
(2002) 05 AHC CK 0051

In the Allahabad High Court

Case No : Special Appeal No's. 122 and 123 of 2002 (MS)

Sandeep Agarwal and Others

APPELLANT

Vs

Adarsh Chadha and Others

RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 329
Societies Registration Act, 1860 — Section 25(2)

Citation : (2002) 4 AWC 3083

Hon'ble Judges : R.D. Shukla, J; Jagdish Bhalla, J

Bench : Division Bench

Advocate : S.K. Choudhary, for the Appellant; K.B. Sinha, Anupam Mehrotra, Subhash Vidyarthi and Om Prakash Yadav, for the Respondent

Judgement

Jagdish Bhalla, J.—On 17th May, 2002, after hearing learned counsel for the parties, we issued certain directions and held that the special appeal is maintainable, reasons of which to be recorded later on,

2. Now we record the reasons, which are as under :

"These two appeals arise out of the order dated 5th April. 2002, passed by learned single Judge in Writ Petition No. 1009 (MS) of 2002 whereby directions have been issued to the Registrar, Firm, Societies and Chits, U. P., Lucknow, to hold the election of the Managing Committee on 20.5.2002, after due publication. The learned single Judge has further directed the Registrar to hold the election on the basis of the list which was valid on 21.3.1999, when the last election of the Managing Committee was held and to ignore all the resolutions of the Managing Committee which were passed subsequent to 21.3.1999 by which membership of some of the members was cancelled and the new members were enrolled. "

3. Appellants in Special Appeal No. 123 (MS) of 2002 were respondent Nos. 5 and 6 in Writ Petition No. 1009 (MS) of 2002 whereas the appellants of special

appeal No. 122 (MS) of 2002 were not party to Writ Petition No. 1009 (MS) of 2002 but have preferred this Appeal on the ground that the impugned order dated 5.4.2002, curtails their vested right of franchise as they are duly enrolled members of the Gymkhana Club and deliberately they were not impleaded as party in Writ Petition No. 1009 (MS) of 2002 so as to suppress the material and correct facts and to mislead the Court.

4. Sri K.B. Sinha, senior advocate and Sri Anupam Mehrotra, counsel for the private respondents and M/s. Oudh Gymkhana Club respectively have raised a preliminary objection regarding maintainability of these appeals on the ground that the impugned order is not a judgment and, therefore, special appeal is not entertainable in view of the provisions of Chapter VIII Rule 5. Chapter VIII Rule 5 reads as under :

"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-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.]"

5. According to learned counsel, from the perusal of above provision, it is amply clear that no special appeal lies against the order passed under Article 226 of the Constitution of India unless there is adjudication of dispute of rival parties and it must put an end to that dispute.

6. Sri K.B. Sinha, Senior Advocate while questioning the maintainability of the special appeal invited our attention to Section 2(9) of the CPC where word "judgment" has been defined. Section 2(9) of the CPC reads as under :

"Judgment" means the statement given by the Judge on the grounds of a decree or order."

Placing reliance on this definition, it has been submitted by him that the impugned order passed by the learned single Judge cannot be treated to be a judgment as defined in the Code and unless it fulfils the requirement of Section 2(9), it will remain as an interlocutory order and further it does not bring about the termination of the proceeding in which the adjudication is made. It has been further contended by him that the impugned order dated 5.4.2002 is only an interim arrangement and not the final judgment and the interim order will ultimately merge into final judgment and thus it cannot be said to be an order

having trappings of the final "order. Moreover, no rights of the appellants of Special Appeal No. 123 (MS) of 2002 have been curtailed by the Impugned order as the appellants of Special Appeal No. 123 (MS) of 2002 have never been enrolled as members of the Oudh Gymkhana Club.

