

(2019) 05 UK CK 0184

In the Uttarakhand High Court

Case No : Special Appeal No. 216 Of 2019, Application For Leave To Appeal No. 4598 Of 2019

Davinder Singh

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 16-05-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 1 Rule 10, 10(1), 10(2)

Citation : (2019) 05 UK CK 0184

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : Parikshit Saini, S.S. Chaudhary, Rakesh Thapliyal, Sanjay Bhatt

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

Application for Leave to Appeal No. 4598 of 2019 :

1. Since the appellant herein had filed an impleadment application in the writ petition, which was dismissed by the learned Single Judge, he is entitled to prefer an appeal against the said order. The application, seeking leave to appeal, is ordered and the application is disposed of.

Special Appeal No. 216 of 2019 :

2. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 2744 of 2018 dated 07.03.2019, whereby the application filed by the appellant-applicant herein, to implead him as the sixth respondent in the writ petition, was rejected by the order under appeal.

3. The writ petition was filed by the sixth respondent herein questioning the order passed by the Incharge Divisional Additional Director (Intermediate Education) Garhwal Division, Pauri dated 27.08.2018 by which the status of the sixth respondent-Institution, as a minority institution was sought to be altered.

This alteration, according to the appellant herein, was made pursuant to a complaint submitted by him along with several others.

4. In the order under appeal, the learned Single Judge held that the pleadings showed that, as on the date when the impugned order was passed, the appellant-applicant was neither a member of the Committee of Management, nor was he a member of the Society, as his membership stood terminated; and the appellant-applicant was not a necessary party to be impleaded in the writ petition in view of the provisions contained under Order 1 Rule 10 C.P.C., the principles of which would apply to the writ jurisdiction, and which contemplates that he should be a necessary party to the proceedings, in whose absence the LIS could not be decided.

5. After extracting Order 1 Rule 10(1) C.P.C., the learned Single Judge observed that the impugned action was only with regards the status, which is provided to the Committee of Management or the Society running the institution, with which an ousted member of the Society had nothing to do; it was the action of the authority which was under challenge by the petitioner; and he was not inclined to allow the impleadment application for the following reasons : (i) the appellant-applicant was neither a member of the Committee of Management, nor was he a member of the Society as his membership stood terminated; (ii) he was merely a complainant and did not acquire the status of being a necessary party for adjudication of the impugned order, which only relates to the determination of the status of the petitioner's institution as a minority institution; (iii) it was the action of the authority which was put to challenge, and it was an INTER SE dispute prevailing between the petitioner and the State agency in passing the impugned order; and (iv) the writ petitioner was neither a necessary nor a proper party, as his presence was not required for an effective adjudication of the issues involved.

6. While Mr. Parikshit Saini, learned counsel for the appellant-applicant, may be justified in his submission that it is Order 1 Rule 10(2) C.P.C, and not Order 1 Rule 10(1) C.P.C. (which is noted in the order under appeal), which is applicable, Mr. Rakesh Thapliyal, learned counsel for the sixth respondent-writ petitioner, would contend that, while an erroneous reference to Order 1 Rule 10(1) C.P.C. has, no doubt, been made in the order under appeal, the learned Single Judge has examined the application filed by the appellant-applicant, to implead him as the sixth respondent in the writ petition, only in terms of Order 1 Rule 10(2) C.P.C.

7. In terms of Order 1 Rule 10 (2) C.P.C., the Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any person, whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon, and settle all questions involved in the writ petition, be added.

8. Since the power conferred, under Order 1 Rule 10 (2) C.P.C, on the Court can be exercised even without an application being made by either party to the writ proceedings, the only question which necessitates examination is whether or not the appellant-applicant's name should have been added as the sixth respondent in the writ petition. Exercise of power by the Court, to add a party as a respondent in the writ petition, would arise only if the Court is satisfied that it is necessary that he be added as a respondent in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the writ petition.

9. While the observations made by the learned Single Judge, in the order under appeal, do appear to indicate that the impleadment application of the appellant-applicant was rejected on the basis of Order 1 Rule 10(2) C.P.C, though the order under appeal refers only to Order 1 Rule 10(1) C.P.C, the satisfaction which the Court must arrive at, before a party is added as either the petitioner or the respondent, is on the basis of the averments made in affidavit file in support of the application filed by the applicant seeking that he be impleaded as the sixth respondent. It is only if such averments make out a case of the applicant being a party, whose presence is necessary to effectually and completely adjudicate upon and settle all questions involved in the writ petition, would the impleadment application be allowed; and the applicant added as the sixth respondent in the writ petition.

10. While Mr. Parikshit Saini, learned counsel for the appellant-applicant, would submit that the appellant's application for being admitted as a member of the Society was illegally rejected by the sixth respondent-writ petitioner, and the names of 37 others were sought to be illegally included as members, which resulted in their filing a complaint which resulted in an inquiry being caused, and the admission of 37 members being cancelled; it is this inquiry report which formed the basis for the Deputy Director to recommend appointment of an Administrator for the Society concerned; and his presence is essential for an effective and complete adjudication of the LIS, and in determining the questions involved in the writ petition, we are satisfied that this exercise must be undertaken, in the first instance, by the learned Single Judge; and are not, ordinarily, matters for examination by a Division Bench in an intra-Court appeal.

11. Suffice it to observe that, since the very dispute which resulted in an Administrator being appointed is the illegal rejection of the application of certain applicants to be admitted as members of the Society (including the appellant-applicant herein), and in admitting others as members which was subsequently held illegal by the Chief Education Officer, the mere fact that the appellant-applicant is not a member of the society would not, by itself, necessitate his application for impleadment being dismissed, since the entire proceedings arose consequent upon rejection of the applications for membership submitted by several person including the appellant-applicant.

12. While we express no opinion as to whether or not the applicant-appellant can

be added as a respondent in a writ petition, in terms of Order 1 Rule 10(2) C.P.C, suffice it to observe that, since the learned Single Judge has mainly relied on the fact that the appellant-applicant was not a member of the Society, in rejecting his impleadment application, the said application necessitates consideration afresh by the learned Single Judge, and the appellant's claim to be added as the sixth respondent in the writ petition, under Order 1 Rule 10(2) C.P.C, must be examined on the basis of the assertions made in the affidavit filed in support of the impleadment application.

13. Suffice it, in such circumstances, to set aside the order under appeal and to restore the Impleadment Application to file. The learned Single Judge shall, after hearing both the parties, examine the matter afresh and in accordance with law.

14. The Special Appeal is, accordingly, disposed of. No costs.