

Before K. Kannan, J.

ANIL KUMAR—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No. 10367 of 2001

16th April, 2012

Constitution of India, 1950 - Art. 226 - Writ petition filed by Principal of Private School for quashing of minutes of meeting of managing committee - Committee reconstituted to remove members who earlier expressed against resolution to place petitioner under suspension alleged by the Petitioner - Whether writ petition maintainable - Held, an intervention against management of unaided private school for alleged malafides of composition of committee not for adjudication in a writ petition - If act complained of has statutory control, intervention would be justified. - Writ Petition dismissed.

Held, that in my view, an intervention against the management of an unaided private school for alleged mala fides of the composition of committee ought not to be normally an issue for adjudication in a writ petition at all.

(Para 11)

Further held, That it could perhaps be contended that an educational institution that caters to a large public interest and which are regulated through Central and State acts have to conform to the law laid down by

statutes and any statutory violations would themselves give rise to intervention by the High Court under Article 226 of the Constitution. If the act complained was a particular activity that had a statutory control and such decision is taken against the statute then the failure of the authority to check the commission of the wrong itself would be a justification for an intervention through a writ petition. A mere resolution of the society deciding to constitute an enquiry to manage its affairs ought not to be an issue for a Court's decision under Article 226.

(Para 13)

Further held, that the intervention through a writ petition against a society engaged in the field of education involving large number students should be in situations where there would be a great danger to the public interest if a patent illegality is allowed to be perpetrated. I do not mean to lay down as a matter of legal principle that would foreclose an intervention at all times against the private society, for it depends on the nature of relief asked and the allegations of the particular misconduct against the respondents. unless the constitution of the enquiry itself was seriously flawed by lack of competency of the person to constitute an Enquiry Officer or when the Enquiry Officer could not be said to be a competent person to act as such Enquiry Officer or where the progress of the enquiry before the Enquiry Officer is vitiated by violation of any of the statutory prescriptions or by violation of norms of natural justice, there ought not to be a scope for entertaining a challenge for the writ petition. In this case, if the Managing Committee had taken a decision by a majority to go through the enquiry, I would find no reason to stall the enquiry and hold that the enquiry could not have been ordered.

(Para 14)

Rajiv Atma Ram, Senior Advocate with Nikhil Chopra, Advocate
Arjun Partap Atma Ram, Advocate and Saurabh Arora,
Advocate, *for the petitioner.*

Kshitij Sharma, AAG, Haryana.

Harsh Aggarwal, Advocate and Aseem Aggarwal, Advocate, *for respondent No. 2.*

Rakesh Khanna, Senior Advocate with Vinay Garg, Advocate,
Naresh Kumar Joshi, Advocate, *for respondents No. 4 and 8.*

K. KANNAN J.

(1) The writ petition is at the instance of the Principal (under suspension) of the Delhi Public School run by the 3rd respondent-Society called Delhi Public School Society. The Society is represented through the Chairman and the Managing Committee of the School is arrayed as a party and represented through the Chairman. The writ petition contains a prayer for quashing of the minutes of the Managing Committee held on 20.06.2007 constituting the 5th respondent-Ms. Justice Usha Mehra, former Judge of the Delhi High Court as the Enquiry Officer. The decision of the Managing Committee, according to the petitioner is vitiated by the fact that the Committee had been reconstituted after removal of certain members, who had earlier expressed themselves against a resolution to place the petitioner under suspension and constituting an enquiry. The basis of the writ petition is that the constitution of the Managing Committee itself was bad and the decision said to have been taken on 21.06.2007 was the result of a manoeuvred composition of the Managing Committee. The nature of allegations against the petitioner that gave room for bringing such resolution and the earlier writ petitions touching upon the same subject matter would become essential to be brought out for a proper consideration of the petitioner's allegation regarding the mala fides of the composition of the Managing Committee.

