

(2004) 07 AHC CK 0140
In the Allahabad High Court
Case No : Special Appeal No. 555 of 2004

State of U.P. and Others

APPELLANT

Vs

Smt. Meera Sankhwar and Others

RESPONDENT

Date of Decision : 12-07-2004

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 10, 5

Constitution of India, 1950 — Article 226

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 29(1)

Citation : (2004) 4 AWC 3162 : (2004) 3 UPLBEC 2179

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : S.C, for the Appellant; T.P. Singh, A.K. Srivastava and Vijay Gautam, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This special appeal has been filed against the impugned interim order of a learned Single Judge dated 1.7.2004. By that order the learned Single Judge has stayed the order of the State Government dated 7.7.2004 by which the writ petitioner (who was the Adhyaksha of Zila Panchayat, Kanpur Nagar) was deprived of her financial and administrative powers pending the enquiry into the charges against her under the Proviso to Section 29(1) of the U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961.

2. Heard learned Counsel for the parties.

3. A preliminary objection has been taken by the learned Counsel for the respondents in this appeal that the impugned interim order dated 1.7.2004 was passed by a learned Single Judge during the summer vacations and hence in view of Chapter V, Rule 10(1) of the Allahabad High Court Rules the said interim order amounts to an order of a Division Bench of this Court and hence no special appeal will lie against it. We do not agree.

4. Chapter V, Rule 10 states :--

"Criminal work shall continue to be dealt with during the vacation by such Judges as may be appointed for the purpose by the Chief Justice.

They may also exercise original, Appellate, Revisional, Civil or writ jurisdiction vested in the Court in fresh matters which in their opinion require immediate attention.

Such jurisdiction may be exercised even in cases which are under the Rules cognizable by two or more Judges, unless the case is required by any other law to be heard by more than one Judge."

5. The provision in the said Rule that the jurisdiction of a Division Bench can be exercised by a learned Single Judge does not mean that the order of a learned Single Judge becomes an order of a Division Bench. It only means that the learned Single Judge can exercise the jurisdiction which normally a Division Bench exercises. This does not mean that the Single Judge becomes a Division Bench. Hence in our opinion the order remains an order of a learned Single Judge and hence a Special Appeal will lie under Chapter VIII, Rule 5 of the High Court Rules.

6. A similar view was taken by a Division Bench of this Court in State of U.P. v. Smt. Dayavati Khanna 1995 (Supp) RD 159.

7. It is then contended by the respondents that no special appeal lies against an interim order.

8. We are of the opinion that by the impugned interim order the learned Single Judge has granted the final relief of permitting the writ petitioner to continue to exercise the financial and administrative powers of Adhyaksha of the Zila Panchayat, Kanpur Nagar. Hence in our opinion this special appeal is maintainable.

9. In this connection we may mention that Chapter VIII, Rule 5 of the Allahabad High Court Rules states that an appeal shall lie to the Court from a judgment. As to when an interim order will be a judgment and when it will not, has been discussed in detail by a Division Bench of this Court in Ashok Kumar Bajpai Vs. Dr. (Smt.) Ranjana Bajpai, .

10. In Committee of Management, Sujobai Girls Inter College, Hathras and another Vs. Manju Keshi Dixit and others, , a Division Bench of this Court held that a special appeal against an interim order of a learned Single Judge in a writ petition was maintainable where it virtually gave the final relief prayed for. That interim order stated :

"Until further orders we direct that the petitioner shall get salary of L.T. Grade teacher and no recovery shall be made in respect of L.T. Grade which he had already received."

11. The Division Bench was of the view that the special appeal was maintainable against that impugned interim order because the said order amounted to a judgment as it gave the final relief prayed for. The Division Bench followed the decisions in (i) U.P. Jr. U.P. Junior Doctors" Action Committee and Others Vs. Dr. B. Sheetal Nandwani and Others, ; (ii) State of U.P. and Ors. v. Committee of Management, 1994 (3) High Court Views Daily (Allahabad) 153; (iii) State of U.P. and Anr. v. Smt. Dayawanti Khanna 1994 ALR 140; (iv) Baldev Singh and Another Vs. Smt. Vidya Devi and Another, and (v) State of U.P. and Ors. v. Km. Renu Tiwari and Ors. 1993 (2) ALR 233.

