
(2010) 07 AHC CK 0229
In the Allahabad High Court
Case No : Special Appeal No. 866 of 2010

Rajiv Saxena and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Allahabad High Court Rules, 1952 — Chapter 8, 5
Societies Registration Act, 1860 — Section 25

Citation : (2010) 07 AHC CK 0229

Hon'ble Judges : F.I.Rebello, CJ and A.P.Sahi, J

Final Decision : Dismissed

Judgement

1.This special appeal is against an order passed by the learned Single Judge dated 11.5.2010. A writ petition was filed before the learned Single Judge against an order of the Prescribed Authority hearing an election dispute under Section 25 of the Societies Registration Act, 1860. The Tribunal in the purported exercise of its powers had granted interim relief in an election dispute. The stand of the petitioners was that the learned Tribunal has no jurisdiction to grant the interim relief in the absence of any specific power so conferred on the Tribunal. The contention of the respondentappellants herein was that the power to grant final relief would include the power of granting interim relief.

2. The learned Single Judge after considering the rival contentions held that there is no power in the Tribunal to grant interim relief. It is against that order the present special appeal has been filed.

3. A preliminary objection has been taken on behalf of the respondents that in terms of Rule 5 of Chapter VIII of the Allahabad High Court Rules, 1952 a special appeal would not be maintainable as the petition arose in respect of an order passed by the Tribunal. The relevant rule is being quoted below:

"5. Special appeal An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court and not

being an order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution. or (b) of the Government or any officer or authority made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

4. On the other hand the learned counsel for the appellant placed before us several judgments of Division Benches of our court to point out that in the instant case the appeal is maintainable and the Tribunal has jurisdiction to grant interim relief.

5. In the case of *Sardar Mohd. Ansar Vs. State of U.P.* reported in 1994(2) ESC 641 All the issue before the learned Division Bench was whether the special appeal would lie. An appeal was preferred under the provisions of the U.P. Intermediate Education Act 1921 by a person belonging to the clerical cadre. A perusal of the provisions shows that such an appeal was not maintainable as only a teacher could maintain an appeal. The Division Bench proceeded to observe that since the appeal could not be instituted by a class III employee it was nonest. Though that order was the subject matter of proceedings so far as the court under Articles 226 and 227 as the appeal itself was not maintainable taking recourse to the extra ordinary jurisdiction was of no consequences. The special appeal in this circumstance under Rule 5 would be maintainable as it would not be an order passed by a Tribunal competent to entertain an appeal in the subject matter.

6. The aforesaid judgment in our opinion is clearly distinguishable.

7. In the instant case the Prescribed Authority as a Tribunal had did not lack patent jurisdiction to entertain the election dispute. The only dispute is whether in exercise of such jurisdiction it could grant interim relief. In such circumstances the reliance sought to be placed in the judgment in the case of *Sardar Mohd. Ansar* (supra) is clearly distinguishable on the facts of the present case.

8. Attention was also invited to the observations of the Division Bench in the case of *Vajara Yojna Seed Farm, Kalyanpur (M/s) Vs. Presiding Officer* reported in 2003 (1) UPLBEC 4961 and paragraphs 49 and 50 were referred. A perusal of the said observations will make it clear that in so far as the learned Division Bench is concerned it held that once the Tribunal has jurisdiction then irrespective of the fact whether the award was legal or illegal passed, a special appeal against order of learned Single Judge in exercise of jurisdiction under Articles 226 and 227 would not be maintainable.

9. In our opinion, this view correctly reflects the true scope and intent of Rule 5. A proper reading of the rule and its intendment is that once an order passed by a competent tribunal is the subject matter of an exercise of this Court in its extraordinary jurisdiction under Article 226 and/or 227, then no intra court appeal would lie. All that is required is that the judgment, order or award is by a tribunal, court or statutory arbitrator or made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act with respect to any matter enumerated in the State List or Concurrent list. The only exclusion, therefore, is these orders or decrees in the course of an administrative enquiry and as noted in *Sardar Mohd. Ansar (supra)*, if the appeal itself was not maintainable.

10. In the instant case the only issue is as to whether the Tribunal has specific jurisdiction to grant interim relief or not. In other words the Tribunal could exercise jurisdiction may be rightly or wrongly. That order was subject matter of the writ petition before the learned Single Judge.

11. In our opinion the special appeal is not maintainable. In the light of that the special appeal is dismissed. The Tribunal is directed to dispose of the election petition within two months from the date of production of a certified copy of this order before it.