
(2001) 08 MP CK 0049
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4003 of 2001

Aditya Soni

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Constitution of India, 1950 — Article 19(1)(c)
Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 37(XXI)

Citation : (2001) 2 MPJR 496 : (2002) 1 MPLJ 310

Hon'ble Judges : Bhawani Singh, C.J.; Arun Mishra, J

Bench : Division Bench

Advocate : Sudha Pandit, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Mishra, J.

This writ petition has been filed by Petitioner, a student challenging the constitutional validity of Ordinance No. 1 dated 25-7-2001 promulgated by State of M. P., Department of Higher Education enabling the constitution of students union in colleges. The Ordinance was issued pursuant to approval by Co-ordination Committee. The Ordinance has been issued with reference to Section 37(XXI) of M. P. Vishwavidyalaya Adhiniyam. It is sought to be struck down on the ground of it being discriminatory inasmuch as it excludes University teaching departments and school of studies of the University from formation of students union and being violative of the rights conferred under Article 19(1)(c) of the Constitution of India to form union or associations.

The Ordinance No. 1 issued on 25-7-2001 replaces the Ordinance No. 1 old Ordinance was approved by the Co-ordination Committee at its meeting held on 16th June, 1994 and adopted by Devi Ahilya Vishwavidyalaya with effect from 30th July 1994. Para 1 of old Ordinance of 1994 is reproduced;

1. There shall be a student's Union in every college and one Student's Union for

UTD's i.e. all the Teaching Departments/Schools of Studies (SOS) of the University.

The provisions of this Ordinance shall not apply to model, autonomous, professional colleges i.e. college of medicine (including Ayurvedic, Unani and Homeopathic) Engineering, Education and Physical Education.

Provided also that the provisions of this Ordinance shall not apply to those University Teaching Departments which are teaching professional courses and to self financing department courses. Provided that the Executive Council of the University may, at the request of any college, permit it to be exempted from the operation of this Ordinance.

There is departure in the new Ordinance of 2001 as to its applicability. Para 1 of the Ordinance No. 1 provides for student's union in every college. The students union will consist of students council and activity societies. Para 1 of new Ordinance No. 1 provides that:

1. There shall be a Students' Union in every college. The Students' Union will consist of: (i) Student's Council (ii) Activity Societies.

The new Ordinance No. 1 excludes U.T.D./SOS i.e. University teaching department/school of studies. It includes professional colleges in its ambit which were previously excluded.

The aims and objectives of the Student's Union have also undergoing change. The old Ordinance No. 1 contained aims and objectives in para 2, to promote discipline and corporate, intellectual civil, and cultural life etc. amongst the students. Para 2 of old Ordinance No. 1 is quoted;

2. The aims and objectives of the Student's Union shall be:

(i) to promote, discipline, and corporate, intellectual civil, and cultural life amongst the students;

(ii) to foster activities to bring out the creative talents of the students;

(iii) to promote the study and discussion of subjects of national and international importance;

(iv) to encourage amongst the students awareness of the responsibilities of an individual in a democratic and secular society;

(v) to promote social activities.

The old Ordinance No. 1 provided that there shall be students union in every college and one student union for all the Teaching Departments/ Schools of studies (SOS) of the University. The provisions of the Ordinance were not made applicable to model, autonomous, professional colleges i.e. college of medicine including Ayurvedic, Unani and Homeopathic, Engineering, Education and Physical education. It was also provided that provisions of the said Ordinance

shall not apply to those University Teaching Departments which are teaching professional courses and to self financing departments courses. It was also provided that executive committee of the University may, at the request of any college, permit it to be exempted from the operation of said Ordinance under Para 1.

The aims and objectives of newly framed Ordinance No. 1 are provided in para 2, which clarifies that,

2. The aims and objectives of the Students' Union shall be:?

(i) To encourage and strengthen the democratic values amongst the students and to train them in the duties and rights of democracy.

(ii) To provide forum for the development of the students as ideal and dutiful citizen of a democratic and secular society.

(iii) To develop responsible and value oriented leadership.

(iv) To generate intellectual, social, cultural environment and discipline, in the academic institutions for the overall personality development in pursuance or the true meaning of education.

(v) To foster innovative, artistic, literary, cultural, academic and sports activities to promote active participation and leadership amongst students to develop their creative talents.

(vi) To promote scientific study and discussion on subjects of national and international importance.

(vii) To promote social service through mutual co-operation, harmony and dedication towards society based on social, economic political equality and justice as envisaged in the Indian Constitution.

(viii) To foster environment of learning and teaching for the development of the college.

