
(1999) 12 AHC CK 0064
In the Allahabad High Court
Case No : Special Appeal No. 564 of 1996

Islam Khan Sekh

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 16-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 AWC 720 : (2000) 2 UPLBEC 980

Hon'ble Judges : Ravi S. Dhavan, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : Raj Kumar Jain, Islam Khan Sekh and Arun Tandon, for the Appellant; A.K. Yadav, J.P. Yadav and Mahesh Chandra Maheshwari, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan and Aloke Chakrabarti, JJ.—This appeal has been filed by one Islam Khan Sekh against the order dated 23rd May. 1996 in Writ Petition No. 17819 of 1996, Mahesh Chandra Maheshwari, v. State of Uttar Pradesh and three others. The appellant Islam Khan Sekh contends that he was a necessary party to the writ petition which aspect was known to the petitioner at every given stage. But, for reasons best known to the petitioner, the appellant had not been made a party respondent. In this context, the appellant Islam Khan Sekh, also a teacher at the same institution, i.e., Sri Diwan Maharaj Singh Inter College. Jakha, Jalaun, desires the Court to examine the array of parties on the memoranda of writ petition. The array of parties is-

"Mahesh Chandra Maheshwari son of Hardev Das Maheshwari, Lecturer. Nagrik Shastra, Sri Diwan Maharaj Singh Inter College. Jakha. Jalaun.....Petitioner

Versus

1. State of Uttar Pradesh,

2. U. P. Secondary Education Services Commission through its Chairman, Allenganj. Allahabad,

3. District Inspector of Schools, Jalaun at Oral,

4. Committee of Management Sri Diwan Maharaj Singh Inter College, Jakha, Jalaun.....Respondents."

2. The contention of the appellant is that the petitioner cannot pretend that he was unaware of the record, as Annexure-1 to the writ petition which are minutes of the proceedings of the Committee of Management, refers to the name of the appellant (Islam Khan Sekh) on two occasions. Not to be unnoticed on the record of the minutes is a reference to earlier writ petition in the matter relating to seniority of teachers whoever may have filed that writ petition. The contention is that beyond a reasonable doubt, appellant Islam Khan Sekh was a necessary party and the matter relating to seniority of teachers even became the subject-matter of litigation in an earlier case by a writ petition before the High Court. Thus, it is submitted that the appellant Islam Khan Sekh is a necessary party, an aspect about which the petitioner, at every given stage was conscious of but chose not to make him a party respondent. The contention is that if the appellant Islam Khan Sekh had an opportunity to present his case, then, the possibility could not have been ruled out that it may have been another order on the writ petition. In these circumstances, while filing the present special appeal on behalf of the appellant Islam Khan Sekh. It is submitted that what the petitioner did not do, the appellant cannot follow the same bad practice and eliminate the petitioner as respondent in this appeal. Consequently, an application has been moved by the appellant to implead the petitioner in the present appeal and the matter be examined de novo on merits In this appeal itself. The ultimate prayer is that the order dated 23 May, 1996 of the learned Judge on the writ petition be quashed.

3. The Court has heard learned counsel for the appellant Islam Khan Sekh as also Mr. Arun Tandon, Advocate, for the respondent, Mahesh Chandra Maheshwari. proposed to be impleaded. otherwise the petitioner in the writ petition.

4. The issue so far as the Court is concerned, is a matter of concern. The prerogative writ jurisdiction of the High Court obliges any citizen who seeks redress. to come absolutely clean with full disclosure of essential facts, if writs the like of which are mentioned under Article 226 of the Constitution are to be utilised to examine injustice of State action. The Court is not concerned who may be the seniormost teacher, whether Mahesh Chandra Maheshwari (petitioner in the writ petition) or Islam Khan Sekh who had not been made a party and Is appellant before this Court. If any order of a State functionary had aggrieved the petitioner Mahesh Chandra Maheshwari, then It was only fair that those who would have been affected, by the order ought to have been made party-respondents. In the writ petition Mahesh Chandra Maheshwari prayed that the

order dated 9th April. 1996 (Annexure-6 to the writ petition) be quashed. Annexure-6 if it is to be examined by a writ of certiorari and ultimately quashed, is an order by the District Inspector of Schools, Jataun at Oral. The quashing of this order could or may effect Islam Khan Sekh. On the record of the writ petition itself, Islam Khan Sekh is mentioned as a senior teacher. If Annexure-6 were to be quashed without permitting Islam Khan Sekh to have his say in the writ petition, the order could affect the latter.

5. The Court cannot encourage such circumstances of permitting the citizen to utilise the prerogative writ Jurisdiction of the Court without impleading those who may have been ultimately affected by an order of the High Court. This would be a bad practice. Equity is against the-petitioner Mahesh Chandra Maheshwari in not coming to the Court with clean hands. Mahesh Chandra Maheshwari was aware that Islam Khan Sekh was his rival. Between Mahesh Chandra Maheshwari and Islam Khan Sekh, there is a lis. This lis is in Court.

6. In the circumstances, the Court has no option but to relegate the parties in exactly the same position as prior to the order of 23rd May. 1996 on the writ petition. The order on the writ petition had been obtained by misrepresentation in not arraying the necessary party. In the circumstances, this order is set aside.

7. Hereinafter, it will be an entitlement of any party affected by the order of the District Inspector of Schools to approach this authority and have their rival contentions addressed before this authority first.

8. The special appeal is allowed with costs throughout.