

(2011) 08 RAJ CK 0076

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10760 of 2011 and Civil Stay Application No. 9904 in Civil Writ Petition No. 10760 of 2011

Devraj Galav

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Constitution of India, 1950 — Article 15, 19(1), 226

Citation : (2011) 08 RAJ CK 0076

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard the learned Counsel for Petitioner.

2. Petitioner, in this writ petition, has challenged Clause 8(vii) of the Guidelines dated 25.06.2010 issued by the Education(Group-4) Department, Government of Rajasthan, imposing restriction that a candidate will not be eligible for contesting election of Students' Union, if he has a previous criminal record.

3. Petitioner has pleaded that he is a student of M.A.(Previous) in the subject of Economics and he is a regular student of Government College, Baran, the Respondent No. 4. The Students' Union Election 2011-2012 has been declared and the same will be held on 20.08.2011. The State Government has issued a Circular/Guidelines dated 25.06.2010 on the basis of recommendations made by the Lyngdoh Committee, which has been ordered to be made effective by the Hon'ble Supreme Court.

4. It is further contended that a criminal case was registered against the Petitioner at Police Station Kotwali, Baran and trial is going on against the Petitioner in the trial Court. Although, there is no evidence against the Petitioner, but he will not be eligible to contest the election of Students' Union because of pendency of criminal case against him, therefore, Clause/Condition No. 8(vii) of

the Guidelines may be declared as illegal and ultra-vires to the provisions of Article 19(1)(c) of the Constitution of India.

5. I have considered the submissions of the learned Counsel for Petitioner and examined the Guidelines dated 25.06.2010.

6. From the Guidelines, it is apparent that the Hon''ble Apex Court while accepting the recommendations of Lyngdoh Committee, directed all the Universities and the State Governments to issue necessary guidelines for conducting Students'' Union Elections in universities and colleges. Recommendations made by the Lyngdoh Committee have been reproduced by the Hon''ble Apex Court in its judgment in *University of Kerala(1) v. Council, Principals'', Colleges, Kerala And Others*, (2006) 8 SCC 304. Recommendation No. 6.5.7 of Lyngdoh Committee is reproduced as under:

6.5.7. The candidate shall not have a previous criminal record, that is to say he should not have been tried and/or convicted of any criminal offence or misdemeanour. The candidate shall also not have been subject to any disciplinary action by the university authorities.

7. Hon''ble Apex Court in above judgment, directed that suggestions given be implemented as and when the necessity so arises and the recommendations are accepted to be adopted as an interim measure, shall be followed in all college/university elections to be held in future. Para 7 of the judgment is reproduced as under:

7. During the course of hearing of the petition, Mr. Gopal Subramaniam, learned Additional Solicitor General brought to our notice the need for a direction to provide security to the academic community who are involved in the process of students'' union elections in the universities and the colleges. It was suggested that to ensure protection to them, the Superintendent of Police, in charge of the area shall provide enough police protection and shall ensure that no untoward incident takes place by providing adequate number of police personnel to be posted near the place of elections. The suggestions appear to be wholesome. We direct that the suggestions given be implemented as and when the necessity so arises. It is made clear that the recommendations made, which we have accepted to be adopted as an interim measure, shall be followed in all college/university elections, to be held hereinafter, until further orders.

8. Although, directive issued by the Hon''ble Apex Court in above referred judgment in *University of Kerala(1)* (supra) on 22.09.2006 was referred to the Larger Bench vide subsequent order dated 11.11.2009 passed in the same case of *University of Kerala*, reported in (2010) 1 SCC 353, however, the Larger Bench has not so far answered the reference made and directions issued by the Hon''ble Apex Court on 22.09.2006 in *University of Kerala(1)* (supra) have not been withdrawn as yet. Consequently, eligibility criteria enumerated in Clause 8 (vii) of the Guidelines dated 25.06.2010 (Annexure-2), cannot be said to be illegal or arbitrary in any manner. It is based upon Recommendation No. 6.5.7. of the

Lyngdoh Committee, which has been directed to be implemented by the Hon'ble Apex Court, the same is binding upon the State and university. Thus, the provisions of Clause 8 (vii) of the Guidelines, cannot be said to be illegal, arbitrary or unreasonable.

