

(2014) 01 AHC CK 0100

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12102 of 2011

Committee of Management, Major Asharam Inter College and
Another

APPELLANT

Vs

Regional Committee and Others

RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 16-A

Citation : (2014) 1 ADJ 689 : (2014) 2 AWC 1767

Hon'ble Judges : P.K.S. Baghel, J

Bench : Single Bench

Advocate : Indra Raj Singh, R.P. Singh, R.P. Mishra and Ram Gopal Tripathi, for the Appellant; S.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

P.K.S. Baghel, J.—The petitioners have preferred this writ petition for quashing the orders dated 3.7.2010 and 29.1.2011, passed by respondent Nos. 2 and 1, whereby the membership of 150 newly enrolled members have been rejected by the Regional Level Committee and a direction has been issued for holding a fresh election. The brief facts of the case are that Major Asharam Inter College, Ganeshpur, Meerut (for short, "the institution"), is a recognized institution, which receives aid out of State fund and thus the provisions of U.P. Intermediate Education Act, 1921 and the U.P. High School & Intermediate College (Payment of Salaries of Teachers and other Employees Act, 1971), are applicable to the institution. The institution is run by the Committee of Management in accordance with the approved scheme of administration u/s 16-A of Intermediate Education Act. The last undisputed election of Committee of Management of the Institution was held on 17.6.2005. The term of the Committee of Management is five years. In the said election, one Sri Riksh Pal Singh was elected as President and the petitioner No. 2 ? Sri Kure Singh was elected as Manager of the institution. Said election was recognized by the D.I.O.S. Meerut on 27.12.2005. It is stated that

on 25.6.2007 a resolution was passed by the General Body of the Committee of Management of the institution to enroll fresh members in the General Body. It is averred in the writ petition that in pursuance of the said resolution, requisite membership fees from 50 persons for life members and from 100 members for ordinary members were collected and the same was deposited in the bank account of the institution. It is stated that after acceptance of membership of newly enrolled members in the meeting of Committee of Management held on 29.5.2009, a meeting of General Body was held on 28.6.2009, wherein newly enrolled members were accepted as members of the institution. Subsequently, a fresh election was held on 14.6.2010, wherein the newly enrolled 150 members were also allowed to participate. It is stated that the said election was held in terms of the scheme of administration and the Election Officer was appointed by the District Inspector of School, Meerut. However, some objections were filed before the D.I.O.S. in respect of electoral college and the election held on the basis thereof. The D.I.O.S disapproved the said election on 3.7.2010, on the ground of enrollment of 150 new members in the General Body and their participation in the said election. A copy of the order of dated 3.7.2010 has been brought on the record as Annexure-23 to the writ petition.

2. Aggrieved by the said order of D.I.O.S., the petitioners preferred a writ petition being Writ - C No. 41608 of 2010 (C/M Major Asharam Inter College, Ganeshpur and another v. D.I.O.S and others), which was disposed of by this Court on 20.7.2010 with a direction to the Regional Level Committee to consider the matter afresh as the D.I.O.S has no jurisdiction to adjudicate the matter. In compliance of this Court's order dated 20th July, 2010, the Regional Level Committee, after affording opportunity to all the concerned parties, has passed the impugned order dated 29.1.2011, whereby it found that newly enrolled members were not valid members as the procedures provided in the scheme administration have not been followed. Against this background, the petitioners have filed this writ petition.

3. I have heard Sri Ram Gopal Tripathi and Sri R.P. Mishra, learned counsel for the petitioners, and Sri S.P. Singh, learned Advocate, who appears for respondent No. 5, and learned Standing Counsel for the State functionaries.

4. Learned counsel for the petitioners Sri Ram Gopal Tripathi submits that the findings of the Regional Level Committee with regard to the election and enrollment of fresh members is not correct as it is based on number of members, who were enrolled by depositing the cash in the Bank. He further submits that the said practice was followed in the present case also and admittedly the cash collected from the newly enrolled members were deposited in the Bank Account of the institution.

5. Learned counsel for the respondents Sri S.P. Singh submits that the procedure for enrollment of members has been given in the scheme of administration and the newly enrolled members are admittedly enrolled in the teeth of Clause-7 of the Scheme of Administration.

