

(1997) 07 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23760 of 1997

Satya Prakash Singh and Another

APPELLANT

Vs

Vice-Chancellor, Dr. Bhimrao Ambedkar Vishvavidyalaya and
Others

RESPONDENT

Date of Decision : 30-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh State Universities Act, 1973 — Section 68

Citation : AIR 1998 All 66 : (1997) 3 UPLBEC 2096

Hon'ble Judges : Shitla Prasad Srivastava, J

Bench : Single Bench

Advocate : R.C. Srivastava and Sri Shailendra, for the Appellant; Pankaj Mittal and Standing Counsel, for the Respondent

Judgement

Shitla Prasad Srivastava, J.—This petition under Article 226 of the Constitution of India has been filed by the petitioners for the relief for quashing the decision by means of Resolution No. 26 dated 7-5-97 of the Executive Council (Annexure-2 to the petition), amended rules approved in its meeting dated 14-6-97 (Annexure 3 to the petition) and further for a writ of mandamus directing respondent No. 4, the Management Committee of the Institution to hold the entrance test for the year 1997-98 for the course of B. Sc. Agriculture I.

2. A preliminary objection has been made by Sri Pankaj Mittal, learned Counsel for the University that the writ petition is not maintainable as the petitioners have alternative remedy to approach the Chancellor of the Universities under the provisions of U. P. Universities Act, 1973 u/s 68 of the aforesaid Act.

2A. Learned counsel for the petitioners has urged that the alternative remedy as pointed out by the learned Counsel for the respondent is not speedy and efficacious remedy for the petitioners. Moreover, as the acts done by the respondents are contrary to the provisions of the Universities Act. They have no power or authority to pass such resolution therefore, the resolution in question is

without authority and the University has no such power under the Universities Act. He has further urged that the provisions of Section 68 is not applicable to the facts of the present case and the writ petition under Article 226 of the Constitution of India is maintainable and even if there is some alternative remedy applicable to the petitioners u/s 68 of the Act, the Court has ample power under Article 226 of the Constitution of India to entertain the petition and decide it on merit, if the authorities have gone beyond the jurisdiction given to it under the Act. Therefore, the petition is maintainable and it cannot be rejected at this stage on the ground of availability of alternative remedy.

3. Before going to the merit of the case it is necessary to see the relevant sections as pointed out by Sri Pankaj Mittal, the learned Counsel on behalf of the University. He placed before the Court Section 68 of the U. P. State Universities Act. The relevant provisions read as under :--

Section 68--"Reference to the Chancellor --If any question arises whether any person has been duly elected or appointed as, or is entitled to be, member of any authority or other body of the University, or whether any decision of any authority or officer of the University (including any question as to the validity of a Statute, Ordinance or Regulation, not being a Statute or Ordinance made or approved by the State Government or by the Chancellor) is in conformity with this Act or the Statutes or the Ordinance made thereunder the matter shall be referred to the Chancellor and the decision of the Chancellor thereon shall be final :

Provided that no reference under this section shall be made--

(a) more than three months after the date when the question could have been raised for the first time;

(b) by any person other than an authority or officer of the University or a person aggrieved;

Provided further that the Chancellor may in exceptional circumstances--

(a) act suo motu or entertain a reference after the expiry of the period mentioned in the preceding proviso;

(b) where the matter referred relates to a dispute about the election, and the eligibility of the person so elected is in doubt, pass such orders of Stay as he thinks just and expedient.

4. Learned counsel for the respondents has urged that as the decision taken by the University is covered by this provision, therefore, the remedy available to the petitioners may be by way approaching to the Chancellor and unless that remedy is availed, the petitioners have no right to file the present writ petition.

5. The petitioners have filed the impugned resolution as Annexure 2 to the writ petition and Annexure-4 which is the notification for admission. A bare perusal of Annexure No. 2 would show that a meeting was held on 7-5-97 at 11.30 A. M. of

Dr. Bhimrao Ambedkar Vishvavidyalaya, Agra (Agra University, Vidya Parishad), and a resolution was passed by the University in that meeting that "The admission to first degree in Agriculture Faculty be made through admission test."

6. The petitioners have filed Annexure 1-A, which is the Rules, and the petitioners have challenged the same in the present writ petition. The relevant portion of Annexure-1A of the Rule is that the entrance test for B.Sc. Agriculture and other classes will be held by the University.

7. Learned counsel for the petitioners has urged that in view of Section 28(4) of the University Act (hereinafter referred to for short as "the Act"), the Committee may issue any direction as respects criteria or methods of admission (including the number of students to be admitted) to constituent colleges maintained by the State Government and affiliated or associated colleges and such directions shall be binding on such colleges. According to learned counsel for the petitioners, in view of this provision the University has no authority or power to take entrance test itself and it is power of affiliated colleges as it was done in the past.

