

(2014) 05 AHC CK 0243

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 68449 of 2013

Pratibha Mishra

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-05-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(c), 226
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16-A

Citation : (2014) 6 ADJ 681 : (2014) 105 ALR 540

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : Prabhakar Awasthi, Advocate for the Appellant; S.P. Rai, Advocate for the Respondent

Final Decision : Dismissed

Judgement

P.K.S. Baghel, J.—The petitioner has preferred this writ petition for issuance of a writ of certiorari to quash the order dated 23 September 2013 passed by the Regional Level Committee, whereby it has rejected the claim of 145 ordinary members and 85 life members, who were claimed to be enrolled by the petitioner in the capacity of President with the concurrence of the general body. The foundational facts are; a society namely Nirmala Parwati Arya Kanya Sanskrit Inter College (for short, "the Society") is a Society registered under the provisions of the Societies Registration Act, 1860 (Act No. 21 of 1860). It has established an Intermediate College, Parwati Arya Kanya Inter College (for short, "the Institution"). It is recognized by the Board of High School and Intermediate Education, U.P. (for short, "the Board"). The College receives aid out of the State funds and its affairs are managed in terms of the provisions of Scheme of Administration u/s 16-A of the U.P. Intermediate Education Act, 1921 (U.P. Act No. II of 1921). A copy of the bye laws is on the record as annexure-1 to the writ petition. In compliance of the order of the Court, the petitioner has also filed a copy of Scheme of Administration alongwith the supplementary-affidavit.

2. It is stated that the election of the Committee of Management was held on 30 March 2008. The term of the Committee of Management was five years. The petitioner claims that she was elected as President of the Society. Before the completion of the term, it was decided to enroll fresh members of the general body. Accordingly, a public notice was issued/published on 07 January 2013 in widely circulated newspaper "Dainik Badaun Shikhar" inviting applications for enrollment as members of the general body. In response to the said public notice, 56 applications were received for the enrollment as life member alongwith the requisite fee of Rs. 2,000/- and 145 applications were received for ordinary membership. All the bank drafts were deposited in Axis Bank, Budaun. The said bank account was opened for the said purpose and the petitioner declared them life member and ordinary members on 15.2.2013.

3. The petitioner asked the Manager of the Institution Smt. Nidhi Sharma orally as well as in writing to convene the meeting vide letter dated 04 April 2013. Thereafter agenda notice was served upon all members through registered post on 03 April 2013 for convening the meeting on 07 April 2013. It is stated that the meeting was accordingly held on 07 April 2013 and all the applicants were declared to be valid members in the said meeting. It is averred in the writ petition that the Manager had also enrolled certain members without the consent of Committee and obtained an order dated 25 April 2013 by the Assistant Registrar validating 63 members although those members were not validly enrolled. It is further stated that on the basis of the order of Assistant Registrar dated 25 April 2013 an election was held wherein Sri Amol Sharma was shown to be elected as Manager and Sri Satyendra Dubey as President. After the election the papers were sent to the District Inspector of Schools (for short, "the DIOS"), who has passed the order dated 30 April 2013 recognizing the aforesaid election dated 28 April 2013.

4. The order of the DIOS dated 30 April 2013 was challenged by the petitioner alongwith four other persons who claimed to be life members of the Institution by means of Writ-C No. 33212 of 2013 (C/M Nirmala Parvati Aryakanya Sanskrit Inter College and 4 others v. State of U.P. and 5 others) and also for quashing of the order of Assistant Registrar dated 25 April 2013. This Court vide order dated 3.7.2013 refused to determine the disputed question of fact, therefore, the petitioners therein were asked to approach the Regional Level Committee. With regard to the order of the Assistant Registrar, the Court directed the Regional Level Committee to ignore the said order. It appears that the DIOS on the basis of the order of this Court dated 03 July 2013 passed an order of single operation on 10 July 2013. The said order was challenged by the Committee of Management, which was recognized by the DIOS vide his earlier order dated 30 April 2013. This Court on 23 July 2013 stayed the operation of the order dated 10.7.2013 in Writ-C No. 39439 of 2013 (C/M Nirmala Parvati Arya Kanya Sanskrit Inter College and another v. State of U.P. and 2 others).