(2) Based on certain alleged complaints of parents about financial irregularities and mismanagement of the school in collecting monies from students for special tuition classes, a decision was said to have been taken by the Managing Committee to suspend the petitioner on 29.03.2007 in contemplation of enquiry against him. Two proceedings were initiated. One a suit instituted by one Pawar before the Delhi High Court contending that the suspension and the contemplated enquiry were bad. A writ petition in C.W.P. No.2598 of 2007 had been filed at the instance of the petitioner himself challenging the suspension as having been passed in violation of the Haryana Education Act, 1995 and Haryana School Education Rules, 2003 as applicable to Unaided Recognized School in the State of Haryana. The suit and the writ petitions were both withdrawn and a writ petition was filed by the petitioner in C.W.P. No.8855 of 2007 before this Court. A Division Bench of this Court had disposed of the case on 31.05.2007 based on

certain undertakings between the parties. The Court recorded the fact that the charge-sheet along with the documents, which were relied on by the Management, had been supplied to the petitioner and after the petitioner replied to the charge-sheet within 7 days, the same would be put up before the management of the society to consider whether an enquiry should be constituted on the basis of charge-sheet or not. If such a decision were to be taken by the Managing Committee, the petitioner conceded that he would have no objection to put in appearance before the Enquiry Officer already appointed by the Managing Committee. The order passed by the Managing Committee was required to be communicated to the petitioner and the Enquiry Officer would also intimate the date of hearing so that he could put in his appearance.

(3) After the disposal of the writ petition on 31.05.2007, according to the petitioner, the Society began to manipulate the composition of the Committee. The Assistant Secretary, CBSE, was reported to have informed the Manager of the School that two new members had been nominated by CBSE in the Managing Committee w.e.f.13.06.2007. According to the petitioner, certain other members of the Managing Committee had been removed and they were the very persons, who had earlier voted in favour of the petitioner at the meeting held on 07.04.2007. One R.D. Pawar at an earlier meeting held on 26.02.2007 questioned the action of the Managing Committee and being perceived as an inconvenient person, he was not allowed to attend even the meeting held on 07.04.2007 and later said to have been suspended. Sh. Virat Sarin, Mr. R.K. Vashishtha and Dr. Meena Singh had all earlier supported the petitioner in the meeting dated 07.04.2007 and they were also removed. Apart from the illegality of removal of some members, some members had been permitted to hold on to their positions as Managing Committee members beyond the tenure. Jagbir S. Badhana had been permitted to hold on to the position as a managing committee member for more than two consecutive terms irrespective of the fact that as per Affiliation Bye-law 20(3) only an ex officio member could continue beyond two years but he was neither an ex officio member nor a member of the Trust or Society. Mr. R.K. Vashishtha had been removed vide order dated 13.06.2007 and Mr. Virat Sarin was removed verbally. After removal of the three members, Virat Sarin, R.K. Vashishtha and Dr. Meena Singh, the announcement of the meeting schedule on 20.06.2007 was made. There

had been induction of new members at the same time in order to pack the committee with persons, who could be persuaded to take a decision against the petitioner for consideration on reply given by the petitioner against the charge-sheet. The persons, who were newly inducted were S.S. Chaudhary, Ms. Neera Sharma, Mr. Ashwani Arya and Mr. Pawan Kumar. The petitioner himself had not known about the composition of the new Committee till the minutes of the Managing Committee had been circulated on 21.06.2007 purporting to reject the reply given by the petitioner and entrusting the matter before the Enquiry Officer for enquiry to the charges.

