
(2002) 09 AHC CK 0114
In the Allahabad High Court
Case No : C.M.W.P. No. 4651 of 2000

Saraswati Vidya Mandir

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 AWC 1917 : (2002) 3 UPLBEC 2777

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Shamim Ahmad and Om Prakash Chaubey, for the Appellant; G.K. Pandey, S.C., for the Respondent

Judgement

A.K. Yog, J.—Heard Sri Shamim Ahmad, advocate, appearing on behalf of the petitioner and Sri G.K. Pandey, learned standing counsel, on behalf of the respondents.

2. Petitioner before this Court is "Saraswati Vidya Mandir Rewatipur, district Ghazipur through its manager Smt. Ram Sakhi Devi" purporting to be an institution, called "Saraswati Vidya Mandir Rewatipur", which is not a legal entity.

3. This Court in Writ Petition No. 10663 of 1976, Sardar Patel Higher Secondary School, Dev Nagar, Mathura v. Deputy Director of Education, Agra Region, Agra and Ors. 1976 AWC 18 vide judgment and order dated 1.3.1976 observed :

"Sri N.C. Upadhyay, learned counsel for the respondent No. 3, Babu Lal Sharma raised a preliminary objection to the maintainability of the petition at the instance of the manager Kedar Nath. He urged that the Committee of Management had authority to hold enquiry and to dismiss the petitioner from service, its proposal to dismiss respondent No. 3 was disapproved by the Deputy Director of Education in appeal, therefore, the aggrieved party was the Committee of Management and the petition could be filed only by it, the manager Sri Kedar Nath had no locus standi to maintain this petition. I find

considerable force in this contention. In paragraph 43 of the second affidavit of respondent No. 3, it was clearly stated that the petition was not maintainable on behalf of the school as it was not the legal entity itself and it ought to have been filed by the Committee of Management. It was further stated that no proof has been shown that the Managing Committee had directed the manager to file the petition. Reply to this assertion is contained in paragraph 45 of the rejoinder-affidavit filed by the petitioner. It states that the contents of paragraph 43 are wholly misconceived and are not admitted, the same being argumentative will more adequately be replied at the time of arguments. There is thus no assertion in the rejoinder-affidavit that the Committee of Management had adopted any resolution to challenge the order of the Deputy Director of Education nor there is any assertion that Kedar Nath was authorised by the Committee of Management to file the present petition. There is further no assertion in the rejoinder-affidavit that the Committee of Management was aggrieved or that it had permitted the manager to file the petition. In fact the averments contained in paragraph 45 of the rejoinder-affidavit have been shown on legal advice, it does not contain any assertion of facts.

The present petition has been filed by Sadar Patel Higher Secondary School through its Manager Sri Kedar Nath. The petition has not been filed on behalf of the Committee of Management or on behalf of the Society, if any, registered under the Societies Registration Act. Obviously, the school or the manager cannot be aggrieved on behalf of the Committee of Management. It is the Society and the Committee of Management which is legally entitled to challenge the orders of the Deputy Director of Education. The Manager cannot assume the functions of the Committee of Management unless he is authorised to do so. Sardar Patel Higher Secondary School is not a legal entity to maintain any legal action on behalf of the Society or the Committee of Management.

In Civil Misc. Writ Petition No. 5808 of 1970, Mahtab Rai, Manager, Har Narain intermediate College v. Deputy Director of Education, decided on 7th January, 1974, a learned single Judge of this Court, almost in similar circumstances, held that the Manager or the school has no locus standi to maintain petition against the order of the District Inspector of Schools or the Deputy Director of Education refusing to grant approval. The learned single Judge observed that the appointment of Principal of college and termination of his services were within the powers of the Managing Committee or the Society and it was the Managing Committee alone which exercises control. That being so, the Manager is not the Managing Committee or the Society and he cannot maintain a writ petition in this Court unless he is authorised to do so. Relying on a Full Bench decision of this Court in Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others, the learned Judge dismissed the petition on the ground that it was not filed on behalf of the Managing Committee or the Society. I am in respectful agreement with the view taken by the learned single Judge in Mahtab Rai's case. In the instant case, neither the Society nor the Managing Committee has filed the writ petition nor there is any material before the Court

to show that the Committee of Management or the Society authorised the Manager to file this petition. In the circumstances the petition is not maintainable.

During the course of hearing, learned counsel for the petitioner made a request for adjournment of the hearing to enable him to file documentary evidence to show that he had been authorised by the Committee of Management. I find no good ground to adjourn the hearing to enable the petitioner to produce evidence to show authorisation by the Committee of Management. As already noted, respondent No. 3 had clearly stated that the petitioner had no locus standi to "maintain the petition and no proof was placed before the Court that the Committee of Management had authorised him. In the rejoinder-affidavit, the petitioner did not even whisper that he was been authorised. If the petitioner had made any statement in the rejoinder-affidavit that the Committee of Management had authorised him to file the petition, I would have granted adjournment but in the absence of any such averment in the rejoinder-affidavit I do not consider it desirable to adjourn the hearing to enable the petitioner to produce authorisation by the Committee of Management.