8. Now coming to the facts of the case, the facts in brief as stated in the petition are that it is admitted to the petitioners that University of Agra is run and managed in accordance with the Uttar Pradesh State Universities Act, 1973. In para 4 of the petition, the petitioners have stated that under the Act, the power and duties of the University is defined u/s 7 and there is no such power in which the University will directly involve in the internal affairs of the affiliated colleges. The provisions of Section 7 are quoted here as under :--

"Powers and duties of the University--

The University shall have the following powers and duties, namely--

(1) to provide for instruction in such branches of learning as the University may think fit, and to make provision for research and for the advancement and dissemination of knowledge."

9. In para 5 of the petition, it has been further stated that Section 21 of the Act defines the powers and duties of the Executive Council and there is no provision by which the executive council can have jurisdiction to hold the admission test for admitting the students in the Degree Colleges in different courses. This section is quoted here as under :--

Section 21. Powers and duties of Executive Council--

(1) the Executive Council shall be the principal executive body of the University and subject to the provisions of this Act, have the following powers, namely--

(i) to hold and control the property and funds of the University.

(ii) to acquire or transfer any movable or immovable property on behalf of the University;

(iii) to make, amend or repeal statute and ordinances;

(iv) to administer any funds placed at the disposal of the University for specific purposes.

(v) to prepare the budget of the University.

(vi) to award scholarship, fellowship, bursaries, medals and other rewards in accordance with the statutes and ordinances.

(vii) to appoint officers, teachers and other employees of the University and to define their duties and the conditions of their service and to provide for the filling of temporary casual vacancies in their posts;

(viii) to fix the fees, emoluments and travelling and other allowances of the examiners;

(ix) (subject to the provisions of Section 37) to admit any college to the privileges of affiliation or recognition or enlarge the privileges of any college already affiliated recognised or withdraw or curtail any such privileges;

(x) to arrange for and direct the inspection of Institutes, affiliated, associated or constituent colleges, halls, hostels and other place of residence of students

(xi) to direct the form and use of the common seal of the University.

(xii) to regulate and enforce discipline among members of the teaching, administrative and other staff of the University in accordance with the Statutes and the Ordinance.

(xiii) to manage and regulate the finances, accounts, investment, property, business and all other administrative affairs of the University, and for that purpose, to appoint such agents as it may think fit.

(xiv) to invest any money belonging to the University (including any income from trust and endowed property) in such stocks, funds, shares or securities as it shall from time to time think fit or in the purchase of immovable property in India, with the like power of varying such investment from time to time.

(xv) to provide the buildings, premises, furniture and apparatus and other means needed for carrying on the work of the University.

(xvi) to enter into, vary, carry out and cancel contracts on behalf of the University;

(xvii) to regulate and determine all other matters concerning the University as well as Institutes, constituted, affiliated and associated colleges in accordance with this Act, the Statutes and the Ordinances."

10. It has been further stated that the Academic Council which is the Chief Academic Body of the University as contemplated in Section 25 of the Act also have no jurisdiction to frame rules and providing jurisdiction to the University for holding the admission test in various affiliated Degree Colleges. Section 25 of the

Act is quoted as under:--

Academic Council.-- (1) The Academic Council shall be the principal academic body of the University and subject to the provisions of this Act, the Statutes and the Ordinances-

(a) shall have the control and general regulation of, and be responsible for the maintenance of standard of instruction, education and research carried on or imparted in the University.

(b) may advise the Executive Council on all academic matters including matters relating to examinations conducted by the University; and

(c) shall have such powers and duties as may be conferred or imposed upon it by the Statutes.

11. The petitioners have stated in para 7 of the writ petition that in view of Section 28(4) of the Act the Admission Committee may provide criteria, methods and guidelines for admission in the affiliated colleges but there is no provision in which the University authorities can take themselves liability of holding the admission test.

Section 28 is bung quoted herein as under :--

Admission Committee.-- (1) There shall be an Admissions Committee of the University, the constitution of which shall be such as may be provided for in the Ordinances.

(3) Subject to the superintendence of the Academic Council and to the provisions of subsection (5) the Admissions Committee shall lay down the principles to various courses of studies in the University and may also nominate a person or a Sub-committee as the admitting authority in respect of any course of study in an Institute or a constituent college maintained by the University.

