
(1992) 09 AHC CK 0107

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3226 of 1978

Mathur Vaish Shiksha Parishad

APPELLANT

Vs

Chancellor, Agra University and Others

RESPONDENT

Date of Decision : 08-09-1992

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 68

Citation : (1992) 4 AWC 512 Supp : (1993) 1 UPLBEC 178

Hon'ble Judges : Ravi S. Dhavan, J

Bench : Single Bench

Advocate : S.P. Gupta, R.N. Singh, S.N. Singh and A.P. Sahi, for the Appellant;
R.R. Agarwal, B.D. Agarwala and Bharatji Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, J.—There is an educational institution at Agra known as the Baikunthi Devi Kanya Maha Vidyalaya, Agra. This educational institution is affiliated to the Agra University as provided under the U.P. State Universities Act, 1973. The Vidyalaya, aforesaid, has a constitution. The structure of the Managing Committee as laid out under it's constitution, is an issue in the present writ petition.

2. Heard learned Counsel for the Petitioner Mr. A.P. Sahi, Mr. Bharat Ji Agrawal for the Managing Committee and Mr. Sidharch Singh the special state counsel.

3. The constitution of the managing committee mentions in clause 10 that the Managing Committee will be composed of 15 members. Amongst the fifteen, three would be amongst the Sri Mathur Vaish Shiksha Parishad, Agra, to be nominated by the governing body of this Parishad. The aforesaid, Sri Mathur Vaish Shiksha Parishad (hereinafter referred to as the Parishad) was denied representation on the Managing Committee. It complained to the Vice-Chancellor under the first Statutes 12.05 of the Agra University that the amendment inserted in the constitution of the Managing Committee cannot be made. The

Vice-Chancellor upheld the contention of the Parishad by his order of 17 November, 1977 and required the Secretary of the Baikunthi Devi Kanya Mahavidyalaya, to regularise matters and constitute the Managing Committee appropriately and under intimation to the Managing Committee. The Managing Committee did not comply with the Vice Chancellor's directions, and moved the Chancellor, u/s 68 of the Act. The learned Chancellor set aside the order of the Vice Chancellor. The Chancellor's order is dated 23-2-1977 annexure-VII to the writ petition.

4. As the submissions are entirely legal and are on record, there is no disputed question of fact in the present writ petition. The constitution of the Managing Committee makes one aspect absolutely clear in clause 27 by prescribing that clauses 4, 10, 11, and 23 will not be subjected to an amendment. In effect, the Constitution provides that the aforesaid five clauses will not be disturbed in their intent and content. This is one of the Basic foundations to preserve the continuity in the administration of the Vidyalaya.

5. Clause 10:1: Kha, in a reference to the context, being relevant is reproduced :

10. Prabandh karini samity ka gathan (ka) Is samity ke 15 sadasya honge jo nimna prakar chune jayenge. (kha) Teen sadasya Sri Mathur Vaishya Parishad Agra ki antarang sabha dwara mononit kiye jayenge.

6. The entire issue in the writ petition is in reference to the interpretation of clauses 10 and 27. When Sri Mathur Vaish Shiksha Parishad, Agra filed a complaint before the Vice Chancellor that its members had been denied representation on the Managing Committee, they simultaneously contended that certain provisions of constitution of the Managing Committee do not permit an amendment. It was the contention of the Parishad, in effect, that the amendment is ultra vires to the constitution under which the Managing Committee functions.

7. The only issue in the writ petition is whether the Vice Chancellor had the power reserved to him to go into this question. The Court will revert to this aspect subsequently. The Vice Chancellor was of the opinion while deciding the complaint of the Parishad that the constitution of the Management Committee could not be altered. The Vice Chancellor further, held that the amendment which has been brought, in the constitution negates the original intent of the constitution which requires that three members of the Parishad will be on the Board of the Management Committee of the Baikunthi Devi Kanya Maha Vidyalaya, Agra. Thus, the Vice Chancellor required the management to regularise its constitution. In effect, the Vice Chancellor was of the view that the amendment which had been brought about cannot be permitted to stand. Clause 27 of the Constitution of the Managing Committee is very clear in it's terms, when it says ;

Is vidhan me sansodhan keval is mahavidyayiaya ko sadharan sabha dwara hi kiya ja sakega jiske liye sadharan sabha ki upasthit iske sadasyaon ki 2/3 hona aavashyak hai. Parantu number 4, 10, 11, 9 wa 23 me parovartan nahi kiya ja

sakega.

8. The order of the Vice Chancellor dated 17 November, 1977 is short but to the point. The relevant extact reads:

have gone through the reply of Mathur Vaish Shiksha Parishad and your reply together with the letter of the President, Baikunthi Devi Kanya Maha Vidyalaya. I find there is not much force in your argument that you have amended the constitution and have decided not to have three representative of the Mathur Vaish Shiksha Parishad as provided in the original constitution of the Managing Committee of the college. According to that original constitution you have to take three members of Mathur Vaish Shiksha Parishad in the Managing Committee of the Baikunthi Devi Kanya Maha Vidyalaya. I would, therefore, impress on you to regularise matters and constitute the Managing Committee of the College and report the same to the University.