5. The petitioner, in compliance of the order of this Court dated 03 July 2013

passed in Writ Petition No. 33212 of 2013 wherein the Regional Level Committee was directed to consider the dispute raised by the petitioner, submitted a detailed representation. Sri Amol Sharma also filed his representation. The Regional Level Committee rejected the claim of 56 life members and 145 ordinary members, who were enrolled by the petitioner vide impugned order dated 23.9.2013. The Regional Level Committee also held that the meeting of 15.3.2013, wherein Sri Satyendra Nath Dubey who was nominated/elected as officiating President of the Society, was illegal but the continuance of the petitioner as a President was accepted as valid. It further rejected all the members enrolled by both the factions and only those members were held to be valid who were enrolled up to 30.3.2008 and District Inspector of Schools was directed to hold the fresh election within three months.

6. Dissatisfied with the order of the Regional Level Committee the petitioner has preferred this writ petition.

7. I have heard learned Counsel for the petitioner Sri Prabhakar Awasthi and Sri G.K. Singh, learned Senior Advocate assisted by Sri Shashi Prakash Rai, learned Counsel appearing for the respondent No. 5 and learned Standing Counsel for the State functionaries.

8. Learned Counsel for the petitioner submits that the petitioner was the President of the Society. He had convened the meeting when Manager refused to call the meeting. In validly held meeting aforementioned members were enrolled.

9. Learned Counsel for the petitioner submits that the membership of the desirous persons has been discarded on the ground that they were enrolled in breach of the clause-4 of the Scheme of Administration and there is no provision in the Scheme of Administration for the renewal of the membership of the ordinary members. He further submits that no opportunity of hearing was given to the desirous persons, whose membership has been rejected, thus the order violates the Article 19(1)(c) of Part-III of the Constitution as their right to form an association has been violated.

10. Learned Counsel for the respondent No. 5 Sri G.K. Singh submits that the petitioner has enrolled the aforesaid 56 life members and 145 ordinary members in violation of the clause 4 of the Scheme of Administration. The said clause provides a detail procedure for enrollment of members and in the present case the petitioner has not followed the said procedure. He further submits that the alleged meeting of the general body was not called in terms of the clause 19(3-r) inasmuch as the meeting was not called by the Manager and the President alone has no power to convene the meeting herself on 03 April 2013. He further submits that clause 12 of the Scheme of Administration provides that at least five days" notice was required in case the notice was sent to the members by registered post and only thereafter it can be assumed that the notice has been given to all the members. Admittedly, the notice was issued on 03 April 2013 and the meeting was held on 07 April 2013 thus the notice of five days" has not been

given, therefore, the meeting dated 07 April 2013 was invalid.

11. He further submits that the quorum of the alleged meeting dated 07 April 2013 was also not complete and consequently the said meeting was adjourned by the President and on the same day in the evening when the adjourned meeting was held only nine members had attended the meeting. He has pointed out that in previous election which was held in 2008, 63 members had participated out of which there were 33 life members and 30 ordinary members and out of those members only 8-9 members were present. He has also drawn the attention of the Court that according to his own case the money was deposited in the new account opened in Axis Bank for the said purpose, whereas the Scheme of Administration provides that the account of the Institution shall be in a Scheduled Bank to be operated by the Manager and Treasurer. The Manager was not taken into confidence by the President while new account was opened in a private bank (Axis Bank).

