

(2013) 04 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3347 of 2013

Abhishek Singh @ Sonu

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 4 ADJ 488 : (2013) 5 AWC 5347 : (2013) 2 UPLBEC 1365

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Shailendra, for the Appellant; A.B.L. Gaur and N.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Shailendra, Advocate on behalf of the petitioner, Sri A.B.L. Gaur, Senior Advocate on behalf of the Vice Chancellor and other University Authorities and Sri N. K. Pandey, Advocate on behalf of respondent No. 5. It is very unfortunate that the University, which is a temple of learning is faced with allegations of decision being taken on considerations other than that statutorily provided, by non other than Professors and Teachers of the University itself. Because of such attitude the University is losing its credential and credibility. Records of this petition reflect that when there was an occasion for the Professors of the University to take strict and correct decision in the matter in accordance with the statutory provisions applicable, they have found a way to hoodwink the provisions, so as to confer an illegal benefit upon the chosen one. This petition is an example as to how the University authorities permit illegalities to perpetuate in the campus.

2. Under challenge in the present writ petition is the election to the office of President of the Students Union of the Allahabad University for the academic session 2012-13. In the said elections respondent No. 5 Dinesh Singh Yadav was one of the candidates. He has been declared elected in a multi corner contest.

3. The petitioner had contested the election for the same office but has lost. It is his case that a protest was lodged at the time of acceptance of nomination of respondent No. 5 qua his being disqualified to contest the Union Elections in terms of the provisions of the University of Allahabad Students' Union (Code of Election) Regulations, 2012 (hereinafter referred to as "Regulations, 2012"). But such objection has been rejected without even referring to the clauses, whereunder respondent No. 5 stood disqualified. On the recommendation of a Scrutiny Committee comprises of as many as 16 Faculty Member of the University of Allahabad. The decision of the Scrutiny Committee is on record of this petition as Annexure-2 to the supplementary counter affidavit filed by respondent No. 5, which shall be dealt with at the appropriate stage.

4. The election of respondent No. 5 is challenged on the ground that he was disqualified under Regulation No. 13(ii) and 13(v) of the Regulations, 2012 to contest the Union Election. The University and its authorities have acted hand in gloves with respondent No. 5 by not declaring him disqualified despite facts in that regard being admitted on record before the University itself.

5. According to the petitioner, respondent No. 5 was a regular student of the said University in the Academic Session 2011-12 for the M.A. Course in the subject of Philosophy. He appeared in the examination held in the year 2012 with Roll No. 73. He failed in the said examination. Therefore, being a failure he stood disqualified from being a candidate for the Students' Union Elections in view of clause 13(ii) of the Regulations, 2012. It is then contended that respondent No. 5 had indulged in an activity wholly unbecoming of a student in the year 2008. One of the Professors of the University, namely Prof. A.K. Srivastava had to bear the brunt of respondent No. 5. His face was painted with black paint and a garland of shoes and slipper (Chappal) was put around his neck. The Professor made a complaint to the University authorities. After enquiry the Vice Chancellor of the University passed an order rustinating respondent No. 5 from the University. This order of the Vice Chancellor dated 5th November, 2008 was communicated to respondent No. 5 under the letter of the Proctor dated 06th November, 2008. The order reads as follows:

As per Vice Chancellor's Order dated 05 November, 2008, you have been expelled for a period of 1 year from the University of Allahabad, for involvement in the incident of June 10, 2008 in which Prof. A.K. Srivastava, Department of Chemistry was insulted, blackened and assaulted. Further your entry into the University Campuses is banned for the period of your rustication.

6. Admittedly, this letter had been served upon respondent No. 5, which fact is not disputed. It is also not disputed by respondent No. 5 that he did not challenge this order of rustication before any authority.

7. In view of his rustication from the University in the year 2008, he stands disqualified under clause 13(v) from being a candidate in the Students' Union Elections of the University.