7. Raising the next question regarding maintainability of the appeal. Sri K. B. Sinha. Sr. Advocate submitted that the election process, in pursuance of the impugned order dated 5.4.2002 of the learned single Judge, has already started and. therefore, also this special appeal is not maintainable. While giving reference of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and Mohinder Singh Gill v. Chief Election Commissioner. New Delhi. AIR 1978 SC 85 the learned counsel relying upon paragraph 32 (5) of the decision of the Supreme Court in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, submitted that the Court must avoid stalling of the election proceedings and shall not act except on a clear and strong case for its intervening having been made out by raising the pleas with particulars and by necessary material. Paragraph 32 (5) of Election Commission of India's case (supra) reads as under :

"The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilize the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

8. Mr. Anupam Mehrotra, counsel for Oudh Gymkhana Club while adopting the arguments made by Sri K.B. Sinha, Senior Advocate with regard to maintainability of the special appeal added that the special appeal is liable to be dismissed on the ground of alternative remedy available to the appellants u/s 25 of the Societies Registration Act, 1860. Moreover, the appellants were not even parties to the writ petition nor the appellants have made any application for impleadment in the writ petition and as such this special appeal by a stranger is not maintainable.

9. Replying to the question regarding maintainability of the Special Appeal No. 122 (MS) of 2002, Sri S.K. Kalia, senior advocate submitted that the impugned order deprives the rights of the valid Members of the Oudh Gymkhana Club duly enrolled after 21st March, 1999 and submitted that the procedure for holding election is provided under bye-laws and, if any member is aggrieved, he has a right to approach the authority concerned under the provisions of Societies Registration Act. Moreover, the impugned order has been passed without they

being asked to put their version before the Court.

10. Sri S.K. Kalia relying upon the decision of this Court in *State of U. P. and Ors. v. Km. Renu Tiwari and Ors.* (1993) 2 UPLBEC 1325 and *Kamayan Rao and Ors. v. Rama Shankar Prasad and Ors.* contended that the order under appeal amounts to disposal of a vital issue and in fact is affecting vital and valuable right of the appellants. It is further submitted that the learned single Judge while disposing application for interim relief has granted reliefs, which are final in nature and beyond the scope of the learned single Judge and is not permissible. Interim reliefs granted by the learned single Judge have the trappings of final order and have curtailed the rights of members who were enrolled after 21.5.1999. In *Kumari Renu Tiwari's* case (supra), this Court following the Full Bench decision of Delhi High Court in *Begum Aftab Zamani v. Shri Led Chandra Khanna* observed as under :

".....it would appear that in order to be a "judgment", an adjudication need not finally put an end to the proceedings in which it has been made. The said proceeding may remain pending but if the order gives to the party what it could get only after final adjudication on the disputed questions, it would amount to "judgment."

11. In *Ramayan Rao's* case (supra), this Court relying upon the decision of the Supreme Court in the case of *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, observed as under :

".....The order under appeal also decides a matter of moment and affects vital and valuable right of the Vice-president to officiate as President of the Nagar Palika. Accordingly by application of this judgment also, the present appeal is maintainable."

12. Elaborating further, Sri Kalia submitted that the interim order is to be tested vis-a-vis with the right of others and in the event. It is found that right of other is affected inspite of the fact he was not party to the writ petition, the special appeal in that situation is maintainable in view of the decision of the Apex Court in *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*,

In this case, their Lordships while pointing out the defect In the writ petition filed by the Sangh of nonjoinder of necessary parties-not even in a representative capacity considering that their number was too large for all of them to be joined individually as respondents, held as under :

"A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them before it as respondents in a representative capacity if their number is too large to join them as respondents Individually, and, if the petitioners refused to so join them, the High Court ought to dismiss the petition for nonjoinder of necessary parties."

13. Sri Anil Tewari, learned counsel appearing In Special Appeal No. 123 (MS) of

2002 adopted the arguments advanced by Sri S.K. Kalia with regard to maintainability of the special appeal and relying upon the definition of "judgment" given by the Supreme Court in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, . submitted that the impugned order dated 5.4.2001, has the effects of trapping the final order and, therefore, it is appealable. Their Lordships of the Supreme Court held in *Shah Babulals case* (supra) as under :

"Thus, the only point which emerges from this decision is that whenever a trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the letters patent."

Their Lordships further observed in paragraph 116 of the report as under :

"Thus, in other words, every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment, (e.s.)

14. After considering the materials on record and the submissions made by the learned counsel for the parties, the contention of Sri K.B. Sinha that the Court has no power to interfere as the election process has started we are of the opinion that it does not give any protection to the respondent as the law relied upon by him is based upon the bar created by Article 329(b) of the Constitution. In the Instant case, the election process has not started under any law but by the order under appeal which has taken away the rights of the duly enrolled members and have deposited membership fee and are utilizing facilities of the Club since long.

