

(2015) 03 AHC CK 0080
In the Allahabad High Court
Case No : Special Appeal No. 368 of 2006

Desh Deepak Srivastava

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 3 ADJ 352 : (2015) 111 ALR 284 : (2015) 3 AWC 2815 :
(2015) 3 ESC 1242 : (2015) 3 UPLBEC 2068

Hon'ble Judges : Krishna Murari, J; Pramod Kumar Srivastava, J

Bench : Division Bench

Advocate : Sanaullah and A.D. Saunders, for the Appellant; K.C. Shukla, R.K. Ojha and S.B. Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. This intra Court appeal is directed against the judgment and order dated 9.12.2005 passed by learned Single Judge in Civil Misc. Writ Petition No. 32932 of 2004; Ajay Singh v. State of UP and others, whereby the writ petition has been allowed and the respondents have been directed to hold fresh selection in accordance with law for the appointment on the post of Lecturer in Mathematics in the Institution. The facts giving rise to the dispute are as under:

"(i) St. Andrews Inter College, Gorakhpur (for short the institution") is a minority institution duly recognized and aided and governed under the provision of Intermediate Education Act, 1921 and the Rules and Regulations framed thereunder.

(ii) The vacancy for the post of two lecturers, one in Mathematics and one in Physics and one in LT Grade occurred in the institution on 30.6.2001 and the process of appointment on the said posts was undertaken by the committee of management.

(iii) The dispute in the present appeal is in respect of the appointment of the

appellant on the post of Lecturer in Mathematics. After recommendation of the name of the appellant, the matter was referred to the District Inspector of Schools, Gorakhpur (for short "the DIGS"), who forwarded it to the Regional Level Committee. The committee took a decision to grant approval for the said appointment and referred the matter to the DIOS on 4.4.2003 for taking necessary consequential action.

(iv) In the meantime, it appears that certain complaints were received in respect of the selection of the appointment on the post of Lecturer in Maths, made by the Manager of Hindu Jagran Manch, Gorakhpur and by a sitting MLA of a political party. The DIOS vide letter dated 30.6.2013 referred the matter to the Joint Director of Education, 7th Region, Gorakhpur and an inquiry was got conducted through Assistant District Inspector of Schools, Gorakhpur, who submitted report dated 16.4.2004 to the effect that selection was made in accordance with the prescribed procedure and there was no illegality or irregularity.

(v) On the basis of the aforesaid inquiry report, the Joint Director of Education vide order dated 22.6.2004 required the DIOS to take appropriate decision for according approval to the selection on the basis of the decision of the Regional Level Committee dated 16.3.2003.

(vi) Aggrieved by the aforesaid, the petitioner-respondent Nos. 5 and 6 filed a writ petition challenging the order dated 22.6.2004. Respondent No. 5 alleged himself to be the manager of the committee of management of the institution in question."

2. It is pertinent to point out at this stage that there was a dispute with respect to the committee of management of the institution in question between two groups. The petitioner-appellant set up an election said to have been held in March, 2003 on the basis whereby he claimed to be the Manager of the committee of management. However, an authorized controller was appointed to manage the affairs of the institution. The dispute travelled to this Court in the form of Civil Misc. Writ Petition Nos. 437 of 2003 and 30714 of 2003. Writ Petition No. 437 of 2003 was filed challenging the order dated 20.12.2002 passed by the Joint Director of Education appointing an authorized controller with a direction to hold election of the committee of management within three months, whereas Writ Petition No. 30710 of 2003 was filed for quashing the order dated 29.5.2003 passed by the Regional Level Committee granting recognition to the election of the committee of management set up by petitioner-respondent Ajay Singh and also for quashing the order dated 20.6.2003 passed by the DIOS whereby the signatures of petitioner-respondent Ajay Singh were attested as the Manager of the committee of management vide judgment and order dated 27.2.2006.

3. Learned single Judge allowed both the writ petitions. It may be relevant to quote the following from the judgment of the learned single Judge.

