

(2011) 07 AHC CK 0145

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25300 of 2008 connected with Civil Miscellaneous Writ Petition Nos. 41457 of 2008 and 25454 of 2009

Iqbal Mahmood and others

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Citation : (2011) 07 AHC CK 0145

Hon'ble Judges : V.K.Shukla, J

Final Decision : Disposed Of

Judgement

V.K. Shukla, J.—In the district of Moradabad, there is an institution known as Fazrul Rehman Inter College, Chandausi, Moradabad. Said institution is recognized under the provisions of U.P. Intermediate Education Act, 1921, and payment of salary to the staff is made up to the High School level under the provisions of U.P. High School and Intermediate Colleges (Payment of Salaries of the Teachers and other Employees) Act, 1971. The Intermediate is unaided even till date. Said institution has its own registered Scheme of Administration. On 08.04.1997 election to the Committee of Management was held and at that time there were 33 valid members. Thereafter papers were sent to the District Inspector of Schools, who vide order dated 17.04.1997 attested the signature of duly elected Manager, namely, Atiqur Rehman. In the said election one Ataur Rehman was elected as President. Initially the tenure of the Committee of Management was three years. However, it was extended to five years. Therefore, the election held on 08.04.1997 was valid up to 07.04.2002. Petitioners of writ petition No.25300 of 2008, who are ten in number, claim that they are valid members of the general body, each one of them having deposited Rs.2000/ according to the provisions of Scheme of Administration, a valid resolution was passed on 14.07.1999 accepting them as members. Thereafter fresh elections took place, and as Regional Committee had not accorded approval to the said elections held on 26.06.2002, at the said juncture Civil Misc, Writ Petition

No.7335 of 2004 was filed and the said writ petition was allowed on the ground of there being violation of the principles of natural justice. Thereafter, the matter was again taken up by the Regional Committee, and decision has been directing therein for holding fresh elections well within time frame of three months after examining the issue of membership. Thereafter, the Prabandh Sanchalak proceeded to hold the election, which was inclusive of the petitioners of writ petition No.25300 of 2008. At the said juncture, writ petition No.59171 of 2007 had been filed, and this Court disposed of the said writ petition with liberty to file objection. Thereafter objections were filed and the orders were passed by the District Inspector of Schools, wherein directives were given for holding elections from amongst 27 members of the general body. In respect of petitioners, it was mentioned that as their membership was not legal, said issue would be decided by the new Committee of Management, which takes over the charge. At the said juncture, Civil Misc. Writ petition No.25300 of 2008 has been filed by Iqbal Mahmood and others. It appears that on one hand order passed by the District Inspector of Schools has been assailed before this Court and on the other hand the matter was represented before the Joint Director of Education. The Joint Director of Education proceeded to set aside the order passed by the District Inspector of Schools. At the said juncture, Abdul Wasi filed writ petition No.41457 of 2008. It is further reflected that on account of pendency of writ petition No.25300 of 2008, the election process which was on, has been stayed. At the said juncture writ petition No.25454 of 2009 has been filed, and thereafter, all the three writ petitions have been clubbed together, and they have been taken up for final hearing and disposal with the consent of parties, by a common judgment.

2. Sri V.D. Mishra, Advocate, learned counsel for the petitioners of writ petition No.25300 of 2008, contended with vehemence that the petitioners are validly enrolled members of the general body as per provisions as contained in the Scheme of Administration. In such a situation and in this background, writ petition filed by them deserves to be allowed and the other writ petition No.41457 of 2008 and writ petition No.25454 of 2009 deserve to be dismissed.

3. Countering the said submissions, Sri Irshad Ali, Advocate appearing for the petitioners of writ petition No. 41457 of 2008 and writ petition No.25454 of 2009, on the other hand, has contended that Iqbal Mahmood and others, cannot be accepted as valid members of the general body and their membership, on the face of it is illegal and against the order passed by the District Inspector of Schools, there is no provision of appeal and further this court had never stayed the election, as such it was totally unjustified to have stayed the said election process. In this background, request has been made that writ petition No.41457 of 2008 and writ petition No.25454 of 2009 be allowed and the writ petition No.25300 of 2008 be dismissed.

