition No. 5208 of 2004 on 24th October, 2007, a notification was published in the newspaper for holding of the election of the office bearers and members of the Committee of Management of the Society for the year 2008-09. The elections were held on 20th November, 2007 and by the order dated 3rd May, 2008, the Assistant Registrar registered the list of office bearers and members of the Committee of Management of the Society with Suresh Chandra Agarwal (Asha India) as the Secretary.

10. This order dated 3rd May, 2008 was challenged in Writ Petition No. 22795 of 2008 which was filed by two members of the Society namely Kalrav Agarwal and Sanjay Agarwal in which an interim order was passed on 9th June, 2008 staying

the operation of the order dated 3rd May, 2008 and a further direction was issued to the Assistant Registrar to hold elections u/s 25(2) of the Act.

11. Special Appeal No. 829 of 2008 was filed against the aforesaid interim order dated 9th June, 2008 in which an interim order was passed for maintaining status quo as on 3rd May, 2008.

12. Ultimately, Writ Petition No. 27795 of 2008 was dismissed on 2nd March, 2009 with the following observations:

Consequently, this Court is of the opinion that a writ petition filed by an individual member which does not represent 1/4 members of the Society cannot be entertained. The judgments cited by the learned Counsel for the Petitioner has no application with regard to the maintainability of the writ petition. The said judgment talks about the validity of the election conducted by a Committee after the expiry of the stipulated period contemplated under its rule or bye laws.

In view of the aforesaid, writ petition is dismissed as not maintainable.

13. Special Appeal No. 580 of 2009 was filed against the order dated 2nd March, 2009 which was dismissed on 12th May, 2009 with the following observations:

We do not have the slightest hesitation in accepting the broad submission of Mr. Tripathi that the provisions of Section 25(1) of the Act cannot curtail the powers of this Court under Article 226 of the Constitution of India but the question in the present case is as to whether in the face of it, it was a fit case, for exercise of jurisdiction under Article 226 of the Constitution of India. Section 25(1) of the Act, inter alia provides for resolution of the dispute of office bearers of a society and it contemplates that the prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a Society, hear and decide any dispute in respect of the election or continuance in office of an office bearer of such society.

Admittedly, the Petitioners do not present 1/4 members of the Society. In the face of it, we are of the opinion that the power of judicial review under Article 226 of the Constitution of India was not fit to be exercised at the instance of the Petitioners.

We do not find any merit in the appeal and it is dismissed accordingly.

14. On 5th May, 2009, the Vice-Chancellor of the University passed an order recognizing the Committee of Management of the Degree College with Dau Dayal Jindal as the Secretary and Mishri Lal Garg as the President for a period of three years u/s 2(13) of the 1973 Act. This order was communicated to the Secretary of the College by the Registrar of the University by the letter dated 9th July, 2009.

15. The State Government, however, passed an order on 17th July, 2009 appointing an Authorized Controller in the Degree College. This order was challenged by in Writ Petition No. 67468 of 2009 in which an interim order was

passed on 3rd September, 2009 which is as follows:

The Committee of Management of Dharam Samaj Degree College, Aligarh (hereinafter referred to as the "College") and its Secretary have filed this petition for setting aside the order dated 17th July, 2009 passed by the State Government appointing an Authorized Controller u/s 58(2) of the U.P. State Universities Act, 1973 (hereinafter referred to as the "Act").

It appears that earlier there was some dispute with regard to the Committee of Management of the College but ultimately the elections of the Committee of Management were held and the Vice-Chancellor of the University initially by the order dated 16th April, 2009 granted recognition u/s 2(13) of the Act for a period of three months and later on by the order dated 9th July, 2009 granted recognition to the Committee of Management for a period of three years.

In the impugned order dated 17th July, 2009 all that has been noticed is that the Vice-Chancellor of the University granted affiliation for a period of three months only with effect from 16th April, 2009 but even after noticing this fact, the State Government appointed the Authorized Controller with retrospective effect from 17th April, 2009.

Sri Prabhakar Awasthi learned Counsel appearing for the Petitioners submitted that the order deserves to be set aside inasmuch as not only the State Government has failed to take into consideration the earlier order dated 16th April, 2009 passed by the Vice Chancellor of the University recognizing the Committee of Management for a period of three months, but has also failed to take into consideration the subsequent order dated 9th July, 2009 passed by the Vice Chancellor of the University recognizing the Committee of Management for a period of three years.

