
(2004) 11 AHC CK 0268
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40069 of 2004

Kunwar Arif Ali Beg alias "Mamu" and Faizan Khan APPELLANT
Vs

Vice Chancellor, Aligarh Muslim University, Chief Election Officer, Aligarh Muslim University Students' Union, Registrar (Counselling Section), Aligarh Muslim University and Patron, Aligarh Muslim University RESPONDENT

Date of Decision : 03-11-2004

Acts Referred:

Aligarh Muslim University Students Union (Conduct of Election) Regulation, 2004 — Regulation 3, 6, 9

Citation : (2004) 11 AHC CK 0268

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : M.D. Singh "Shekhar", for the Appellant; Shashi Nandan and Sunita Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri M.D. Singh "Shekhar" Advocate on behalf of the petitioners and Sri Shashi Nandan Senior Advocate assisted by Srimati Sunita Agarwal on behalf of respondents 1, 2, 3 and 4.

2. Petitioner No. 1, Kunwar Arif Ali Beg claims himself to be the student of M. Tech. III semester while petitioner No. 2, namely Faizan Khan, claims himself to be a student o B. Com. Final year in the Aligarh Muslim University, Aligarh, with enrolment Nos. 48927 and CC-5208 respectively. The petitioners being the students of Aligarh Muslim University are also members of the Aligarh Muslim University Students Union. The Vice Chancellor of the Aligarh Muslim University in his capacity as Patron of Aligarh Muslim University Students Union, as per Statute 34 under Chapter XXI of the Ordinances Academic (Executive) approved the Aligarh Muslim University Students Union (Conduct of Election) Regulation, 2004 (hereinafter referred to as the election regulations) for conduct of the elections of the Students Union. By means of notification dated 05.09.2004

Professor Noor Mohammad, Department of Sociology, was appointed as the Chief Election Officer for conducting the elections of the officer bearers of the Students Union of the University for the academic year 2004-05. The petitioners contend that subsequent to the aforesaid notification nominations were invited for various posts of the Students Union. Petitioner No. 1 submitted his nomination as a candidate for the post of President while petitioner No. 2 submitted his nomination for the post of Honorary Secretary. On 20.09.2004 the list of valid candidates for the post of Secretary as well as the President of the Students Union was declared. In the said list so disclosed the name of the petitioners were not mentioned as a consequence there to nominations of the petitioners for the respective posts stood declared invalid.

3. The petitioners have challenged the aforesaid action of the respondents on the ground that (a) the Chief Election Officer, Professor Noor Mohammad, had issued a letter dated 22.09.2004 informing all the candidates that their demand for permitting all the candidates who have filed their nominations to contest the elections of the Students Union has been accepted by the Vice Chancellor. The said decision of the Chief Election Officer is final in view of Regulation 6 read with Regulation 9 and, therefore, the subsequent letter of the Chief Election Officer to the effect that the Patron Vice Chancellor has not accepted his request for permitting all the candidates to participate in the elections is wholly without jurisdiction; (b) the respondents have acted in a discriminatory manner while interpreting Clause 3 of the Election Regulations as amended under the Officer Memo dated 15.09.2004 inasmuch as in respect of similarly situate candidates who have been found guilty of indiscipline and gross misconduct, permission to contest the elections has been granted as their candidature has not been rejected, as has been done in the case of the case of the petitioners, as such the entire election stood vitiated on the ground of the discrimination practiced by the Vice Chancellor in permitting other disqualified candidates who were similarly punished for indiscipline and gross misconduct (to contest the election); and (c) the respondents misinterpreted the words "has been expelled from the roll of the University" as contained in Clause 3 of the Regulations inasmuch as the same qualifies the case of gross misconduct only and has no application in respect of the students who have been punished for indiscipline only.

4. On behalf of the Aligarh Muslim University it has been stated that the nominations of the petitioners have been rejected as they were ineligible for contesting the elections in view of Clause 3 and 5-A of the Regulations inasmuch as petitioner No. 1, Kunwar Arif Ali Beg was rusticated from the roll of the University with immediate effect from 04.12.1995 and the University campus was placed out of bounds for him. Against the said order Kunwar Arif Ali Beg filed Writ Petition No. 31609 of 1996 which was disposed of by this Court by judgment and order dated 17.03.1998 with a direction that the petitioner may file an appeal against the said expulsion order before the Executive Council. In compliance of the orders of this dated 17.03.1998 passed in Writ Petition No. 31609 of 1996 the Vice Chancellor, having regard to the fact that Kunwar Arif Ali

Beg has already undergone expulsion for more than six years, permitted revocation of the order of rustication with immediate effect meaning thereby that expulsion of the petitioner No. 1 for six years was maintained and he was given liberty for fresh admission in the University under the orders passed in appeal. It has further been pointed out that Kunwar Arif Ali Beg had passed B.Sc. Engineering in the year 1999 and was admitted to M. Tech course in the year 2003 only. Thus there has been a break of more than 4 years between the course last completed by the petitioner No. 1 and the next course to which he has been admitted.

5. Similarly petitioner No. 2, Faizan Khan, was rusticated from the roll of the University for a period of 5 years vide Office Memo dated 15/16.09.2003. Against the said order petitioner No. 2 preferred a writ petition before the High Court which was allowed and the matter was remanded to the Disciplinary Committee for fresh decision. The petitioner No. 2 pleaded guilty and prayed for mercy before the Disciplinary Committee. The Disciplinary Committee taking a lenient view in the matter recommended that the petitioner be expelled for one year only i.e. for academic session 2003-2004, and he was further debarred from further admission to any course run by the University or in any other institution maintained by the University, during this period. In view of the aforesaid factual position it is contended that there is no illegality in the action of the University in declaring the petitioners ineligible for contesting the elections of the Students Union and the writ petition deserves to be dismissed.

