

(1994) 10 AHC CK 0096
In the Allahabad High Court
Case No : S.A. No. 697 of 1994

Committee of Management, Dharam Samaj College and
Others

APPELLANT

Vs

Vice-Chancellor, Agra University and Others

RESPONDENT

Date of Decision : 07-10-1994

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5, 6
Constitution of India, 1950 — Article 226, 227
Uttar Pradesh State Universities Act, 1973 — Section 68

Citation : (1996) AWC 15 Supp : (1994) 3 UPLBEC 1666

Hon'ble Judges : G.S.N. Tripathi, J;B.M. Lal, J

Bench : Division Bench

Advocate : Ashok Bhushan, for the Appellant; Pankaj Mittal and R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

G.S.N. Tripathi, J.—This appeal is directed against the judgment and order dated 2.9.94 passed by Hon"ble Mr. Justice B. K. Singh, sitting single, in writ petition No. 28796 of 1994 whereby the learned single Judge has rejected the petition of the Appellants on numerous grounds, mainly on the ground that an alternative remedy by way of a reference to the Chancellor which lies u/s 68 of the State Universities Act. The learned Single Judge has ordered "I am of the view that in the above set of circumstances as well as legal provisions the Petitioners have alternative and efficacious remedy before the Chancellor u/s 68 of the State Universities Act referred to above. As such I decline to exercise extraordinary powers under Article 226 of the Constitution of India and hold that this writ petition is barred by an alternative and efficacious remedy available under the Act." It was further directed that "It is accordingly provided that in case a reference is preferred by the Petitioners within the limitation then the Hon"ble Chancellor will dispose of the representation after affording opportunity to the Respondents within three months from the date the contesting opposite parties

put in appearance before the Hon"ble Chancellor".

2. From the facts narrated in the judgment of the learned single Judge, the Petitioners (Appellants) impugned the order dated 19.3.94 passed by the Vice-Chancellor, Agra University whereby the Committee of Management of which Respondent No. 3 claims himself to be a member, has been recognized. The Petitioners claim themselves to be genuine Managing Committee of Dharam Samaj College, Aligarh of which Sri Ramesh Chandra Agarwal, is the Secretary. An election took place on 3.7.94. On 6.7.94, an information was sent by the Petitioners to the Vice-Chancellor of the Agra University informing about the election and impliedly claiming recognition in their favour. Rival election dated 13.7.94 was pleaded by the Respondents. They also made a prayer for being recognized as genuine Managing Committee of the said Institution. The Vice-Chancellor without affording opportunity to the Petitioner to show cause against the rival election, as alleged, recognized the Respondents as genuine Managing Committee and office-bearers. There was a plea of bias also taken before the learned single Judge, against the Vice-Chancellor, for which some facts and figures were pleaded, namely, the Vice-Chancellor happened to be an Ex-Principal of the Institution and after retirement he was appointed as a Vice-Chancellor by the State Government, Mr. S.P. Gupta, learned Counsel for the Petitioners has also made a statement at the Bar that the Vice-Chancellor has also retired w.e.f. 13.9.94. Thus on the ground of bias of Vice-Chancellor against the Petitioners and denial of natural justice inasmuch as no opportunity was afforded to the Petitioners to show cause against the rival claimants in the so-called election and alleged prayer for recognition, the petition was filed before the learned Single Judge.

3. A preliminary objection was raised on behalf of the Respondents that there was an efficacious and alternative remedy by way of a reference to the Chancellor u/s 68 of the State Universities Act available. Therefore, the writ was not maintainable under Article 226 of the Constitution. It was also urged before the learned Single Judge that Vice-Chancellor was duly informed by the Petitioners that they have been duly elected as office-bearers of the Committee of Management on 6.7.94 and 14.7.94. The other side i.e., Respondent No. 3 claimed to have been elected by an election, which was held on 13.7.94 and the information of the said election was sent to the Vice-Chancellor on 17.7.94. in this manner before the Vice-Chancellor recognized the Committee of Management of Respondent No. 3, a dispute of rival claimants about election, was raised before him. As such, he was required to have decided the dispute under Statute 12.34 of the Statute of the Agra University, which provides that all the parties shall be heard before any decision is arrived at. The Vice-Chancellor intentionally flouted those provisions on account of bias. He nourished ill-will and bias against the Appellant Petitioners. It was urged that the Vice-Chancellor was earlier the Principal of the College and from the period, he is not fairly disposed of towards the Petitioners. Rather he was more close to Respondent No. 3 and that was the governing factor in the mind of the Vice-Chancellor whereby he

recognised the Respondents in an illegal manner, without properly applying his mind to the facts of the case set up by the Petitioners. He ignored the valid election in favour of the Petitioners and relied upon a fictitious election as set up by Respondents and that too without affording reasonable opportunity to the Petitioners.