Prima facie the submissions advanced by Sri Awasthi have force and the matter requires consideration.

Learned standing counsel appears for Respondent Nos. 1, 2, 3 and 5 while Sri Sanjay Kumar Singh appears for Respondent No. 4. They pray for and are granted four weeks' time to file the counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List this petition for admission/hearing in the week commencing 26th October, 2009.

Until further orders of this Court, the operation of the impugned order dated 17th July, 2009 shall remain stayed.

16. It is stated by the Petitioners that the General Body of the Society, in its meeting held on 12th August, 2009, removed Kalrav Agarwal, Pradeep Agrawal, A. K. Singhal, Kanti Prasad Agarwal and Dinesh Kumar Agrawal as members of the General Body of the Society under Clause 14 (a) of the Bye-Laws of the Society and intimation of this decision was also sent to the Deputy Registrar by

the letter dated 12th August, 2009. Subsequently, a communication dated 22nd August, 2009 was sent to the Assistant Registrar for registration of the list of office bearers and members of the Committee of Management of the Society for the year 2009-10.

17. However, it is stated by the private Respondent No. 3-Dinesh Kumar Agarwal that certain decisions were taken by the General Body of the Society in its meeting held on 18th June, 2009. At Item No. 2, the General Body passed the vote of no confidence against the office bearers of the Committee of Management of the Society elected on 20th November, 2007 and the office bearers and members of the Committee of Management of the Society were removed. At Item No. 3, the General Body resolved to seek resignation from Suresh Chandra Agarwal (Asha India), Dau Dayal Jindal, Suresh Chandra Tayal and Dinesh Kumar Agrawal as members of the General Body of the Society under Clause 14 of the Bye-Laws of the Society since they had indulged in activities against the interest of the Society. At Item No. 4, the General Body of the Society elected the new office bearers and members of the Committee of Management of the Society.

18. Subsequently, the papers for registration of the new list of office bearers and members of the Committee of Management of the Society, elected on 18th June, 2009, were sent to the Assistant Registrar by the letter dated 3rd July, 2009. The Assistant Registrar issued notice to the parties fixing 30th July, 2009 and ultimately, by the order dated 8th October, 2009 the Assistant Registrar found that the meeting was held on 18th June, 2009 in accordance with the Bye-Laws of the Society and he registered the list of office bearers and members of the Committee of Management of the Society for the year 2009-10 with Dinesh Kumar Agarwal as the Secretary.

19. It is this order dated 8th October, 2009 passed by the Deputy Registrar that has been impugned in the present petition.

20. In the counter affidavit filed by Respondent No. 3 Dinesh Kumar Agarwal, it is stated that a registered letter dated 13th April, 2009 was sent by 21 members of the General Body of the Society to Suresh Chandra Agrawal, Secretary of the Society for convening a meeting of the General Body of the Society under Clause 32 of the Bye-Laws of the Society and since meeting was not convened by the Secretary, these 21 members issued general notices to all the 523 members of the Society by U.P.C. on 11th June, 2009 for holding an urgent meeting of the General Body on 18th June, 2009. It is also stated that the notice was also published in the newspaper "Times of India" dated 10th June, 2009 that Annual General Meeting of the House will be held on 18th June, 2009 at 11: 00 a.m. It is further stated that a Special meeting of the Society was then held on 18th June, 2009 which was attended by 198 members of the General Body in which Kunwar Bahadur Agarwal was elected to preside the meeting since the President and the Vice-President did not attend the meeting and in the said meeting not only vote of no confidence was passed against the office bearers of the Committee of

Management of the Society and certain members were also expelled from the primary membership of the Society, but new office bearers of the Committee of Management of the Society were also elected and papers were sent to the Assistant Registrar by Dinesh Kumar Agarwal in his capacity as Secretary of the Committee of Management of the Society. Subsequently, the list of office bearers of the Society for the year 2009-10 was registered by the Assistant Registrar u/s 4 of the Act by the order dated 8th October, 2009 with Dinesh Kumar Agarwal as the Secretary.

21. Sri Prabhakar Awasthi, learned Counsel appearing for the Petitioners made the following submissions:

(a) The order dated 8th October, 2009 deserves to be set aside as it has been passed without hearing the office bearers of the Petitioner-Committee of Management.

