

State of U.P. and ors. Vs. Committee of Management and ors.

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Court : Allahabad

Decided On : Jul-06-2009

Reported in : 2009(4)AWC4033

Judge : S. Rafat Alama and ;Sudhir Agarwal, JJ.

Appellant : State of U.P. and ors.

Respondent : Committee of Management and ors.

Judgement :

1. We have heard Sri V.K.S. Chaudhary, learned Senior Advocate assisted by Sri B.N. Singh, Advocate on Intervener Application filed on behalf of Adhivakta Samanvay Samiti U.P. through its Secretary Sri R.K. Ojha, Advocate, Office at 198 Lukerganj, Allahabad, learned Standing Counsel for the appellant (in Special Appeal No. 517 of 2007) and Ch. N.A. Khan and other learned Counsels appearing for the parties in all the connected matters.

2. The applicant has approached this Court with the prayer that it should be allowed to be heard in the above mentioned appeal alongwith other connected matters so that the applicant may support the judgement of Hon'ble Single Judge impugned in this appeal holding that Muslims are not entitled to be recognised as religious minority in the State of U.P. and accordingly, Madarsas run by Muslim communities are not entitled for grant in aid since they cannot be treated as minority religious institutions.

3. At the outset this Court enquired from the learned Counsel for the applicant as to how this application is maintainable, inasmuch as, whether the applicant is supporting the petitioner or the respondents of the writ petition.

4. Learned Counsel for the applicant submitted that he is supporting the judgement since it has decided an issue of national importance. Further, in respect to one prayer in the writ petition he is supporting the petitioner and in respect to the other prayer in the writ petition he is supporting the respondents though the grounds of support are absolutely different. He further submitted that since he is supporting the judgement on certain issues decided by Hon'ble Single Judge, therefore, the applicant is entitled to be heard in these appeal and the intervention deserved to be allowed.

5. In order to show the maintainability of the application reliance is placed on Chapter XXII Rule 5-A of the Allahabad High Court Rules, 1952 (hereinafter referred to as the 'High Court Rules') and Order I Rule 8-A of the Code of Civil Procedure (hereinafter referred to as the 'CPC'). It is contended that though Order I Rule 8-A CPC provides that the Court may hear a person but the word 'may' in the facts and circumstances and the purpose for which the rule is made, is liable to be construed as 'shall'. In support of the above submission reliance is placed on a passage from 'Interpretation of Statutes' by Jagdish Swaroop and 'Principles of Interpretation of Statutes' by G.P. Singh. Besides, Sri Chaudhary cited authority of the Apex Court in *The Collector (District Magistrate) Allahabad and Anr. v. Raja Ram Jaiswal* : AIR 1985 SC 1622 (para 19); *Saraswati Industrial Syndicate Ltd. v. CIT* : 1999(3) SCC 141 (para 12); *State of Bihar and Anr. v. Bal Mukund Sah and Ors.* : AIR 2000 SC 1296 (para 14) and *Municipal Council Hansi, District Hissar v. Maniraj and Ors.* : AIR 2001 SC 1861 (para 6). He further argued that Section 107 CPC confers power upon the appellate Court which is possessed by the trial court and, therefore, the provision of Order 1 Rule 8A C.P.C. would have application in Special Appeal also. Sri Chaudhary further argued that the applicant is trying to protect the public fund from being squandered by the State authorities for purposes other than public and national interest and it is his fundamental duty under Article 51-A of the Constitution of India to protect the same. Besides, such grant-in-aid to the institutions in question is also violative of Article 27 of the

Constitution of India, therefore, the applicant is entitled to be heard in the matter and to advance his submissions.

6. On the contrary, all the parties in the appeals whether representing appellants or the respondents opposed the intervention application and contended that the applicant has no interest in the matter in issue in writ petition but certain issues which were not involved directly or otherwise in the writ petition but have been decided by Hon'ble Single Judge on his own and now to support those issues only the present application has been filed, though the applicant is neither supporting the petitioner nor the respondents in the writ petition but a different case altogether so as to destroy the case of both the sides. Sri J.K. Tiwari, learned Standing Counsel placed reliance on the Apex Court's decision in *Rajasthan Public Service Commission and Anr. v. Harish Kumar Purohit and Ors.* : 2003(5) SCC 480 and *Ravi Rao Gaikwad and Ors. v. Rajaji Nagar Youth Social Welfare Assn. and Ors.* : 2006(5) SCC 62. The other learned Counsel adopted the arguments of Sri Tiwari and said that the application should be rejected.

7. For permitting a person to intervene in a pending matter, no specific provision has been made either in the CPC or in the High Court Rules. The two provisions on which reliance has been placed on behalf of the applicant are Chapter XXII Rule 5-A of the High Court Rules and Order I Rule 8-A of CPC. Therefore, first of all we propose to consider the above two provisions.