4. After respective arguments have been advanced, factual situation which emerges in the present case, and to which there is no dispute, is that in the last

elections so held, in all 33 members were shown to have participated. Out of the said 33 members, six had died and thus only 27 surviving members were there. Writ petition No.25300 of 2008 had been filed claiming that the petitioners thereof had been validly enrolled as members by the committee of management of the institution according to the provisions of Scheme of Administration under resolution dated 14.07.1999. In such a situation and in this background, by no means their membership could have been denuded.

5. In order to appreciate the provisions as contained in paragraph 7 of the Scheme of Administration, which deals with the procedure of becoming member of the general body, are being looked into, and for ready reference, paragraph 7 thereof is being extracted below:

"7. Procedure becoming member of General Body.

A nomination for inclusion or addition as life member or ordinary member should be signed by two members of the general body as proposer and seconder and should specify the qualifications of the member, should be sent to the manager along with the bank draft of the sum of the donation for inclusion in the agenda of a regular/special meeting of the managing committee which may either accept or reject the nomination, in case it is accepted the person will become the member from the same date. If rejected the same will be put before the general body in a regular or special meeting. If the general body accepts the nomination he will become the member otherwise the bank draft will be returned. The decision of the general body will be final subject to explanation below para 4(v)."

6. A bare perusal of the provisions quoted above would go to show that nomination for inclusion or addition as life member or ordinary member should be signed by two members of the general body as proposer and seconder and should specify the qualifications of the member, should be sent to the manager along with the bank draft of the sum of the donation for inclusion in the agenda of a regular/special meeting of the managing committee which may either accept or reject the nomination, in case it is accepted the person will become the member from the same date, and in case of rejection the same will be put before the general body in a regular or special meeting. In case the general body accepts the nomination he will become the member otherwise the bank draft will be returned. The decision of the general body will be final subject to explanation as mentioned in paragraph 4(v).

7. In the present case from the own showing of the petitioners of writ petition No.25300 of 2008, at no point of time any draft, as was required, had ever been given, and to the contrary, from their own admission, it is reflected that a lump sum amount of Rs.2000/ in cash was deposited by each one of the petitioners. Annexure 2 to the writ petition reflects that membership has been sought to be accepted on the said date. The fact of the matter is that the membership could have been accepted only as per provisions as contained in the Scheme of Administration, and here in the present case, draft was not at all there and based

on some purported nomination membership has been shown to have been accepted and receipts have been issued on 14.07.1999 and 15.07.1999. Once prescribed procedure for being enrolled as member, the nomination paper was to be supported by draft, then by no stretch of imagination, as has been mentioned, the amount in question could have been accepted in cash and deposited in the way and manner as it has been deposited. In order to rule out manipulation and manoeuvring, such provision has been introduced. Membership of 10 incumbents has rightly been disapproved by the District Inspector of Schools and rightly it has been mentioned that their nomination would be considered after fresh elections are held on the basis of undisputed members. Regional Level Committee had already expressed doubts qua enrollment of these 10 members vide order dated 01.11.2005 Thus, the view taken by the District Inspector of Schools cannot be said to be faulty on any score, whatsoever. Once such is the factual situation, then there is no occasion for this Court to interfere with the order passed in the writ petition No.25300 of 2008.

8. In spite of the fact that against the order passed by the District Inspector of Schools there is no statutory remedy of appeal, even then the matter was represented before the Joint Director of Education and the Joint Director of Education has proceeded to allow the said representation. The Joint Director of Education has not at all examined this aspect of the matter as to whether their enrollment was strictly in consonance with the provisions as contained in the Scheme Administration, inasmuch as application in question for being enrolled as member, was to be accompanied with draft. Here, in the present case at no point of time draft was accompanied with the nomination and the receipts accepting the amount had been issued on 14.07.1999 and 15.07.1999, and the said amount has been shown to have been deposited on 16.07.1999 in the bank. Once there was no provision of appeal provided for, then the order passed by the Joint Director of Education is totally without jurisdiction; same deserves to be set aside. Further, in spite of the fact that there was no restraint order from the High Court, the Joint Director of Education has proceeded to stay the election. The order passed by the Joint Director of Education cannot be subscribed, as the elections are to be held in consonance with the Scheme of Administration.

