



2026:AHC:23374-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 1227 of 2025

Committee of
Management and
another

.....Petitioners(s)

Versus

State of U.P. and 6
others

.....Respondents(s)

Counsel for Petitioners(s)	: Gajendra Pratap (Sr. Adv.) Vinay Kumar Singh
Counsel for Respondent(s)	: Rajiv Singh (S.C.), Ashok Khare (Sr. Adv.) with Ramesh Chandra Tiwari, G.K. Singh (Sr. Adv.) with Rishabh Narayan Singh, Aditya Kumar Singh, Hritudhwaj Pratap Sahi, Sankalp Narain

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. Heard Shri Gajendra Pratap, learned Senior Advocate, assisted by Shri Vinay Kumar Singh, Advocate for the appellants, learned Standing Counsel for respondents no. 1, 2, 3 and 4, Shri Aditya Kumar Singh, learned counsel for respondents no. 5 and 6 and Shri G.K. Singh, learned Senior Advocate, assisted by Shri Rishabh Narayan Singh, Advocate for respondent no. 7.
2. An application seeking impleadment has been filed on behalf of one Vijay Bahadur Singh claiming himself to be life member of Bayalsi Shaikhsanik Samiti, Jalalpur, District Jaunpur, stating therein that he had

filed a caveat application in the writ petition giving rise to the present special appeal and though he was not impleaded as a party therein, he was heard by the learned Single Judge and, therefore, he may be impleaded in this appeal. Certain other facts have also been stated in the affidavit.

3. We find that the learned Single Judge has not yet allowed the application for impleadment and, in first paragraph of the order impugned before us, after noticing opposition made on behalf of the petitioners to the impleadment, time to file response against the said application has been granted to the petitioner side. This Court, therefore, is not inclined to allow the said application in the present special appeal and the question of impleadment of applicant Vijay Bahadur Singh is left open to be considered by the learned Single Judge in the pending writ petition.

4. The instant appeal raises a challenge to an order dated 26.11.2025, whereby learned Single Judge, after noticing the submissions made on behalf of respective parties as well as learned counsel for the applicant seeking impleadment, has granted time to the parties to exchange affidavits in the matter and directed listing of the matter on 19.12.2025 amongst top ten cases.

5. The writ petition was filed by the appellants challenging an order dated 10.11.2025, whereby the State Government had appointed Regional Higher Education Officer, Varanasi as Authorised Controller in the institution for a period of one year in purported exercise of powers under Section 58(1) of U.P. State Universities Act, 1973 ('the Act, 1973').

6. Before the learned Single Judge, placing reliance on a judgment of Hon'ble Supreme Court in the case of **State of U.P. and others Vs. Committee of Management of S.K.M. Inter College and another: 1995 Supp (2) SCC 535**, arguments were advanced on behalf of the Principal of the institution, i.e. respondent no. 7 and also the party seeking impleadment that the erstwhile Manager and the petitioner no. 2, who is presently the Manager of the institution, are husband and wife

and, therefore, in view of the law laid down by Hon'ble Supreme Court, the order impugned suffers from no infirmity.

7. Learned Single Judge has passed the following order dated 26.11.2025, which is impugned in the present appeal:-

"1. Sri Ashok Khare, learned Senior Advocate assisted by Sri Ramesh Chandra Tiwari, learned counsel has moved an impleadment application to which Sri O.P. Singh, learned Senior Advocate assisted by Sri Vinay Kumar Singh, learned counsel for the petitioner has an objection and states to file his response within a week.

2. Sri G.K. Singh, learned Senior Advocate assisted by Sri H.P. Shahi and Sri Sankalp Narain, learned counsel has appeared for the respondent no.7 and Sri Aditya Kumar Singh, learned counsel has appeared for respondent nos.5 and 6. Vakalatnama filed by them today is taken on record.

3. Sri O.P. Singh, learned Senior Advocate submits that the order impugned has been passed without considering the reply submitted by the petitioner in correct perspective and the same is bad in law.

4. Per contra, Sri Ashok Khare and Sri G.K. Singh, learned Senior Advocate who appears for the respondents states that the Manager of the outgoing committee was Sri Vijay Pratap Singh against whom the allegations exist, happens to be the husband of the petitioner no.2 and reliance has been placed on the judgment of the Supreme Court in the case of State of U.P. and Others v. Committee of Management of S.K.M. Inter College and another (1995 Supp(2) SCC 535) wherein vide paragraph 11 and 12, the Court has held thus:

"11. It could be seen from the explanation offered by the respondents that the properties were not properly managed and they set up title to the properties in themselves and mismanaged the properties, committed mal- feasance and misfeasance and did not account for the funds collected. It is true that in 1991, fresh elections were held pursuant to which new management came into office and its term also has expired by afflux of time. As no new elections were conducted, old one is continuing the management. In 1986 when show cause notice was issued, Onkar Singh was the Manager. After the elections, his son Munendra Pal Singh is continuing as the Manager. In other words, the family is in the management of the Committee.