(b) The meeting of the General Body of the Society held on 18th June, 2009 was not held in accordance with the provisions of Clause 32 of the Bye-Laws of the Society and the Petitioners or other members of the General Body of the Society were not given any notice of the said meeting.

(c) In the absence of any provisions in the Bye-Laws of the Society for passing a vote of no confidence against the office bearers and members of the Committee of Management of the Society, they could not have been removed by vote of no confidence in the meeting held on 18th June, 2009.

(d) Removal of Suresh Chandra Agarwal (Asha India), Dau Dayal Jindal, Suresh Chandra Tayal, Dinesh Kumar Agrawal as members of the General Body of the Society is contrary to the provisions of Clause 14 of the Bye-Laws of the Society.

(e) The Assistant Registrar failed to take into consideration the fact that Kalrav Agarwal, Dinesh Kumar Agarwal and three others had been removed as members of the General Body of the Society in terms of Clause 14 (a) of the Bye-Laws of the Society in the meeting of the General Body of the Society held on 12th August, 2009.

(f) Fresh elections of the office bearers and members of the Committee of Management of the Society could not have been held on 18th June, 2009 itself without notice to all the members and without publication of the election programme.

(g) Writ Petition No. 27448 of 2009 was dismissed as withdrawn since by mistake Suresh Chandra Agrawal was shown as the Secretary of the Committee of Management of the Degree College whereas in fact it was Dau Dayal Jindal who was the Secretary/Manager of the Committee of Management of the Degree College.

(h) The order passed by the Deputy Registrar on 8th October, 2009 fails to take into consideration the aforesaid facts and, therefore, deserves to be set aside.

22. Sri Anoop Trivedi, learned Counsel appearing for Respondent No. 3-Dinesh Kumar Agarwal made the following submissions:

(a) The meeting of the General Body of the Society was validly convened under Clause 32 of the Bye-Laws of the Society by 21 members of the General Body of the Society after giving proper notice to all the members of the General Body of the Society.

(b) The General Body of the Society committed no illegality in passing the vote of no confidence against the office bearers and members of the Committee of Management of the Society.

(c) The General Body of the Society committed no illegality in cancelling the membership of the four members of the General Body under Clause 14 of the Bye-Laws of the Society.

(d) Fresh elections of the office bearers and members of the Committee of Management of the Society were validly held on 18th June, 2009 and the Deputy Registrar committed no illegality in registering the list of the office bearers and the members so elected.

(e) The Deputy Registrar committed no illegality in rejecting the submission of Suresh Chandra Agrawal (Asha India) about removal of five members of the General Body of the Society under Clause 14 (A) of the Bye-Laws of the Society since no evidence was submitted to substantiate the allegations.

(f) The Deputy Registrar was justified in taking an ex parte decision since Suresh Chandra Agrawal (Asha India) and the other members deliberately avoided filing objections on the pretext of illness.

(g) The order passed by the Deputy Registrar on 8th October, 2009 is based on the materials available on record and does not suffer from any infirmity which may call for interference under Article 226 of the Constitution and in case the Petitioners are aggrieved they can file a civil suit in view of the decision in Committee of Management, Shri Swami Gokulanand Purvamadhyamik Vidhyalaya and Ram Chandra Yadav Vs. Assistant Registrar, Firms Societies and Chits and Others, .

(h) Writ Petition No. 27448 of 2009 was filed by the Committee of Management with Suresh Chandra Agrawal (Asha India) as the Secretary on 25th May, 2009 for a direction upon the Respondents to discontinue the Authorised Controller who was functioning in the Degree College and for handing over the charge of the affairs of the Institution to the Petitioner-Committee of Management but the said petition was dismissed as withdrawn on 27th August, 2009 since notice of the meeting to be held on 18th June, 2009 had been received by them and they were aware of the decisions taken in the said meeting.