(4) The new composition of the Committee making removal of some persons and inducting new persons were to defeat the order passed by this Court in C.W.P. No.8855 of 2007. In a working Committee meeting of the Society held on 14.03.2007, it had been resolved that the Managing Committee of the Delhi Public School, Faridabad would be reconstituted only with the previous approval of the Chairman as well as of two Vice Chairmen of the Society. Acting under the guise of such a power, the Society had deliberately picked out the names of persons who had voted in favour of the petitioner and against the dictat of the Chairman and caused them to be removed from the committee. The reconstitution contemplated by the bye-law had required the concurrence of the Chairman and two Vice Chairmen but even without apprising the Vice Chairmen about the removal of some of members, induction of some members had been done so as to secure the removal of the petitioner. The petitioner would contend that R.K. Vashishtha and Dr. Meena Singh could not have been removed when the Affiliation Bye Law 20(3) allowed for continuation beyond one term and both Vashishtha and Meena had only completed the first term. Sh. Virat Sarin had not even completed the first term when he was removed. The removal of Virat Sarin itself had been challenged by him in C.W.P. No.9491 of 2007 and this Court by an interim order dated 19.06.2007 had allowed Virat Sarin to attend the meeting held on 20.06.2007. Resultantly, the quorum of the Managing Committee on 20.06.2007 had actually been raised to 22 against the prescribed quorum of 21 under the Affiliation Bye Law 20(1). The minutes of the meeting, which are impugned in the writ petition show that R.D. Pawar and the petitioner had been wrongly omitted. The petitioner could not have lost his place in the Managing Committee

unless he had been removed from the service. Even the mere suspension could not have resulted in affecting his office in the Managing Committee. The petitioner himself had not been called for the meeting dated 20.06.2007.

(5) Even apart from the alleged illegal composition of the Committee to examining the agenda item of consideration of the reply by the petitioner and the decision to persist with an enquiry, Bye Law 20 required that the petitioner should be given a full opportunity to participate in the meeting. The CBSE Affiliation Bye Laws themselves do not prescribe a bar against the presence of a person against whom action is sought to be initiated. If the petitioner could be kept away because the agenda required the consideration of his own reply, by the same token of logic even the 7th respondent-Lt. Gen. J.S. Bawa, who was the Chairman could not have been present at the meeting since he was the prime mover of the Resolution against the petitioner and the person, who brought about the illegal suspension against him.

(6) The ultimate resolution said to have been passed on 20.06.2007 contained several patent errors. One, Dr. Sharda Nayak, which was shown in the Minutes drawn on 21.06.2007 as having given approval to the resolution had openly questioned the manner in which the minutes had been drawn. It has been brought out through objections to the minutes that there was no consideration of the petitioner's reply. While the High Court direction required that the reply of the petitioner was to be considered by the Managing Committee, what was put to vote was whether the petitioner's reply should be discussed or not. The petitioner also had some objections about the manner in which the proceedings were conducted before the Enquiry Officer, Retd. Justice Usha Mehra. According to the petitioner, she had a prejudiced mind. The Enquiry Officer had secured a portion of remuneration even before a final decision was required to be taken in pursuance of the High Court direction dated 31.05.2007. The payment of fee to the Enquiry Officer even without going to the fact that the enquiry was to be held or not and whether the Managing Committee was going to approve of such action after considering the reply given in the manner directed by the High Court showed a prejudiced mind about the constitution of the enquiry itself. The petitioner would claim that he has no faith in the entire proceeding.

(7) Amongst the respondents, the State Government represented through the Secretary Department of Education and the CBSE represented through the Secretary have not been filed any independent written statement. The respondents No.4, 7 and 8 namely the Managing Committee, Lt. Gen J.S. Bawa, who was the Chairman of the Managing Committee and the newly appointed Principal Dr. Stalin Malhotra have alone filed the written statement and the contest has been principally taken at their instance. The respondents would contend that the fact that the alleged exclusion of three persons Virat Sarin, R.K. Vashishtha and Meena Singh had taken place because they had supported the petitioner in the meeting held on 07.04.2007 was false. On the other hand, the Managing Committee had no control over the removal of two of them namely Vashishtha and Meena Singh who had been nominated by CBSE whereby the Virat Sarin had been a PTA representative. Virat Sarin had made several representations to the Managing Committee against the gross misconduct of the petitioner as Principal. Affiliation Bye Laws 20(2)(b)(ii) required that a person to become a member of the Managing Committee has to be a parent of the student in the school (underlining as in the written statement) and since his son Varun Sarin had passed out the school after completing 10+2 examination in May, 2006, Virat Sarin's term as a Member of the Managing Committee stood vacated, being co terminus with the status as a parent of student, who had passed out of the school. A new PTA had been constituted on 07.05.2007 through a class wise draw of lots as recommended by a Committee constituted on their behalf and vide resolution dated 08.05.2007, the new constituted Committee had elected two members namely Ashwani Arya and Pawan Kumar as PTA representatives to occupy the two seats in the Managing Committee.