12. Under these circumstances, we are of the view that the Committee should not be allowed to be in the management of the Institution. Accordingly the Authorised Controller is directed to immediately take over the management of the Institution and set right the running of the Institution on proper lines; then conduct the elections within the period prescribed under the Act and hand over the management to the newly elected body."

5. They further submit that since the erstwhile manager and the petitioner no.2 who is presently the Manager of the Institution are husband and wife, in view of the law laid down by the Hon'ble Supreme Court. The order impugned suffers from to infirmity.

6. All the respondents are granted two weeks' time to file counter affidavit. Rejoinder affidavit, if any, shall be filed within a week thereafter.

7. List this case on 19.12.2025 amongst top ten cases."

(word 'no' appears to be incorrectly typed as 'to' in 5th paragraph of the order of the learned Single Judge)

8. Learned Senior Counsel appearing for the appellants has made submissions that the order dated 10.11.2025, impugned in the writ petition, having been passed in utter violation of the provisions of Sections 57 and 58 of the Act, 1973, the same was liable to be stayed and therefore, learned Single Judge has erred in not passing any interim relief. Reference was made before us to sections 57 and 58 of the Act, 1973.

9. Elaborating his submissions, it has been contended that a show cause notice dated 11.06.2025 was issued by the State Government calling upon the management to submit its reply within 15 days qua certain financial irregularities disclosed in special audit report dated 25.11.2024 submitted by the competent committee and recommendation dated 21.04.2025 made by the Director of Education. The appellants, though submitted a detailed response dated 02.07.2025 annexing therewith a report dated 29.06.2025 of the erstwhile Secretary, wherein the allegations levelled in the show cause notice as well as in the recommendation made by the Director were elaborately responded to, no consideration has been made by the State Government while passing the order dated 10.11.2025, whereby Authorised Controller was appointed, which act of the State Government is in teeth of the statutory provisions contained under Sections 57 and 58 of the Act, 1973.

10. Further submission has been made that the conclusion drawn by the State Government while appointing Authorised Controller is contained only in paragraph no. 6 of the order dated 10.11.2025, wherein only this much has been indicated that, after due consideration of explanation/reply dated 02.07.2025, the same has been filed 'without any force and not maintainable'. Submission is that the explanation/reply was

very much maintainable as the same is not only contemplated under the provision itself but also for the reason that the respondents had, themselves, called upon the management to submit its response by issuing notice dated 11.06.2025.

11. As far as the response having been found 'without any force', submission has been made that no basis has been disclosed to arrive at such a conclusion, particularly in view of the nature of detailed response submitted by the appellants. It is, therefore, contended that in the facts and circumstances of the case and the nature of order impugned, it was a fit case where the learned Single Judge should have stayed operation of the order dated 10.11.2025 and non-grant of such interim relief is seriously prejudicial to the interest of the appellants.

12. Learned Standing Counsel appearing for respondents no. 1 to 4, learned counsel appearing for respondents no. 5 and 6, Shri G.K. Singh, learned Senior Counsel appearing for respondent no. 7 and Shri Ashok Khare, learned Senior Counsel appearing for the party seeking impleadment, have vehemently opposed the submissions made on behalf of the appellants. First of all, it is submitted that the special appeal is not maintainable under Chapter VIII Rule 5 of the High Court Rules, 1952, inasmuch neither the stay application has been rejected by the learned Single Judge nor has the writ petition been finally decided and only affidavits have been directed to be exchanged.

13. On merits, it is submitted that there being serious financial irregularities and misappropriation of funds having already stood revealed in the special audit report dated 25.11.2024 submitted by the competent committee and recommendation dated 21.04.2025 made by the Director of Education, the State Government was perfectly justified in appointing the Authorised Controller. Reference has been made to various material available on record.

14. It is further submitted that when, before the learned Single, it was pointed out that the erstwhile Manager and the petitioner-appellant no. 2, i.e. the present Manager of the institution, are husband and wife, the

learned Single Judge, following the judgment of Hon'ble Supreme Court in the case of **S.K.M. Inter College (supra)**, rightly declined to grant interim relief and invited response from the parties. It is further submitted that whereas a counter affidavit has already been filed in the writ petition, no rejoinder affidavit has been filed.

15. We have considered the submissions made and have perused the material available on record.

16. As far as the objection raised on behalf of the respondents as regards maintainability of present special appeal, we may refer to a Full Bench decision of this Court in the case of **Ashutosh Shrotriya and others Vs. Vice-Chancellor, Dr. B.R. Ambedkar University and others: 2015 (8) ADJ 248 (FB)**. The said matter had arisen out of reference made to the Full Bench to answer following questions:-

“(1) Where a learned Single Judge while hearing a writ petition calls for counter and rejoinder affidavits, but does not pass any order on the stay application either granting or refusing a stay, will the order amount to a refusal of interim relief to the petitioner either temporarily or impliedly and a 'judgment' within the meaning of Chapter VIII Rule 5 of the Rules of the Court, 1952;

(2) Does an order which adversely affects the valuable rights of a party by a temporary or implied refusal of interim relief have the trappings of a judgment.”