8. Chapter XXII Rule 5-A of the High Court Rules reads as under:

5-A. Hearing of persons not served with notice.-At the hearing of the application, any person who desires to be heard in opposition to the application and appears to the Court to be a proper person to be heard, may be heard notwithstanding that he has not been served with notice under Rule 2.

9. A bare perusal of Rule 5-A shows that where a person in the writ Court appears and requests to be heard in opposite on the petition and and it appears to the Court that he is a proper person only then he may be heard even though no notice has been served upon him since he was not a party impleaded in the writ petition. To attract Rule 5-A of the High Court Rules, two things are necessary; (1) a

person desired to be heard in opposition to the application and (2) he appears to be a proper person to the Court that he should be permitted to be heard. Here the present application is not one seeking intervention for opposing the writ petition. Secondly, in the dispute involved in the writ petition, the learned Counsel for the applicant could not show as to how he is a proper person to be heard. Therefore, in our view, the reference made and reliance placed on Rule 5-A is misconceived and does not apply to the present application. We have no manner of doubt that wherever and whenever the Court finds that a person is a proper party to be heard in a matter he should be allowed opportunity to be heard but simply because someone has come and requested to be heard, he cannot be allowed as a matter of course and that too, which all the parties in the writ petition are opposing.

10. Then we come to Order I Rule 8-A CPC which reads as under:

8-A. Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings.-While trying a suit, the Court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the Court may specify.

11. To attract Rule 8-A three things are required: (1) While trying the suit the Court should be satisfied that a person or body of persons is interest in any question of law; (2) such question of law must have directly and substantially in issue in the suit and (3) it is necessary in the public interest to allow such person or body of person to present his or its opinion on the question of law.

12. Besides, the power of the Court to permit such person or body of persons to present his or its opinion is discretionary, inasmuch as, the Rule says that the Court may permit such person or body of persons. Sri Chaudhary vehemently submitted that the word 'may' has to be read as 'shall'. In 'Principles of Statutory Interpretation' by Sri G.P. Singh, at page 447 while commenting upon the proposition as to when a provision would be read as mandatory or directory, the following observations of Lord Cairns have been quoted:

There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so.

Where a power is deposited with a public officer for the purpose of being used for the benefit of person specifically pointed out with regard to whom a definition is supplied by the Legislature of the condition upon which they are entitled to call for its exercise, that power ought to be exercised and the court will require it to be exercised.

13. The above proposition in our view, is not at all necessary to be gone in this matter. In our view, Rule 8-A by itself has no application in the present case. Therefore, It would not be necessary for us to go into the academic question as to whether the word 'may' in Rule 8-A should be read as 'shall' or not. The very first condition to attract Rule 8-A is that there is a question of law. Sri Chaudhary has submitted before us that according to him the following questions are involved in this matter which are pure questions of law and, therefore, the applicant as intervenor is entitled to be heard:

1. Whether Muslims can be termed as a minority in Uttar Pradesh?
2. Is the Madarsa, where religious teaching is imparted, is entitled to grant-in-aid from the State Government?
3. Is the Anjuman Madarsa Noorul Islam Dehra Kalan Ghazipur a 'Minority Institution' which the meaning of Articles 29(1) and 30 of the Constitution?

14. Sri B.N. Singh, Advocate has filed written arguments also today in the Court and in para 4 thereof also the above questions have been mentioned. A bare reading of the above questions, in our view, shows that the above questions cannot be said to be pure questions of law. On the contrary, they are questions involving investigation into facts and, at the best, some of them may be said to be

mixed questions of facts and law. The first question formulated by the applicant, as to whether Muslims can be termed as a minority in U.P. cannot be decided by construing only some statutory provisions but needs a detailed investigation into several factual information needs collection of evidence and scrutiny threadbare of such facts. Similar is the position with respect to questions No. 2 and 3. If a question would have been raised 'what minority is', the same may be said to be a pure question of law needs to be decided in the light of constitutional provisions contained in Articles 29 and 30 of Constitution of India but when the question is as to who is a minority and whether a particular community can be said to be minority etc., such questions cannot be said to be a pure question of law. As said above, these questions involve collection of evidence, relevant facts and figures and, therefore, are questions of fact or at the best mixed questions of facts and law. The three issues/questions which have been formulated by the applicant on which it intends to address the Court, since in our view, cannot be said to be the questions of law, therefore, Rule 8-A as such has no application in the case in hand and cannot help the applicant for maintaining the application in question.

15. Then comes the basic questions as to who intervenor is and when intervention application can be allowed.

16. In *Saraswati Industrial Syndicate* (supra) the Apex Court categorically held that purpose of granting an intervention application is to entitle the intervenor to address argument in support of one or the other side. Therein the persons who filed the intervention application supported the case of the assessee and opposed the view taken by the Income Tax Department. Therefore, the Apex Court allowed the intervention application and heard intervenor in that case. This view was reiterated in *State of Tamil Nadu v. Board of Trustees of the Port of Madras* : 1999(4) SCC 630.