6. I have considered the respective submissions advanced by the learned counsel for the parties and perused the record.

7. It is a common ground that the affairs of the institution are managed by a Committee of Management, which has a duly approved scheme of administration, a copy whereof has been brought on records as Annexure-1 to the writ petition. From a perusal of the scheme of administration, it is evident that a detailed procedure has been laid down under Clause-7 for enrollment of new members. The Clause-7 of the scheme of administration reads as under:

8. The Regional Level Committee has found that Clause-7 provides to deposit the membership by way of bank draft in favour of the institution, however in the present case none of the members have deposited their membership fee through a bank draft. The Regional Level Committee has also found that some of the office bearer and members have filed their notarized affidavits, stating that they are not aware of the enrollment of new members between 22nd May and 29th May, 2010. The Regional Level Committee has further found that no meeting of the General Body was held to accept the Membership of newly enrolled members, in absence whereof the membership cannot be accepted.

9. Learned counsel for the petitioners Sri Ram Gopal Tripathi has very fairly submitted that the finding of the Regional Level Committee that members have not deposited their membership fee through the Bank Draft, is correct. However merely because the members were enrolled by accepting the fee in cash, cannot be a ground for setting aside the matter, which is based on record and admitted fact that none of the members had deposited the requisite fee.

10. Learned counsel for the petitioners has drawn the attention of the Court to the judgment of this Court in Shiv Nath Singh and others v. State of U.P. and others, 2008 (89) ADJ 540 (DB). In the said case, Clause-7 of the scheme of administration is verbatim of the scheme of administration of this institution. In the said case also, there was violation of Clause-7 of the scheme of administration. The Court held that it is in the interest of the institution, if the provision for deposit of membership fee through a bank draft is a requisite. For the sake of convenience, paragraphs 10 & 11 of the judgment are extracted below:

10. It is urged by the learned counsel for the appellants that the treasurer had full authority to accept membership fee by cash for enrolling new members. He urged that there is no bar in accepting membership fee by cash and clause 7 of the Scheme of Administration was not mandatory and was directory in nature and its non-compliance would not be fatal and the new 130 members have to be treated as void members.

11. We have given our anxious consideration to the question as to whether clause-7 of the Scheme of Administration is mandatory or directory. It has not been disputed by the learned counsel for the appellants that new members enrolled on 14.7.2007 had deposited their membership fee by cash and they had not

deposited the fee through a bank draft. The approved Scheme of Administration in clause-7 provides that for enrollment of a new member, the membership fee has to be deposited through a bank draft but if the general body decides not to make him a member the bank draft would be returned. Clause 7 of the Scheme of Administration has a definite purpose. It avoids dispute with regard to fictitious claim of membership. It also avoids frivolous litigation. It acts as a check on unscrupulous person who wants to grab the management of an institution by enrolling members of their choice and by creating artificial dispute of membership of the general body of manufacturing papers. It may be possible to manufacture papers regarding membership but a bank draft cannot be manufactured. If clause-7 mandates that a thing to be done in a particular manner then it has to be done in the same manner, and not in any other manner. The provision of clause 7 of the Scheme of Administration providing for deposit of membership fee through a bank draft is the larger interest of the registered society and the institution and clearly intends that it should be followed and has to be held as imperative in nature and its non-compliance would be fatal. Thus, 130 new members enrolled on 14.7.2007 are liable to be held invalid members. Therefore, we are of the considered opinion that clause-7 of the Scheme of Administration providing for deposit of membership fee through a bank draft, by a person who wants to become a member of the general body of the society is mandatory in nature.

11. In view of the law laid down in the said case and also in view of admitted facts of this case, this Court finds that the procedures laid down in Clause-7 of the Scheme of Administration has not been followed in the present case.

12. After careful consideration of the matter, I find that the findings of fact recorded by the Regional Level Committee are based on evidence on record and do not call for any interference under Article 226 of the Constitution of India.

13. Learned counsel for the petitioners has not raised any other submission.

14. In view of the above, the writ petition lacks merits and is accordingly dismissed.

15. Learned counsel for the petitioners submits that a direction may be issued to the respondents to hold the election expeditiously. Said request has not been opposed by the learned standing counsel and Sri S.P. Singh, learned counsel, who appears for the private respondent.

16. Having considered the aforesaid request, a direction is issued to the Authorized Controller to hold the election of Committee of Management of the Institution as expeditiously as possible preferably within a period of three months from the date of receipt certified copy of this order. No order as to costs.