12. Similarly in State of U.P. and Ors. v. Param Hansh Singh 2001 (3) AWC 2160, a similar view has been reiterated. It was held therein that if an interim order amounts to final relief claimed in the writ petition, the special appeal is maintainable. The Court held as under :

"In our opinion, the contention raised has no substance. The provisions of " Chapter VIII, Rule 5 of the Rules do not prohibit filing of a special appeal against an interim order. If the interim order is of such as nature which grants principal relief claimed in the writ petition, the special appeal against such an order cannot be held to be barred."

13. A similar view has been reiterated in Hind Lamps Limited Vs. Deputy Labour Commissioner, Agra and Another, and State of U.P. v. Kumari Renu Tiwari and Ors. (1993) 2 UPLBEC 1325; Prof. Y.C. Simhadri, Vice Chancellor, Y.C. Simhadri, Vice Chancellor, B.H.U. and Others Vs. Deen Bandhu Pathak, . In all these cases it was held that an interlocutory order which decides the matter in dispute or affects vital and valuable rights of the parties and which works serious injustice to the parties concerned, is a judgment and is as such appealable.

14. In Sandeep Agarwal and Others Vs. Adarsh Chadha and Others, , the Court held that when the order of the Court has the trappings of a final order it would be appealable for the reason that there may not be final adjudication of the case nor the proceedings may come to an end, but if the order grants relief which could have been granted after final adjudication on the disputed questions, it would amount to a judgment.

15. In Society Madarsa Mazahir Uloom Mubarak Shah, Saharanpur v. Muzaffar Hussain 1994 AWC 55, it was held that where the order passed by the Court affects valuable rights and amounts to prehearing the judgment, it would be appealable. While deciding the case, the Court placed reliance upon a large number of judgments including Nagar Palika Inter College, Jaunpur v. Dr. Hawaldar Singh and Ors. 1993 AWC 1362 and Committee of Management of S.S.V. (Post Graduate) College Vs. Sushil Kumar Sharma and Others, , etc.

16. In view of the above decisions we are clearly of the opinion that the special appeal is maintainable as it has been filed against an interim order granting the final relief.

17. In *Y.C. Simhadri, Vice Chancellor, B.H.U. and Others Vs. Deen Bandhu Pathak*, a Division Bench of this Court has held that a special appeal will lie against an interlocutory order where the said order contains the traits and trappings of finality.

18. In the aforesaid decision the special appeal was directed against an order of the learned Single Judge who had entertained an application filed by the writ petitioner under Article 215 of the Constitution on the allegation that an earlier order passed by the learned Single Judge had not been complied with. The Division Bench held that a special appeal was maintainable against this interlocutory order.

19. In *Sandeep Agarwal and Others Vs. Adarsh Chadha and Others*, a Division Bench of this Court held that the special appeal against an interim order of a learned Single Judge directing the Registrar to hold election on the basis of the list of the voters valid on 21.3.1999 and also directing to ignore all resolution passed subsequently was maintainable because the interim order has the trappings of a final order. The Division Bench referred to a large number of Supreme Court decisions on the point.

20. In *Hind Lamps Limited Vs. Deputy Labour Commissioner, Agra and Another*, a Division Bench held that a special appeal against an interim order of the learned Single Judge to be maintainable. By his order the learned Single Judge had stayed the order dated 27.3.2002 passed by the Deputy Labour Commissioner, Agra granting permission to the appellant to lay off its workmen and further directing that a fresh application may be made complying with the rules and the same may be disposed off expeditiously. The Division Bench held that such an interim order should not have been passed and a special appeal lies against it.

21. In *Nagar Palika Inter College v. Dr. Hawaldar Singh* 1993 AWC 1362, a learned Single Judge of this Court directed that the petitioner should be appointed as the Principal of the College within a month and be paid salary. Against this interim order a special appeal was filed before a Division Bench which set aside the interim order holding that it has granted the final relief and hence was illegal. This decision relied on the Supreme Court decision in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*.