(8) The respondent would contend that the petitioner has engineered to file several suits and writ petitions to defeat and delay the constitution of the Committee and for enquiry into the charges. He had originally caused a suit to be filed in C.S. No.498 of 2007 at the instance of Dr. R.D. Pawar. Thereafter, the petitioner filed C.W.P. No.2598 of 2007, which was later dismissed as withdrawn. C.W.P. No.8855 of 2007 had been filed by the petitioner in terms of which alone the impugned meeting dated 20.06.2007 and resolutions had been passed. Virat Sarin had filed the C.W.P. No.9491 of 2007 and at the time of filing of written statement, the said writ petition

was also pending. The petitioner had been personally present in the Court during all these proceedings including the case that was filed by Virat Sarin. The petitioner's understanding that several persons had been excluded from the Managing Committee only because they had voted earlier in his favour was clearly wrong. The respondents would contend that Vivek Suri, N.K. Vaid and Mr. Sunil Gandhi had actually approved of the decision taken already on 07.04.2007 suspending the petitioner. Written consent had also been given by Shovna Narayan and Dr. Sharda Nayak for the resolution approving of the suspension of the petitioner and issuance of charge-sheet against him. Vashishtha and Meena Singh had actually completed three years' term and they had been replaced by CBSE by Ms. Neera Sharma and Mr. S.S. Chaudhary in terms of Bye Law 20(3) that delimits the period for a term of three years. In any event, the tenure of the CBSE nominees was at the pleasure of the CBSE and the Managing Committee could not have made any manipulation as regards the same, as contended by the petitioner.

(9) Joining issues on the circumstances relating to the exclusion of R.D. Pawar, the respondents would contend that he had behaved in the most unruly manner as records of the minutes of the Managing Committee itself would reveal. The suspension of R.D. Pawar had been taken even before the Court decision in C.W.P. No.8855 of 2007. Even contention of the petitioner that Virat Sarin, Vashishtha and Meena Singh had voted in favour of the petitioner is not correct. Virat Sarin did not sign the minutes of the Meeting dated 07.04.2007 and R.K. Vashishtha and Meena Singh had actually approved the minutes and endorsed the action taken against the petitioner and R.D. Pawar. The minutes of the meeting dated 26.02.20007 approving of the action against the petitioner have been filed by the respondents as Annexure R- 4, 7&8/VIII

(10) As regards the presence of the 9th respondent namely Jagbir S. Bhadana, it is contended that he was a member of the Managing Committee as an elected representative of the PTA and ex officio member in terms of Bye Law 20(2) (b)(ii). Thereafter he had been nominated as a member of the Managing Committee and continued as such. Only a re-nomination of a member for more than two consecutive terms in the same capacity could be barred under the Bye Law. The exception carved out under Bye Law 20(3) would show that the reconstruction against re-

nomination applied only to Clauses (i) (iv) and (vi) and not to a person, who fulfilled the capacity for ex officio member under Bye Law 20(2)(b)(ii). It is also contended by the respondents that the writ petition itself is not maintainable. Since the 3rd respondent society is an unaided private school, the decisions taken by the Managing Committee could not be a point of dispute before the Court through a writ petition.

