

Court No. - 10**Case :-** WRIT - C No. - 25544 of 2023**Petitioner :-** Church Of India And 2 Others**Respondent :-** State Of U.P. And 7 Others**Counsel for Petitioner :-** Pradeep Kumar Upadhyay, Abhishek Tiwari, Vrindavan Mishra**Counsel for Respondent :-** CSC, A.D. Saunders, Rohit Pandey**Hon'ble Kshitij Shailendra, J.**

1. Supplementary affidavit filed today is taken on record.
2. In view of the fact that only a copy of the order dated 09.05.2023, already impugned in the writ petition, has been brought on record by means of the said supplementary affidavit, the Court does not feel any requirement for inviting response from the other side on the supplementary affidavit.
3. Heard Sri Atul Dayal, learned Senior Counsel, assisted by Sri Vrindavan Mishra and Sri Abhishek Tiwari, learned counsel for the petitioners, learned Standing Counsel for the State-respondents no.1, 2, 5 and 6, Sri Rohit Pandey, learned counsel for the respondents no.3 and 4 and Sri Navin Sinha, learned Senior Counsel, assisted by Sri A.D. Saunders, learned counsel for the respondents no.7 and 8 and perused the record.
4. Considering the facts of the case, instead of keeping this petition pending and inviting written response from the respondents, the Court feels it appropriate to finally decide the writ petition.
5. By means of the present writ petition, the order impugned dated 09.05.2023 has been challenged by which the Vice-Chancellor of the respondent University has, in exercise of powers under Section 2(13) of U.P. State Universities Act, 1973, accorded recognition to the Committee

of Management-respondent no.7 in relation to the degree college run by the Society in question.

6. The submission of Sri Atul Dayal, learned Senior Counsel, is that there were multiple phases of litigation in respect of affairs of the society which dispute, ultimately, merged into decision of Special Appellate Bench contained in the judgment dated 24.02.2020 passed in Special Appeal No.1718 of 2012 connected with Special Appeal No.1719 of 2012 and Special Appeal Defective No.938 of 2012.

7. It is contended that considering the dispute, this Court directed the Deputy Registrar concerned to make a reference under Section 25(1) of the Societies Registration Act, 1860 to the Prescribed Authority with a further direction that the Prescribed Authority would decide the reference within a period of three months. Certain consequential directions were also issued to the Deputy Registrar with regard to exercise of powers under Section 4 of the Act.

8. It is contended that while more than three years period has passed, the reference is still pending and in the meantime, the contesting respondents obtained recognition to the list of general body of the society pertaining to the year 2020-21 and when the petitioners came to know about the same, they filed complaint before the Deputy Registrar who passed an order dated 18.03.2021 declaring the registration of the list of office bearers/ general body as ineffective from the date of its registration.

9. It is contended that despite the fact that the order dated 18.03.2021 has been challenged before this Court by the respondents, no interim order has been passed but surreptitiously the respondents have succeeded to impress the Vice Chancellor of the University to

accord recognition to their Committee by the order impugned dated 09.05.2023.

10. In sum and substance, the contention of Sri Dayal is that so long as the dispute is pending before the Prescribed Authority and the order dated 18.03.2021 remains operative, consequential recognition granted by the Vice Chancellor is not according to law.

11. Learned Standing Counsel submits that none of the parties took serious steps to get the dispute adjudicated upon by the Prescribed Authority otherwise it would not have remained pending for a period of three years.

12. Sri Rohit Pandey, learned counsel for the University, submits that the order impugned is conditional in nature and it clearly speaks that in case any contrary order is passed by the competent court/ authority which comes into the knowledge of the Vice Chancellor, the recognized Committee of Management would be deemed to be automatically invalid with immediate effect, meaning thereby that recognition granted would stand cancelled. He has also placed reliance upon Statute 13.34 of the First Statute of the respondent-University, which reads as follows:-

"13.34 Whenever there is a dispute regarding the management of an affiliated college, persons found by the Vice Chancellor to be in actual possession and control of the college properties may, for purposes of the Act and these Statutes be **recognized to constitute the Management of such college until a court of competent jurisdiction orders otherwise;**

Provided that the Vice Chancellor shall before making an order under this Statute, afford an opportunity to the rival claimants to make written representations.