"The prayer made in Civil Misc. Writ Petition No. 437 of 2003 is for quashing the

order dated 20.12.2002 passed by the Joint Director of Education whereby the Authorized Controller have been appointed to manage the affairs of the institution and with further direction to hold the election of the committee of management within three months. As already held above, as per the scheme of administration and the provisions of the Act, no Authorized Controller could have been appointed in the minority institution of the petitioner for the purpose of managing the affairs of the said minority institution. As regards, the holding of elections, since there is no general body of the institution and as per the scheme of administration, the committee of management comprises of only members who are either Ex-Officio, nominated or co-opted, in and the absence of any other rival committee of management claiming that it has a parallel Diocesan Education Board or Lucknow Diocesan Trust Association which is to govern and manage the college as per the approved Scheme of Administration, the question holding election is still clear from amongst the members of the committee of management (who are Ex-Officio, nominated or co-opted does not arise). As such, in my view, the order dated 20.12.2002 passed by the Joint Director of Education deserves to be set aside and accordingly quashed.

As regards prayer made in Writ Petition No. 30710 of 2003, which is for quashing of the order dated 29.5.2003 passed by the Regional Level Committee granting recognition to the election of the Committee of Management held on 11.3.2003 and also for quashing the consequential order dated 20.6.2003 passed by the DIOS, whereby the signatures of respondent No. 5 Ajay Singh have been attested as Manager of the committee of the management, in my view, since the facts of the present case, the elections were held by the Authorized Controller only inviting the group represented by the respondents and ignoring the claim of the petitioners, who were in control over the management and affairs of the college for over three decades up to the year 2002, the order of the Regional Committee dated 29.5.2003 granting recognition to the election dated 11.3.2003 deserves to be quashed. The Regional Level Committee has, in fact, gone to the extent of the Anglican Church of India which is to inherit the properties of the college Church of India, Pakistan, Burma and Ceylon, which included the college in question. The educational authorities could not have done the same as it would require evidence to be adduced by the parties, which could only be done in case if the parties so desire, they may get the issue decided in a regular civil suit. Besides the aforesaid reasons, even otherwise when the order dated 20.12.2002 appointing the Authorized Controller has been quashed, the order dated 29.5.2003 passed by the Regional Committee recognizing the elections got conducted by the Authorized Controller, as well as the consequential order dated 20.6.2003 passed by the District Inspector of Schools are both liable to be set aside and are hereby quashed....

In the result, subject to the directions given hereinabove, both the writ petitions succeeds and are allowed."

4. We have heard Sri A.D. Saunders, learned counsel for the appellant, learned

standing counsel for the State-Respondents and learned counsel for respondent Nos. 5 and 6.

5. It is submitted on behalf of the appellant that one of the question raised before the learned Single Judge was with respect to the maintainability of the writ petition filed by petitioner-respondent by claiming himself to be the manager of the institution and his locus to maintain the writ petition. However, learned Single Judge wrongly and illegally refused to interfere into the said question and allowed the writ petition without considering the aspect of the matter which went to the root of the dispute. It is also submitted that since there was an interim order dated 22.7.2003 passed in WP No. 31710 of 2003 restraining the functioning of the petitioner-respondent Ajay Singh as the manager of the institution so he could not allege himself to be the manager of the institution and maintain the writ petition in that capacity. It is also submitted that once he was not the manager of the institution of the institution, the writ petition at his behest challenging the appointment of the appellant in any view of matter would not have been maintainable. However, the learned single Judge ignoring this aspect of the matter wrongly and illegally allowed the writ petition.

6. In reply, it has been submitted on behalf of the petitioner-respondent that the learned single Judge having found that the selection of the petitioner was dehors the regulation framed for appointment hence rightly allowed the writ petition and no interference is called for.

7. We have considered the rival submissions and perused the records.

8. Basic question which arises for consideration is in respect of the locus standi of the petitioner respondent Nos. 5 and 6 to maintain the writ petition in capacity as manager of the committee of management of the institution and the elected committee of management respectively. Undoubtedly, this Court restrained respondent No. 5 to function as manager of the institution by means of interim order dated 22.7.2003 passed in WP No. 31710 of 2003 and subsequently the writ petition was allowed and his recognition as manager of the institution was quashed.