23. I have considered the submissions advanced by the learned Counsel for the parties.

24. The controversy in the present petition revolves around the meeting of the General Body of the Society held on 18th June, 2009. In this connection, it needs to be remembered that the papers relating to the elections of the office bearers and members of the Committee of Management of the Society held on 20th November, 2007 were forwarded to the Assistant Registrar and by the order dated 3rd May, 2008, the Assistant Registrar had registered the list of office bearers and members of the Committee of Management of the Society for the year 2008-09 with Suresh Chandra Agarwal (Asha India) as the Secretary. This order dated 3rd May, 2008 was challenged by two members of the General Body of the Society namely Kalrav Agarwal and Sanjay Agarwal in Writ Petition No. 27795 of 2008 but this petition was dismissed on the ground that a writ petition filed by less than 1/4th members of the General Body of the Society could not be entertained in view of the provisions of Section 25(1) of the Act. The special appeal filed against the aforesaid judgment and order was also dismissed on 12th May, 2009. It is after the dismissal of this writ petition that the meeting of the General Body of the Society was held on 18th June, 2009. It is also alleged by the Petitioners that subsequently Kalrav Agarwal, Pradeep Agarwal, A. K. Singhal, Kanti Prasad Agarwal and Dinesh Agarwal were removed as members of the General Body of the Society on 12th August, 2009 in terms of Clause 14A of the Bye-Laws of the Society which provides that membership can be cancelled for certain reasons and information was given to the Deputy Registrar.

25. It is, however, the case of Respondent No. 3-Dinesh Kumar Agarwal that 21 members of the General Body of the Society sent a registered letter dated 13th April, 2009 to the Secretary Suresh Chandra Agarwal (Asha India) for convening a meeting of the General Body of the Society but since such meeting was not convened, a special urgent meeting of the General Body was called for on 18th June, 2009 under Clause 32 of the Bye-Laws of the Society.

26. In order to appreciate the rival contentions, it is necessary to examine the Bye-Laws of the Society.

Clause 12 of the Bye-Laws of the Society provides that the term of office bearers and members of the Committee of Management of the Society shall be three years but they shall continue in office till the successors are elected.

Clause 14 of the Bye-Laws of the Society provides that if the conduct of a member of the Society is objectionable or if the conduct is against the interest of the Society or if a member has been convicted by a criminal court for an offence relating to moral turpitude, then an order requiring the member to submit his resignation from the General Body can be passed by 2/3rd majority of the members present in the meeting of the Committee of Management of the Society specially convened for this purpose but if the said member does not submit his resignation within one month then his name can be cancelled from the membership of the Society.

Clause 14A of the Bye-Laws of the Society provides that a member of the

General Body cannot initiate any proceeding in a Court of law with respect to a dispute pertaining to the Society and if he does so, then the Society can cancel his membership.

Clause 26 of the Bye-Laws provides that every year there shall atleast be one meeting of the General Body of the Society.

Clause 30 provides that the President or the Secretary shall call meetings or special urgent meetings of which prior information shall be given in the following manner:

(a) Two weeks prior notice should be given for holding ordinary meeting of the General Body.

(b) One week prior notice should be given for holding special urgent meeting of the General Body.

(c) Three days prior notice should be given for holding the ordinary meeting of the Committee of Management of the Society or the College.

(d) 24 hours prior notice should be given for holding special urgent meeting of the Committee of Management of the Society or the College.

It further provides that in the meeting only such matters should be discussed for which prior information has been given, but with the permission of the President of the meeting, urgent matters can be discussed.

Clause 31 provides that the Secretary of the Society can call an ordinary meeting of special members with one week prior notice but he can also call an extraordinary meeting of the special members by giving three days prior notice.

Clause 32 provides that apart from the President and the Secretary, any three members of the Executive Committee or 21 members of the General Body can send written information to the President or the Secretary for convening special meeting of the General Body for the purpose stated in the communication. It further provides that if the President or the Secretary, after receipt of the aforesaid communication, do not call a meeting within three weeks, then the persons desirous of holding a meeting, after sending prior information to the members of the General Body and after informing the President and the Secretary, themselves can call a meeting of the General Body.

27. Having noted the relevant provisions of the Bye-Laws of the Society, it is necessary to refer to the following facts and conclusions mentioned in the order dated 8th October, 2009 passed by the Deputy Registrar:

(i) Dinesh Kumar Agarwal as Secretary of the Committee of Management of the Society submitted papers of the proceedings dated 18th June, 2009 for registration of the 2009-10 list of the office bearers of the Committee of Management of the Society stating that a special urgent meeting of the General Body of the Society was convened for 18th June, 2009 under Clause 32 of the

Bye-Laws of the Society by 21 members of the General Body of the Society since Suresh Chandra Agarwal (Asha India) did not convene a meeting of the General Body of the Society despite notice dated 13th April, 2009 sent by Registered Post by these 21 members of the General Body of the Society. The said meeting was attended by 198 members and as the President and Vice-President did not attend the meeting, Kunwar Bahadur Agarwal was elected as the Chairman of the Meeting. Vote of no confidence was passed against the office bearers of the Committee of Management of the Society and the primary memberships of Suresh Chandra Agarwal (Asha India), Dau Zindal, Suresh Chandra Tayal and Dinesh Kumar Agarwal in the General Body of the Society were terminated. New office bearers of the Committee of Management of the Society were also elected and the list of office bearers for the year 2009-10 was submitted.