It appears that on 30-7-2001, Additional Secretary, Department of Higher Education, State of M.P. asked vide letter Ex. P/4 the Vice Chancellor of Devi Ahilya Vishwavidyalaya, Indore, and other Universities that election shall be held only in colleges for this year and fixed the dates for election on 29th and 30th August, 2001, and, necessary steps be taken for holding elections. A copy of Ordinance was also sent along with the letter.

It is urged that election programme has been declared. The election is not going to be conducted in University teaching departments and schools of studies of the University.

Ms. Sudha Pandit, learned Counsel for the Petitioner has advanced the following arguments:

(i) The Ordinance No. 1 violates fundamental rights of students of University teaching departments and schools of studies by omitting them in para No. 1. Thus students have been deprived of right to form union, a right guaranteed under Article 19(1)(c) of the Constitution of India.

(ii) The Ordinance No. 1 is discriminatory and it arbitrarily excludes University Teaching Departments and School of Studies from formation of students unions through election.

(iii) The students of University Teaching Departments and School of studies shall be deprived of pursuing aims and objectives of Ordinance No. 1.

The crucial question raised in the petition is that Ordinance No. 1 is violative of the rights of students under Article 19(1)(c) of the Constitution of India. The nature of right guaranteed by Clause (c) of Article 19(1) of Constitution of India does not depend upon any statutory law or subordinate legislation. This right is available to every citizen and they have important right to form association. The right so enjoyed has no reference to a right which is conferred by a particular statute to act as member of a body which is creation of the statute itself. The Ordinance No. 1 has been framed under statutory provision of Section 37 (XXI) of the M. P. Vishwavidyalaya Adhiniyam and the Ordinance No. 1 has statutory force. Hence, Ordinance No. 1 cannot be said to be curtailing or abridging a right under Article 19(1)(c) which is available to a citizen. It is open to the competent legislature to provide for creation of a particular body laying down condition of membership composition etc. In *Raja Kulkarni v. The State of Bombay*, AIR 1954 SC 73, it was argued that the right of the Appellants to freedom of speech and expression and to form association or Unions under Article 19(1)(c), read with Article 14, conferring the right of equality before the law or the equal protection of the laws is infringed by the Bombay Industrial Relations Act, inasmuch as it gives preference to a trade Union upon the artificial test of having the greater percentage of membership, namely not less than 15 per cent. The contention was rejected on the ground that the right to freedom of speech and expression is not denied to the Appellants, nor are they prohibited from forming associations or Unions. It is open to lay down a reasonable classification and the challenge of the Appellants to the validity of the Act as infringing their fundamental rights and yet they base their case of discrimination on the provisions of the same Act was negatived.

Freedom to form an association includes not only the right to start an association but to continue it also as held in *Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others*, The right is exercisable for lawful purpose. The fundamental right guaranteed under Article 19(1)(c) does not extend to nor embrace within it the objects or purposes or the activities of an association. It can be only for lawful purpose. It does not carry with it a further guarantee that the objects or purposes of an association so formed shall not be interfered with by law except on grounds as mentioned in Article 19(1)(c). In *L.N. Mishra Institute of Economic Development and Social Change Patna and Another Vs. State of Bihar and*

Others, , right of management of society of managing a institute was distinguished from right to form society. The submission that taking over of institute by Government deprived society to form and continue the association and as such unconstitutional and void under Article 19(1)(c) of the Constitution was held to be unsound and rejected. Once voluntary association has been formed its composition cannot be altered to introduce involuntary members.

The right under Article 19(1)(c) is not absolute. Article 19(4) specifically empowers the State to make any law to deter, abridge or abrogate any of the right under Article 19(1)(c) in the interest of public order or morality. By the Ordinance No. 1 we find no curtailment of right as right does not extend to compel University to form an association of students by method of election, which exactly is the objective sought by present petition. Such relief is unachievable and impermissible to be granted.

The students have no fundamental right under Article 19(1)(c) of the Constitution to compel their institution/management to make a provision for election and by that method to provide for formation of students union, which is exactly the prayer in the instant writ petition.

The fundamental right to form an association cannot be stretched too far so as to mean that the students union should be allowed to be formed that too by mode of election and they should be provided in the schools and the colleges.

The students are not debarred by Ordinance No. 1 to join societies. The students are supposed to devote to studies not to take part in political and anti-social activity. The disciplined atmosphere is the requirement of the day. They should devote themselves to study without being influenced by antisocial, communal and political agencies.

