

## **Ganga Singh Chauhan and Dr. Brij Mohan Lal Gupta Vs State of U.P. and Others**

**Court:** Allahabad High Court

**Date of Decision:** July 3, 2010

**Acts Referred:** Constitution of India, 1950 " Article 226  
Societies Registration Act, 1860 " Section 4

**Hon'ble Judges:** V.K. Shukla, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### **Judgement**

V.K. Shukla, J.

Present review application has been filed against the judgment and order dated 06.11.2007 passed by this Court, wherein

this Court proceeded to quash the order dated 21.10.2005 passed by the Joint Director of Education, asking the Prabandh Sanchalak of the

institution to get the list of the member from Ganga Singh Chauhan as well as recognition accorded by the Regional Level Committee on 17.2.2006

as well as attestation of signature and the Joint Director of Education, Bareilly Region, Bareilly has been directed to appoint Prabandh Sanchalak

of the institution forthwith for holding election as per provision as contained in Scheme of Administration, as tenure of erstwhile Committee had

already run out. Against the said judgment in question Special Appeal No. 1743 of 2007 had been filed and therein stand was taken that after the

judgment had been rendered in the aforesaid writ petition subsequent development had taken place, as Sub-Divisional Magistrate in exercise of

authority vested u/s 25(1) of the Societies Registration Act, 1860 accepted the election, and aggrieved against the same, writ petition No. 53229

of 2007 had been filed and the writ petition was dismissed by this Court. The Special Appeal Bench taking note of the fact that there were two

orders holding the field, which had left the order passed by the Sub-Divisional Magistrate undisturbed, holding that there were 20 members of the

society and there was another judgment, which is under review and in such a situation Special Appeal Bench was of the view that there should not

be conflicting orders holding the field, and for this purpose liberty was given for review of the order and further it was also mentioned that Sri

Baghel had also objection that the order dated 17.02.2006 was not part of the writ petition, respondent No. 6 may consider as to whether the

order should also be made part of the petition, and if so, may amend the petition, so that same may be squarely challenged. After the said liberty

was reserved, the Special Appeal Bench proceeded not to express any otherwise opinion on the findings and merits of the reasoning given by this

Court and disposed of the appeal with direction to apply for Review. Pursuant to this liberty being accorded, present Review application has been

filed.

2. Sri Prabhakar Awasthi, learned Counsel for the applicant, contended with vehemence that the order passed by the Sub-Divisional Magistrate as

affirmed by the Prescribed Authority resolves the controversy, as such order passed by this Court is liable to be reviewed and further once the

order dated 17.02.2006 had not at all been made part of the writ petition, by no stretch of imagination, same could have been quashed, as such

review application is liable to be allowed.

3. Countering the said submissions, Sri G.K. Singh, Advocate, on the other hand, contended that in the present case original record had been

summoned, parties were given full liberty to go through the said record and after respective arguments had been advanced at length and whatever

finding has been returned the same is record based, and as far as order passed by the Prescribed authority is concerned, it was merely based on

will and nothing beyond the same, and this Court has relegated the matter to be decided by civil court, as such same cannot be treated to be

conclusive, having any bearing on the categorical finding recorded by this Court, as such review application is liable to be dismissed. Coupled with

this, entire record had been summoned and by a writ of certiorari said record has been set right, and as such no objection can be taken in respect

of quashing of the order dated 17.02.2006, in such a situation review application deserves to be dismissed.

4. After respective arguments have been advanced, factual position which has emerged in the present case on the basis of the record produced has

been as follows:

The last valid election had been held on 26.11.2000 and tenure of the said Committee of Management had been until 26.11.2003. In the said

election, which had been held, three life members and seventeen ordinary member found enrolled participated Dr. Brij Mohan Gupta was elected

as Manager, Ganga Singh Chauhan as President, J.K. Chandel Vice President, Nathhu Singh as Assistant Manager and Mewa Singh as Treasurer.