8. What is surprising to note is that when a complaint was made with regard to disqualifications attached to respondent No. 5 the matter was referred to a Scrutiny Committee comprises of 16 Professors/Faculty Members of the University. The report submitted by 16 Professors/Faculty Members of the University with regard to respondent No. 5 makes an interesting reading. It reads as follows:

Dinesh Singh Yadav

Charges: (1) registration of case

(2) Rustication

In the light of the fact that the candidate is a bona fide student of M.A. I (2012-13) Anthropology, he may be allowed to contest because the system has to be honored so far as his admission in session (2012-13) is concerned.

9. This Court has no hesitation to record that such report of 16 Faculty Member of the University is a farce and a clear case of non-application of mind to the statutory provisions and an attempt to benefit a student who should have been dealt with all firmness. It appears that such is not the practice at the University of Allahabad, other considerations prevail. As a result whereof the nomination of respondent No. 5 was accepted and he was permitted to contest the election.

10. It would be appropriate to consider what is being pleaded in reply by respondent No. 5 to the said facts.

11. It is his case that Dr. A.K. Srivastava, who is stated to have been ill, treated by respondent No. 5 himself, made an application in writing to the Vice Chancellor dated 02nd March, 2009 with a request to withdraw the expulsion order of four students and to allow them to appear in the examinations. However, he reserved a right to express his firm resolve to do whatever is humanly possible to uncover the known faces of the conspirators who were roaming with impunity in the corridors of said University.

12. No orders were passed by the Vice Chancellor on the said application. It appears that the application did not even travel upto the Vice Chancellor.

13. The Proctor of the University intervened and on the basis of an order, which was passed in a writ petition filed by another student who was expelled from the University namely Abhinav Tripathi s/o Chandra Narain Tripathi, he directed the Controller of Examinations that respondent No. 5 may also be permitted to undertake the examination but his result may not be declared. It is on this basis respondent No. 5 claims that since he was permitted to appear in the examinations, expulsion order loses all significance.

14. So far as his having failed in M.A. Previous Examination of 2012 is concerned, counsel for respondent No. 5 with reference to the Hindi translation of the Regulations, 2012 submits that for a candidate to be disqualified from the University examinations he must have failed in the University examination in the

same year in which the Students' Union Elections are held.

15. It is worthwhile to reproduce the Hindi translation of the Regulations, 2012 relied upon by respondent No. 5. It reads as under:

16. It is lastly contended that in terms of the Lyngdoh Committee Report, Grievance Cell has been constituted by the University of Allahabad. The petitioner has already approached the Grievance Cell. Therefore, this Court, in stead of entering into the issues raised in the present writ petition qua the candidature of respondent No. 5, may direct the Grievance Cell to decide the matter on reference made by the petitioner in a time bound manner. Reference is made to the judgment of this Court in Alok Kumar Singh v. Mahatma Gandhi Kashi Vidyapeeth, Varanasi and others, 2013 (1) UPLBEC 455.

17. To complete the narration of facts as borne from the record, it is worthwhile to record that respondent No. 5 himself made an application before the University in his own handwriting dated 24th August, 2009 wherein he admitted that he has been expelled from the University. He was permitted to appear in the examination because of an order passed by the High Court in the case of another student, the term of expulsion has expired and therefore now his result may be declared. This letter of respondent No. 5 is enclosed as Annexure-6 to the affidavit of the Vice Chancellor of the University.

18. It is also recorded that initially an affidavit was filed by the Registrar of the University wherein, for the reasons best known to him, the documents, which have been brought on record by the Vice Chancellor, were not referred to and only half hearted reply was filed. The Court was not satisfied and therefore insisted that complete facts be disclosed before this Court and for the purpose affidavit of the Vice Chancellor was called for. It is only then that the Vice Chancellor has disclosed complete facts before this Court by means of his personal affidavit.

19. The said facts have only been stated to highlight that there is no attempt on the part of the University Faculty Members to ensure that the guilty are brought to book and the atmosphere fairness prevails in of the University.

20. The academic atmosphere of the University of Allahabad is being ruined day in and day out, as reflected from the newspaper reports as published in daily newspaper.

