
(1994) 01 AHC CK 0078
In the Allahabad High Court
Case No : Special Appeal No. 3 (M/B) of 1994

Lucknow University and another	Vs	APPELLANT
Ashwani Kumar Walia and another		RESPONDENT

Date of Decision : 24-01-1994

Acts Referred:

Allahabad High Court Rules, 1952 — Chapter 8, 5

Citation : (1994) 01 AHC CK 0078

Hon'ble Judges : S.N.Sahay, J and Shobha Dikshit, J

Final Decision : Dismissed

Judgement

S N. Sahay, J.—Heard the Learned counsel for parties. This appeal is directed against the order dated 24194, passed by a learned Single Judge in writ petition no. 173 (M/S) of 1994. It appears that respondent no. 1 made a request to the Registrar of the Lucknow University for permission to appear in the M. B. A. Examination from a private ward of K G. Medical College, Lucknow where he was admitted for treatment on account of a fracture sustained by him in his right leg. The request was granted by the Registrar by order dated 17194 and respondent no. 1 was permitted to give examination from the private ward. The order of the Registrar was cancelled by the Vice Chancellor of the University on 21194, that led to the filing of the above mentioned writ petition.

2. In the writ petition respondent no. 1 made an application for interim relief. It was argued on behalf of respondent no 1 that the Registrar had power under Section 16(5) of the U. P State Universities Act to direct that the petitioner shall appear in the examination from the private ward of the K. G. Medical College. It was also argued that the Vice Chancellor had no right to interfere with the said order. On behalf of the University it was contended that the Vice Chancellor is responsible for holding and conducting the University examinations properly and as such he had jurisdiction under Section 13(1) (e) of the abovementioned Act to cancel the order passed by the Registrar. The prayer of respondent no. 1 for permission to appear in the examination from the private ward was opposed on

behalf of the University. In this connection a reference was made on behalf of the University to certain policy decisions also taken by the University authorities that a candidate will have to sit at the examination centre only. After referring to the abovementioned submissions made on behalf of the parties, the learned Single Judge proceeded to pass the following order :

""Therefore, as interim measure it is directed that the petitioner shall be permitted to appear in the examination of M. B. A., 1994 which is going to start from today i. e. 24194 at 2.00 p. m. from private ward of King George Medical, College Lucknow where the petitioner is admitted for treatment. List after the expiry of the period of four weeks.

Let a copy of the order be issued to parties today on payment of usual charges."

3. The appellants feeling aggrieved from the said order of the learned Single Judge, have preferred this appeal. It has been urged on behalf of the appellants that the Special Appeal is maintainable in view of the decision of this Court in *Sri Ramoyan Rao v. Sri Rama Shanker Prasad* 1993(11) Lucknow Civil Decisions 1182 and the order under appeal is erroneous because the Vice Chancellor has the necessary power to cancel the order of the Registrar and the same has not been considered by the learned Single Judge. In this connection, it was also submitted that the order passed by the Registrar was never communicated to respondent no. 1 and, therefore, it could be lawfully cancelled by the Vice Chancellor.

4. We have perused the order under appeal and find that no opinion has been expressed by the learned Single Judge on the merits of the contentions raised on behalf of the parties. The controversy between the parties was whether an order passed by the Registrar in exercise or purported exercise of jurisdiction under Section 16(5) of the aforesaid Act can be rescinded or cancelled by the Vice Chancellor under Section 13(I) (e) of the U. P. State Universities Act, 1973. This controversy has not been adjudicated upon and no final opinion has been expressed. The order under appeal indicates that the same was passed by the learned Single Judge when he was satisfied that it is necessary for the ends of justice, keeping in view the circumstances of the case. We are informed that the examination did commence on 24194 and the respondent no. 1 has already appeared in certain papers & there are only two papers left, one to be held today and the other day after tomorrow. In our opinion no decision has been given by the learned Single Judge on merits of the case and the rights and liabilities of the parties, which were in issue before him have not been finally adjudicated. In *Shah Babulal Khimji v. Jayaben D. Kania* AIR 1991 SC 1786, it has been held that every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affected vital and valuable rights of the parties and which work serious injustice to the party concerned. This case has been referred to in the case of *Sri Ramayan Rao* cited above, upon which the appellants have placed reliance. Moreover, it has been held in *Gujarat Steel Tubes Ltd. v. Its Mazdoor Sabha* AIR 1980 SC 1896 that an

appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real though fine. In the present case the order under appeal does not decide rights of the parties and in the circumstances discussed above, does not work injustice to the parties. The petitioner has appeared in some papers in the examination from the private ward and only two papers are left. It is settled law that if substantial justice has been done in a case, the appellate court will not interfere. Therefore, we are not inclined to interfere with the discretion exercised by the learned Single Judge in passing the order under appeal. We find that the appeal is liable to be dismissed. All matters in issue between the parties in the writ petition will be finally settled and decided by the appropriate Bench hearing the matter in due course.

5. The appeal is accordingly dismissed. No order as to costs.

(Appeal dismissed.)