4. As against it, the learned Counsel for the Vice-Chancellor submitted that even after assuming the election of the Petitioners to be correct, and this was a case in which the order of the Vice-Chancellor suffered from the legal vice of violation of rules of natural. Justice and also bias, a very effective and efficacious remedy was available by way of reference to the Chancellor.

5. After considering the rival claims of the parties, learned Single Judge was of the view that the remedy u/s 68 of the State Universities Act was very much available to the Petitioners and the extraordinary powers conferred by Article 226 of the Constitution upon the High Court should not be invoked.

6. We have heard learned Counsel for the parties at the stage of admission itself.

7. To be fair to Sri S.P. Gupta, learned Counsel for the Petitioners, he admitted that the remedy available u/s 68 (supra) was very much available to the Petitioners and they can get all the reliefs which they claim today in this petition in this Court, but all the same he says that this Court cannot throw out a case on the ground of an alternative remedy, because there was an allegation of bias against the Vice-Chancellor and this Court can very well entertain the petition. For that, he has placed reliance on two cases of this Court: (i) Nathi Mai Ram Sahai Mai and Ors. v. Vice-Chancellor, Meerut University and Ors. 1981 UPLBEC 161 and an unreported decision passed in P.C. Sikand v. The Chancellor, Agra University, Agra Civil Misc. W.P. No. 1844 of 1977 decided on 28.2.79. No doubt these rulings help the contentions advanced by the learned Counsel for the Petitioners. However, learned Counsel for the Respondents have relied upon another decision K.V. George Vs. Secretary to Government, Water and Power Department, Trivandrum and Another, and Ved Pal Singh v. Vice-Chancellor, Meerut University, Meerut and Ors. 1981 UPLBEC 356. In the Banaras Hindu University case, the powers had been conferred upon a Visitor to set aside any order or proceeding of the University on facts as well as on law and there was no limitation on his powers. So an alternative and efficacious remedy was made available to the aggrieved person, and it was directed that he should have approached the Visitor first and exhausted the statutory remedy available to him. Even the plea of violation of rules of natural justice could be raised before him.

8. The Respondents mildly raised an objection regarding the maintainability of this Special Appeal in view of Rule 5, Chapter VIII of Allahabad High Court Rules.

9. Rule 5 of Chapter VIII of Allahabad High Court Rules runs as under:

Special appeal--An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree

or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal Jurisdiction (or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal. Court of statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act with respect to any of the matters enumerated in the State List or the concurrent list in the Seventh Schedule to the Constitution, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.).

This rule was interpreted by a Division Bench of this Court in *Sita Ram Lal v. District Inspector of Schools* 1994 UPLBEC 24. That was also a dispute relating to seniority, which was initially decided by the management. Later on an appeal lay before the District Inspector of Schools. The District Inspector of Schools overruled the decision of the management Committee. The party aggrieved moved the High Court in Writ Petition. The Writ Petition was dismissed. Special Appeal was filed. The Division Bench observed as follows:

Regulation 3 of the Regulations.--Special appeal does not lie against an order passed in exercise of the appellate jurisdiction by an authority under Rule 5 of Chapter VIII or Rules of the Court. The District Inspector of Schools has trappings of a court and this power has been vested under Statute i.e. Clauses (i) of Regulations (1) of the Regulations in Chapter II under the Intermediate Education Act, 1921. Special Appeal is not maintainable against the decision of a tribunal under Chapter VIII, Rule 5 of the Rules of the Court.

10. We are in respectful agreement with the observations made in this judgment and we find that the Vice-Chancellor, being a domestic tribunal had all the trappings of a semi-Judicial authority. He was authorised to pass an order after giving reasonable opportunity to the parties i.e., it was a quasi-judicial Tribunal. Similarly the Chancellor, while hearing reference u/s 68 of the State Universities Act also Acts as a Tribunal. Both these authorities are the creation of the statute and have all the trappings of a Court and thus they are quasi-judicial Tribunals. Therefore, once the matter was decided by the learned Single Judge, the Special Appeal does not lie. At this very stage, it will be pertinent to note that the learned Counsel for the Respondent initially did not raise this point, rather he conceded that the Special Appeal lay before the Division Bench of this Court. We heard the parties on this point but despite the fact that the learned Counsel for the Respondent has not raised this objection regarding the maintainability of this appeal, we are of firm opinion that this appeal does not lie. The appeal is accordingly liable to be dismissed on this ground alone.

11. Now coming to the question of alternative remedy, our attention has been invited to the case of *Babu Ram, Ashok Kumar and Another Vs. Antarim Zila Parishad*, . The following observations were made and we are in respectful

agreement with the same:

Taxing statutes provide a complete machinery for assessment of tax and for remedy against the assessment and normally the party aggrieved should exhaust that remedy before invoking the aid of the Court.

Whether the remedy of appeal under the taxing statute is onerous or not, is not to be determined in abstract. It is a relative matter. The remedy may be onerous in one case and not in the other. The quantum of the assessment, the time when the tax is to be paid for obtaining a rehearing in appeal, and the financial condition of an Assessee should all be considered in deciding about the onerousness of the remedy.

