
(2014) 12 RAJ CK 0037

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1984 of 2014

Banshi Lal Bhahada

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Citation : (2015) 2 CDR 615

Hon'ble Judges : Sunil Ambwani, Acting C.J.; J.K. Ranka, J

Bench : Division Bench

Advocate : Dinesh Yadav, Naveen Verma and Yadvendra Yadav, Ashok Cam, Senior Counsel assisted by Ajay Choudhary and Himanshu Jain, Advocates for the Appellant; G.S. Gill, Additional Advocate General, Harish Kandpal, Addl. Govt. Counsel, Prateek Kasliwal, R.A. Katta and Banwari Sharma, Advocates for the Respondent

Judgement

1. We have heard learned counsel appearing for the appellant, who was not a party to the writ petition. The appellant had contested the election for the post of Research Representative, in the Students Union Elections of the Rajasthan University, 2014. Since, learned Single Judge has directed to cancel the entire elections we are of the view that the applicant's rights have been affected by the judgment, and thus, the application filed by him for leave to file the appeal is allowed. We have heard learned counsel appearing for the parties, including learned Additional Advocate General, appearing for the State of Rajasthan, learned counsel appearing for the Rajasthan University, and learned counsel appearing for the petitioner in the writ petition, who is respondent No. 4 in this Special Appeal.

2. This Special Appeal is directed against the judgment passed by learned Single Judge, on 27.11.2014, by which while entertaining the writ petition filed by Shri Saransh Ghiya (respondent No. 4 in this appeal), he has issued directions that in view of violation of the Code of Conduct, laid down to be followed in the elections for constitution of the Students' Unions, as also the directions of the Hon'ble

Supreme Court, accepting the Lyngdoh Committee's recommendations, the University will cancel the elections held on 23.08.2014. Learned Single Judge further directed that looking to the fact that if the polling would not have taken place, a direction could have been given to allow only those students in the election, who have adhered to the norms. The cancellation of the elections would however be with the liberty to hold elections after submitting an affidavit before this Court that it would be conducted without violation of the recommendations of the, Lyngdoh Committee, as approved by the Hon''ble Apex Court. Learned Single Judge thereafter directed as follows:--

"The University of Rajasthan so as the State Government are, however, directed to effectively consider as to why the election should not be held in the manner provided under para 6.2.4 of the judgment in the case of University of Kerala (supra). It is to avoid participation of large number of students in direct elections and the type of incidences reported in this case.

Necessary considerations, as directed above, would be made by the State of Rajasthan. They would also be at liberty to even bring legislation to bar Students'' Union Elections, if it cannot be conducted with adherence to the recommendations of Lyngdoh Committee as approved by the Hon''ble Apex Court. The writ petition is allowed with the aforesaid."

3. It is submitted by learned counsel appearing for the appellant, that the writ petition, at the instance of Shri Saransh Ghiya petitioner, was not maintainable for want of locus standi. The petitioner did not identify himself in the writ petition. He has simply stated in the writ petition; "The petitioner is a concerned citizen of Jaipur, Rajasthan, where he is using on day to day basis the route of J.L.N. marg and the nearby area of University of Rajasthan." It was further stated by him in paragraph 1 of the writ petition, that the violations of the guidelines of Lyngdoh Committee as it was laid down and accepted by the Supreme Court, can be seen to be violated on day to day basis.

4. It is stated that the elections for constitution of Rajasthan University Students'' Unions, were notified on 14.08.2014. The elections were held under the Constitution of the Rajasthan University Students'' Union, 2010, as amended in the year 2014, to constitute Students'' Unions at the University level and of the students of the P.G. Department/Units, and the Constituent Colleges of the University, called "Rajasthan University Students Union". Para 7 of the Constitution, provides for other Unions at Department/Units/Constituent College level, to include Students Union in all P.G. Departments/Units, Students'' Union in University Commerce College, University Centre-II Law College, University Law College, University Maharaja''s College, University Maharani''s College, University Rajasthan College, and University Five Year Law College.

5. The date of polling was fixed for 23.08.2014. A day before polling was to take place, a writ petition giving rise to this Special Appeal, was filed on 21.08.2014. On 22.08.2014, learned Single Judge, after going through the contents of the

writ petition, passed an order, the operative portion of which, is as follows:--

"Since, prima facie, violation of recommendations of Lyngdoh Committee, as referred in the judgment supra, exists in the matter, the elections of the student's union could have been stayed by this Court but this writ petition has been preferred a day earlier to the voting, however, this Court cannot be a silent spectator in the matter, moreso when, recommendations of Lyngdoh Committee as referred by the Hon''ble Apex Court are violated.

