
(2003) 08 AHC CK 0058
In the Allahabad High Court
Case No : F.A.F.O. No. 2240 of 2003

Chaudhary Charan Singh University

APPELLANT

Vs

Astron Educational Samiti and Others

RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 30
Uttar Pradesh General Clauses Act, 1904 — Section 23A
Uttar Pradesh State Universities Act, 1973 — Section 28, 69

Citation : (2003) 6 AWC 4927

Hon'ble Judges : S.P. Srivastava, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Anurag Khanna, for the Appellant; Vivek Chaudhary and Ajai Srivastava, for the Respondent

Final Decision : Allowed

Judgement

S.P. Srivastava, J.—This miscellaneous first appeal is directed against an interlocutory order granting an ad interim injunction requiring the Defendant-University not to direct the Plaintiffs to admit any student in their educational institutions and further restraining them from fixing any fee for the payment seat or free seat. The Defendant-University was further restrained from interfering in an illegal manner in the matter relating to imparting of education by the Plaintiffs in their non-aided self-financing institutions. While granting the aforesaid injunction, the trial court made it clear that so far as the fee part was concerned, the interim order was to remain subject to the orders passed by the High Court in the pending writ petition.

2. While granting the aforesaid interim order, the trial court had permitted the Defendant to file objections and had posted the application seeking the ad interim injunction for final disposal.

3. The Defendant-University, instead of waiting for the final order as

contemplated under Order XXXIX Rule 4 of the C.P.C., has come up in appeal against the aforesaid order of interim injunction.

4. Heard the learned Counsel for the Appellant as well as the learned Counsel representing the contesting Respondent.

5. Perused the record.

6. The facts in brief shorn of details and necessary for the disposal of this appeal lie in a narrow compass.

7. The suit giving rise to this appeal had been filed by 7 societies registered under the Societies Registration Act, which claimed to be running and managing 7 educational institutions, which were also impleaded as co-Plaintiffs, to impart education in the course of B. Ed. and prepare the students to appear in the final examination of B. Ed. degree held by the Appellant-University which confers B. Ed. degree to the successful candidates. The Society, running and managing the aforesaid educational institutions, had applied to the Defendant-University requesting for the affiliation of their respective educational institutions for imparting the education for the course of B. Ed. degree. The Chancellor of the Appellant-University had granted the affiliation to the concerned societies recognizing their educational institutions for imparting education for B. Ed. course which were allotted 100 seats each for the year 2002-03.

8. With their affiliation, the societies became entitled for the running of their self-financing professional institutions intended to impart education for B. Ed. Professional course during the year 2002-03.

9. The Plaintiffs, however, received a letter dated 10.5.2003 from the Defendant-University informing them that the University intended to hold the counselling for the admission in the Plaintiffs' institutions informing them to send their representatives in the said counselling. The Plaintiffs asserted that the counselling was a system of selection of students to be admitted in various colleges on the basis of the examination held by the University and thereafter allotment of the seats assigned to the educational institutions by the University against free seat or payment seat.

10. The Plaintiffs claimed that after the decision of the Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , the Defendant-University had no jurisdiction to hold any counselling and was illegally and in an unauthorized manner was adamant to hold a counselling and nominate the students selected by it for being admitted as against the seats allotted to the Plaintiffs' institutions.

11. The Plaintiffs accordingly prayed for a decree of permanent prohibitory injunction against the Defendant restraining it permanently from directing the Plaintiffs' educational institutions to admit any student selected by the University and to fix any fee structure in respect of the Plaintiffs' educational institution

regarding free seats or payment seats. The Defendant was further required to be restrained from interfering in the rights of the Plaintiffs to themselves admit the students in their respective institutions.

12. Along with the plaint, an application seeking an ad interim relief in the nature of the final relief sought for by the Plaintiffs had been moved which was objected to by the Defendant-University on various grounds.