15. Taking into accounts the arguments advanced by the learned counsel for the appellants, we are of the view that the Impugned order passed by the learned single Judge has the trappings of the final order because the Registrar, Firm, Societies and Chits, U. P., Lucknow, has been directed to hold election on the basis of the list valid on 21.3.1999 when the last election of the Managing Committee was held and also directed to ignore all the resolutions passed subsequent to 21st March, 1999, without being specific about the same.

16. In view of the above, we have no hesitation in saying that special appeals are maintainable.

17. No doubt, learned counsel for the parties are in agreement that the election of the Committee of Management shall be held at the earliest and the only dispute between the parties is that the appellants want that the election be held on the basis of present membership whereas the respondents are keen that the election be held on the basis of list which was in existence at the time of last election.

18. Sri S.K. Kalia, while reiterating his arguments in this behalf, further submitted that the impugned order has curtailed the rights of franchise of the appellants without they being at any fault and being members, they are using the club facilities and are participating in the activities of the Club. Further, no reason has been assigned for debarring them from their right of franchise. Even if, there is any dispute between the President and the Secretary or between the office bearers of the Committee of Management, then also right to cast vote cannot be taken away. He added that the appellants are interested in election but at the same time, they do not want to give up their right of franchise being duly enrolled members of the Club.

19. Sri Anil Tewari appearing for the appellants of Special Appeal No. 123 (MS) of 2002, while reiterating the above arguments submitted that there are number of other identical and connected writ petitions along with Writ Petition No. 1009 (MS) of 2002 and by the order under appeal, preliminary objection raised regarding maintainability of the Writ Petition No. 1009 (MS) of 2002 being prosecuted by a person, whose membership has already been cancelled and at present is not even a member of the Club, has been rejected without any reason. It is submitted by the learned counsel for the appellants that the learned single Judge had Indicated in the order under appeal that after going through the record, it appears that there is a dispute between the President and the Secretary and they are having strange relations after the election of 1999 and had rejected the contention raised about the maintainability of the writ petition without deciding the objection by a speaking order. Objection regarding maintainability of the writ petition is independent to the dispute between the President and the Secretary and in any circumstance, this cannot be the reason for rejecting the objection.

20. Sri K.B. Sinha, Senior Advocate and Sri Anupam Mehrotra appearing for the private respondents and the Club respectively have drawn our attention to the various happenings of the club including certain expulsions, litigations between the President and Secretary and not holding of election after March, 1999 and further submitted that the President is having a different Bank Account and huge amount of money has been misappropriated. On the contrary, the appellant Adarsh Chadha, who was elected in the year 1999 and was allegedly expelled by the President and Ors., has levelled similar charges.

21. At least one thing is clear, if the version of the parties is taken to be true that money has been misappropriated, it is a matter of great concern and cannot be ignored.

22. Having examined the materials on record and the submissions made by the learned counsel for the parties and the law laid down by the Courts, we are of the opinion, that it is the duty of Registrar, Firms, Societies and Chits, U. P. Vikas Bhawan, Lucknow, to conduct the elections u/s 25 (2) of the Societies Registration Act, 1860. smoothly of the Managing Committee of the Club and it is his Job to choose grains from the chaff and then come to the conclusion as to

who are duly enrolled members. The restriction imposed by the learned single Judge will amount to deciding the matter without affording opportunity to those whose rights are going to be adversely affected,

23. We, therefore, set aside the order dated 5.4.2002, so far as it imposes restriction of holding election on the basis of the list which was valid on 21.3.1999, with a direction to the Registrar, Firm, Societies and Chits to prepare the final voter list of the duly enrolled members expeditiously and fix a time schedule for holding of election at the earliest. The said elections would be subject to the decision of the writ petition.

24. We further provide that all the identical and connected writ petitions be disposed of together expeditiously by the learned single Judge.

25. Before parting, we would like to observe that while hearing the writ petitions, the learned single Judge may also look into the allegation whether any money has been misappropriated by the office bearers or members of the Club and, if it is so what remedial measures or directions can be issued in this regard.

26. With the above observations and directions, both the appeals are disposed of finally.