
(2011) 12 AHC CK 0163
In the Allahabad High Court
Case No : Writ C No. 51181 of 2011

C/M C.L. Jain Post Graduate College and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 39

Citation : (2011) 12 AHC CK 0163

Hon'ble Judges : R.K. Agrawal, J;B. Amit Sthalekar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. An Amendment application has been filed today seeking correction in the description of array of parties arrayed as respondents no. 2, 3 and 4 for substitution of the word Allahabad by Agra.
2. The application is allowed. Necessary amendment be incorporated during the course of the day.
3. By means of the present writ petition, the petitioner has sought a writ order or direction in the nature of certiorari quashing the order dated 29.7.2011 passed by the Chancellor Dr. Bhim Rao Ambedkar University, Agra, filed as Annexure-13 to the writ petition as also a writ of mandamus commanding the respondents not to interfere in the peaceful functioning of the petitioners.
4. Briefly stated the facts giving rise to the present writ petition are as follows:
5. Chhadami Lal Jain College Society, Firozabad is a Society (hereinafter referred to as the Society) which has been registered under the provisions of the Societies Registration Act, 1860. It has been established with an object to promote education. The Society has established a Post Graduate College in the District of Firozabad, which is known as C.L. Jain Post Graduate College, Firozabad (hereinafter referred to as the Post Graduate College). The Post

Graduate College is affiliated to Dr. Bhim Rao Ambedkar University, Agra (hereinafter referred to as the Agra University) and is governed by the provisions of U.P. State Universities Act, 1973. The First Statute framed by the Agra University is applicable to the Post Graduate College. The affairs of the Post Graduate College is managed by a Committee of Management of which the petitioner no. 2 Dr. Anil Kumar Yadav claims himself to be the duly selected Secretary. The election of the Society and the Committee of Management of the Post Graduate College was held on 14.9.2009. The petitioner no. 2 Dr. Anil Kumar Yadav was elected as Secretary of the Committee of Management in the said election. The elections were recognized by the Vice Chancellor vide order dated 12.9.2009 and the signature of the petitioner no. 2 was also attested. He has been operating the bank account and managing the affairs of the Post Graduate College as per provisions applicable. A complaint was filed by one Shri Ashok Dixit before the Vice Chancellor of the Agra University on the ground that the petitioner no. 2 Dr. Anil Kumar Yadav is not eligible for being elected as Secretary of the Committee of Management as his two brothers are working as a teacher and a clerk in the Post Graduate College. The Vice Chancellor after issuing notice to the petitioner and considering the reply, vide order dated 13.9.2010 had held that the petitioner no. 2 is not eligible for being elected as Secretary.

6. His recognition was, therefore, cancelled. Feeling aggrieved the petitioner no. 2 as also the Committee of Management approached this Court by filing Writ Petition (C) No. 58040 of 2010 which was heard and decided by a learned Single Judge vide judgment and order dated 21.9.2010. This Court quashed the order dated 13.9.2010 passed by the Vice Chancellor and directed him to pass a fresh order in accordance with law within a specified period. The main ground for quashing the order dated 13.9.2010 was that it did not contain any reasons. Pursuant to the order dated 21.9.2010 the Vice Chancellor decided the matter vide order dated 6.1.2011 and this time has held that the complaint made by Shri Ashok Dixit is frivolous and does not have any force. The order dated 6.1.2011 passed by the Vice Chancellor was the subject matter of representation before the Chancellor at the instance of the Principal of the Post Graduate College namely, Dr. B. K. Tiwari. The Chancellor after giving an opportunity of hearing to all concerned vide order dated 29.11.2011 has been pleased to set aside the order passed by the Vice Chancellor and has held that the petitioner no. 2 Dr. Anil Kumar Yadav is not eligible for being elected as Secretary of the Committee of Management of the Post Graduate College. The Chancellor has held that as it is not disputed that the two brothers of the petitioner no. 2 namely, Arun Kumar Yadav, a Class III employee and Achint Kumar Yadav is working as a Teacher on contract basis in the Post Graduate College, Firozabad, the petitioner no. 2 Dr. Anil Kumar Yadav is not entitled to be elected on the post of Secretary of the Committee of Management. The Chancellor has relied upon a decision of a learned Single Judge of this Court in the case of Mahabir Singh Vs. Ist Addl. District Judge, Meerut and others passed in civil misc. writ petition No. 11147 of

1980 since reported in 1981 UPLBEC 463.