(4) Subject to the provisions of Sub-section (5) the Committee may issue any direction as respects criteria or methods of admission (including the number of students to be admitted) to constituent colleges maintained by the State Government and affiliated or associated colleges and such directions shall be binding on such colleges."

12. It is contended by the petitioners that Section 37(4) makes it categorically clear that except as provided by this Act the management shall be free to manage and control the affairs of the affiliated colleges and be responsible for its maintenance and upkeep. This section has been quoted in the writ petition which is reproduced as under:--

37(4) Except as provided by this Act the management of an affiliated college shall be free to manage and control the affairs of the college and be responsible for its maintenance and upkeep, and its Principal shall be responsible for the discipline of its students and for the superintendence and control over its staff."

13. Then the petitioners also quoted Section 38 which is also quoted herein as under :--

38(4)-- The conditions of recognition of an associated college shall be prescribed by the Statutes or imposed by the Executive Council, but no associated college shall except with the previous approval of the Chancellor, be authorised to impart instruction for post-graduate degrees.

Provided that if an associated college is refused recognition for imparting instruction for postgraduate degrees, such college may, with the approval of the Chancellor be granted affiliation by an University referred to in Section 37, anything in Section 5 notwithstanding and thereupon, such college shall cease to be an associated college."

14. In para 18 of the petition, it is stated that Admission Committee in its meeting dated 14-6-97 approved the new amended rules. According to the petitioners, Rules 1997, Rule 3(Aa) contemplates conducting of joint admission test at University level of degree colleges for the courses described in the said rules. It is stated by the petitioners that the decision is illegal and without jurisdiction as neither the Executive Council nor the Academic Council nor the Admission committee has any jurisdiction to take responsibility of holding the admission test of Degree Colleges. It is also stated that the decision of the University which has been notified on 21-6-97 is also illegal. To support their contention the petitioners have stated that while the University holding the admission test in the month of July, 1997, the Director of Higher Education is directing the college authorities to complete the admission up to 31-1-97. Therefore, the University authority has no jurisdiction to take any decision relating to holding the admission test.

15. In para 34 of the writ petition it has been categorically stated by the petitioners that in view of Section 37(4) of the Act the decision of the University authorities is an encroachment in the power and jurisdiction of the management, as under the Act the mandate of Legislature is clear that the management are free to manage and control, responsible for the affiliated colleges and they are solely responsible for the maintenance and up keep. On the basis of these allegations, the petitioners have stated that the action taken by the University authorities is contrary to the provisions of the Act and as such they have no jurisdiction or authority to pass the impugned resolution and issue such notification. Aggrieved by this action of the respondents the petitioners have filed the present writ petition.

16. Learned counsel for the respondents has urged that from the statements contained in various paras of the writ petition, it is apparent that the aggrieved party is only the management of the institution but the present petition has been filed by the petitioners who are the candidates seeking admission. Therefore, the petition is not maintainable on this ground alone. Learned counsel for the respondents has urged that since these two petitioners have also applied for

admission test, therefore, they have no right to challenge the resolution of the Executive counsel by this petition.

17. Learned counsel for the petitioner has urged that the petitioners have applied to the college, meaning thereby that they have accepted the jurisdiction and authority of the college to pass any order relating to their admission, therefore, it should be presumed that they have not accepted the resolution passed by the University authorities and the notification issued by them.

18. Without going to the merit of the case as to whether the University has right to hold the test and without going to the merit of the case as to the factual controversy involved in this case that the University has also authorised the affiliated colleges to hold test and without going to the merit of the case as to whether the Director of Education has already issued direction to the University to hold the examination and complete the same by 31-7-1997, it will be proper to see whether the alternative remedy as urged by learned counsel for the respondents which is mentioned in Section 68 of the Act is the proper remedy and without going to the Chancellor, the petitioners can approach this Court under Article 226 of the Constitution and whether doctrine of exhaustion of alternative remedy is applicable to the present case. Learned counsel for the petitioner has cited a decision given by the Appex Court of the country in Civil Appeal No. 607 of 1995 arising out of SLP No. 1078 of 1994, Dr. Bal Krishna Agarwal v. State of U.P. This judgment was delivered by the Appex Court on 10-1-1995 (reported in 1995 AIR SCW 800). The Court has observed as under (Para 10) :--

"Having regard to the aforesaid facts" and circumstances we are of the view that the High Court was not right in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy u/s 68 of the Act especially when the writ petition that was filed in 1988 had already been admitted and was pending in the High Court for the past more than five years. Since the question that is raised involves a pure question of law and even if the matter is referred to the Chancellor u/s 68 of the Act it is bound to be agitated in the Court by the party aggrieved by the order of the Chancellor, we are of the view that this was not a case where the High Court should have non-suited the appellant on the ground of availability of an alternative remedy. We, therefore, propose to go into the merits of the question regarding inter se seniority of the appellant and respondent Nos. 4 and 5.