EXPLANATION

"In determining the question as to who is in **actual possession and control of the college properties the Vice Chancellor shall have regard to the control over the funds of the institution and over**

the actual administration, the receipt of the income from the property of the institution and to other relevant circumstances which might have bearing on the question to be determined."

13. The submission of Sri Pandey therefore is that the order of the Vice Chancellor is subject to any order passed by the competent court/ authority and is not final in nature.

14. Sri Navin Sinha, learned Senior Counsel, submits that though it is true that no interim order has been passed in the writ petition challenging the order dated 18.03.2021 and that the reference has not been decided, the same would not come in the way of granting recognition to the respondent Committee of Management in view of the admitted position of fact that even prior to passing of the order impugned dated 09.05.2023, there was another order passed two years back on 02.07.2021, reference whereof is contained in paragraph no.26 of the complaint moved by the petitioners themselves, whereby recognition to the respondent Committee of Management was granted at that very time and in absence of challenge made to the order dated 02.07.2021, subsequent challenge made to the order dated 09.05.2023 cannot sustain.

15. Sri Sinha further submits is that even if the society is disputed in view of the pendency of matter before the Prescribed Authority, in so far as running of the degree college is concerned, there cannot be a vacuum and the only thing which has to be seen by the Vice Chancellor is that as to which body is in actual possession and control of the college properties and once the petitioners are not under control since long, once the respondent committee is in actual possession and control of the college property as well as the management, mere pendency of reference before the Prescribed Authority would not be sufficient to quash the order impugned.

16. Having heard the learned counsel for the parties, I find that granting recognition under Section 2(13) of the Act is always subject to adjudication made by the competent authority in relation to the managerial dispute and Statute 13.34 is meant for that very purpose. The said Statute takes into consideration granting recognition to the management subject to the decision of the court of competent jurisdiction in relation to the dispute regarding management of an affiliated college.

17. I find that once the Division Bench has reposed faith in the Prescribed Authority to adjudicate the entire dispute relating to the society way back in the year 2020, the Prescribed Authority was under obligation to decide the dispute subject to reference made to it as directed under the order of the Division Bench.

18. A copy of the summons issued by the Prescribed Authority fixing 06.09.2022 has been annexed alongwith the writ petition and it is contended by Sri Atul Dayal that the matter is pending before the Prescribed Authority.

19. With regard to this, it has been argued by other side that it is a fresh reference made by the petitioner and not the reference directed to be made by the Deputy Registrar to the Prescribed Authority under the order of the Division Bench.

20. Be that as it may, since considerable period of time has lapsed after the Division Bench decided in the aforesaid special appeals, once, admittedly, a reference is pending before the Prescribed Authority, the same has to be decided as it would affect the validity of the order impugned dated 09.05.2023.

21. Considering the facts and circumstances of the case, the directions issued by the Division Bench, the Statute 13.34 and the

conditional nature of the order impugned dated 09.05.2023, the writ petition is **disposed of** directing the Prescribed Authority/ concerned Sub-Divisional Officer, Kanpur Nagar to decide the pending reference **on or before 31.01.2024** after providing full opportunity of hearing to the petitioners as well as respondents no.7 and 8.

22. Absolutely no adjournment shall be granted by the Prescribed Authority to any of the parties and **adjudication will not go beyond 31.01.2024**.

23. The parties are at liberty to file the decision of the Prescribed Authority before the Vice Chancellor of the University as soon as it is passed.

24. The Vice Chancellor shall, after taking into consideration the said order and the order impugned dated 09.05.2023, shall pass a **fresh order** and that too after providing opportunity of hearing to the petitioners and the respondents no.7 and 8.

25. In view of the above, the order impugned dated 09.05.2023 shall remain subject to the orders to be passed as directed above.

26. Any of the parties may file certified copy of this order before the Prescribed Authority **in the month of October, 2023 itself**.

Order Date :- 17.10.2023

AKShukla/-