(ii) On receipt of the aforesaid papers, notice dated 20th July, 2009 was issued to the erstwhile office bearers to file the objections by 30th July, 2009 stating that Dinesh Kumar Agarwal as Secretary of the Society had sent a communication dated 4th July, 2009 regarding the resolutions taken in the meeting held on 18th June, 2009 alongwith the list of office bearers of the Committee of Management of the Society.

(iii) Suresh Chandra Agarwal (Asha India) informed that he had been recognised as the Secretary by the High Court and legal opinion should also be sought regarding the papers submitted by Dinesh Kumar Agarwal. A request was also made for furnishing copy of the documents submitted by Dinesh Kumar Agarwal so that a reply could be filed. Such a letter was again sent on 28th July, 2009 by Suresh Chandra Agarwal (Asha India), Satish Kumar Singh, Pawan Zindal and Swatantra Prakash Gupta.

(iv) Documents were supplied to Amit Kumar on 12th August, 2009 and the others were informed by the letter dated 19th August, 2009 that they can inspect the documents in the office of the Deputy Registrar and obtain copies.

(v) Letter dated 31st July, 2009 was sent to Mishri Lal Garg, Swatantra Prakash Gupta, Suresh Chandra Agarwal, Amit Kumar, Dinesh Kumar Agarwal, Satish Kumar Singh, Pawan Zindal and Rajeev Agarwal informing them that hearing will take place on 20th August, 2009 at 12 "O Clock.

(vi) On 20th August, 2009 Dinesh Kumar Agarwal appeared but hearing could not take place and it was fixed for 28th August, 2009.

(vii) On 28th August, 2009, nobody appeared and, therefore, notice was issued to the parties fixing 22nd September, 2009.

(viii) On 22nd September, 2009 only Dinesh Kumar Agarwal appeared but the other persons did not appear. Suresh Chandra Agarwal (Asha India) and Swatantra Prakash Gupta desired that some other date may be fixed and Suresh Chandra Agarwal also submitted his medical certificate.

(ix) All the members who did not appear on 22nd September, 2009 were

informed through letter dated 22nd September, 2009 about the next date of hearing.

(x) On the next date, i.e., 30th September, 2009 only Dinesh Kumar Agarwal appeared but the other persons did not appear and nor did they submit any evidence.

(xi) On 29th September, 2009 Suresh Chandra Agarwal (Asha India) again submitted a medical certificate and requested for fixing a date in the last week of October, 2009 but since many dates had earlier been fixed, ex parte hearing was done.

(xii) From the materials available on record, it is clear that a letter was sent by 21 members of the General Body of the Society to the Secretary on 13th April, 2009 for convening a meeting of the General Body of the Society under Clause 32 of the Bye-Laws of the Society but since the meeting was not convened by the Secretary, these members convened a meeting of the General Body on 18th June, 2009 after intimating all the members of the General Body by U.P.C. and notice was also published in newspaper "Times of India" on 10th June, 2009.

(xiii) Since the President and Vice President of the Society did not attend the meeting, it was held under the Chairmanship of Kunwar Bahadur Agarwal. This meeting was attended by 198 members of the General Body. Suresh Chandra Agarwal (Asha India) or other persons did not submit objections and so it is clear that the meeting was held on 18th June, 2009 in accordance with the Rules.

(xiv) From the record it transpires that a letter dated 12th August, 2009 was sent by Suresh Chandra Agarwal (Asha India) to the Assistant Registrar regarding the meeting held on 12th August, 2009 for removal of Kalrava Agarwal, Pradeep Agarwal, S. K. Singhal, Kanti Prasad Agarwal, Babu Lal, Vashudeo Prasad and Dinesh Kumar Agarwal from the primary membership. Dinesh Kumar Agarwal, however, informed that he had no information about such meeting and nor was such a meeting held. No evidence was submitted by Suresh Chandra Agarwal to substantiate that the meeting was held on 12th August, 2009.