13. The learned Counsel for the Appellant has strenuously urged that in the facts and circumstances of the present case taking into consideration the fact that the Plaintiffs themselves based their right on the affiliation granted by the Defendant-University and further the fact that their institutions had been recognized by the University for imparting the course of instructions/study preparing the candidates admitted as against 100 seats allotted by the University for appearing at the final examination held by the University itself for conferring the B. Ed. degree, the Plaintiffs were bound by the provisions contained in the State Universities Act specially the provisions contained in Section 28 of the said Act and could not have any right to get the seats in question filled up adopting any mode other than the mode prescribed by the University itself in exercise of the jurisdiction contemplated u/s 28 of the State Universities Act and could not by-pass the procedure for admission prescribed under the said Act.

14. It has also been urged that the suit filed by the Plaintiffs Respondents was not maintainable and barred by Section 69 of the State Universities Act.

15. At this stage, it will be useful to refer to the relevant part of Section 28 of the U.P. State Universities Act, 1973:

28. Admissions Committee.-

(1) There shall be an Admissions Committee of the University, the constitution of which shall be such as may be provided for in the Ordinances.

(2) The Admissions Committee shall have the power to appoint such number of sub-committees as it thinks fit.

(3) Subject to the superintendence of the Academic Council and to the provisions of Sub-section (5), the Admissions Committee shall lay down the principles or norms governing the policy of admission to various courses of studies in the University and may also nominate a person or a sub-committee as the admitting authority in respect of any course of study in an institute or a constituent college maintained by the University.

(4) Subject to the provisions of Sub-section (5) the Committee may issue any direction as respects criteria or methods of admissions (including the number of students to be admitted) to constituent colleges maintained by the State Government and affiliated or associated colleges, and such directions shall be binding on such colleges.

(5) Notwithstanding anything contained in any other provision of this Act-

(a) reservation of seats for admission in any course of study in University, institute, constituent college, affiliated college or associated college for the students belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens may be made and regulated by such orders as the State Government may, by notification, make in that behalf:

Provided that reservation under this clause shall not exceed fifty per cent of the total number of seats in any course of study:

Provided further that reservation under this clause shall not apply in the case of an institution established and administered by minorities referred to in Clause (1) of Article 30 of the Constitution:

Provided also that the reservation under this clause shall not apply to the category of other Backward Classes of citizens specified in Schedule II to the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994:

(b) admission to medical and engineering colleges and to courses of instruction for degrees in education and Ayurvedic or Unani systems of medicine (including the number of students to be admitted), shall subject to Clause (a), be regulated by such orders (which if necessary may be with retrospective effect, but not effective prior to January 1, 1979) as the State Government may by notification, make in that behalf:

Provided that no order regulating admission under this clause shall be inconsistent with the rights of minorities in the matter of establishing and administering educational institutions of their choice ;

(c) in making an order under Clause (a), the State Government may direct that any person who wilfully acts in a manner intended to contravene, or defeat the purposes of the order shall be punishable with imprisonment for a term not exceeding three months or with fine not exceeding one thousand rupees, or with both, as may be specified in the order.

(5A) Every order made under Clause (a) of Sub-section (5) shall be laid, as soon as may be, before both Houses of the State Legislature and the provisions of Sub-section (1) of Section 23A of the Uttar Pradesh General Clauses Act, 1904, shall apply as they apply in respect of rules made by the State Government under any Uttar Pradesh Act.

(6) xxx xxx xxx

16. It may be noticed that in its decision in the case of University of Allahabad and Others Vs. Amrit Chand Tripathi and Others, , after analyzing various provisions of the State Universities Act, the Apex Court had observed as indicated herein below:

Sub-section (4) of Section 28 enables the Admissions Committee to issue directions regarding "the criteria or methods of admission (including the number

of students to be admitted) to constituent colleges maintained by the State Government and affiliated or associated colleges". This provision which enables the Admissions Committee to issue directions to constituent colleges, affiliated or associated colleges in the matter of criteria or methods of admission also indicates that the principles or norms governing the policy of admission to various courses of studies in the University must necessarily include the criteria or methods of admission.