7. Assailing the order of the Chancellor, Shri Ashok Khare, learned Senior Counsel assisted by Shri Gautam Baghel, Advocate for the petitioner submitted that the representation made by Dr. B.K.Tiwari, Principal of the Post Graduate College was not maintainable as he cannot be said to be a person aggrieved. On merits he submitted that in view of the subsequent amendment made in the Statute applicable to the Agra University and its affiliated Colleges, even representatives of the non teaching staff has to be appointed as a member of Committee of Management and no corresponding amendment having been made in section 39 of the U.P. State Universities Act, therefore, the decision given by this Court in the case of Mahabir Singh (Supra) would not be applicable. He relied upon a Division Bench decision in the case of Vijay Karan Bisaria and another Vs. The Chancellor, Bundelkhand University, Jhansi and others reported in 1982 UPLBEC 148 in which this Court has held that the object of section 39 shall apply to a case where the relative of the person who has been elected as an office bearer or member of the Committee of Management has been appointed subsequently and not if the said relative is working since before. He therefore, submitted that the order of Chancellor is liable to be set aside.

8. Shri Neeraj Tripathi, learned counsel appearing for the Chancellor justified the order passed by the Chancellor and submitted that Dr. B.K. Tiwari was also heard by the Vice Chancellor when he had passed the order on 13.9.2010 and 6.1.2011 and also before this Court in writ petition (C) No. 58040 of 2010 preferred by the present petitioners in the earlier round of proceedings and, therefore, it cannot be said that Dr. B. K. Tiwari has no locus to file a Reference before the Chancellor questioning the order dated 6.1.2011 passed by the Vice Chancellor. On merits he submitted that the decision relied upon by the Chancellor namely, Mahabir Singh (Supra) has been approved by the Hon"ble Supreme Court in the case of Executive Committee of Meerut College, Meerut and others Vs. The Vice Chancellor, Meerut University Meerut and another reported in 1983 UPLBEC 418. He further submitted that the Division Bench decision relied by Shri Khare has been held to be no longer good law by the Hon"ble Supreme Court in the aforesaid case.

9. Having heard the learned counsel for the parties and giving our thoughtful considerations to the various pleas raised by learned counsel for the parties, we find that it is not in dispute that Dr. B.K. Tiwari was heard by the Vice Chancellor when he passed the order on 13.9.2010 and 6.1.2011 and also by this Court in Writ Petition (C) No. 58040 of 2010. Thus it cannot be said that he has no locus to challenge the order dated 6.1.2011 passed by the Vice Chancellor by preferring a Reference before the Chancellor. These facts have not been disputed by the learned counsel for the petitioners. Thus the first objection raised by Shri Khare has no legs to stand.

10. Coming to the merits of the matter, we find that the controversy has since been settled by the Hon"ble Supreme Court in the case of Executive Committee

of Meerut College, Meerut (Supra). The Hon''ble Supreme Court has held in paragraph 3 as under:

The provisions of Section 39 of the Act seem to us quite clear and they do not admit of any doubt. By that section, no person can be chosen as a member of the management of an affiliated or associated college if either he or his relative accepts any remuneration for any work in such college. It is common ground that a brother of Appellant 3 has been working as a Lecturer in the Law Department of the Meerut College since July, 10, 1972 and has been drawing remuneration in that capacity. Whatever may be the resulting inconvenience to Appellant 3, the language of section 39 leaves no room for doubt that he is disqualified from being chosen as a member of the Management of the Meerut College, because his brother receives remuneration for the work done by him as Lecturer in the Law Department of the college.

11. The Hon''ble Supreme Court has further held that by a judgment dated August 26, 1981 given in Civil Misc. Writ No. 11147 of 1980, N.D. Ojha, J of the Allahabad High Court has taken a similar view. Further in paragraph 8 of the report the Hon''ble Supreme Court has held that any contrary judgment of a Division Bench, if exists, is not a good law.

12. We may mention here that learned counsel appearing for the Executive Committee of Meerut College, Meerut before the Hon''ble Supreme Court had specifically brought to the notice of the Supreme Court the Division Bench decision of this court wherein a contrary view to that of Hon''ble Mr. Justice N.D. Ojha, as His Lordship then was, has been taken and in that context the Hon''ble Supreme Court has held that it is no longer good law.

13. We may mention here that subsequent amendment made in the First Statute of the Agra University wherein representative of the non teaching staff has been made a member of the Committee of Management with no corresponding amendment in section 39 of the State Universities Act, 1973 would not make any difference to the principles laid down by the Hon''ble Supreme Court. We are bound by the decision given by the Hon''ble Supreme Court and consequently we hold that the order passed by the Chancellor does not suffer from any legal infirmity.

14. The petition fails and is dismissed in limine.