
(1995) 08 AHC CK 0016
In the Allahabad High Court
Case No : C.M.W.P. No. 18520 of 1995

Ahmad All Khan and Another	Vs	APPELLANT
District Inspector of Schools and Others		RESPONDENT

Date of Decision : 16-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 23 Rule 1
Constitution of India, 1950 — Article 226

Citation : (1995) 08 AHC CK 0016

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : Ashok Bhushan, for the Appellant; A.P. SahL and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Heard the learned Counsel for the Petitioners and Sri A.P. Sahi, learned Counsel representing the Respondent Nos. 2 and 3.

2. Perused the record.

3. The Petitioners seek quashing of the Order dated 15.12.1994, passed by the District Inspector of Schools where under for the remaining period of tenure of the committee of management elected on 16.11.1994 for running and managing the National Inter College, Shikarpur Bulandshahar, he had granted recognition in favour of Dr. Rahat Aim as Manager and had attested his signatures as such making it clear that in case, It is found subsequently that relevant material had been suppressed or concealed in the matter, in that event the order shall be cancelled. The Petitioner has also prayed for the quashing of the order dated 15-6-1995, passed by District Inspector of Schools where under acting upon the legal advice of the District Government Counsel (Civil), the District Inspector of Schools had refused to proceed further in the matter relating to the recall of the earlier order In view of the pendency of the suit filed by the Petitioner No. 1.

4. It appears that Sri Ahmad Ali Khan and Abdul Humid had filed a suit against Sri Rahat Aim and Ahmad Sayeed Khan claiming a decree of permanent injunction restraining the Defendants from interfering in the functioning of Ahmad Ali Khan as Deputy Manager/Manager and Abdul Humid as Treasurer and their running and managing of the National Inter College. This suit was, however, allowed to be withdrawn by the court of Munsif Bulandshahr vide the order dated 19.5.95 without any liberty to file a fresh suit. The learned Munsif has clearly observed so in the aforesaid order permitting the Plaintiffs to withdraw the suit. However, the Plaintiffs had stated that they did not want to prosecute their suit any further.

5. This Court in its decision rendered by a Division Bench in the case of Regional Manager v. Pradeep Goel, reported in JT 192 ACJ 274, after considering the various decisions of this Court as well as the Apex Court had observed that salutary principles enshrined in the Code of CPC governing the trial of civil suit may be applied to the proceedings Under Article 226 of the Constitution of India excepting the habeas corpus petition. It was also observed that the principles underlying Order 23, Rule 1 of the CPC are such which can be made applicable to petition Under Article 226 of the Constitution of India also excepting of course the petitions relating to the habeas corpus.

6. In his order dated 15.12.1994, the District Inspector of Schools had recognised Dr. Rahat Azim as the Acting Manager of the committee of management running and managing the National Inter College for the remaining period of the tenure of the committee of management. From a perusal of the assertions made in the plaint of suit No. 608 of 1994, it is apparent that Sri Ahamad Ali Khan, the Petitioner No. 1 claimed to be continuing as the Manager of the aforesaid committee of management and sought for an injunction restraining Rahat Aim, the Defendant No. 1, in interfering in the continuance and functioning of Plaintiff No. 1, Ahamad All Khan as the Manager of the committee of management, approved for the National Inter College. From the order passed by the trial court In the aforesaid suit. It is further apparent that Ahamad All Khan in effect abandoned his claim and on this ground the permission to withdraw the suit without liberty to file a fresh suit had been granted by the trial court.

7. In the aforesaid view of the matter. I do not find justifiable ground for the intervention of the equity at the Instance of the Petitioner No. 1.

8. So far as Aamed din. the Petitioner No. 2 is concerned, it appears that he was previously the Principal of National Inter College, Shikarpur as is clear from the letter dated 15.6.1995 a copy of which has been filed as Annexure-12 to the writ petition and letter dated 22.5.1995, a copy of which has been filed as Annexure-10 to the writ petition.

9. It further appears that the Petitioner No. 2 had joined hands with the Petitioner No. 1 to support his case. He has also sought for a direction as is clear

from the second relief claimed in the writ petition seeking the Respondents to recognise the Petitioner No. 1, as the Assistant Manager of the institution.

10 In the circumstances indicated above, when the Petitioner No. 1 himself has abandoned his claim, I am clearly of the opinion, that no interference is called for by this Court, while exercising the extraordinary jurisdiction envisaged Under Article 226 of the Constitution of India even at the instance of the Petitioner No. 2.

11. It should, however, be noticed that as observed by this Court In its decision in the case of Shandar Hussain and Anr. v. The Deputy Director of Education and others, (Civil Misc. Writ Petition No. 38185 of 1993," decided on 29.10.1993), an order passed by the District Inspector of Schools granting or withholding recognition to a committee of management for the purpose of running and managing the Institution in accordance with the scheme of administration approved under the provisions of the Intermediate Education Act and the Regulations framed there under is amenable to scrutiny by the Regional Deputy Director of Education of the concerned region if sufficient ground is made out for the same. An aggrieved person, therefore, can approach the Regional Deputy Director of Education for the redressal of his grievances against an order passed by the District Inspector of Schools in connection with the granting or withholding of the recognition to a committee of management or against any such order passed by the District Inspector of Schools which has the effect of recognising any person as a representative of the committee of management for the purpose of running and managing the institution which ought not to have been recognised as such.

12. The learned Counsel for the Petitioner contended that the Petitioner No. 1 cannot be held to be precluded from approaching this Court in its jurisdiction Under Article 226 of the Constitution of India for getting his grievances redressed merely because he has abandoned his claim In the circumstances Indicated hereinabove. The learned Counsel has tried to draw support in this connection from the decision of the Apex Court in the case of the The State of Madhya Pradesh Vs. The State of Maharashtra and Others, , wherein It had been held that a right which a litigant does not know that he possesses or a right which Is not In existence at the time of first suit can hardly be regarded as a "portion of his claim "within the meaning of Order 2, Rule 2 of the CPC emphasizing that the crux of the matter Is the presence or lack of awareness of the right at the time of first suit. This decision, however, cannot come to the rescue of the Petitioner in the facts and circumstances of the present case.

13. The learned Counsel for the Petitioner has also placed reliance in support of the above submission on the decision of the Punjab and Haryana High Court in the case of Girdhari Lai Bansal v. Bhakhra Byas Management and functioning of Plaintiff No. 1, Ahamad All Khan as the Manager of the committee of management, approved for the National Inter College. From the order passed by the trial court In the aforesaid suit. It is further apparent that Ahamad All Khan

in effect abandoned his claim and on this ground the permission to withdraw the suit without liberty to file a fresh suit had been granted by the trial court.

14. In view of my conclusions indicated hereinabove, the contention of the learned Counsel for the Petitioner is not acceptable. It should not be lost sight of in this connection that this Court has consistently held that the order of the District Inspector of Schools granting or withholding recognition in favour of a committee of management for the purposes of administrative matters in connection with the running and managing of an educational institution in accordance with the scheme of administration approved under the provisions of the U.P. Intermediate Education Act and Regulations framed there under could be challenged by means of a civil suit before the civil court of competent Jurisdiction and the District Inspector of Schools has to abide by the decision of the civil court.

15. In the facts and circumstances of the present case as noticed above, the Petitioner No. 1 having taken recourse to the remedy for the redressal of his grievances in the matter relating to recognition indicated hereinabove and having abandoned his claim, it seems to me, that more than sufficient ground has been made out for declining any relief to the Petitioners while exercising the extraordinary equity Jurisdiction envisaged under Article 226 of the Constitution of India.

The writ petition is accordingly dismissed in limine.