17. The Full Bench, after dealing with the provisions of Chapter VIII Rule 5 of the Rules and various decisions of the Hon'ble Supreme Court and this Court, though observed that calling for a counter affidavit or for completion of pleadings is a direction of a procedural nature in aid of the ultimate progression of the case and a direction of such nature would ordinarily not be amenable to the remedy of a special appeal, however, while answering the reference, the Court, in para-37 of the judgment, concluded as follows:-

“In view of the aforesaid discussions, we answer the question of law referred to the Full Bench by holding that, an order of a learned Single Judge upon a petition under Articles 226 or 227 of the Constitution only calling for counter and rejoinder affidavits is merely a procedural order in aid of the progression of the case. An order of this nature which is purely of a procedural nature in aid of the progression of the case and to enable the Court to form a

considered view after a counter affidavit and a rejoinder are filed would not be amenable to a special appeal under Chapter VIII Rule 5. Such an order does not decide anything nor does it have the trappings of finality. **If a party to the proceedings seeks to press an application for ad interim relief of a protective nature even before a counter affidavit is filed, on the ground that a situation of irretrievable injustice may result or that its substantive rights would be adversely affected in the meantime, such an argument must be addressed before the Single Judge. If such an argument is urged, it should be dealt with however briefly, consistent with the stage of the case, by the Single Judge. It is for the Division Bench hearing the special appeal to consider whether the order decides matters of moment or is of such a nature that would affect the vital and valuable rights of the parties and causes serious injustice to the concerned party.”**

18. A perusal of the conclusion drawn by the Full Bench clearly indicates that in a matter where a party seeks to press an application for ad interim relief of a protective nature even before a counter affidavit is filed, on the ground that a situation of irretrievable injustice adversely affecting substantive rights of the said party has arisen, such an argument must be addressed before and dealt with by the learned Single Judge and it is for the Division Bench hearing special appeal to consider whether the order decides matters of moment or is of such nature that would affect the vital and valuable rights of the parties and causes serious injustice to the concerned party.

19. Coming to the case in hand and in light of the judgment of the Full Bench, a bare perusal of the order of the learned Single Judge indicates that after noticing the contentions raised by the parties (mainly by the respondents' side) to the effect that the erstwhile Manager and the petitioner no. 2 (the present Manager) are husband and wife, learned Single Judge, after placing reliance on the judgment of Hon'ble Supreme in the case of **S.K.M. Inter College (supra)**, directed the respondents to file counter affidavit and the appellants to file rejoinder affidavit thereafter and fixed the matter amongst top ten cases to be taken up on 19.12.2025. Apparently, learned Single Judge has only taken note of the *inter se* relationship between the erstwhile Manager and the present Manager and in light thereof, did not grant any interim relief to the

appellants. The subject matter of challenge i.e. order appointing authorised Controller was indeed affecting the vital and valuable rights of the appellants, was required to be dealt with by learned Single Judge and as such the appeal is maintainable.

20. We find that the show cause notice dated 11.06.2025, forming basis for passing the order appointing Authorised Controller, does not contain any allegation of *inter se* relationship between the erstwhile Manager and the present Manager; rather the same is essentially based only upon a joint report dated 25.11.2024 and recommendation dated 21.04.2025, which contain some conclusion based upon the allegations of financial irregularities/misappropriation of funds etc.

21. Further, the response given by the appellants was also based upon the contents of notice, report and the recommendation and the order dated 10.11.2025 appointing Authorised Controller is found not based upon the *inter se* relationship between the erstwhile Manager and the present Manager; rather the same has been passed after turning down the explanation/reply submitted by the petitioners.

22. In view of the above, non-consideration of prayer for stay on those aspects, which are not the subject matter of proceedings, does not appear to be justified and for this reason alone, we are inclined to interfere in the matter. Since we are neither deciding the stay application nor the writ petition itself, we deem it appropriate, based upon the discussion made hereinabove, that the stay application accompanying the writ petition deserves to be considered on its own merits qua the proceedings culminating into passing of the order appointing Authorised Controller.

23. Consequently, we make a request to the learned Single Judge to hear and decide the stay application in the writ petition on its own merits after hearing the parties.

24. If certain affidavits are required to be exchanged in the matter, the same shall be exchanged before the next date fixed before the writ court.

25. The writ petition shall now be listed for the aforesaid purpose before the learned Single Judge **on 17.02.2026 as a fresh case.**

26. With the aforesaid observations, the present appeal stands **disposed of.**

(Kshitij Shailendra, J) (Arun Bhansali, CJ)

February 2, 2026

AKShukla/-