Seventeen ordinary members who had participated in the said election, their tenure was three years and thereafter their membership automatically

came to an end as per Clause 4(3)(b) of Scheme of administration. Ganga Singh Chauhan claiming to be the President proceeded ahead by inviting

application for enrolment of member by means of advertisement in the news paper dated 18.9.2003. Said membership was not accepted and the

election based on the said proceeding, was also not approved as said membership had not been ratified by General Body. This Court in its earlier

order dated 17.9.2005 inter se parties has given various detailed reasons as to why such proceeding are of no consequence, said order is final and

binding inter se parties, and net effect of the said proceedings are that there are only three life members of the society left with no ordinary

members. As far as Ganga Singh Chauhan is concerned, admittedly his tenure had run out way back in the year 2003 and as such he could not

have been accepted as President of the Managing Committee of the institution in question thereafter and he had no authority whatsoever to

proceed with enrolment of member. It is evident from the counter affidavit filed on his behalf that he undertook proceeding for enrolment of the

member on 21.1.2005. Ganga Singh Chauhan admittedly was elected as President of the Managing Committee of the institution on 26.11.2000,

said period had already run out and next elections, which were set up by him dated 23.11.2003 was not at all accorded approval by the authority

concerned i.e. by Regional Level Committee by order dated 7.5.2004, wherein categorical direction was made for appointment of Prabandh

Sanchalak and said order of Regional Level Committee was approved by this Court on 7.9.2005. Once order dated 7.9.2005 was passed by

Regional Level Committee, and same was affirmed by this Court, then Ganga Singh Chauhan had no authority to enrol the member of the society

as his status was that he continued to be life member of the society and nothing beyond it. Joint Director of Education in the present case clearly

erred in law in giving direction to treat Ganga Singh Chauhan as President and take list from him of electoral college.

5. In the present case, Joint Director of Education, as well as Regional Level Committee, at no point of time , have tried to find out as to whether

electoral college and members have been validly enrolled or not and merely proceeding on the presumption that Ganga Singh Chauhan is President

of the society, whatever list was supplied by him, same has been accepted as gospel truth. This was wholly unjustifiable, unreasonable approach on

the part of the Joint Director of Education and the Regional Level Committee, while proceeding to deal with the matter, ignoring the provisions of

bye-laws of the society and Scheme of Administration. Counter affidavit filed by Ganga Singh Chauhan clearly proceeds on the presumption that

he proceeded to enrol the member by claiming himself to be the President of the society, ignoring the fact that he had been elected as President, as

per the provision of Scheme of Administration, and said period had already run out, and as such he had no authority under law to claim himself as

President."

6. Taking note of the aforesaid facts, this Court on 16.11.2007 passed following order:

In these circumstances and in this background, order dated 21.10.2005 passed by the Joint Director of Education asking the Prabandh Sanchalak

of the institution to get list of the member from Ganga Singh Chauhan is quashed as well as recognition accorded by the Regional Level Committee

on 17.2.2006 is quashed and consequential attestation of signature is also quashed, Joint Director of Education, Bareilly Region, Bareilly is

directed to appoint Prabandh Sanchalak of the institution forthwith for holding election as per provision as contained in Scheme of Administration,

as tenure of erstwhile Committee had already run out and there are only three life members of the society left and as such it would be expedient to

take into account provision of bye-law of society and proceed accordingly.

In case, it is not feasible, to hold election, and there are only three members of the general body, steps be undertaken for dissolution of Society u/s

13B of Societies Registration Act, 1860 and State Government would be free to take up the institution, in accordance with law.

With these observations, writ petition are allowed.

7. In the meantime as per review application, the elections of the society of Dr. Sudama Prasad Bal Vidya Mandir Kutchery Road, Shahjahanpur

was held, wherein Ganga Singh Chauhan claims to have been elected as President and Sri Bal Krsihna Gupta as Manager. Entire papers in regard

to the said elections were transmitted to the Assistant Registrar, Firms Societies and Chits for the purpose of registration of the list of office bearers

u/s 4 of the Societies Registration Act. To the said list so transmitted Dr. Brij Mohan Lal Gupta filed objection and the matter was referred to the

Prescribed Authority u/s 25 of the Societies Registration Act for authenticity of the elections held on 25.11.2005. Prescribed Authority in its turn

decided the dispute based on the will dated 13.08.1965 and mentioned therein that Ganga Singh Chauhan was the President and Bal Krishna

Gupta Manager and had proceeded to declare the validity of the election submitted by them qua the society.

8. Entire dispute decided by the Prescribed Authority is based on the will and nothing beyond the same. This Court on account of the decision

being based on registered will did not find any reason to interfere in the finding of fact recorded by the Prescribed Authority. The fact that question

of will was involved, is fully reflected from the order passed by learned Single Judge in writ petition No. 53229 of 2007, and validity of will could

not have been gone into in exercise of authority of judicial review. Relevant extract of the said judgment is being quoted below:

By means of present writ petition petitioner has challenged the order dated 10.08.2007 passed by respondent No. 1 Prescribed Authority/Sub-

Divisional Magistrate, district Shahjahanpur, by which the objection of the petitioner No. 2 has been rejected and the objection of Ganga Singh

Chauhan and Bal Krishna Gupta has been accepted and Ganga Singh and Bal Krishna Gupta has been declared President and Manager of the

Committee of Management, respectively.

