

(2012) 10 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 53241 of 2012

Alok Kumar Singh

APPELLANT

Vs

Mahatma Gandhi Kashi Vidyapeeth and Others

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 143, 308, 323, 336

Citation : (2013) 4 ADJ 650

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : K.K. Roy and Mukesh Kumar Singh, for the Appellant; Ajeet Singh, Vivek Verma, Santosh Kumar Pandey and Piyush Prakash Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—The petitioner - Alok Kumar Singh claims himself to be a regular student of M.A. Final Year of the Respondent No. 2 - College which is affiliated to the Respondent No. 1 - University. On an announcement of the election programme of the Students' Union Election, the petitioner filed his nomination on 5th October, 2012 for the post of President. The election rules have been codified contained in Chapter XIII of the Ordinances framed by the respondent - University. The proposed rules as relied on by the petitioner have now been transformed into a permanent code which have been incorporated in the ordinances of the University as indicated above. A copy of the said Students' Union Rules has been tendered by Sri Vivek Verma, learned counsel for the petitioner and reliance has been placed on a recent decision of this Court in the case of Vishal Yadav and another v. State of U.P. and others, Writ Petition No. 51542 of 2012 decided on 5.10.2012.

2. The relevant ordinance on which the submissions have been raised is which clearly requires that a candidate should not have any criminal antecedents which

according to the said ordinance means that the candidate should not have faced any trial in the past nor any case should be pending against him at the time of nomination or thereafter. The rule further provides that the candidate should not be convicted in any criminal case nor should he have a background of any disciplinary proceedings initiated by the University or the College. A candidate would be disqualified and ineligible for contesting elections if he suffers from the aforesaid ineligibility conditions.

3. The petitioner has disclosed that he does not have any criminal background but a supplementary affidavit has been filed today by Sri K.K. Roy, learned counsel for the petitioner, bringing on record the questionnaire from the Court of the Chief Judicial Magistrate, Ballia dated 6.10.2012, indicating that a charge-sheet has been filed against the petitioner in Case Crime No. 624 of 2012 under Sections 143, 336, 323 and 308 IPC. A copy of the charge-sheet has also been brought on record.

4. Sri Roy submits that the petitioner, according to the Lyngdoh Committee Recommendations Paragraph 6.5.7, does not suffer from any infirmity so as to make him ineligible as a candidate, inasmuch as, the petitioner has neither been tried nor convicted for any criminal offence or misdemeanour. He therefore submits that so long as a person does not face trial or get convicted he cannot be disqualified or branded as ineligible to contest elections.

5. Sri Roy has further narrated the mala-fides which according to him led to the rejection of the nomination of the petitioner on the aforesaid ground which he contends was done in order to pacify the other candidates whose nominations had been rejected. He submits that one Krishan Pratap Yadav who is represented before this Court through Sri Piyush Prakash Singh Advocate as a caveator is being supported by one Rana Pratap Yadav "Dadhi". The said Rana Pratap Yadav is an expelled student of the College who has criminal antecedents and who succeeded in becoming a Member of the Zila Panchayat, Ballia. He created an uproar in the College and in collusion with the District Magistrate, Ballia humiliated the Election/Returning Officer, Mr. Akhilesh Kumar Rai who rejected the nomination of Krishna Pratap Yadav on the ground of violation of the code of elections.

6. It is urged that the said Krishna Pratap Yadav alongwith another candidate Kishan Pratap Singh had spent huge amounts during their campaigning and he has also invited the attention of the full page advertisement of Krishna Pratap Yadav in Hindi Daily Dainik Jagran which according to him would cost about three lacs. He submits that since these malpractices were rampant, the nomination papers of Krishna Pratap Yadav and Kishan Pratap Singh were rightly rejected. Annoyed by this rejection, the said candidates lined up with their political masters of the ruling party and pressurized the District Magistrate to haul up the Returning Officer, who was virtually in these compelling circumstances, forced to resign. The resignation of the Returning Officer is also admitted by Sri Vivek Verma who has obtained instructions from Sri Virendra Singh the Principal of the

College and also from the University.

7. Sri Roy therefore contends that in the aforesaid background, it is the caveators who have created an atmosphere of disturbance and as such the same cannot be a ground to refuse relief to the petitioner. He further submits that Mr. Rana Pratap Yadav "Dadhi" is the same person who has lodged the F.I.R. against the petitioner referred to hereinabove.

8. Replying to the aforesaid submissions, Sri Vivek Verma, learned counsel for the respondent No. 1 - University, and who has also obtained instructions from the Principal of the Institution, submits that a notice has been published on 9th October, 2012 itself adjourning the elections sine-die and he further contends that he has instructions to state that in view of the provisions of Clause no elections can be held and the Union will be treated to be suspended for the current academic session.

9. Learned counsel for both the caveators Sri Pandey and Sri Singh contend that the election process is a democratic process and in view of the judgment of the Apex Court in the case of University of Kerala Vs. Council, Principals", Colleges, Kerala and Others, , the elections of the Students" Union should be held which is being thwarted by an illegal process and incorrect orders passed by the respondent - College as supported by the university.

10. They contend that the nomination papers of their candidates namely Krishna Pratap Yadav and Kishan Pratap Singh have been wrongly rejected and they are also aggrieved on account of the said action of the College authorities. They submit that in view of the criminal background, the petitioner has rightly been held to be ineligible on account of his involvement in a pending criminal case in which he has been charge-sheeted and therefore the petition should be dismissed.