12. I have considered the rival submissions advanced by the learned Counsel for the parties and perused the record.

13. It transpires from the record that the last election was held on 30 March 2008 wherein the petitioner Smt. Pratibha Mishra was elected as President and respondent No. 5, Nidhi Sharma was elected as Manager of the Institution. The term of the office bearers is five years. Before the term was over on 30 March 2013 a dispute arose between the President and the Manager and both of them had issued public notices in separate newspapers inviting the general public for the membership of the general body as life member or ordinary member. The petitioner has issued a public notice in the daily newspaper "Dainik Badaun Shikhar" on 7.1.2013. The last date was mentioned on 7.2.2013 and according to the petitioner total 56 applications were received for general member and 145 as ordinary members. The clause 4 of the Scheme of Administration provides a detail procedure for enrollment of the new member. A person, who wish to be member of the general body is required to move an application to the Treasurer alongwith a Bank draft of requisite amount, who shall forward the application and the fee to the President of the Society. The President shall examine each case about the maintainability of membership and he will pass an order, which shall be placed before the Committee of Management. If the Committee of Management has any objection about any applicant-member, his case shall be placed before the general body and its decision shall be final.

14. In the present case the meeting of the Committee of Management was admittedly not called by the Manager, and the President himself has issued the agenda notice on 03 April 2013 and schedule of meeting to be held on 07 April 2013. A copy of the said notice has been brought on the record as annexure-5 to the writ petition.

15. From the perusal of the notice it would be seen that it was signed by the President and the meeting was called on 07 April 2013 at the residence of the

President himself. Clause 12 of the Scheme of Administration deals with the convening of meetings. For the sake of convenience clause 12 is extracted herein below:

16. In paragraph-14 of the writ petition the petitioner has stated that the agenda notice was sent on 03 April 2013 to hold meeting on 07 April 2013. Paragraph-14 of the writ petition reads as under;

"14. That, for the purpose of Meeting to be held on 7.4.2013, Agenda Notice was served upon all the Members through registered-post. Photocopy of Agenda Notice dated 3.4.2013 as well as Photostat copy of receipts as an exemplar sent to Members is being annexed herewith and is marked to this writ petition as Annexure-5."

17. From a simple reading of clause 12 of the Scheme of Administration and the statement made in paragraph-12 of the writ petition it is demonstrably established that the meeting dated 07 April 2013 was not held in terms of the clause 12 of the Scheme of Administration, therefore, any decision taken in the meeting which was not validly held, is illegal. As observed earlier the clause 4 of the Scheme of Administration has also not been complied with. Admittedly, the membership of the newly enrolled members were deposited in a newly opened account of the Axis Bank as mentioned in paragraph-10 of the writ petition.

18. The Regional Level Committee has found that there was complete violation of clause 4 and 12 of the Scheme of Administration and on the said ground the membership of the petitioner has been rejected.

19. The Scheme of Administration has been framed in terms of Section 16A of the U.P. Act No. II of 1921, which requires that the each recognized Institution shall have a Scheme of Administration. The Scheme of Administration has statutory flavour.

20. As regards the submissions of the petitioner Sri Awasthi that the Regional Level Committee has not heard 56 members before passing the said order, I find it difficult to accept the said submission for the reason that none of the members, whose membership has been rejected by the Regional Level Committee, has raised their grievance before any forum. They have not challenged the said order. Only the petitioner has preferred this writ petition, and members have not been impleaded as respondent, thus the petitioner cannot espouse their cause. No other submission has been made by Sri Awasthi.

21. The object of the Scheme of Administration is for smooth functioning of the Institution. If the procedure has been laid down in the Scheme of Administration it has to be complied with. A division Bench of this Court in the case of Shiv Nath Singh, Vipin Tomar and Kiran Late Vs. State of U.P. and Others had the occasion to deal with the similar issue. Paragraph No. 11 of the judgment reads as under:

"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

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 by 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 in 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."

22. Therefore, for the aforesaid reasons, the order of the Regional Level Committee does not suffer from any illegality. The findings of fact recorded by the Regional Level Committee do not want any interference under Article 226 of the Constitution. Thus no interference is called for. The writ petition is liable to be dismissed. Persons, whose membership has been rejected by the Regional Level Committee are at liberty to adopt such remedy which is available under law. In the event they adopt such remedy, the observation and findings in this order shall not cause any prejudice to them. The Forum/Authority shall pass independent order in accordance with law.

23. The writ petition is, accordingly, dismissed. No order as to costs.