Heard Sri R.C. Dwivedi, learned Counsel for the petitioner, Sri Indra Raj Singh and Sri Ratan Deep Mishra, learned Counsel appearing on behalf

of the opposite party and perused the impugned order.

Petitioner No. 2 claimed to be the President of the society on the basis of will dated 13.10.1969 of Dr. Sudama Prasad, which was held to be

unregistered will while the claim of the opposite party has been accepted on the basis of registered will of Dr. Sudama Prasad dated 13.08.1965.

I do not find any reason to inter with the finding of fact recorded by the Prescribed Authority. In the present writ petition, petitioner has raised the

disputed question of fact, which cannot be gone into writ jurisdiction under Article 226 of the Constitution of India.

The decision of this Court cited by the learned Counsel for the petitioner in case of Dr. Mehendi Hasan and Anr. v. State of U.P. and Ors.

reported in (2007) (3) ESC 2153 (All) and in the case of Jagdish Chandra Shashtri v. Prescribed Authority and Anr. reported in (1007) 1

UPLBEC 242 are not applicable to the present case.

In the result, writ petition fails and is accordingly dismissed .

9. Once issue, which has been decided by this Court while passing judgment which is under review, has not at all been raised before the

Prescribed Authority, neither any answer has been on the said issue, the order passed by the Prescribed Authority is based on validity of the will

and this Court has refused to interfere in the disputed question of fact being raised, the order passed by this Court will not stand vitiated on any

count, once the same is based on relevant provisions and once it has been passed after going through the record, which had been duly summoned

and which clearly demonstrated manipulations and manoeuvrings, which has been noted in great detail in the order under review. The finding of fact

returned by this Court on the basis of record produced cannot be diluted merely because there is order passed by the Prescribed Authority based

on will, and this Court has refused to go into disputed questions of fact, whereas the validity of the will was not an issue before this Court and on

the issue raised answer has been given, based on record and after opportunity of hearing to the parties.

10. Much emphasis has been laid on the fact that once order was not forming part of the record of the case, same could not have been quashed by

the High Court in writ jurisdiction. For this purpose reliance has been placed on two judgments; namely, Hindustan Petroleum Corpn. Ltd. v.

Sunita Mehta and Ors., (2001) 9 SCC 344 and Abhay Narain Singh v. State of U.P. and Ors. 2007 (2) ADJ 281 . In the case of Hindustan

Petroleum Corporation (supra), the order had not even been challenged in writ petition nor the same formed part of the record of the case, in such

a situation it was held that it could not be quashed by the High Court in writ jurisdiction. In such circumstances the order was not approved of. In

the case of Abhay Narain Singh (supra), the view taken was that no relief can be granted to the petitioner for quashing of the order, by which the

private respondent was authorized to raise construction, but the same was not part of the record. In such a situation writ petition itself could not be

entertained.. In the said writ petition so filed for a direction to the respondent authorities, particularly, Divisional Commissioner , District Collector,

Sub-Divisional Magistrate and the District Inspector of Schools to decide the representation filed by the petitioner for restraining the private

respondents from raising constructions of the school in the village. It was reflected therein that the order which was passed in favour of the private

respondents to raise constructions was not forming part of the record; in such a situation view taken was that no relief was accorded to the

petitioner.

11. Both the aforesaid judgments will not apply to the facts of the present case, for the simple reason that herein specific prayer has been made for

quashing of the decision dated 17.02.2006, and specific mention had been made that copy of said order has not been supplied and entire record

be summoned. This is accepted position that writ of certiorari is issued for calling of the record of case so that conscionable justice may be

administered, and if required by quashing of the order. In the present case copy of the order dated 17.02.2006 was not available on record, but it

is accepted that writ of certiorari had been prayed for, for its quashing and pursuant thereto original record had been summoned; same had been

perused by the parties and then writ of certiorari had been issued by proceeding to quash the order impugned. Once prayer was already there and

entire record had been summoned pursuant to order passed by this Court and same was also before the Court; the record had been perused by

the parties; thereafter arguments were advanced, and then there remained no legal impediment in quashing the impugned order dated 17.02.2006

by setting the record straight.

12. Consequently, the present review application is sans merits and is, accordingly, dismissed.