(xv) From the aforesaid discussion and the records submitted by Dinesh Kumar Agarwal, it is clear that the proceedings of the meeting held on 18th June, 2009 are in accordance with the Byes-Laws of the Society and on the basis of the said meeting, the list of office bearers of the Committee of Management of the Society for 2009-10 should be registered u/s 4 of the Act.

28. It is not in dispute that the Assistant Registrar had by the order dated 3rd May, 2008 registered the list of office bearers and members of the Committee of Management of the Society for the year 2008-09 with Suresh Chandra Agarwal (Asha India) as the Secretary on the basis of the election of the Committee of Management of the Society held on 20th November, 2007. Under Clause 12 of the Bye-Laws of the Committee of Management of the Society, the term of office

bearers and members of the Committee of Management of the Society is three years but it is also provided under the said Clause that they shall continue in office till the successors are elected. Initially, an attempt was made by two members of the General Body of the Society namely, Kalrava Agarwal and Sanjay Agarwal for setting aside the order dated 3rd May, 2008 passed by the Assistant Registrar by filing Writ Petition No. 27795 of 2008 but this petition was dismissed on 2nd March, 2009 and the special appeal filed against the said judgment and order was also dismissed on 12th May, 2009. It is after the dismissal of the aforesaid writ petition and the special appeal that a claim was made by Dinesh Kumar Agarwal regarding holding of an urgent meeting of the General Body of the Society on 18th June, 2009 by 21 members of the General Body of the Society under Clause 32 of the Bye-Laws of the Society since the Secretary of the Society Suresh Chandra Agarwal (Asha India) did not convene the meeting despite the request made by 21 members of the General Body of the Society by the registered letter dated 13th April, 2009.

29. It is the contention of Sri Prabhakar Awasthi, learned Counsel appearing for the Petitioners that the postal receipt annexed as Annexure-C.A.-1 to the counter affidavit regarding sending of the letter dated 13th April, 2009 is not clear and nor can it be deciphered from the receipt as to whom the letter was sent and nor is there any document of the postal department to establish that the said letter was actually served upon the Secretary of the Society. It is, therefore, his contention that unless and until it is established that the communication dated 13th April, 2009 was actually served upon the Secretary of the Society Suresh Chandra Agarwal (Asha India), the occasion for calling a meeting of the Committee of Management of the Society by these 21 members does not arise.

30. It is also the submission of learned Counsel for the Petitioners that it was incumbent upon these 21 members to have issued proper notice to all the members of the General Body of the Society for the holding of the meeting on 18th June, 2009 but that was not done. He points out from the counter affidavit that all that has been stated in this regard is that information was sent to all the members of the General Body of the Society by U.P.C. on 11th June, 2009 for holding the urgent meeting of the General Body on 18th June, 2009 and a copy of the said letter with the postal receipts has been annexed as Annexure C.A.-2 to the counter affidavit. It is his submission that it is not possible to decipher the date from most of the postal receipts enclosed as Annexure C.A.-2 to the counter affidavit and from some of the postal receipts it is clear that the notice was sent on 12th June, 2009. It is, therefore, his submission that this is contrary to the provisions of Clause 30 of the Bye-Laws of the Society since at least a week's prior notice was required to be given for convening the special meeting of the General Body.

31. He also points out that according to the Respondents, newspaper publication for holding of the meeting of the General Body was also made on 10th June, 2009 in "Times of India". It is his submission that apart from the fact that the

said newspaper was published from New Delhi and not from Aligarh, the notice merely mentions that the Annual General Meeting of the Society will be held on 18th June, 2009 and does not mention that urgent meeting will be held and nor does it mention that the meeting will consider the no confidence motion against the existing office bearers of the Committee of Management of the Society. He, therefore, contends that for holding ordinary meeting of the General Body, at least two weeks" prior notice was required to be given but that was not done. It is, therefore, his contention that the members of the General Body had no knowledge that urgent meeting of the General Body of the Society will be held on 18th June, 2009 to consider the No Confidence Motion against the office bearers and members of the Committee of Management of the Society.

32. It is also the contention of Sri Prabhakar Awasthi, learned Counsel for the Petitioners that in the absence of any provision in the Bye-Laws of the Society for passing no confidence motion against the office bearers of the Committee of Management of the Society, it was just not possible for the General Body of the Society to remove the entire office bearers and members of the Committee of Management of the Society in the meeting held on 18th June, 2009. He, therefore, submits that the decision taken at resolution No. 2 is not contemplated under the Bye-Laws of the Society.