* * * * *

Article 226 confers on the Court a discretionary power. In moulding its discretion it may have regard to various circumstances including the existence of an adequate alternative remedy. The existence of an alternative remedy does not oust the power of the Court to act under Article 226; it is a circumstance which would weigh with the Court in deciding whether it should exercise the power or not. Rule 6 is phrased in inexorable language, and constrains the Court to dismiss a petition in limine and at all events if the Petitioner has got an alternative remedy.

* * * * *

Even an important question can be decided correctly and if the High Court finds that important questions that arose before an inferior Tribunal were decided by it incorrectly, it is not compelled to entertain the petition for certiorari or mandamus against the inferior Court and to give notice of it. No useful purpose will be served by its entertaining the petition and giving notice of it.

12. A similar view was taken by a Division Bench of this Court in Babu Ram, Ashok Kumar and Another Vs. Antarim Zila Parishad, and the case was thrown out on the ground of alternative remedy.

13. As against it, reliance has been placed on Natthi Mai Ramsabhai Mai v. Vice-Chancellor, Meerut University 1983 UPLBEC 99. This case was also cited before the learned Single Judge. In that case the ratio laid down was that alternative remedy is no bar when the order impugned was passed in violation of principles of natural Justice or under law which was ultra vires. There is no dispute with this principle that this Court is not bound to reject a petition simply on the ground of alternative remedy, but the question is whether this extraordinary Jurisdiction under Article 226 of the Constitution should be invoked where there is already a statutory remedy available. We think it is not a question of presence or absence of powers vested under Article 226 of the Constitution in this Court, rather it is a case of proper exercise of those powers. The questions of fact, including the violation of rules of natural justice, validity of an election claims and counter-claims regarding the elections were all questions which cannot be said to be

purely questions of law, rather there are mixed questions of law and fact for that the domestic tribunal is better equipped to give a conclusion after evaluation of the evidence and the circumstances available before them. Whereas this Court cannot go into questions of fact. As observed earlier, all the reliefs sought for in this petition are admittedly available in a reference before the Chancellor u/s 68 of the U.P. State Universities Act. Then we are of considered view that although this Court can entertain a writ petition of this nature, it will not be a proper and just exercise of the powers vested in this Court. If everything is brought before this Court, then there is no useful purpose why domestic appellate tribunal or court should be provided to administer justice of administrative or quasi-Judicial nature. Therefore we are of the view that the learned Single Judge was right in observing that a very efficacious alternative remedy lay u/s 68 of the U.P. State Universities Act and the Petitioner should have invoked that Jurisdiction first and after exhausting all remedies available under the Statute, he can approach the Court still under Article 226 of the Constitution. Hence, we are in agreement with the view taken by the learned Single Judge and it cannot be said to be perverse in any manner whatsoever.

14. We also find support to our views from another Division Bench ruling of this Court in *Dr. N.K. Singh v. Banaras Hindu University*. This case was also cited before the learned Single Judge. We find that the ratio laid down in that case fully applies to the facts of the present case and the learned single Judge was right in accepting this view and rejecting the petition on the ground of an alternative remedy.

15. The learned Counsel for the Appellant has also placed reliance upon two Supreme Court judgments reported in AIR 1958 SC 86 and *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, . in these cases also the apex court has said that simply because an alternative remedy is available, the court need not throw the petition under Article 226 of the Constitution. Here again we want to say that there is no dispute with the principles of law laid down by the apex court. The question is of judicious application of these principles to individual cases. When an alternative and efficacious remedy is available, this Court is not bound to entertain a petition under Article 226 of the Constitution. Therefore, we find that despite the fact that this Court has powers as observed above by Apex court in the aforesaid two rulings, we do not deem it proper to exercise this extraordinary jurisdiction in the present case.

16. The provisions of Section 68 of the State Universities Act quoted by the learned single Judge at pages 4 and 5 of the judgment go to show that the powers of the Chancellor are very extensive and he is empowered to grant all the reliefs, which have been claimed by the Petitioner.

17. Our attention was invited to certain observations made by the Vice-Chancellor while rejecting the claim of the Petitioners to the effect that although there is no prescribed proforma to make an application for recognition and there

was no such rule and specific prayer for recognition should be made in the application, yet he had reservations, therefore, the view taken by the Vice-Chancellor is not correct. We refrain ourselves from passing our judgment on this point, because in our considered view the Chancellor will take note of all these objections contained in the order of the Vice-Chancellor, in case a proper reference is filed before him u/s 68 of the State Universities Act.

18. In the result, this appeal has no force and it deserves to be dismissed on the grounds taken by the learned single Judge in the impugned judgment. Further we hold that on account of the bar contained in Rule 5, Chapter VIII of the Allahabad High Court Rules, the Second Appeal does not lie.

19. For the reasons stated above the appeal is dismissed in limine.