22. In *State of U.P. v. Kumari Renu Tiwari* (1993) 2 UPLBEC 1325, a special appeal was filed against the interim order of this Court of a learned Single Judge by which the petitioner was directed to be paid salary in a particular grade and to be given other benefits available to regularly appointed lecturers. The Division Bench held that by the interim order practically the final relief has been granted which could not have been done. Accordingly, the special appeal was held to be maintainable and was allowed.

23. In *Union of India v. Modilufi Ltd.* 2003 (4) AWC 2796 (SC), a three Judges Bench of the Supreme Court (vide Paras 16 and 17) held that by an interim order

the final relief in the case cannot be granted.

24. In Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , the Supreme Court deprecated the practice of granting an interim order which practically gave the principal relief sought in the petition.

25. Similar view was taken by the Supreme Court in Union of India v. Jain Shudh Vanaspati Ltd., Civil Appeal No. 11450 of 1983, in which the Supreme Court observed :

"After having learned Counsel for the rival parties, we are of the opinion that the interim order passed by the High Court on November 29, 1983, is not warranted since it virtually grants to the respondents a substantial part of the relief claimed by them in their writ petition. Accordingly, we set aside the said order."

26. The above view was followed by the Supreme Court in State of Rajasthan and Others Vs. Swaika Properties and Another, .

27. A similar view again taken by the Supreme Court in State of West Bengal and Others Vs. Calcutta Hardware Stores and Others, , where the Supreme Court again administered a strong admonition deprecating the practice of the High Court of granting interim orders which practically have the effect of granting the final relief prayed for.

28. In U.P. Junior Doctors' Action Committee and Others Vs. Dr. B. Sheetal Nandwani and Others, , the Supreme Court observed :

"It is a well known rule of practice and procedure that at interlocutory stage a relief which is asked for and is available at the disposal of the matter is not granted."

29. In Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, , the Supreme Court observed that admission should not be granted in all educational institution by means of interim directions.

30. In Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa , the Supreme Court again reiterated that an interim order passed pending a writ petition which has the effect of allowing the writ petition should not have been passed.

31. A similar view was taken by the Supreme Court in Commissioner/Secretary to Government Health and Medical Edu. Deptt. Civil Sectt., Jammu Vs. Dr Ashok Kumar Kohli, and in Bank of Maharashtra Vs. Race Shipping and Transport Co. Pvt. Ltd. and another, .

32. Learned Counsel for the respondents (writ petitioners) invited our attention to a two Judges Bench decision of the Supreme Court in Deoraj Vs. State of Maharashtra and Others, and on the strength of Paras 12 and 13 of the same submitted that the said interim order could be passed granting final relief.

33. We have carefully perused the judgment of the Supreme Court in *Devraj v. State of Maharashtra* (supra) and we are of the opinion that the said decision is wholly distinguishable. In that case, the facts were that in an election only one nomination was filed which was found to be in order and was not withdrawn. The time for filing nominations, scrutiny and withdrawals was over and there was no contest. Nothing remained to be done. Hence, in these very rare and exceptional circumstances the Supreme Court held that since it was a fool proof case interim order can be granted giving final relief of declaration of the result.

34. In our opinion in the present case, it cannot be said that there is a fool proof case in favour of the writ petitioner. In the present case, the facts are that there were several serious allegations against the writ petitioner and an inquiry was set up u/s 29 of the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam in which the District Magistrate was initially appointed as the Inquiry Officer. The writ petitioner alleged that the District Magistrate was prejudiced against her and the Inquiry Officer should be changed. Hence the State Government appointed the Commissioner as the Inquiry Officer. After holding a preliminary enquiry the Commissioner found that out of the 15 charges against the writ petitioner as many as eight charges were prima facie found proved.