(11) To take the issue of the maintainability of the writ petition as a preliminary objection, learned Senior Counsel on behalf of the petitioner would contend that the objection was being taken up much after the proceedings before the Hon'ble Supreme court when the challenge was to the commencement of the proceedings before the Enquiry Officer when the Supreme Court passed an order in SLP No. 10543 of 2008 on 15.12.2009. The Supreme Court had specifically directed that this Court should undertake an examination of the validity of the composition of the Committee and the vires of the decision without reference to the result of the enquiry report. If there was an objection regarding the maintainability of the writ petition itself, the respondents ought to have taken the objection before the Supreme Court and cannot take it up after there was a direction from the Supreme Court for disposal. In my view, an intervention against the management of an unaided private school for alleged mala fides of the composition of committee ought not to be normally an issue for adjudication in a writ petition at all. The objections in this writ petition relate to the exclusion of three members and the continuance of the 9th respondent as a member of the Committee that resulted in a composition of a committee which was illegal and consequently the decision taken by it is vitiated. As regards two of them at least who were CBSE nominees, I cannot find that the 3rd respondent-Society could have had any role in the same. As regards the removal of a PTA representative, he has himself filed the writ petition and the same is said to be pending. The continuance of the 9th respondent alone would be a matter for consideration of whether he could have continued or not. None of these issues involve any public law element and if the respondents did not take an objection regarding the maintainability of the writ petition before the Supreme Court, it was surely not an occasion where the respondents could have taken that objection. The respondents themselves were not filing the case before the Supreme Court but it was the petitioner, who had challenged the interim direction given by this Court in this writ petition

allowing for parties to approach the Court after the conclusion of the enquiry by the Enquiry Officer and also permitting the society to fill up the post of a principal as an interim measure. The society could not be said to be aggrieved in any way by both the directions, for it was able to secure a favourable consideration of both their acts, viz., of the continuation of enquiry through the enquiry officer and filling up the Principal's post during the pendency of writ petition. They did not come by any fetter through the institution of writ petition at this stage and therefore, the maintainability of the writ petition against the society itself could have been taken only at appropriate stage when the writ petition came up for hearing.

(12) Learned Senior Counsel appearing on behalf of the petitioner relies on judgment of a Five Member Bench of this Court in **Ravneet Kaur versus The Christian Medical College, Ludhiana (1)**, where this Court held that conservative view regarding the maintainability of writs against the State or its instrumentality was giving way to a liberal meaning and the power under Article 226 was no longer confined to the issue of writs against statutory bodies and instrumentalities of States only. The "expression any other person or body performing public duties" would include even college supplementing the effort of the State and would be amenable writ jurisdiction for that purpose. Neither the language of the Constitution nor the present day needs of the society would permit exemption of bodies performing public duties from the superintendence of the Courts. This Court was examining the issue of the maintainability of writ against aided colleges in the matters of admissions in **Kavita versus Daya Nand Medical College and Hospital, Ludhiana (2)**. Again a Five Member Bench of this Court held that the controversy regarding the maintainability of writ petition against a private medical college had already been concluded by its previous decision rendered in **Ravneet Kaur's** case (supra).

(13) It could perhaps be contended that an educational institution that caters to a large public interest and which are regulated through Central and State acts have to conform to the law laid down by statutes and any statutory violations would themselves give rise to intervention by the High Court under Article 226 of the Constitution. If the act complained was a particular activity that had a statutory control and such decision is taken

(1) 1997(3) SCT 210

(2) 1998(3) SCT 51

against the statute then the failure of the authority to check the commission of the wrong itself would be a justification for an intervention through a writ petition. For example, even a private unaided school has to follow a particular procedure for termination of services of a teacher and if a statute also provides for a sanction from a public authority but the termination is effected without reference to such a statutory control, the violation of the statute and the failure to follow a procedure as the statute envisages would make possible an intervention through a writ petition against the management decision. A mere resolution of the society deciding to constitute an enquiry to manage its affairs ought not to be an issue for a Court's decision under Article 226. If it were to be contended that some members had been deliberately removed by the mala fide conduct of persons at the helms of affairs of the society, it would require appropriate evidence to establish the mala fides. In this case a parent-teacher representative Mr. Sarin is said to have been removed from the society by the fact that he had supported the petitioner. On the other hand, it is seen that he had himself given the representation against the petitioner previously to the Managing Committee. Documents have been filed by the respondents adverting to the same. As regards the exclusion of two other members, who were CBSE nominees, they have themselves not challenged their exclusion. What prompted to CBSE to nominate new members after the removal of two others ought to have been an issue for oral evidence through CBSE management, if any motivation or collusion were to be attributed to them. Otherwise, if CBSE had displaced two with two new nominees, the petitioner cannot have a case that the Managing Committee had any role to play. How a member would have behaved if he had been allowed to continue would be purely conjectural.