There is a tendency of political agencies building and taking part amongst the students and to pollute entire academic atmosphere of the institution. In number of decisions the restriction on teachers from mixing up with the political institutions has been held justified and reasonable. Restriction on the teachers has the purpose behind it of having academic atmosphere unpolluted by the political institutions, same can be regulated and achieved by the academic bodies of the Universities by providing same in the Ordinance.

A converse situation came to be considered in *Nabin Chandra Sahu v. Principal Aska Science College Aska* and another, ILR 1972 Cutt 538, wherein student of the Aska Science College was debarred of taking membership of outside club, and required to obtain approval of the Principal before doing so and breach of this rule was to be regarded as a serious offence and permission of the Principal could be granted only on the request from student's father or the natural guardian. Every student was required to furnish an undertaking or to face expulsion if he did not withdraw the membership, which had not been allowed. Article 116 of the Orissa Education Code was challenged, it was held not to be violative of Article 19(1)(c) of the Constitution of India. Article 116 of the Orissa

Education Code reads as under:

116. Membership of outside clubs, etc. ? Any students on the rolls of a Government or aided-College, who wishes to join any club or society outside the College, which has not been approved by Government, must obtain the approval of the Principal before doing so. Breach of this rule will be regarded as a serious offence. Permission will ordinarily be granted by the Principal on presentation of a written and duly signed request from the student's father or natural guardian.

The decision in *P. Balakotaiah Vs. The Union of India (UOI) and Others*, was referred to in *Nabin Chandra Sahu (supra)* in para 6, which we quote below:

6. *P. Balakotaiah Vs. The Union of India (UOI) and Others*, the following notice, so far as it is material, was challenged as being hit by Article 19(1)(c) of the Constitution:

Whereas in the opinion of the General Manager, you are reasonably suspected to be a member and office secretary of the B. N. Rly. Workers' Union (Communist sponsored) and were thickly associated with communists such as Om Prakash Mehta, B. N. Mukherjee, R. L. Reddi, etc., in subversive activities in such manner as to raise doubts about your reliability and loyalty to State in that, though a Government employee, you attended private meetings of the Communists, carried on agitation amongst the Railway workers for a general strike from November 1948 to January 1949 evidently to paralyse communication and movement of essential supplies and thereby create disorder and confusion in the country and that consequently, you are liable to have your services terminated under Rule 3 of the said Rules.

While negating the contention that the aforesaid rule is hit by Article 19(1) (c) Their Lordships observed thus:

But apart from that, we do not see how any right of the Appellants under Article 19(1)(c) has been infringed. The orders do not prevent them from continuing to be Communists or trade unionists. Their rights in that behalf remain after the impugned order precisely what they were before. The real complaint of the Appellants is that their services have been terminated: but that involves, apart from Article 311, no infringement of any of their constitutional rights. The Appellants have no doubt a fundamental right to form associations under Article 19(1)(c), but they have no fundamental right to be continued in employment by the State, and when their services are terminated by the State they cannot complain of the infringement of any of their constitutional rights, when no question of violation of Article 311 arises.

In the instant case, no such restriction has been put by the Ordinance No. 1 not to be a member of an outside association etc. Thus, there arise no question of violation of fundamental right under Article 19(1)(c) of the Constitution of India. The students are bound to observe the reasonable restrictions imposed in the interest of education, discipline, law and order on campus. Nothing debars them

from exercising the fundamental right under Article 19(1)(c) to the extent permissible.

The another limb of the argument raised by the Petitioner is that deletion of the University teaching departments and schools of studies from the Ordinance No. 1 creates inequality among equals. It is urged that in the colleges the formation of elected unions have been provided, then why not in school of studies and the University teaching departments.

It is submitted by counsel for the Petitioner that for the last about 15 years no such students unions were formed after holding election in the colleges, University teaching departments and schools of studies. It was obviously on consideration of various factors, such as growing indiscipline among students which had vitiated the atmosphere on the campus, the classes are being hardly attended, the attendance had become scarce. The relations of teachers and taught are not on that high pedestal. Holy centers of learning are in the explosive situation causing serious threat to pursuit of learning itself. Activities like ragging are on increase which warranted the Apex Court laying down detailed guide lines in *Vishwa Jagruti Mission v. Central Government and Ors.* AIR 2001 SCW 2871 to check ragging, which entails even police action. Taking overall assessment of the matter the co-ordination committee at the highest level has taken a decision to exclude U.T.D./SOS from purview of the Ordinance No. 1. We find absolutely no ground to interfere. It is for such body of academicians to take decision in such matter in the best interest of students discipline, moral values and promote learning, when co-ordination committee has chosen not to conduct election in University teaching departments and Schools of studies. We find no discrimination or wrong committed.

