
(2009) 08 AHC CK 0112
In the Allahabad High Court

Saurabh Chaturvedi

APPELLANT

Vs

Adesh Seth and Others

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Constitution of India, 1950 — Article 226

Citation : (2010) 4 AWC 3453

Hon'ble Judges : C.K. Prasad, C.J;D.K. Arora, J

Bench : Division Bench

Final Decision : Allowed

Judgement

C.K. Prasad, C.J.—Saurabh Chaturvedi, appellant herein, aggrieved by order dated 10.04.2009 passed by a learned Judge in C.M. Application No. 35429 of 2009 filed in Writ Petition No. 2817 (MS) of 2008, whereby a direction has been issued that till the next date of listing, no extraordinary general meeting shall be convened to consider the matter regarding expulsion of the writ petitioner and other members of the Lucknow Golf Club, has preferred this appeal under Rule 5 Chapter VIII of the Allahabad High Court Rules, 1952.

2. Shorn of unnecessary details, facts giving rise to the present appeal are that Adesh Seth, respondent No. 1 herein, filed the writ petition, inter alia, praying for the following reliefs:

- i. That by means of an order, direction or writ in the nature of certiorari, to be issued by this Hon'ble Court, whereby part of the impugned order dated 02.06.2008 passed by the Opp. Party No. 1 insofar it relates to the rejection of objections in respect of the members eligible to participate as well as the publication and due prominence of the election schedule, as contained in Annexure No. 1 may kindly be quashed.
- ii. That by means of an appropriate writ or direction including in the nature of mandamus be issued by this Hon'ble Court appointing some officers other than

the opp. party No. 1 who be directed to hold elections as scheduled by allowing only those members who were eligible to participate and cast their votes on 31st March 2005 as already unanimously agreed vide resolution passed by the then undisputed Managing Committee of year 2003; and an administrator be appointed to take charge of the affairs of the club till the holding of the elections.

3. It seems that during the pendency of the writ petition, Devesh Rastogi, respondent No. 5 herein, issued letter dated 04.04.2009 to consider the expulsion of the writ petitioner and one Prashant Chandra from the membership of the Lucknow Golf Club (hereinafter referred to as the "Club"). Said Adesh Seth filed an interlocutory application (C.M. No. 35429 of 2009), inter alia, praying for staying the operation of the letter dated 04.04.2009 and restraining the Club from convening the extraordinary general meeting to consider the expulsion of the writ petitioner and Prashant Chandra from the membership of the Club. The aforesaid interim relief was resisted on various grounds. However, the learned Judge by the impugned order, granted the interim relief and while doing so, he observed as follows:

Keeping in view the fact that the hearing of the instant writ petition as well as the other connected writ petitions is under way and 15.04.2009 is the next date fixed for hearing of all the matters and also the fact that status quo order is operative in Writ Petition No. 2941 (M/S) of 2008 and no date has been fixed for convening extraordinary general meeting for considering the matter regarding expulsion of the petitioner and others from the membership of the club, without going into the merits of the respective contentions of the parties, at this stage, it is provided in the interest of justice that till the next date of listing no extraordinary general meeting shall be convened by the opposite party No. 3 for considering the matter regarding expulsion of the petitioner and other members from the membership of the Lucknow Golf Club.

4. Mr. Sudeep Seth, appearing on behalf of respondents Nos. 1 and 2, raises a preliminary objection to the maintainability of the appeal. He submits that the order impugned is an interlocutory order, which cannot be construed to be a judgment and, hence, the special appeal in terms of Rule 5 Chapter VIII of the Allahabad High Court Rules does not lie. He points out that the interlocutory order did not have the effect of finally disposing off the writ petition. In support of the submission, reliance has been placed on a decision of this Court in the case of Society Madarsa Mazahir Uloom Mubarak Shah v. Muzaffar Hussain (1994) 1 UPLBEC 277, and our attention has been drawn to paragraph 11 of the judgment, which reads as follows:

11. For an order to be treated as ""judgment", in both the stages, it is necessary that it should have the effect of finally disposing of a writ petition and affecting the valuable rights of the parties which might ultimately is given when the writ petition is finally disposed of by the Court.

5. Reliance has also been placed on another decision of this Court in the case of

Ashok Kumar Gupta v. Metal Goods Private Limited 1992 AWC 676, and our attention has been drawn to the following paragraphs of the said judgment:

8. Apart from the Full Bench decision, for the Stamp Reporter, on the cognizability or the maintainability of a special appeal, the Rules of the Court are clear. Section 3 of Part I, Chapter I defines Special Appeal. It reads:

Special Appeal an appeal from the judgment of one judge.

9. There cannot be a Special Appeal under the Rules of the Court which is not against a judgment. The rule is one of prudence, guaranteeing continuity of proceedings subjecting, only a judgment to appeal. The provision of an appeal, Special Appeal, as it is called under the Rules of the Court, 1952, rested in principle on what was ordained in the Letters Patent of 1866. Clause 10 of the Letters Patent clearly spells out the parametres of an appeal. It says, in reference to the context:

Appeal to the High Court from Judges of the Court.