It was further observed that: "The scheme of the Act in regard to admissions to the degree courses of the University, therefore, appears to be like this: The Admissions Committee prescribes the principles or norms governing the policy of admission to the various courses of study. This is subject to the superintendence of the Academic Council. The Academic Council may exercise its powers of superintendence, among other ways, by proposing an ordinance which may have the effect of reversing or modifying the action of the Admissions Committee. Thereafter, the Executive Council may make an ordinance if it so thinks fit. Once an ordinance is made, it will not naturally be open to any of the University bodies, including the Admissions Committee to act contrary to it. This appears to be the scheme of the Act insofar as it relates to admissions. ... The Academic Council has the power to overrule the decision of the Admissions Committee in exercise of its power of superintendence.

17. It may further be noticed that in its decision in the case of Dhruv Green Field Ltd. Vs. Hukam Singh and Others, , the Apex Court had observed that "the jurisdiction of the Courts to try all suits of civil nature is very expansive as is evident from the plain language of Section 9 of the Code of Civil Procedure. This is because of the principle *ubi jus ibi remedium*. It is only where cognizance of a specified type of suit is barred by a statute either expressly or impliedly that the jurisdiction of the civil court would be ousted to entertain such a suit. The general principle is that a statute excluding the jurisdiction of civil courts should be construed strictly.

18. The Apex Court in its aforesaid decision had also referred to the decision of the Constitution Bench in the case of Ram Swarup v. Shikhar Chand AIR 1996 SC 893, wherein an observation to the following effect was made:

The two tests, which are often considered relevant in dealing with the question about the exclusion of civil courts' jurisdiction are (a) whether the special statute which excludes such jurisdiction has used clear and unambiguous words indicating that intention ; and (b) does that statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions. Applying these tests the inference is inescapable that the jurisdiction of the civil courts is intended to be excluded.

The bar excluding the jurisdiction of civil courts cannot operate in cases where the plea raised before the civil court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity.

19. In its decision in the case of Dhruv Green Field Ltd. (supra), the Apex Court had laid down the following principles:

10. In the light of the above discussion, the following principles may be restated:

(1) If there is express provision in any special Act barring the jurisdiction of a civil court to deal with matters specified thereunder the jurisdiction of an ordinary civil court shall stand excluded.

(2) If there is no express provision in the Act but an examination of the provisions contained therein leads to a conclusion in regard to exclusion of jurisdiction of a civil court, the Court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act ; if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the civil court is barred. If, however, no such adequate and effective alternative remedy is provided then exclusion of the jurisdiction of the civil court cannot be inferred.

(3) Even in cases where the jurisdiction of a civil court is barred expressly or impliedly, the Court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity.

20. At this stage, it will be appropriate to refer to the provisions contained in Section 69 of the State Universities Act which is reproduced below:

69. Bar of suit.--No suit or other legal proceedings shall lie against the State Government or the Director of Education (Higher Education) or the Deputy Director (as defined in Section 60A) or the Authorised Controller or the University or any officer, authority or body thereof in respect of anything done or purported or intended to be done in pursuance of the Act or the Rules or the Statutes or the Ordinances made thereunder.

21. In the present case, the Plaintiffs had never come up with any such plea that exercising the jurisdiction envisaged u/s 28 of the U.P. State Universities Act, the competent Admissions Committee had not taken any decision regulating the procedure for nominating the students as against the allotted seats for imparting education to the B. Ed. course preparing the students to appear at the final examination held by the University itself. The University from the facts and circumstances brought on record, appears to have issued the impugned direction implementing the decision of the Admissions Committee. The provisions contained in Section 69 of the Act impose a statutory bar regarding maintainability of a suit providing that no suit or other legal proceedings shall lie against the State Government or the Director of Education (Higher Education) or the Deputy Director (as defined in Section 60A) or the Authorized Controller or the University or any officer, authority or body thereof in respect of anything done or purported or intended to be done in pursuance of the Act or the Rules or the Statutes or the Ordinances made thereunder.