9. Locus standi for probative relief under Article 226 of the Constitution of India are subject to certain well-settled principle. The petitioner should ordinarily be one who has a personal or individual right in the subject-matter of dispute and can demonstrate a legal wrong or legal injury. The only exception to the said principle is in the case of the writ of habeas corpus or a writ of quo warranto or in writ petition filed in public interest. In writ petitions in the nature of habeas corpus, quo-warranto and public interest litigation the question of locus standi loses its significance. The Apex Court In Vinoy Kumar Vs. State of U.P. and Others, AIR 2001 SC 1739 : (2001) 4 JT 506 : (2001) 3 SCALE 376 : (2001) 4 SCC 734 : (2001) 2 SCR 1196 : (2001) 2 UJ 1163 : (2001) AIRSCW 1641 : (2001) 3 Supreme 343 , has held as under:

"Generally speaking, a person shall have no locus standi to file a writ petition if

he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence, that the Court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases."

10. Again the Hon"ble Apex Court in the case of Ghulam Qadir Vs. Special Tribunal and Others, (2001) 9 JT 231 : (2001) 6 SCALE 667 : (2002) 1 SCC 33 , held that:

"There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."

11. The Apex Court in the case of Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others, (2013) 1 ABR 454 : AIR 2013 SC 58 : (2013) 136 FLR 574 : (2012) 11 SCALE 39 : (2013) 4 SCC 465 , has held that:

"It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a Court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for

enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the Courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same."

12. The petitioner-respondent Ajay Singh approached this Court claiming himself to be manager of the institution. He, despite full knowledge concealed the fact that challenge was made to the order dated 29.5.2003 passed by Regional Level Committee recognising the election set up by him and also order dated 20.6.2003 passed by the DIOS attesting his signatures as manager of the Institution in Writ Petition No. 30170 of 2003 wherein an interim order staying the effect and operation of the said two orders was passed on 22.7.2003, thus he could not have filed writ petition representing himself as manager of the institution on 11.8.2014 much after said order dated 22.7.2003 was passed.

13. Apart from the fact that petitioner-respondent No. 5 invoked the extraordinary jurisdiction of this Court by misrepresenting and concealing material fact which dis-entitle him from grant of any relief, even otherwise he has no locus in the matter to challenge the selection process of the appellant for he cannot be said to be a person aggrieved. The person aggrieved does include the person who suffers from psychological or on an imaginary injury. A person aggrieved must, therefore, necessarily be one whose right or interest has been adversely effected or jeopardized. Petitioner-respondent No. 5 by any stretch of imagination does not stand test and thus writ petition at his behest cannot be held to be maintainable.

14. Even the petition cannot be treated as a public interest litigation. The Courts have consistently held that such a course of action is not permissible so far as service matters are concerned. The Supreme Court in *Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc.*, (1998) 6 AD 417 : AIR 1999 SC 114 : (1999) 87 CLT 86 : (1998) 3 CTC 97 : (1998) 5 JT 645 : (1998) 2 LLJ 1013 : (1998) 4 SCALE 643 : (1998) 7 SCC 273 : (1998) SCC(L&S) 1802 : (1998) 1 SCR 77 Supp : (1999) 1 SLJ 205 : (1998) AIRSCW 3467 : (1998) 6 Supreme 524 , held that "there is no doubt that a total stranger to the service concerned cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated." In *Thammanna Vs. K. Veera Reddy and Others*, AIR 1981 SC 116 : (1980) 4 SCC 62 : (1981) 1 SCR 73 : (1980) 12 UJ 760 , it was held Hon"ble

Apex Court that although the meaning of the expression "person aggrieved" may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something.

15. The aforesaid factual situation of the matter was not taken into account by the learned single Judge while allowing the writ petition. Apart from above, in so far as merit of the case is concerned not only the petitioner is to be non-suited on account of filing writ petition by concealing material facts and misrepresenting himself as manager of the institution, but also since we have come to the conclusion that the writ petition itself is not maintainable at the behest of the petitioner, we do not find it expedient to enter into the merits of the matter. As a result, the impugned order passed by the learned Single Judge dated 9.12.2005 is not liable to be sustained and is hereby set aside. Special Appeal stands allowed. However, in the circumstances of the case there shall be no order as to costs.