In view of the above, while the respondents are permitted to hold elections on 23rd August, 2014 for University of Rajasthan and its constituent colleges, they are restrained to declare result of the elections unless an affidavit is filed in the Court by the competent authority of the respondent Nos. 2 & 3 that while holding the elections, the norms prescribed in the judgment supra were adhered to and have not been violated.

List this case after two weeks accordingly."

6. It is submitted that polling was held on 23.08.2014, but on account of the interim order, counting could not take place.

7. In the writ petition, a reply was filed by the University. Applications were filed by the appellant and some of the candidates, namely Shri Jeevan Deepak Datonia, Yogesh Kumar Meena, Annu Kanwar, Monika Choudhary and Anil Chopra. The Court had at it's discretion called for the affidavit of the Commissioner of Police, Jaipur, which was submitted on 04.09.2014.

8. It is submitted by learned counsel appearing for the appellant that the petitioner is a busy body and a wayfarer, who had no concern with the elections. He was not a student of the University of Rajasthan and has taken a Law Degree from outside the State of Rajasthan. He had no locus standi to file the writ petition in view of the judgment of the Supreme Court in State of Uttaranchal Vs. Balwant Singh Chauhal and Others, , and Rules 385-E to 385-1 of the Rajasthan High Court Rules, 1952 (for short "the Rules of 1952").

9. It is further submitted that there was absolutely no complaint with regard to any violation of the Code of Conduct of the Rajasthan University Students' Union, or even Lyngdoh Committee's recommendations on the date of polling. There was no complaint made by anyone, that the polling was not held in a free and fair atmosphere. One of the candidate, who had also contested the elections, had to be elected unopposed. There was no such circumstances, which may have allowed the Court to interfere and to direct for cancellation of the entire elections.

10. It is submitted that the University had defended the elections. In the affidavit " filed by the University, it was stated that they are trying their best so that the Code of Conduct, as set out in the Constitution of the Rajasthan University Students' Union 2010, and the Lyngdoh Committee's recommendations, are followed. They however do not have any control over the incidents, which may take place outside the campus of the University. The Commissioner of Police, in

his affidavit, stated that there were some incidents of crime and violence at Bikaner, where two persons lost their lives. The investigation of the offence is in progress; Rallies were taken out by the students without seeking permission from the police. He also reported that there were some clashes outside the campus, and that posters were pasted on the walls of the University, and on the walls of other parts of the city of Jaipur, defacing public properties.

11. It is submitted that apart from Lyngdoh Committee's recommendations, the Constitution of the Rajasthan University Students' Union, also provides for Code of Conduct in para 26 of the Constitution, and the consequences of violation of Code of Conduct in para 27, with Additional Penal Liability under para 28, for which a Grievance Redressal Mechanism has been set up under para 29, which provides that Grievance Cell shall be responsible for the redressal of election related grievances including but not limited to breaches of the code of conduct of election and complaints relating to election-related expenditure.

12. Learned counsel appearing for the University states that the University authorities had taken care that elections are held peacefully. There were certain incidents of defacing the public property by pasting posters, and for which, notices were issued to the concerned candidates. Their replies are under consideration.

13. It is submitted by learned Additional Advocate General, appearing for the State of Rajasthan, that adequate care was taken to maintain law and order in the campus and to ensure peaceful atmosphere in the University and in the city of Jaipur. The Commissioner of Police had reported the details of incidents relating to elections to the Court. The State Government is not in favour of cancellation of the elections. He submits that if any individual candidate has violated the Code of Conduct, the Constitution of the Rajasthan University Students' Union, provides for taking action in accordance with para 26 and 27 of the Constitution of the University.

14. Learned counsel appearing for the petitioner/respondent No. 4, has defended the judgment. He states that the petitioner is a responsible citizen of Jaipur, and is an Advocate, practicing in the District Court. He was concerned with large scale violation of the Lyngdoh Committee's recommendations. Learned counsel submits that there was violence reported in various parts of the State. The walls of the University and neighbouring areas were defaced with posters, and rallies were held without permission from authorities disturbing the life of citizens of Jaipur city. A situation had arisen, which has been elaborately mentioned by the Commissioner of Police, threatening the academic atmosphere and creating the circumstances, which resulted into serious breach of peace in the area. He submits that petitioner as a responsible citizen had approached the High Court for compliance of the Lyngdoh Committee's recommendations, dated 23.05.2006, accepted by the Supreme Court, as well as the Code of Conduct in the Constitution of the Rajasthan University Students' Union. He has relied upon a judgment of the Madras High Court in All India Anna Dravida Munnetra

Kazhagam vs. The State Election Commissioner, in Writ Petition No. 39400/2006, decided on 12.01.2007 and on 16.02.2007 by a third Judge, in which the elections of Municipal Council were cancelled by the High Court.