35. In this connection we may refer to Section 29(1) of the said Adhiniyam :--

"If in the opinion of the State Government the Adhyaksha or the Up-Adhyaksha while acting in place of Adhyaksha willfully omits or refuses to perform his duties or functions under this Act or abuses the powers vested in him or is found to be guilty of misconduct in the discharge of his duties, [or because physically or mentally incapacitated for performing his duties] the State Government, after giving the Adhyaksha or Up-Adhyaksha, as the case may be, a reasonable opportunity for explanation may by order removed him from office [and such order shall be final and not open to be questioned in a Court of Law]:

Provided that where in an enquiry held by such person and in such manner as may be prescribed, an Adhyaksha or Upadhyaksha is prima facie found to have committed financial and other irregularities such Adhyaksha or Upadhyaksha shall cease to exercise and perform the financial and administrative powers and functions, which shall, until he is exonerated of the charges in the final enquiry, be exercised and performed by a committee consisting of three elected members of the Zila Panchayat appointed in this behalf by the State Government."

36. Under the Proviso to Section 29(1) in the preliminary inquiry if there is prima facie satisfaction in the Enquiry Officer that the Adhyaksha has committed financial and other irregularities he can temporarily be deprived of his financial and administrative powers and functions, which may be restored if he is exonerated of the charges in the final enquiry. At the present stage the enquiry is still going on and the learned Commissioner has found 8 of the 15 charges to be prima facie proved against the petitioner. This Court cannot sit in an appeal over this prima facie finding of the Commissioner, vide *Ranjeet Singh Vs. Ravi*

Prakash, .

37. In *Mukesh Rajput Vs. State of U.P. and Others*, , a Division Bench of this Court held that prima facie findings under the Proviso to Section 29(1) are subject to the findings in the regular inquiry. This Court under Article 226 of the Constitution cannot sit as a Court of Appeal over the prima facie findings of the Commissioner. Moreover, the order under the Proviso to Section 29(1) was only interlocutory in nature since the guilt or innocent of the petitioner has yet to be established in the regular inquiry. For these reasons the Division Bench dismissed the writ petition.

38. Sri T.P. Singh, learned Counsel for the respondents submitted that procedure for holding the inquiry was not followed. Since we are allowing this appeal only on the ground that by an interim order final relief has been granted which could not be validly done, we are not going into this point submitted by Sri T.P. Singh. He can urge it at the time of final hearing of the writ petition.

39. We are further of the opinion that this is not a fit case for interference under Article 226 of the Constitution. Writ jurisdiction is discretionary jurisdiction vide *Chandra Singh Vs. State of Rajasthan and Another*, ; *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, ; *Ludhiana Central Co-operative Bank Ltd. Vs. Amrik Singh and Others*, , etc. Hence even when there is an error of law this Court is not bound to interfere.

40. On the facts of the case we are of the opinion that apart from what we have stated above the learned Single Judge should not have interfered with the order dated 7.6.2004, and he should only have directed that the enquiry be completed expeditiously. The enquiry is still pending and hence it would be inappropriate to interfere with the impugned order of the State Government at this stage, particularly by an interim order.

41. Shri T.P. Singh learned Counsel for the respondent in this appeal has submitted that even if the administrative and financial powers of the Adhyaksha were to be taken away they should have been given to the District Magistrate or some other officer, instead of giving them to members of the Zila Panchayat. We cannot agree with this submission. The Proviso to Section 29(1) clearly mentions that such powers can only be given to three elected members of the Zila Panchayat. Shri Singh, then urged that the three persons appointed had contested election against the respondent. There is nothing in the Proviso to Section 29(1) that a person who had contested election against the Adhyaksha cannot be a member of the three member committee. All that the proviso requires is that he should be an elected member of the Zila Panchayat.

42. For the reasons given above we set aside the impugned interim order of the learned Single Judge dated 1.7.2004 and request the Court before whom the matter may come up now to decide the writ petition itself finally at an early date.

43. Appeal is allowed.

44. The parties may approach Hon"ble the Chief Justice with an expedite application.

45. Let a copy of this order be given to the learned Counsels for the parties on payment of usual charges by tomorrow.