9. Consequently, writ petition No.25300 of 2008 is dismissed. Writ Petition Nos.41457 of 2008 and 25454 of 2009 are allowed. Directives are issued that the elections of the Committee of Management be held within next three months from the date of receipt of a certified copy of this judgment, and after the elections are so held, it will be open to the incumbents to raise the issue before the appropriate forum.

26.07.2011

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10. In order to appreciate the provisions as contained in paragraph 7 of the Scheme of Administration, which deals with the procedure of becoming member

of the general body, are being looked into, and for ready reference, paragraph 7 thereof is being extracted below:

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11. A bare perusal of the provisions quoted above would go to show that nomination for inclusion or addition as life member or ordinary member should be signed by two members of the general body as proposer and seconder and should specify the qualifications of the member, should be sent to the manager along with the bank draft of the sum of the donation for inclusion in the agenda of a regular/special meeting of the managing committee which may either accept or reject the nomination, in case it is accepted the person will become the member from the same date, and in case of rejection the same will be put before the general body in a regular or special meeting. In case the general body accepts the nomination he will become the member otherwise the bank draft will be returned. The decision of the general body will be final subject to explanation as mentioned in paragraph 4(v).

12. In the present case from the own showing of the petitioners of writ petition No.25300 of 2008, at no point of time any draft, as was required, had ever been given, and to the contrary, from their own admission, it is reflected that a lump sum amount of Rs.2000/ in cash was deposited by each one of the petitioners. Annexure 2 to the writ petition reflects that membership has been sought to be accepted on the said date. The fact of the matter is that the membership could have been accepted only as per provisions as contained in the Scheme of Administration, and here in the present case, draft was not at all there and based on some purported nomination membership has been shown to have been accepted and receipts have been issued on 14.07.1999 and 15.07.1999. Once prescribed procedure for being enrolled as member, the nomination paper was to be supported by draft, then by no stretch of imagination, as has been mentioned, the amount in question could have been accepted in cash and deposited in the way and manner as it has been deposited. In order to rule out manipulation and manoeuvring, such provision has been introduced. Membership of 10 incumbents has rightly been disapproved by the District Inspector of Schools and rightly it has been mentioned that their nomination would be considered after fresh elections are held on the basis of undisputed members. Regional Level

Committee had already expressed doubts qua enrollment of these 10 members vide order dated 01.11.2005 Thus, the view taken by the District Inspector of Schools cannot be said to be faulty on any score, whatsoever. Once such is the factual situation, then there is no occasion for this Court to interfere with the order passed in the writ petition No.25300 of 2008.

13. In spite of the fact that against the order passed by the District Inspector of Schools there is no statutory remedy of appeal, even then the matter was represented before the Joint Director of Education and the Joint Director of Education has proceeded to allow the said representation. The Joint Director of Education has not at all examined this aspect of the matter as to whether their enrollment was strictly in consonance with the provisions as contained in the Scheme Administration, inasmuch as application in question for being enrolled as member, was to be accompanied with draft. Here, in the present case at no point of time draft was accompanied with the nomination and the receipts accepting the amount had been issued on 14.07.1999 and 15.07.1999, and the said amount has been shown to have been deposited on 16.07.1999 in the bank. Once there was no provision of appeal provided for, then the order passed by the Joint Director of Education is totally without jurisdiction; same deserves to be set aside. Further, in spite of the fact that there was no restraint order from the High Court, the Joint Director of Education has proceeded to stay the election. The order passed by the Joint Director of Education cannot be subscribed, as the elections are to be held in consonance with the Scheme of Administration.

14. Consequently, writ petition No.25300 of 2008 is dismissed. Writ Petition Nos.41457 of 2008 and 25454 of 2009 are allowed. Directives are issued that the elections of the Committee of Management be held within next three months from the date of receipt of a certified copy of this judgment, and after the elections are so held, it will be open to the incumbents to raise the issue before the appropriate forum.