33. There is no provision in the Bye-Laws of the Society for removing the office bearers of the Committee of Management of the Society by vote of no confidence and indeed Sri Anoop Trivedi, learned Counsel appearing for the Respondents has also not been able to place any such provision. In Riaz Uddin Vs. State of U.P. and Others, , a Division Bench of this Court held that in the absence of any provision in the Scheme of Administration of the Institution, a vote of no confidence cannot be passed against the members of the Committee of Management of the Institution and the relevant observations are as follows:

Under Clause 7 of the Scheme of Administration, the term of the Committee of Management is three years (copy of which is enclosed as Annexure-4 to the writ petition).

It is mentioned therein that "the term of office-bearers and members v. (a) and (c) other than ex officio members shall be three years from the date they are chosen, provided that the term of every office bearer shall be deemed to have continued till his successor is chosen. The term of the ex officio members shall be governed by the Regulations of the Act.

There is no provision in Scheme of Administration for passing of vote of no-confidence against the members of the Committee of Management. Also there is no statutory provision in the U.P. Intermediate Education Act or any other statute to this effect.

It has been contended by the learned Counsel for the Appellant that the no-confidence motion was passed against the Respondent No. 5 on 31.8.2003, and it was also affirmed by the general body of the society on 8.9.2003.

In our opinion, such no confidence motion is wholly null and void and has no legal effect at all. Only if there is a provision for passing a no-confidence motion, can a no-confidence motion be legally passed. There is no inherent power to pass a no-confidence motion. For example, under the Representation of the People Act, there is no provision for passing a motion of no-confidence against an elected Member of Parliament, and hence the term of the member will continue as long as that Parliament exist.

The term of a Member of Parliament can therefore, not be curtailed by passing a motion of no-confidence, even if passed by a majority of the voters in the constituency.

Some statutes contain a provision for a motion of no-confidence e.g., the U.P. Panchayat Raj Act, U.P. Municipalities Act, U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam etc. Hence, wherever there is a provision for passing a motion of no-confidence it can certainly be passed, but where there is no such provision a no confidence motion legally cannot be passed at all, and if passed, will be null and void.

(Emphasis supplied)

34. In the present case also, Clause 12 of the Bye-Laws of the Society provides that the term of the office bearers and members of the Committee of Management of the Society shall be three years but they shall continue in office till the successors are elected. In the absence of any provision in the Bye-Laws of the Society or the Act for removing the office bearers and members of the Committee of Management of the Society by vote of no confidence, the decision taken by the General Body of the Society on 18th June, 2009 for removing the office bearers and members of the Committee of Management of the Society by vote of no confidence cannot be sustained in view of the aforesaid Division Bench judgment of this Court.

35. In view of the aforesaid, it is not necessary to examine the other contentions raised by the learned Counsel for the Petitioners about the validity of the meeting of the General Body held on 18th June, 2009 under Clause 32 of the Bye-Laws of the Society. It, however, needs to be noted that there is force in the submission of the learned Counsel for the Petitioners that the meeting held on 18th June, 2009 is not in conformity with the provisions of Clause 32 of the Bye-Laws of the Society since it is not established from the records that the communication dated 13th April, 2009 was actually sent by 21 members of the General Body of the Society to the Secretary for convening a meeting of the General Body of the Society. This apart, if such important decisions like removal of office bearers and members of the Committee of Management of the Society and cancellation of primary membership of certain members of the Society was to be taken in the meeting to be held on 18th June, 2009, then it was incumbent upon these 21 members to have taken proper steps for service of notice upon all the members of the General Body of the Society and sending of information by U.P.C. does not

inspire confidence particularly when the receipts are not clear.

36. Even otherwsie, there is confusion as to whether an urgent meeting of the General Body was to be held on 18th June, 2009 or whether Annual General Meeting was to be held since there is variation in the communication dated 11th June, 2009 and the newspaper publication. If, as mentioned in the newspaper notice, the Annual General Meeting was held on 18th June, 2009, then the notice falls short of two weeks" time which was required to be given in such a case.

37. It is also not clear whether seven days" notice was given to the members for holding the urgent special meeting on 18th June, 2009 since some of the postal receipts from which the date can be deciphered, shows that the letter was dispatched on 12th June, 2009 for holding the urgent meeting on 18th June, 2009.