(14) The intervention through a writ petition against a society engaged in the field of education involving large number students should be in situations where there would be a great danger to the public interest if a patent illegality is allowed to be perpetrated. I do not mean to lay down as a matter of legal principle that would foreclose an intervention at all times against the private society, for it depends on the nature of relief asked and the allegations of the particular misconduct against the respondents. If the writ petition were to contain a challenge to passing of a resolution, I would still see it in the context of the scope of the mischief that is likely to be caused

if such a resolution were to be put through. In this case when both parties agreed before this Court in an earlier writ petition that the petitioner would have a right to file a reply to the charge-sheet levelled and the Managing Committee would take a decision on whether an enquiry should be constituted or not, I would hold that unless the constitution of the enquiry itself was seriously flawed by lack of competency of the person to constitute an Enquiry Officer or when the Enquiry Officer could not be said to be a competent person to act as such Enquiry Officer or where the progress of the enquiry before the Enquiry Officer is vitiated by violation of any of the statutory prescriptions or by violation of norms of natural justice, there ought not to be a scope for entertaining a challenge for the writ petition. In this case, if the Managing Committee had taken a decision by a majority to go through the enquiry, I would find no reason to stall the enquiry and hold that the enquiry could not have been ordered.

(15) Events that have taken place subsequent to the writ petition cannot be ignored. After the institution of the writ petition and the constitution of the Enquiry Officer, the Enquiry Officer has proceeded to conduct the enquiry, where the petitioner has had a full scale participation and the report has also been prepared and filed in Court. Two circumstances can be envisaged as the present case brings out. One, if the report had exonerated the petitioner, then even the constitution of enquiry could not be said to have prejudiced the petitioner, for he ultimately comes unscathed. The second situation could be when the petitioner could be found to be guilty and the petitioner wants to contend that enquiry ought not to have been constituted. It would be grossly unreasonable and inequitable for a person to pick up on technicalities in a situation where a full fledged enquiry yields to a finding of guilt against the person. For such a person to contend that the enquiry ought not to have been constituted would be meaningless. The Supreme Court has held that the decision of this Court will be rendered without reference to the Enquiry Officer's report. I have not the slightest clue what the Enquiry Officer's report says. I am only trying to bring out a prospect of either situation of an Enquiry Officer finding him not guilty or finding him guilty, the judicial intervention cannot be made at this stage in favour of the petitioner.

(16) The grounds taken for the challenge themselves are peripheral. If the crux of the issue is composition of the Managing Committee, I will find that two nominee members of the CBSE, who were displaced by a set of another two could not alter the situation, for the nominees are expected to act at the behest of CBSE, uninfluenced by personal predilections. The issue of whether Mr. Sarin could have continued cannot itself make a difference, for, through an interim order given by the Court he was actually allowed to participate. His presence and his voting did not come to the aid of the petitioner. The continuation of 9th respondent as a person surviving to a 3rd term is alone the issue. I find under Affiliation Bye Law 20(2), the composition of the Managing Committee would be drawn from the following clauses-

“20. School Managing Committee, its constitution, power and functions.

2. (b) subject to the total number of members specified in clause (a), every managing committee shall include the following namely;

- (i) the Head of the School. He will be a Member Secretary of the School Managing Committee;
- (ii) two parents of students in the school;
- (iii) two teachers of the schools;
- (iv) two other persons (of whom one shall be women); who are, or have been, teachers of any other school or of any college, to be nominated by the Trust/Society/Company registered under Section 25 of the Companies Act, 1956/ Board;
- (v) two members, from out of a panel recommended by the Trust/Society/Company registered under Section 25 of the Companies Act, 1956 to be nominated by the Board. If the Panel is not accepted fresh panel may be asked. The names recommended should not below the rank of a Principal of a Sr. Sec. School.