10. And we do further ordain that an appeal shall lie to the said High Court of Judicature Allahabad from the judgment...of one Judge of the said High Court....

10. The Special Appeal in the Rules of the Court, 1952, cannot even be entertained, if it is not against a judgment. Such is the law on this aspect in the Charter which establishes this High Court, a provision preserved in principle, in the Rules of the Court, even today.

6. Ms. Bulbul Godiyal, however, appearing on behalf of appellant, submits that the order restraining the Club to hold the extraordinary general meeting to consider expulsion of members does not, in any way, relatable to the relief claimed in the writ petition. She submits that the order impugned has the trapping of finality and, as such, the special appeal is maintainable. She emphasizes that in the present case, interim order has been passed after taking into consideration the objections raised and, hence, the special appeal is maintainable. In support of her submission, reliance has been placed on a judgment of the Supreme Court in the case of Midnapore Peoples' Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others, and our attention has been drawn to paragraphs 15 and 16 of the judgment, which read as follows:

15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

- (i) Orders which finally decide a question or issue in controversy in the main case.
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
- (iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.
- (iv) Routine orders which are passed to facilitate the progress of the case till its

culmination in the final judgment.

(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

16. The term "judgment" occurring in Clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, "judgments" for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not "judgments" for the purpose of filing appeals provided under the Letters Patent.

7. Having appreciated the rival submission, we find substance in the submission of Ms. Godiyal. Here in the present case, by the impugned order, the Club has been restrained from holding the extraordinary general meeting to consider the expulsion of few of its members. In our opinion, this has the trapping of a judgment and has decided an issue which is not the subject matter of main issue, therefore, the special appeal is maintainable.

8. Mr. Seth, representing respondents Nos. 1 and 2, also questioned the locus standi of the appellant to assail the order impugned. He points out that the appellant is not a person aggrieved and it is the Club, which has been restrained from holding the extraordinary general meeting to consider the expulsion of its members. In this situation, according to his submission, the appellant cannot be said to be the person aggrieved.

9. We do not find any substance in the said submission of Mr. Seth. It is not in dispute that the appellant happens to be the member of the Club and one of the signatories to the requisition for expulsion of the members. In any view of the matter, every member of the Club has the right to see that the Club functions smoothly and according to its Bye-laws and any breach thereof will entitle him to question the same before the appropriate forum. Hence, it cannot be said that the appellant is not a person aggrieved and, hence, he has no locus standi to challenge the order.

10. While assailing the impugned order, Mrs. Godiyal submits that the subject matter of the writ petition was the order dated 2nd of June 2008 passed by the Deputy Registrar, Societies, Chits and Funds, Lucknow whereby he had rejected the objections in respect of the members eligible to participate in the election and for a direction to him to hold elections as scheduled by allowing those members who were eligible to participate and cast their votes on 31st of March, 2005. She points out that the interim relief prayed for and granted by the impugned order, in no way, flows from the main relief sought for in the writ petition. She emphasizes that the writ petitioner (respondent No. 1 herein), by

an interlocutory application had not only prayed for restraining the Club from holding the extraordinary general meeting for his expulsion but also for expulsion of another member, who had not joined as a party in the writ petition. She further points out that the relief of the nature sought in the interlocutory application was not fit to be granted in case a separate proceeding for that is initiated, as no writ lies against the Club, as it is not an agency, instrumentality or authority of the State. According to her, restraining the Club from holding meeting to consider the matter of expulsion of few of its members, interferes with the functioning of the Club. In support of the submission, reliance has been placed on a decision of the Supreme Court in the case of Bihar Public Service Commission and Another Vs. Dr Shiv Jatan Thakur and Others, and our attention has been drawn to paragraph 38 of the judgment, which reads as follows:

38. It is the said interim orders which are impugned in the special leave petitions. We are really unable to see how the writ jurisdiction of the High Court under Article 226 of the Constitution of India could have been availed of to make the said interim orders which interfered with the normal functioning of the BPSC by the constitutional functionaries, even if the High Court desired to have the views of the BPSC as regards the writ petition filed by Dr. Thakur against the BPSC and the functioning of its Chairman. We are indeed unable to understand how such interim orders could be regarded as those which have been made in aid of the final relief, if any, required to be granted in the writ petition or required to maintain status quo pending final disposal of the writ petition. When the nature of the interim orders is seen, it becomes obvious that the High Court has sought to take over the responsibility of carrying on the functions of the BPSC by appointing its own Chairman for conducting a meeting of the BPSC. It is no doubt open to the Court to reject the affidavit filed on behalf of the BPSC by the Chairman on its view that it cannot be regarded as the opinion of the BPSC. But, in a case, even where such decision of the Commission as a body had been called for, the High Court was not enabled, in the purported exercise of its jurisdiction under Article 226 of the Constitution, to make such interim orders which would have made the functioning of the BPSC, a constitutional institution, a mockery in the eyes of the general public and exposed its constitutional functionaries to ridicule. It is true that Article 226 of the Constitution empowers the High Court to exercise its discretionary jurisdiction to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, quo warranto and mandamus or any of them for the enforcement of the rights conferred under the Constitution or for an other purpose, but such discretion to issue directions or writs or orders conferred on the High Court under Article 226 being a judicial discretion to be exercised on the basis of well-established judicial norms, could not have been used by the High Court to make the said interim orders which could not have in any way helped or aided the Court in granting the main relief sought in the writ petition. The said interim orders, therefore, not being those made to maintain the status quo or undo an order, the review of which is sought, so that the ultimate relief to be granted to the party approaching it, may not

become futile, they become wholly unsustainable. Such interim orders are made by the High Court, to say the least, without realization that they had the effect of putting the Chairman and its members to ridicule in the eyes of the general public and making a constitutional institution of the BPSC a mockery. For the said reasons, the interim orders impugned in the SLPs cannot be sustained and are liable to be set aside.