11. Replying to the said submissions of the said candidates, Sri Verma for the University has invited the attention of the Court to Clause 23 of the Ordinances which provides for a Grievance Redressal Cell for matters relating to the holding of elections. He submits that the said provision is an exhaustive provision and if the students have any grievance they can raise the same before the said Cell of the University which has the authority to decide such disputes against which an appeal can be filed to the Vice-Chancellor. He therefore submits that inspite of the fact that the petitioner is ineligible and the other contesting parties have disqualified themselves on account of the violation of the code of elections, yet they can approach the University under the aforesaid provision for the redressal of their grievances, and therefore, the petition should be dismissed on this ground as well.

12. Having heard learned counsel for the parties, the announcement of the Students" Union Election has led to a surge of antisocial and criminal elements vying against each other to get prominence through the Students" Union Election.

13. In the instant case, the F.I.R. which led to the filing of the charge-sheet against the petitioner appears to narrate an incident that took place on 24th July, 2012, and the charge-sheet whereof was submitted on 6.10.2012 after investigation. In the said circumstances, it is evident that a criminal case involving the petitioner became pending against the petitioner in terms of Clause .

14. Learned counsel for the petitioner vehemently urged that so long as the Court does not take cognisance and issue summons, it cannot be said that there is a case pending. In the opinion of the Court, the Ordinance applicable in the present controversy has to be interpreted in the light of the aim and object of excluding candidates with criminal antecedents. It has not to be interpreted in terms of the Criminal Procedure Code strictu-sensu. In the opinion of the Court, the language of the relevant ordinance clearly indicates that there should not be a criminal case pending against a person who wants to be a candidate in the Students' Union Election. In the instant case, the charge-sheet has been submitted before the Court, and therefore, it cannot be said that there is no criminal case pending. The petitioner will have to be discharged in order to get over the charge-sheet filed against him which can only be done by the Court and accordingly the matter becomes pending before the Court in terms of Clause of the Ordinances. The said clause has been considered by this Court in the light of the Paragraph 6.5.7 of the recommendations of the Lyngdoh Committee Report referred to in the decision of the University of Kerala (supra) and it has been held that the Ordinance framed by the University is in conformity with the judgment of the Apex Court. Even otherwise a student having indulged in a criminal activity becomes ineligible as it is not his fundamental right to contest an election. The vires of the rule has already been upheld in the aforesaid judgment.

15. In the aforesaid background, the candidature of the petitioner has been rightly rejected.

16. Coming to the situation which has arisen on account of the resignation of the Returning Officer, the argument of Sri Verma that the elections now cannot be held in emergent situation has also to be given weight. Clause reads as under:

The aforesaid clause clearly mandates that if the elections are not held within 6 to 8 weeks of the commencement of the academic session, then the students' union can be treated to be suspended for the said session due to unforeseen circumstances.

17. Sri Verma informs that the academic session of the University has commenced w.e.f. 17th July, 2012 to which the degree college concerned is affiliated. The period of 8 weeks has already expired but even if the college was proceeding to get the elections held, an emergent situation has arisen for adjourning the same sine-die. The college has witnessed rampage and violence and he informs at the bar that the University itself had to be shutdown for five days with no academic life during the elections of the University. He contends

that the involvement of criminal elements and antisocial persons has further added to this problem as has emerged in the present case and therefore he has instructions to state that it will not be possible to allow the college to hold elections during this academic session in view of the rule referred to hereinabove.

18. The aforesaid argument of Sri Verma cannot be brushed aside. The academic atmosphere of the college cannot be bartered away and subjected to any such unruly atmosphere which has invited criminal elements to contest elections. The question of the cancellation of the nomination of the caveators also is a serious matter as the college appears to have located large scale violations of the code of conduct. These issues directly relate to the ultimate purpose for which such elections are being held.

19. This Court has today itself in the decision in the case of Sudhir Ojha v. State of U.P. and others, Writ Petition No. 53613 of 2012 has deprecated the claim of such elements with a criminal background to participate in elections, and the writ petition has been dismissed. The observations made in the said judgment are also attracted in the present case where in the background as disclosed hereinabove the holding of elections is contrary to the aims and objects of the Lyngdoh Committee Report.

20. In view of the said circumstances, the resignation of the Returning Officer and the adjournment of the elections sine-die does not deserve to be interfered with by this Court in the exercise of jurisdiction under Article 226 of the Constitution of India.

21. Having said so, it is appropriate to mention the argument of Sri Verma for the University relating to the redressal of grievances through a Cell as per the provision under Clause 23 of the Ordinances. In the opinion of the Court, even if a person is aggrieved by the rejection of his nomination or the non-holding of elections the same can be raised before the Grievance Redressal Cell under the aforesaid Clause 23 of the Ordinances under Chapter XIII and a relief can be claimed in the event it is legally admissible and permissible. Accordingly, this Court does not find any fault in either the rejection of the nomination of the petitioner in the circumstances indicated above nor does it find any error in the decision of the college in adjourning the elections sine-die which do not deserve to be held till appropriate orders are passed by the University through the Grievance Redressal Cell or in Appeal by the Vice-Chancellor as provided in Clause 23 of the Ordinances. The writ petition is therefore consigned to records with the aforesaid observations without prejudice to the rights of the petitioner and the caveators to approach the University for the redressal of their grievances if any.