- (vi) The remaining members to be nominated or elected as the case may be, in accordance with the rules and regulations of the society or trust or company registered under Section 25 of the Companies Act, 1956 by which the school is run.
- (vii) Not more than two members may be nominated as per the conditions, if any, laid down in the "No Objection Certificate". Provided further that the above provisions shall be implemented with immediate effect and those affiliated earlier and not complying with above provisions shall be required to take remedial measures with suitable qualified substitutes within a year positively.
- (viii) No Head Master/Principal shall be appointed in the school who is related to any member of the School Managing Committee.
- (ix) For the purpose of this rule, the relation includes the following Brothers, Sisters, Husband, Wife, Son, Daughter, Son-in-law and Daughter-in-law.

Provided further that any violation of rules will lead to the disaffiliation of the school."

(17) Clause 2(i) provides for two representatives of students in the school. Byc Law 20(3) states that the terms of members of the Managing Committee shall be 3 years and a member can be renominated for another term. This is subject to the condition that a member cannot remain in office for more than two consecutive terms. An exception that falls within this is an ex-officio member and member of the Trust/Society/Company. It is elicited in the reply of the respondents that the 9th respondent has fulfilled two different capacities as member of the Managing Committee as an elected representative of PTA and later as a nominee of the Managing Committee. I cannot understand how renomination would be possible beyond a period of two years except to an ex officio member. Parents of the students who are nominated through the PTA Association do not fulfill any ex-officio capacity in the manner that byc-laws have been drawn. It is not too clear as to how the 9th respondent's continuance as a Managing

Committee member beyond the period of two years was permissible but even his absence could not have made a difference, since I am not rendering a specific finding in the absence of any relief therefor. If it were to be assumed that he was not a member, It would restore the number to 21 (with Mr.Sarin being allowed to participate in the meeting by this court's interim order in yet another writ petition). The ultimate tally through the impugned resolution shows that the resolution had been supported by 10 members and opposed by 8. Even if the 9th respondent's vote were to be excluded, there will still be a vote in excess in favour of the motion over the votes against the motion.

(18) Even apart from finding that it will be inexpedient to make an interference, I would also find that the disciplinary procedure that Rule 44 of the Affiliation Bye Law provides for imposing a major penalty, where the Disciplinary Authority is required to frame definite charges on the basis of allegations on which the enquiry was proposed to be held and a copy of the charges ought to be furnished to an employee seeking for his explanation. On receipt of the statement of defence if the disciplinary authority itself is competent to enquire into the charges as if it considers necessary to appoint an Enquiry Officer. The decision to constitute an Enquiry Officer itself does not require a full fledged enquiry. Even an irregularity in the procedure for a decision to constitute an enquiry cannot render the result of the enquiry itself invalid. If the Managing Committee was competent to entrust the matter for an enquiry, I would only find that the presence of the 9th respondent as a person, who had been allowed to continue beyond period of two terms could be treated as irregular, even then the majority decision ought to prevail. If there was any violation of the principles of natural justice in the manner of conduct of enquiry that could give rise to petitioner an independent cause of action, for the correctness of the enquiry report is itself not in challenge before this Court for an obvious reason that the enquiry report is not made public so far.

(19) I find no reason to quash the constitution of the enquiry for the alleged mischief, which is attributed to the decision cannot go into the root of the controversy itself of whether the petitioner had been guilty of misconduct or not. That can be brought out only through the enquiry report and since that report has been prepared, it is only apposite that the petitioner's objection must be over-run to give room to allowing the enquiry report to

(Surya Kant, J.)

be released. If the enquiry report is favorable to the petitioner and he has been exonerated of the charges, it shall be taken to the next stage for further consideration in accordance with law. If the report is adverse to the petitioner, he will have independent remedy to challenge the same.

(20) The writ petition is consequently dismissed. The Enquiry report is directed to be unsealed. The registry shall open the Enquiry Officer's report and make it a part of the record. The Enquiry Officer is at liberty to place yet another copy with the Managing Committee to take further action in accordance with the procedure established by law.