11. Mr. Seth, in answer thereto, submits that the action of the members asking for convening the extraordinary general meeting to consider the expulsion of the writ petitioner was to pressurize the writ petitioner not to pursue the writ petition and when the writ petition was being heard, there was no occasion to hold the meeting to consider the expulsion of the members. According to him, this conduct of the Club and members tends to interfere with the course of justice and on the face of earlier order granting status quo, the learned Judge did not err in restraining the Club from holding the extraordinary general meeting to consider the expulsion of the writ petitioner and another member. In support of the submission, reliance has been placed on a judgment of the Supreme Court in the case of *Pratap Singh and Anr. v. Gurbaksh Singh* 1962 Supp (2) SCR 838, and our attention has been drawn to the following passage from paragraph 10 of the judgment, which reads as follows:

...This, in our opinion, undoubtedly amounted to contempt of court. There are many ways of obstructing the court and "any conduct by which the course of justice is perverted, either by a party or a stranger, is a contempt; thus the use of threats, by letter or otherwise, to a party while his suit is pending; or abusing a party in letters to persons likely to be witnesses in the cause, have been held to be contempts". (Oswald's Contempt of Court, 3rd Edn., p. 87). The question is not whether the action in fact interfered, but whether it had a tendency to interfere with the due course of justice. The action taken in this case against the respondent by way of a proceeding against him can, in our opinion, have only one tendency, namely, the tendency to coerce the respondent and force him to withdraw his suit or otherwise not press it. If that be the clear and unmistakable tendency of the proceedings taken against the respondent, then there can be no doubt that in law the appellants have been guilty of contempt of court, even though they were merely carrying out the instructions contained in the circular letter.

12. Having appreciated the rival submissions, we find substance in the submission of Ms. Godiyal. The relief sought for in the writ petition has been quoted in extenso in the preceding paragraph of the judgment and from its perusal, it is evident that the prayer was to quash the order of the Deputy Registrar whereby he had rejected objections in respect of the members eligible to participate in the election and to hold the election as scheduled and permit only such members who were eligible to cast their votes on 31st March, 2005. Expulsion of a member from the Club is not remotely concerned with the aforesaid relief. The decision to convene the extraordinary general meeting to

consider the expulsion was at the instance of the members of the Club and such an action of the Club could not be challenged in a writ petition. In our opinion, by the impugned order, the learned Judge has decided an issue, which is not the subject matter of the main issue. In the case of Midnapore Peoples" Coop. Bank Ltd. (supra), the Supreme Court has observed that a question, which is not the subject matter of the main issue, even if decided by an interim order, is a judgment, which can be interfered with in special appeal. The order impugned has affected the vital and valuable rights of the members of the Club to consider the expulsion of its members which, in their opinion, are not fit to be retained as members of the Club.

13. Now referring to the authority of the Supreme Court in the case of Pratap Singh (supra), the same has no bearing in the facts and circumstances of the present case. As observed earlier, the dispute in the writ petition is in relation to the members, who are eligible to cast their votes in the election of the office bearers of the Club and had nothing to do with the expulsion of the members. It is entirely a different and distinct issue and, hence, it cannot be said that the extraordinary general meeting to consider the expulsion of the writ petitioner was, in any way, to restrain him from proceeding with the writ petition. It is worth mentioning here that for convening a meeting to consider expulsion of a member, certain number of members is required to be given notice and it is only thereafter that the meeting can be convened. It is difficult to countenance that all such members had joined together so as to prevent the writ petitioner from proceeding with the writ petition.

14. Mr. Seth submits that in view of the order of status quo granted earlier, the Club was not competent to convene the extraordinary general meeting to consider the expulsion of members and in the background thereof, the learned Judge did not err by restraining the Club from holding the meeting.

15. We do not find any substance in the said submission of Mr. Seth. The status quo was in relation to the election of office bearers of the Club and had nothing to do with the expulsion of the members. The order of status quo did not preclude the members of the Club to give notice for holding the meeting to consider the expulsion of a member or the Club to hold such meeting.

16. We hasten to add that any observation made in this judgment shall have no bearing on the merit of the writ petition and shall be confined to the decision of this appeal.

17. In the result, the appeal succeeds and is allowed. The impugned order dated 10.04.2009 passed in C.M. Application No. 35429 of 2009 filed in Writ Petition No. 2817 (M/B) of 2008 is set aside.

18. In the facts and circumstances of the case, there shall be no order as to costs.