The decision of such bodies like co-ordination committee are not to be ordinarily interfered with. They are the best Judge of interest of students, academic activities etc. It is for them to consider whether election should be held or nominated bodies should function or bodies created by selection on merit basis. The decision of the Co-ordination Committee to conduct election for this year in colleges also appears to be on experiment basis as reflected in Annexure-P/4.

It is also contended that para 2 of the Ordinance No. 1 provides aims and objectives such as to encourage and strengthen the democratic values amongst the students of which Petitioner and students of Universities Teaching Departments/Schools of studies are deprived of. It is also urged that elections provide forum for development of secular society, develop leadership, personality development, creative talents, to promote scientific study and discussion, rendering social service. The submission so raised has no basis for various reasons to be alluded hereinafter, firstly by providing aims and objectives for formation of union nothing new has been introduced. It only reflects the purpose of education. Education makes a man that brings about tolerance, to enter into world of thought in education. It is hollow to presume that such aims and objectives as mentioned in para 2 of Ordinance No. 1 can only be achieved by

the conduct of elections of students union in the colleges and students of University Teaching Departments/School of Studies and students are deprived of pursuing them. Democratic values, secular society, responsible leadership, personality developments, development of creative talents, scientific study and discussion, social service contemplated in para 2 can better be achieved by value oriented education students union or no-students union it is very basis for existence of every centre of education/learning that it should serve the purpose of overall personality development, there should be discussion, it should provide study of science, art and culture etc. It must develop skill and embrace ethical value which has social acceptance that is how a balanced personality is made to serve the society. There should be discussion, on various subjects in every faculty which is part of curricular activity. The aims and objectives mentioned cannot said to be achieved by formation of students unions but they are inherent in education itself. The value oriented education has to provide beacon light, enlighten the path, and remove dark. Mentioning such objectives in Ordinance No. 1 is more for the purpose of activities in the field of academic interest only, not resort to strike, other hooliganism during election and afterwards. Students unions are not to be equated with trade unions. We find no basis for holding that students of University Teaching Departments/School of Studies are discriminated in any manner in persuing the objectives mentioned in para 2. It is the duty of the Petitioner and other students to strive towards excellence and they have the corresponding right of not to be deprived of an opportunity in pursuit of their choice. It is incumbent upon the University to teach equality value to make them responsible persons and to impart such education, which makes a student a responsible and value oriented person, only then a true education can come about in existence. We need equal education/instruction which opens up brain and use its all faculties, not only memory part of brain, with all round development of personality. What has been stated by Shri M. C. Setalwad in 1950"s in his report about legal education that, colleges in country have failed to develop skill and all round development personality and students passing out are let loose in society like drones and parasites is true even today about many more faculties. In the prevailing scenario academicians have taken a decision not to hold election, cannot be unjustified. The first priority is to improve education itself and make it worthy.

Aims and objectives of purposive education are to be fixed and achieved by the academicians and expert bodies. We do not see that only holding of election can fulfil it and bring about equality in obtaining instructions. It became imperative to consider what important aspects pertaining to the education are. The disparity in the system of education still prevailing which has the effect of creating inequality between two persons possessing same qualifications having been educated in two different set ups. Equality in education cannot be confused with right to have unions of students by election. What are equal rights and equality; they are certainly in education and lies in compass of equality of instruction. We do not feel that opportunity to develop personality is deprived to student by not

conducting the elections, equality does not lie in that, but, in the development of overall capacity/faculties of learning which is necessary for innovation and other form of development. The elections in colleges/schools of studies are not of that significance for achieving the objectives mentioned in para 2 of Ordinance No. 1. Desirability of holding such elections is within domain of the appropriate bodies to consider. We find no opportunity deprived or right to equality infringed in Ordinance No. 1 by not providing for elections in University Teaching Departments/School of Studies.

Universities are bound to provide intellectual, social, cultural environment and also enforce discipline to foster innovative, artistic, literary, cultural, academic and sports activities, such activities can be and are bound to be part and parcel of University/Colleges calendar as essential ingredient of education and no student can be denied of his right to such activities. Environment of learning and teaching is a must in every institution. The only thing better is the travelling deep into sea of education itself and not election. Thus, it cannot be said that there is a deprivation of any such right of the Petitioner by not conducting or providing for elections for the students unions in the university teaching departments and school of studies.

Resultantly, we find no merit in challenge to Ordinance No. 1 framed under M. P. Vishwavidyalaya Adhinyam. The writ petition is dismissed.