15. After hearing learned counsel for the parties, prima-facie we are satisfied that the writ petition was not maintainable in the alleged public interest at the instance of the petitioner/respondent No. 4. Chapter XXIIA of the Rajasthan High Court Rules, 1952 (for short, "the Rules of 1952"), regulates the procedure for filing a public interest litigation. Rule 385-B, provides a PIL petition, to be heard 1 ordinarily by a Division Bench unless otherwise ordered by the Chief Justice. The Proviso to Rule 385-E, provides that in every petition filed in public interest, the particulars of the petitioner, or of the petitioners when there be more than one petitioner, shall be distinctly stated, and the petitioner shall carry photograph as well as address proof of every individual petitioner. Rule 385-E of the Rules of 1952, provides as follows:--

"385-E. Filing of PIL Petition.-A petition, drawn as nearly as possible in conformity with the Format appended to these, rules could be filed in the High Court espousing a public cause in the nature of regular public interest petition by an individual or by individuals having social public standing/professional status/public spirited antecedents. Such petition could also be filed by or with any social action group or a non-governmental organization.

Provided that in every petition filed in public interest, the particulars of the petitioner, or of the petitioners when there be more than one petitioner, shall be distinctly stated; and the petition shall carry photograph as well as address proof of every individual petitioner and so also of the deponent filing the affidavit in support of the petition.

Provided further that in every petition filed by or with any social action group or non-governmental organisation, a specific resolution of such group or organisation to file such petition while authorising particular person or persons to prosecute the matter shall also be annexed to the petition."

16. In the present case, it is apparent that the petitioner had except a statement in paragraph 1 of the writ petition that he is a responsible citizen and passes through JLN Marg, on which the University is situate, not given any further details, either with regard to his status, or his concern and the source of knowledge for the events on which he had alleged breach of Code of Conduct and violation of Lyngdoh Committee's recommendations. He, on the facts and circumstances stated in the writ petition, had no concern with the University elections, whatsoever.

17. We are also, prima-facie, satisfied that there was no material placed before the Court, that there was any violence or breach of peace, which may have affected the polls on 23.08.2014, when the students exercised their right of franchisee, to elect the office bearers of the Students' Unions, under the Constitution of the Rajasthan University Students' Union, 2010. The incidents of

holding rallies without permission, clashes between the group of students, and the incident in Bikaner, reported by the Commissioner of Police, may or may not have had any concern or with any candidate participating in the university elections. It was the duty of the Police Commissioner, to have maintained the law and order, and to have prevented such things to have happened in the city on account of the university elections, as reported in his affidavit. These event do not either disclose any serious threat to breach of peace, nor any allegations were made against any particular candidate, of having violated the Code of Conduct, or any of the Lyngdoh Committee's recommendations.

18. We do not find any material in the pleadings, or in the reply or reports, pointing to any violation of Code of Conduct against any particular candidate, who may have violated the Code of Conduct, or Lyngdoh Committee's recommendations.

19. We are, prima-facie, of the view that the elections, in such circumstances, could not have been cancelled, as a whole. If the incidents reported by the Commissioner of Police, have any relevance to the breach of Code of Conduct by any candidate, steps could be taken by a person, who was directly concerned with the elections, or by the University, for the consequences of violation of the Code of Conduct, and which may have ultimately resulted into cancellation of the results of that particular candidate.

20. We do not find any violation of the Code of Conduct or the Lyngdoh Committee's recommendations, either by any candidate, or the candidates collectively, which could have resulted into formation of opinion for cancellation of the entire elections.

21. The Students' Union Elections are held for constitution of Students' Unions under the Constitution of the Students' Unions, which has approval of the University of Rajasthan for giving it a formal expression of their democratic rights. The Students' Unions in the University have statutory recognition. The Students' Unions play an important role, both for the welfare of the students as well as for assisting the university authorities in discharging its functions and in carrying on various activities in the University.

22. Prima-facie, there is nothing on record to show that there was any such violation of the Code of Conduct, or breach of peace in the City, which may have vitiated the entire elections, and more particularly when there was no incident of any violence reported on the date of polling, which may lead to an inference that the elections were not held freely and fairly.

23. In view of the above, we admit the Special Appeal and allow all the respondents to file their detailed reply within four weeks.

List this Special Appeal for hearing on 16.02.2015.

Until further orders, effect and operation of the impugned judgment dated 27.11.2014. shall remain stayed. The University will proceed with the counting of

the votes, and declare the results, subject to result of this Special Appeal.