22. It must be emphasized that an order made without jurisdiction cannot be deemed to be one made under the Act. However, the civil court of competent

jurisdiction cannot be deemed to be debarred from scrutinizing the validity of the order challenged on the ground of jurisdiction. The real purpose underlying the provisions contained in Section 69 of the State Universities Act, is to ensure that all the orders made in exercise of any power conferred by or under the Act shall remain exempted from the challenge in courts of law as regards the sufficiency of ground and propriety.

23. In the context, therefore, the inference that the civil court's jurisdiction was intended to be excluded appears to be inescapable. The aforesaid provision excludes judicial scrutiny of any order passed by any authority in exercise of any power conferred by or under the Act as regards the correctness or propriety thereof. The bar created cannot, however, operate in cases where the plea raised before the civil court goes to the root of the matter and if upheld, ready to a conclusion that the impugned order was a nullity.

24. The jurisdiction of the civil courts to deal with the civil causes can be excluded by the Legislature by special Act which deal with the special subject-matters but the exclusion of the jurisdiction of the civil courts must be made by statutory provision which expressly provides for it or which necessarily and inevitably leads to such an inference.

25. It should further be not lost sight of that u/s 9 of the CPC Code, a civil court is empowered to try any suit of any nature. This jurisdiction could be ousted by special legislation expressly or by necessary implication. Slackening standards and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The direction to the Appellants to disobey the statutory provisions contained in the State Universities Act cannot be taken to serve the rule of law and instead will be a breeding source of indiscipline.

26. It is not permissible for the civil court to alter the material of which the Act is woven. The civil court can only iron out the creases. A Statute has to be construed according to the intent of those who make it and the Court has to act upon it.

27. The decision in the case of Unni Krishnan (supra) or T.M.A. Pai Foundation (supra) cannot be taken to have struck down the provisions contained in Section 28 or 69 of the U.P. State Universities Act. In fact the statutory provisions contained in the State Universities Act continue to remain operative.

28. From the perusal of the various provisions of the Act in question and the scheme running thereunder, it is apparent that the Act is a self-contained exhaustive code and provides various remedies to the party aggrieved which may be pursued for the redressal of the grievances, if any. It provides a complete machinery for adjudication of claims and in the presence of the bar envisaged u/s 69 of the Act, which clearly overrides other laws including Section 9 of the Code of Civil Procedure, no scope for the civil court is left for entertaining any suit touching a controversy which could be raised and decided

within the framework of the Act itself.

29. That being the position in law, taking into consideration the own conduct of the Plaintiffs in seeking affiliation under the provisions of the State Universities Act, accepting to abide by the procedure regulating admission, etc. as prescribed under the provisions contained in Section 28 of the State Universities Act, accepting the allotment of the seats from the University and the fact that these institutions impart education to the candidates for appearing at the final examination for conferring the B. Ed. degree by the University itself, the statutory bar contained in Section 69 of the State Universities Act has to be taken to be an unsurmountable hurdle in the way of the Plaintiffs.

30. Consequently, we are of the clear opinion that in the presence of the statutory provisions as contained in the State Universities Act with which the Plaintiffs were bound and the nature of the order complained of issued by the Defendant-University, no such injunction as granted ought to have been issued.

31. In view of our conclusions indicated hereinabove, this appeal succeeds and the impugned order passed by the trial court is set aside. The application seeking ad interim injunction filed by the Plaintiffs is dismissed.

32. There shall, however, be no order as to cost.

33. Before parting with the judgment, we think it proper to indicate that the observations made by the trial court in the impugned order or in this order have to be taken only with reference to the stage of the proceedings and should not in any manner be deemed to imply or mean reflection or comments on the merit of the case. The trial court shall now proceed to decide the suit on merits after taking into account the evidence led by the parties in support of their respective cases.