17. Again it came to be considered in *Ravi Rao Gaikwad* (supra) where an order of the High Court permitting the intervenors to participate in the case before Hon'ble Single Judge was under challenge. The Apex Court considered as to what was the issue involved in the writ petition before the Hon'ble Single Judge and thereafter observed that the persons making impleadment application cannot throw any light

on those matters and relying on *Saraswati Industrial Syndicate (supra)* set aside the order of the High Court whereby the intervenors were allowed to participate in the matter. This has been followed in *Ram Nandan Singh and Ors. v. A.G. Office Employees Co-op. House Construction Society Ltd., Ranchi and Ors. : JT 2007(12) SC 86*.

18. Coming to the judgements relied upon by the applicant we find that in *Bal Mukund Sah (supra)* the intervenor supported general category candidates who had filed the writ petition before the High Court. In *Maniraj (supra)* the property of a person seeking intervention was sought to be taken away without either impleading him or hearing him. Therefore, the Court held that he was a necessary and proper party though he had filed the application titled as 'Intervenor'. This fact is evident from the following in para 6 of the judgment:

In the circumstances, the application made by the appellant ought to have been allowed when the direction adversely and seriously affected the valuable rights of the appellant over the immovable property in dispute.

19. Similarly, in *Raja Ram Jaiswal (supra)* serious allegations were made against Hindi Sahitya Sammelan and its impleadment application was rejected by the High Court. The Apex Court found that the allegations of mala fide and ulterior motive levelled against Hindi Sahitya Sammelan cannot be heard in its absence and observed that the High Court wrongly rejected the application for impleadment. It also found that Sammelan was a proper party to be heard and this was not disputed by Sri Nariman, learned Counsel appearing for the appellant in that case.

20. Therefore, in all the three cases, we find that the intervention was allowed either when the person was supporting one of the party or that he was found to be a necessary and proper party to the dispute before the Court. Here the Madarsas were allowed grant-in-aid by the State Government by issuing a Government Order in the year 1996. Some of the Madarsas, whose list was given, were allowed the said benefit. Some more Madarsas (to be precise 67 Madarsas) were sought to be extended the said benefit by means of an order dated 17.5.2004, which did not include the institution of the petitioner-respondent in this appeal, i.e., Anjuman Madarsa Nooral Islam Dehra Kalan, Ghazipur. Therefore, the said

institution challenged the said order on the ground that that non inclusion of the petitioner-respondent's name in the said list was illegal. There is no challenge to the Government Order of 1996 which is a matter of policy to provide grant-in-aid to the Madarsa. What the applicant intervenor intends to submit is that no grant-in-aid whatsoever could be allowed to any Madarsa at all and, therefore, the order dated 17.5.2004 challenged in the writ petition deserves to be quashed and to this extent the intervenor is supporting petitioner respondent No. 1 in the writ petition but it is opposing their further prayer to provide grant-in-aid to this institution for the reason that according to the intervenor-applicant such grant to Madarsas is illegal. Ex facie, the intervenor's case is absolutely different. In absence of any challenge to the Government Order of 1996, neither any such plea can be allowed to be raised nor can be heard by this Court in a matter where such an order is not at all in dispute. On the contrary, the parties in the writ petition have placed reliance on the said Government Order for taking its benefit. Ex facie, therefore, it is evident that the intervenor's application is not supporting either of the party in the writ petition but intend to make out a new case of its own.

21. Moreover, the appeals before us have been filed alleging that the issues decided by Hon'ble Single Judge never arose in the matter and the respondents before us also agree so far as this aspect is concerned. The intervenor has categorically said in the application in para 5 that all the parties are colluding for the said purpose. Para 5 of the application is reproduced as under:

5. That it appears that both State of U.P. and the Committee of Management and Anjuman Madarsa Noorul Islam Dehra Kalan, have filed appeals, from the grounds of appeal and the contents of appeals it appears that the both State of U.P. and the committee of Management Anjuman Madarsa are colluding with each other on main question decided. This is a question of national importance and is likely to affect the whole country. In such State of affairs is necessary and the intervener who has filed the application on the very date the special appeal No. 322 of 2007 was listed for admission. The intervener must be heard, it appears that no order has been passed on the intervener application it appears no application came before the court and it not listed for orders.

22. It is thus evident that the applicant intervenor neither proposes to support any of the parties in the writ petition nor the issues raised by the parties. We, therefore, do not find that this application as an intervenor can be allowed and the applicant can be permitted to advance submissions opposing all the parties in the writ petition. In fact, the remedy lies elsewhere. The intervenor-applicant, if so advised, may avail such remedy as admissible in law before the appropriate forum with appropriate pleadings, grounds, reliefs, etc..

23. In view of the above discussion, we are clearly of the view that this application is not maintainable.

24. Rejected.

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