9. The Management Committee was aggrieved by the directions of the Vice Chancellor and took resource to filing a representation before the Chancellor, Agra. University u/s 68 of the Act. While examining the order of the learned Chancellor one aspect needs to be taken note of. A copy of the representation was not sent to the Parishad by the. Managing Committee nor by the learned Chancellor, Agra University. This is an admitted position in the counter affidavit of the Managing Committee, particularly paragraph 43 and 44. Thus, these matters are not in issue. The Parishad was not aware of the nature of the representation before the Chancellor, Agra University nor had been given an opportunity to have a say before the learned Chancellor. The proceedings before the Vice-Chancellor were, thus, ex-parte.

10. The learned Chancellor decided the representation of the Managing Committee. Before commenting on the order of the learned Chancellor dated 23 February, 1978, (annexure "T to the writ petition), let the impugned order be seen. It reads ;

I have gone through the representation of Sri Raghubir Prasad Gupta, Secretary, Managing Committee Baikunthi Devi Post Graduate Mahila Mahavidyalaya Agra and the comments of the Vice Chancellor, Agra University. It appears that the President, Mathur Vaish Shiksha Parishad, Agra made a representation to the effect that three representatives of the Parishad should be taken in the Managing Committee of the aforesaid College under clause 10(1) (kha) of the College Constitution. This was contested on behalf of the Management and it was pleaded that by virtue of amendment made in the Constitution, the representation of the Parishad was not necessary. The Vice Chancellor or order dated November 17, 1977 upheld the plea of the Parishad and directed the Secretary of the College to regularise matters and constitute the Managing Committee accordingly and report the same to the University.

The Vice Chancellor has purported to exercise the power referred to in Statute 12.05 (f) of Agra University Statutes. It provides that the constitution of the

Management of every college shall provided that if any question arise whether any person is entitled to be a member or office bearer of the Management or whether the Management is legally constituted, the decision of the Vice Chancellor shall be final. Therefore, unless the Constitution of the College is amended and such a provision is introduced therein, the Vice Chancellor can have no jurisdiction to decide that three members of the Mathur Vaish Shiksha Parishad are entitled to be members of the Management of the College and that in their absence the management is not legally constituted. The dispute between the parties if of a civil nature and may be settled by a Court of competent jurisdiction. In this view of the matter, I allow the representation of Sri Gupta and set, aside the aforesaid order of the Vice Chancellor.

11. The only question is whether the Vice Chancellor had the power vested in him by law to scrutinise the aspect whether the Board of the Managing Committee had been validly constituted and, further, whether there had been any change incorporated in the constitution and whether such a change could be brought about except with the prior permission of the Vice Chancellor. There was no other issue either between the parties nor before the Vice Chancellor or the learned Chancellor.

12. The first misunderstanding which is discernible as a manifest error admitted on the face of the record in the order of the learned Chancellor is that the issues before the Chancellor were misunderstood as a power having been exercised by the Vice Chancellor under statute 12.05 (f) of First Statute of the Agra University. The learned Chancellor records.

The Vice-Chancellor has purported to exercise the power referred to statute 12.05 (f) of the Agra University.

13. Here lies the misunderstanding. It was assumed, by the learned Chancellor that the Vice Chancellor was acting under statute 12.05 (f). Let this provision be examined ; 12.05 (f)

If any question arises whether any person has been duly chosen as, or is entitled to be a member of office-bearer of the Management or whether the Management is legally constituted, the decision of the Vice Chancellor shall be final.

14. The assumption that the Vice Chancellor had exercised his power under clause 12.05 (f) was incorrect. The Vice Chancellor did not mention it in his order, but the power which he exercised was not under clause (f) but (e). Clause 12.05 (e) prescribes that no change in the constitution of the management of any college shall be made except with the prior permission of the Vice Chancellor. This clause lays down.

(e)No change in the said constitution shall be made except with the prior permission of the Vice Chancellor.

15. Thus, the issue in the petition stands answered. The Management Committee had brought about the change in it's constitution, for which they had not taken

the permission of the Vice Chancellor. But, it is not as if the Vice Chancellor had not been vested with the powers to look into these matters. The Constitution of the Managing Committee, and on this there is no issue, prescribes that in reference to clause (10), amongst many other clauses, a change in the constitution will not be permitted. Finding that clause (10) was one of those provisions of the constitution of the Managing Committee which did not permit a change, the Vice Chancellor was not incorrect in asking the Managing Committee to regularise the constitution and fallen line by not resorting to a change which was not permitted, and any change in the concerned clauses should it be amended will be ultra vires to the memorandum which is the constitution of the Managing Committee.

16. In so far as the impugned order of the learned. Chancellor is concerned the error lay in assuming that the Vice Chancellor's powers did not lie in clause 12.05 (f) what was not seen was that the Vice Chancellor had been clothed with adequate powers to prevent a change of constitution of the Management Committee of an educational institution except by prior leave of the Vice Chancellor under clause (e). To presume that the power was exercised under clause 12.05 (f) was a manifest error and once this error stands corrected the issue stands in the correct perspective. This Court has corrected the error by a writ of certiorari. The order of the learned Chancellor dated 23 February 1978 is, thus, quashed by a writ of certiorari. The order of the Vice Chancellor dated 17 November, 1977 stands.

17. The petition succeeds with costs.