21. Now turning to the merit of the petition, this Court may deal with the plea of remedy before the Grievance Cell at the first instance.

22. Normally the High Court under Article 226 of the Constitution of India insists upon exertion of remedy available under the statutory provision but such limitation has been imposed by the Court itself upon its own power. If the Court in the given set of facts finds that the remedy is illusory or not efficacious, the High Court has the power to decide the issue itself. The powers of the High Court under Article 226 of the Constitution of India are not curtailed only because of

the availability off the remedy.

23. The facts of this case are shocking. This Court will not permit the situation to continue even for a single day any further. Facts are not in dispute, only application of Rules to the facts is to be adjudicated. The conduct of the Faculty Members/Officers of the University, as noticed above, has not been satisfactory. This Court has no hesitation to record that the Grievance Cell also comprise of the Faculty Members of the same University. It has become necessary for this Court to itself decide the issue as has been canvassed, instead of diverting the matter to the University, in the facts of the case. Further the academic session 2012-13 is to expire in nearly two months from today, asking the Grievance Cell to decide the matter would only create a situation where the issues themselves would become infructuous. The objection in that regard is rejected.

24. From what has been recorded above, it is established beyond doubt that respondent No. 5 was rusticated from the University under an order of the Vice Chancellor dated 05th November, 2008 and the order of the Vice Chancellor was communicated to respondent No. 5 vide letter of the Proctor dated 06th November, 2008. The service of the letter of the Proctor stands admitted to respondent No. 5 from his own application dated 24th August, 2009. The order of the Vice Chancellor, as communicated to respondent No. 5 was never challenged before any higher authority or before any Court of Law by him. He did not make any application for supply of the copy of the order of the Vice Chancellor dated 05th November, 2008 at any point of time.

25. From the letter of the petitioner dated 24th August, 2009, wherein he records that now his term of expulsion has expired and his result may be declared, also leads to the inference that he had accepted that order of expulsion without protest. It is, therefore, admitted on record that respondent No. 5 was expelled from the University for his misconduct. He was disqualified under clause 13(v) of the Regulations, 2012. Respondent No. 5 could not have been a candidate in the Students' Union so long as the expulsion order stands on record. His nomination should have been rejected outright on the aforesaid ground itself.

26. So far as the second ground of challenge is concerned, it is worthwhile to quote the English version of the clause 13(ii), which reads as follows:

13(ii) The candidate shall in no event have any academic arrears in the year of contesting the election and has not failed in any University examinations.

27. This Court is of the opinion that from a simple reading of clause 13(ii) it is apparent that it consists of two part. The first part deal with the academic arrears, which is confined to the year of holding of the elections. While the other part, which starts with word "and" is a different clause, it debars a student from contesting the election, if he has failed in any University examination. The work "and" as used in clause 13(ii) has to be read as "or".

28. The Hindi translation, as read by the counsel for respondent No. 5 would lead to an absurd result. It is well known that the Students' Union Elections are held at the start of the academic session where no examinations take place. Therefore, the question of any student having failed in the University examination in the academic session, in which the University elections are to be held, would be an impossibility. An interpretation which leads to an impossible situation has to be avoided. The Hindi version of clause 13(ii) has to be read in harmony with the English version of the Regulation and would necessarily mean that a student who has not failed in any University examination alone can contest the elections. The failures of the University examinations are debarred from contesting the elections. Purpose is wholesome, namely that the students, who are not good in academic, should not become students leaders.

29. In view of the what has been recorded above, this Court holds that respondent No. 5 was disqualified from being a candidate in the Students' Union Elections in view of clause 13(ii) and clause 13(v) of the Regulations, 2012. Therefore, his election as the President of the Students' Union is hereby quashed. This Court also recommends that in respect of future Students' Union Elections the Vice Chancellor must consider as to whether the 16 Faculty Members of the Scrutiny Committee, which had submitted that report, as quoted above, should be assigned any such duty or not. Writ petition is allowed.