19. It appears from bare reading of the aforesaid judgment that the Apex Court was convinced that since the writ petition remained pending for five years, it will be of no use to dispose of the same on the ground of alternative remedy and to send back to the Chancellor which will cause further delay in the matter, therefore, the Apex Court to my mind disposed of the petition on merits.

20. The next judgment cited by the petitioners is Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, . On the

basis of this judgment learned counsel for the petitioner has urged that existence of alternative remedy to the petitioner is no bar for the petitioners to file a writ petition before this Court under Article 226 of the Constitution of India.

21. Learned counsel for the petitioners has also cited decision reported in *Ram and Shyam Company Vs. State of Haryana and Others*, . This decision was delivered by the Apex Court of the country. On the basis of this decision, learned counsel for the petitioners has urged that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion, a self imposed restraint on the Court, rather than a rule of law. It does not oust the jurisdiction of the Court. Where the order complained against is alleged to be illegal or or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. The other decision which was cited by learned counsel for the petitioners is 1984 UPLBEC 330 *Lakshmi Kant Mani Tripathi v. Vice Chancellor, Gorakhpur University*, which was decided by the Division Bench of our High Court. Learned counsel for the petitioners has urged that it would not be correct to equate the words "not in conformity with the Act" with "not within the jurisdiction conferred by the Act." The former expression is wider in connotation, and would embrace also the orders or decisions which may be within jurisdiction and yet erroneous. An erroneous decision arising from wrong construction of any provision cannot be said to be in conformity with the Act. If the Vice-Chancellor passed certain order, in exercise of his powers u/s 13(1) (a) of the Act and that order is challenged as erroneous, and is found that it is an erroneous exercise of the power conferred by the Act or the Statutes or the Ordinances etc. it cannot be said to be one in conformity with the Act. Therefore, his contention is that impugned resolution and notification for holding entrance test by the University is not in conformity with the provisions of Universities Act and the respondents has no jurisdiction to take such decision and if such powers have been exercised, the petitioner can approach this Court under Article 226 of the Constitution. As stated above, the learned counsel for the petitioners has cited *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, and he placed reliance specially para 12 of the aforesaid decision, to the effect that if an order was passed by the Vice Chancellor, such order could surely be challenged by means of a petition under Article 226 of the Constitution and the dismissal of the petition on the ground of alternative remedy u/s 68 of the Act would not be proper.

22. Learned counsel for the University has placed before me a decision given by this Court in writ petition No. 13585 of 1992 *Modi Tyre Factory, Modi Nagar Ghaziabad v. Nagar Palika, Modi Nagar*. In this case the question arose as to whether the petitioner has alternative remedy to file an appeal before the authority as provided under U.P. Municipality Act against the order passed by the

Taxing Officer. The writ petition was not maintainable. This Court, placing reliance on a decision in *H. B. Gandhi v. Gopi Nath and Sons*, held that the provisions of Section 160 of the Act was ignored while the petitioner filed the petition which suffers from doctrine of exhaustion of alternative remedy and the writ petition was not maintainable. He has also placed a copy of the judgment of the aforesaid case. In para 6 of the aforesaid judgment the Apex Court in *H.B. Gandhi's* case, the Court held that when an hierarchy of appeals is envisaged by a taxing statute, it is generally to be insisted that an assessee must go through the statutory proceedings. The submission of learned counsel for the respondents is that in view of the provision of Section 28 of the Universities Act, the respondents have power to pass any resolution in respect of holding a test for admission to the affiliated colleges also. Learned counsel for the petitioners in reply to the submission of learned counsel for the respondents has urged that the decision which has been taken by the Apex Court in 1968 UPLBEC 1966 is to the effect that the University has no power u/s 28 to hold test for the colleges but this power has been given to the management of the colleges.

23. As stated above, this Court is not going into merits of the case as to whether the University authorities have jurisdiction to hold test for admission to the affiliated colleges or it is the jurisdiction of management of the Colleges u/s 28 of the Universities Act. But as a decision has been taken by the University (sic). This point can be agitated before the Chancellor of the Universities u/s 68 of the Act and in case the petitioners are not satisfied with the order of the Chancellor, then they may come to this Court under Article 226 of the Constitution.

24. With the aforesaid observations, the writ petition is disposed of.

25. Let a copy of this order be given to learned counsel for the petitioners within 24 hours, if possible, on payment of usual charges.