

(2011) 01 AHC CK 0064

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1326 of 2011

Committee of Management, Shri Ram Dev Sanskrit
Mahavidyalaya and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Citation : (2011) 2 ADJ 317 : (2011) 1 UPLBEC 650

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—The Petitioner Harinath Dubey claims to be the Manager of the Petitioner No. 1-Committee of Management which is managed through a society registered as Shri Ram Dev Sanskrit Mahavidyalaya, Bareri, District Jaunpur.

2. The Petitioner contends that the Registrar has taken a decision in his favour and the renewal certificate had been issued under his orders pursuant to the directions of this Court dated 12.8.2009, therefore, it is the Petitioner who is entitled to be treated to be the validly elected office bearer of the society.

3. Sri P.S. Baghel submits that once the Petitioner is the accepted office bearer and there being no distinction between the committee of management of the society and the degree college, the Vice-Chancellor was bound to recognize the Petitioner accordingly. He submits that the status of the Petitioner is therefore supported in law and reliance is placed on the decision in the case of Committee of Management A.K. College Shikohabad District Firozabad and Anr. v. State of U.P. and Ors. 2000 (2) ESC 870 (All).

4. Sri Baghel further submits that a recognition was granted to the alleged elections of the committee of management on 23rd April, 2010 set up by the Respondent No. 7 without putting the Petitioner to notice inspite of the fact that he was continuing to manage the affairs of the institution and was in effective

control. The said order was challenged in Writ Petition No. 25966 of 2010 and this Court after hearing counsel for the parties disposed of the writ petition without adjudicating the claim on merits with a direction to the Vice-Chancellor of the University to decide the same in accordance with law. It was further clarified that the order dated 23.4.2010 shall abide by the final decision taken by the Vice-Chancellor.

5. Sri Baghel submits that in accordance with the said directions, the Petitioner moved two representations dated 29.6.2010 and 17th August 2010, copies whereof have been filed as Annexure 16-A and Annexure 19 to the writ petition. The specific objection taken by the Petitioner before the Vice-Chancellor was that they were in effective control and in view of the provisions of statute 12.28 the Vice-Chancellor should record a finding keeping in view the lawful effective control of the Petitioner. Further objections were also entailed which have been enlisted in Annexure 19 to the writ petition.

6. Sri Baghel submits that the Petitioner being an old and infirm person, was suffering from ailment, moved a request before the Vice-Chancellor to allow him to be represented through his Authorized Representative but the Vice-Chancellor insisted on the personal presence of the Petitioner and he proceeded to pass the impugned order in violation of principles of natural justice. It is further contended that none of the objections as raised by the Petitioner that were on record have been adverted to, and therefore the order is vitiated.

7. In response Sri P.N. Saxena, learned Senior Counsel for the Respondent No. 7 submits that in the matter relating to the renewal of the society and the order passed by the Registrar the answering Respondent preferred Writ Petition No. 72367 of 2010 which is pending consideration before this Court and it has been observed therein that the order passed by the Registrar gratuity renewal shall not be treated to be through Sri Harinath Dubey. He, therefore, submits that in such a situation any order passed by the Registrar cannot enure to the benefit of the Petitioner.

8. He further contends that the impugned order categorically records that seven issues were framed by the Vice-Chancellor and the Petitioner having failed to respond to the same, the Vice-Chancellor had no option but to affirm his earlier decision. He submits that the Petitioner did not appear before the Vice-Chancellor and therefore the Vice-Chancellor was bound to proceed in terms of the directions of this Court and pass an order and therefore, it is not open to the Petitioner to contend that no opportunity was provided to him.

9. In response to the said submission, Sri Baghel in rejoinder submits that, even assuming for the sake of arguments the Petitioner defaulted in not appearing before the Vice-Chancellor, yet the Vice-Chancellor was under a legal duty to have adverted to the objections which were on record and further if any reply was given by the Respondent No. 7 in response to the 7 queries made, the Petitioner ought to have been informed of the said reply dated 12.10.2010, and

then any decision could have been given by the Vice-Chancellor. Having not done so, the decision making process is vitiated and it violates the principles of natural justice.

10. Having heard learned Counsel for the parties, who agree that the matter be disposed of finally at this stage and that the Respondents do not choose to file any counter-affidavit, the matter is being disposed of at this stage itself.

11. The finding recorded by the Vice-Chancellor in relation to the objection filed by the Petitioner cannot be said to have been dealt with, inasmuch as, even if the Petitioner failed to physically present himself, his representations and objections namely Annexure 16-A and Annexure 19 were on record before the Vice-Chancellor containing an explanation with regard to the claim of the Petitioners. The same does not find mention in the impugned order.

12. The aforesaid objections also indicate that the Petitioner had raised the issue of effective control to which no response has been given by the Vice-Chancellor. Apart from this the seven questions that were allegedly put by the Vice-Chancellor appear to have been replied by the Respondent. Not only this if the version of the Respondent is taken to be correct then the said queries had also been answered by the Petitioner in the reply which has been filed as Annexure 19 to the writ petition. Either way the Vice-Chancellor ought to have adverted himself to the said contents without waiting for the personal presence of the Petitioner. The objections inter-se between the Petitioner and the Respondent No. 7 ought to have been exchanged and thereafter the Vice-Chancellor could have proceeded to decide the matter.

13. In the opinion of the Court the Vice-Chancellor has not complied with the directions dated 20th May, 2010 in Writ Petition No. 25966 of 2010. Accordingly, the Court is of the opinion that the order impugned is unsustainable. The conclusions therefore drawn on 12th October, 2010 by the Vice-Chancellor are set aside and the Vice-Chancellor shall proceed to pass a fresh order after considering the objections raised by either side and the evidence adduced.

14. The Vice-Chancellor shall fix a date for hearing and shall proceed with the matter even if the parties do not respond to the said date to decide the claim on merits. The Vice-Chancellor shall complete this exercise as expeditiously as possible but not later than two months from the date of presentation of a certified copy of this order before him.

15. The writ petition is allowed.