In the result the writ petition is dismissed as not maintainable. There will be no order as to costs. The stay order is vacated.

Dated : 1.3.1976

Sd. K. N. Singh. "J"

4. Again in the Writ Petition Nos. 6879 of 1974 and 12582 of 1975 : V. V. Inter College, Shamli v. U. P. Shiksha Nideshak, Pratham Mandal, Meerut and Ors., vide Judgment and order dated 7.4.1976 it was observed :

"..... These two petitions were taken up for hearing on 6th April, 1976. At the very outset of the hearing learned counsel for the respondent-principal raised preliminary objection about the maintainability of these two petitions. He urged that the petitions have not been filed by the aggrieved party, instead these have been filed by V. V. Inter College, Shamli, which is neither aggrieved party nor a juristic person to maintain the petitions. I find considerable force in the contention. It is admitted between the parties that there is a registered society which runs and maintains the Vaish College, Shamli, Muzaffarnagar. The college is recognised under the U. P. Intermediate Education Act, 1921. The college is run and managed by a Committee of Management constituted in accordance with the Scheme of Administration approved by the authorities under the Act. Under the provisions of the Act and the Regulations framed thereunder, it is the Committee of Management which is empowered to make appointments, to take disciplinary action and to pass orders of removal or suspension against the Principal or a teacher. No other member, or authority of the registered society has any power to exercise jurisdiction in these matters. The Committee of Management is empowered to file appeal against the order of the District Inspector of Schools. The Committee of Management is a statutory authority under the Act and the Regulations and it is legally entitled to take action in

matters relating to the affairs of the administration of the college. The Committee of Management has not filed these petitions. There is no material on record to show that the Committee of Management adopted any resolution authorising the manager to file these petitions. The petitions as framed are not maintainable because the V. V. Inter College, Shamli, cannot be an aggrieved person to challenge the impugned orders. The aggrieved party, if any could be the Committee of Management of the Society itself. In Writ Petition No. 10663 of 1975 decided on 1st March, 1976, I took a similar view. Another learned single Judge of this Court dismissed Writ Petition No. 580 of 1970 on 7th January, 1974, precisely on this very ground. The view taken by me and other learned single Judge is fully supported by a Full Bench decision of this Court in Indian Sugar Mills Association through its Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others, .

During the course of hearing, amendment applications were filed seeking relief for the amendment of the writ petitions for adding Committee of Management as petitioner. The applications have been rejected by me by a separate order.

So far as Writ Petition No. 12582 of 1975 is concerned, there is another reason to dismiss the same without going into merits. The writ petition was presented before this Court on 17th December, 1975. It appears that during the course of the preliminary hearing the Bench observed that the petitioner should file appeal before the Deputy Director of Education. The petitioner college thereupon filed appeal before the Deputy Director of Education, Meerut Region, against the impugned order of the District Inspector of Schools dated 6th December, 1975. The appeal has not been disposed of as yet, instead it is still pending. There is no dispute that the appeal against the order of the District Inspector of Schools refusing to accord approval is maintainable u/s 16G(3) (c). There is further no dispute that the petitioner college has availed that remedy and appeal is pending before the Deputy Director of Education. It is thus, clear that the petitioner has availed statutory alternative remedy of appeal available to him in law and that remedy is still being perused by him. In the circumstances it would not be a sound exercise of discretion under Article 226 of the Constitution to hear and adjudicate the issues raised by the petitioner in the present petition which can effectively be decided by the Deputy Director of Education. The petitioner is not entitled to relief on this ground also.

In the result both the petitions fail and are dismissed. There will be no order as to costs.

Dated : 7.4.1976

Sd. K.N.S."

5. Aforesaid judgment was affirmed by Division Bench in intra court appeal, S. A. No. 154 of 1976, V. V. Inter College, Shamli v. U. P. Shiksha Nideshak Pratham Mandal, Meerut and Ors., vide judgment and order dated 2.8.1976 quoted below :

"Sri R.K. Jain, learned counsel for the appellant, states that he does not press this appeal. The appeal is accordingly dismissed."

Dated : 2.8.1976

Sd. G.C.M.

Sd. K.C.A."

6. In view of the aforesaid decisions, petition is not maintainable in the name of the petitioner as it stands today.

7. Learned counsel for the petitioner, however, submitted that he be allowed time to correct the description. This cannot be permitted by amendment as has been held in the V. V. Inter College (supra). However, by dismissal of the writ petition management/society of the institution, which own, runs and manages, shall not be precluded from approaching the concerned authority to seek redressal of his grievance and recall the impugned order dated 16th July, 1999, providing review of its decision after affording opportunity to the management/society running the institution to file documents and such information as may be required by such authority and holding enquiry as may be required.

8. Writ petition stands dismissed.

9. No order as to costs.