9. The Division Bench of this Court in D.B. Civil Writ Petition No. 9306/2011-Mukesh Kumar Bhakar v. University of Rajasthan and Ors., decided on 26.07.2011, considered another restriction imposed on the candidates to contest election only once for any post of Office Bearers in the same Students' Union and the relevant provision i.e. Article 15(c) of the Constitution of Rajasthan University Students' Union, 2010 was upheld and it was held that the same cannot be said to be unconstitutional or violative of Article 19(1)(c) of the Constitution of India. The relevant portion/paras of Division Bench judgment are reproduced as under:

No doubt about it that the directive issued by the Apex Court in University of Kerala(1) (supra) on 22.9.2006 has been referred to the Larger Bench vide subsequent order dated 11.11.2009 passed in the same case of University of Kerala reported in (2010) 1 SCC 353, however, the Larger Bench has not so far answered the reference made and the directions issued by the Apex Court on 22.9.2006 in University of Kerala (supra) have not been withdrawn as yet. Consequently, the provision of Article 15(c) of the Constitution of the Students' Union cannot be said to be illegal or arbitrary in any manner. It is based upon the recommendation No. 6.5.6 of the Lyngdoh Committee, which has been directed to be implemented by the Apex Court, the same is binding upon the State and Universities. Thus, provision of Article 15(c) cannot be said to be illegal, arbitrary or unreasonable.

Examining the submissions on merits also, we are of the considered opinion that the provision of Article 15(c) has been framed with the objective that though the democratic process of election of Students' Union may take place in the Universities but at the same time, it is not made the routine of the students to contest the election more than once. The restriction cannot be said to be unreasonable or restrictive of the rights to contest election. It is regulatory measure. Reasonable restriction can always be imposed with respect to the elections of Students' Union. Right to contest election cannot be claimed as fundamental right. It is statutory right and can be subjected to certain conditions. There are instances when the students have made it business to contest the elections time and again. They do not want to pass out of Universities merely for the sake of contesting elections and to contest again and again vitiating entire atmosphere of educational institutions in which objective is different. It is in order to get rid of such vices and also that students should concentrate mainly on studies and they should not make contesting election of students union as their main business in the colleges, the provision appears to have been carved out. It is cannot be said to be unreasonable, illegal and arbitrary in any manner nor can be said to be unconstitutional or violative of

Article 19(1)(c) of the Constitution of India.

...

For the reasons mentioned above, the provision contained in Article 15(c) of the Constitution of the Students' Union cannot in any manner be said to be arbitrary or illegal or unconstitutional or violative of fundamental right of the Petitioner, rather it appears to have been made to ensure that students concentrate more on studies and not to treat the election as their main business in the Universities and to create good academic and disciplined scenario and healthy educational atmosphere in the Universities. Thus, as a matter of fact, the provision seems to be in the interest of students as a whole. Apart from this, the provision has been made pursuant to the directives of the Apex Court and same is in conformity with the report of the Lyngdoh Committee. It does not in any manner infringe any of the right of the Petitioner much less fundamental right. It is within the domain of the University to make the provision in question and power has been exercised well within the framework of law and it does not suffer from the vice of arbitrariness. Hence, no case is made out so as to interfere with the provision in question in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India.

Thus, the writ petition being devoid of merit deserves dismissal and it is hereby dismissed. No costs.

10. In view of above discussions, it is clear that Clause 8(vii) of the Guidelines dated 25.06.2010 is based on the recommendations of Lyngdoh Committee, which have been ordered to be implemented by the Hon'ble Apex Court. The Division Bench has also examined the similar restriction imposed on the candidates who contest election and upheld the said restriction.

11. In these circumstances, I do not find any merit in this writ petition and the same is, accordingly, dismissed.

ORDER

12. Since main appeal itself has been dismissed, therefore, stay application does not survive and the same also stands dismissed.