38. It is also the contention of learned Counsel for the Petitioners that termination of primary membership of four members under resolution No. 3 is not in accordance with Clause 14 of the Bye-Laws of the Society since the General Body of the Society could have at best directed the members to submit their resignation and only if resignation letter was not submitted within one month, that the names of such members could have been cancelled from the list, but this procedure was not adopted.

39. The newspaper publication dated 10th June, 2009 does not mention that the meeting was convened for considering the cancellation of the membership of four members from the General Body of the Society, yet the General Body of the Society took up this issue in the meeting held on 18th June, 2009. Secondly, under Clause 14 of the Bye-Laws of the Society, resignation has first to be sought from such members and it is only when such members do not submit their resignation within a period of one month that their membership can be cancelled but in the present case, it has been noted by the Deputy Registrar that the membership was cancelled on the same date. The decision taken by the General Body of the Society at resolution No. 3 in the meeting held on 18th June, 2009, therefore, also cannot be sustained.

40. It is also the contention of learned Counsel for the Petitioners that fresh elections of the Committee of Management of the Society could have only been held in accordance with the Bye-Laws of the Society but in the instant case after removing the earlier office bearers of the Committee of Management of the Society in the meeting held on 18th June, 2009, the new Committee of Management was also constituted on the same date. The resolution mentions that since the members present in the meeting expressed their willingness for holding the election on the same date so that there was no vacuum, fresh elections were held after a period of half an hour. Such a procedure said to have been adopted in the meeting held on 18th June, 2009 is not only contrary to the provisions of the Bye-Laws of the Society but is also contrary to the well-established procedures relating to elections. In the first instance, the notification

for holding the elections has to be announced and information has to be conveyed to all the members of the General Body of the Society. Such notification was not issued and at best it can be said that only 198 members were aware that the election is to be held though even according to Respondent No. 3-Dinesh Kumar Agarwal, there were about 533 members of the General Body of the Society. The remaining members, therefore, had no notice that election of the Committee of Management of the Society will be held on 18th June, 2009. This apart, the decision to hold fresh elections was taken on 18th June, 2009 and the entire election process was completed on 18th June, 2009. It is, therefore, not possible for the Court to sustain such an election of the Committee of Management of the Society held on 18th June, 2009.

41. The Deputy Registrar, while registering the list of office bearers and members of the Committee of Management of the Society for the year 2009-10, has failed to take into consideration the aforesaid facts and has merely observed that the meeting was validly held on 18th June, 2009 under Clause 32 of the Bye-Laws of the Society and the elections were also validly conducted on the same date, i.e., 18th June, 2009. As seen above, on the said date not only were the existing office bearers and members of the Committee of Management of the Society removed by vote of no confidence but fresh elections were also held for constituting a new Committee of Management of the Society. Thus, for the reasons stated above, it is not possible to sustain the order dated 18th October, 2009 passed by the Deputy Registrar. The contention of the learned Counsel for the Petitioners that the order has been passed by the Deputy Registrar without giving opportunity to the office bearers, therefore, need not be examined.

42. The submission of learned Counsel for Respondent No. 3-Dinesh Kumar Agarwal that the writ petition should not be entertained as the Petitioners can file a civil suit to assail the order dated 18th October, 2009 passed by the Deputy Registrar in view of the decision in Committee of Management, Sri Swami Gokulanand Purvamadhyamik Vidyalaya Jaunpur (supra) cannot be accepted. The Court held that Civil Suit should be filed as oral and documentary evidence was required. In the present case, as seen above, it has been found as a fact that all the three resolutions are not in conformity with the Bye-Laws of the Society. In such circumstances, it will not be appropriate to dismiss the petition on the ground that the Petitioners can file a civil suit.

43. It will, however, be open to the Petitioners to raise the issue about the proceedings dated 12th August, 2009 regarding cancellation of membership of four members before the appropriate forum.

44. Thus, for all the reasons stated above, the order dated 18th October, 2009 passed by the Deputy Registrar as also the resolutions taken in the meeting of the General Body of the Society held on 18th June, 2009 are set aside. The Deputy Registrar shall now examine the papers submitted by the Petitioners for registration of the list of office bearers and members of the Committee of Management of the Society for the year 2009-10 in accordance with law.

45. The writ petition is allowed to the extent indicated above.