6. The petitioners have not challenged the facts which have been mentioned in the counter affidavit filed by the University, in paras 15, 16 and 17 whereof the details of expulsion orders passed against the petitioners, as noticed hereinabove, have been mentioned. Reference in that regard may be had to para 11 and 12 of the rejoinder affidavit. In the rejoinder affidavit the names of three candidates who were punished for indiscipline and gross misconduct, namely Farooq Khan, Nafis Ahmad and Naseem Ashraf, have mentioned for the purposes of establishing that the aforesaid students have been permitted to contest the elections of the Students Union despite the fact that they have been punished by the University for indiscipline and gross misconduct.

7. I have heard learned counsel for the parties and gone through the record.

8. It has been settled by the Hon^{ble} Supreme Court in the judgment reported in 200 SCC (10) at page ... that the right to participate in the elections of the union of students is not a fundamental right. It is only a statutory right which is regulated strictly in accordance with the provisions of the statutes permitting holding of the elections of the Students' Union. In view of the said legal position the petitioners can be permitted to participate in the elections of the Students' Union only if they fulfill all the requisite conditions and are not disqualified/declared ineligible under the provisions of the Regulations. It is in this background that this Court has to examine the legal contentions raised on behalf of the petitioners.

9. For the purposes of deciding the issue as to whether the petitioners have been rightly declared ineligible by the University for contesting the elections of the Students Union, it would be necessary to refer to the Aligarh Muslim University Students Union (Conduct of Election) Regulations, 2004. Relevant Clauses 3, 5, 6 and 9 of the said Regulations are quoted below:--

"3. No student who has been convicted of any criminal offence or against whom any disciplinary action has been taken by the Vice Chancellor, either on the recommendation of the Discipline Committed or otherwise. Shall be eligible to stand as a candidate in the elections."

4. ...

5. Only a student eligible to vote under Clause 2, but not hit by any of the disqualifications specified in Clause 3, shall be eligible to stand as a candidate for election;

Provided that no student, though otherwise eligible to be a candidate, shall be eligible to stand for election if--

(a) he has failed to clear or complete part of a course that he is currently admitted to within the minimum period prescribed for that part of the course; or

(b) there is a break exceeding one academic year between the course last completed by him at this University or any other University and the next course to which he has been admitted; or

(c) the total period for which he has been a regular student of this University in the past, excluding Senior Secondary course, exceeds seven years; or

(d) he is in the service of the University or any Government or any other body/organization/institution, notwithstanding that he is on leave.

6. The nomination papers of the candidates for election shall be submitted to the Chief Election Officer on the date and time fixed for this purpose on a prescribed form giving the name, class/course, enrolment No. and Hall of the candidate, proposer and the seconder, as also the acceptance of the candidate concerned. The Students Union officer, which shall be the officer of the Chief Election Officer, shall supply these forms to the candidates. The Chief Election Officer shall have the right to determine the eligibility of otherwise of the proposer, the seconder as well as the contestant. If it is found that the candidate is ineligible as per Clauses 2, 3 and 5 of these regulations, his nomination paper shall be rejected. The decision of the Chief Election Officer in the matter shall be final."

9. In the matter of interpretation of these regulations, the decision of the Chief Election Officer shall be final."

10. Reference may also be had to the amendments made in the aforesaid Regulations vide Office Memo dated 15.09.2004. issued by the Vice Chancellor in the capacity of Patron of the Aligarh Muslim University Students Union and as per

statute 34 of the Statutes of the University read with the provisions of Chapter XXI of the Ordinances (Executive) which read as follows:--

"1. The existing Clause 3 shall stand substituted as follows:--

3. No student who has been convicted of any criminal offence, or has been judged guilty of indiscipline or gross misconduct and has been expelled from the rolls of the University, shall be eligible to stand as a candidate in the elections.

2. The existing Proviso under clause 5 shall stand substituted as follows:--

(a) there is a break exceeding three academic years between the course last completed by him at this University or any other University and the next course to which he has been admitted; or

(b) the total period for which he has been a regular student of this University in the past, excluding Senior Secondary course, exceeds eight years; or

(c) he is in the service of the University or any Government or other body/organization/institution, notwithstanding that he is on leave.

The above amendments/additions to "Aligarh Muslim University Students Union (Conduct of Election Regulations, 2004" shall come into force with immediate effect."

11. It is not in dispute that in accordance with the agenda published for the elections as has been enclosed as annexure-12 to the writ petitioner, the date for scrutiny of the nomination papers was fixed for 20th September, 2004. From the list of the eligible candidates as published on 20th September, 2004, after such scrutiny by the Chief Election Officer, the names of the petitioners were excluded and as a consequence thereto their nominations stood rejected. The said decision of the Chief Election Officer, in view of the provisions of Regulations 6 and 9 became final and could not have been questioned by the petitioner before the Vice Chancellor/Patron. However, the question still survives as to whether the Chief Election Officer was justified in rejecting the nominations of the petitioners for their respective posts. From Clause 3 of the Regulations, subsequent to its amendment vide Office Memo dated 15.09.2004, it is apparently clear that a student who has been judged guilty of indiscipline or gross misconduct and has been expelled from the rolls of the University shall not be eligible to stand as a candidate in the elections. Similarly under Proviso (a) Clause 5, if there is a break of three academic years between the course last completed by the student at the Aligarh Muslim University or any other University and the next course to which he has been admitted, such a student is also ineligible to be a candidate in the elections.

12. From the facts which have been stated in the counter affidavit on behalf of the University it is established beyond doubt that the petitioners had been expelled by the University because of misconduct and indiscipline and therefore both the petitioners are ineligible to contest the elections of the Students' Union,

in view of the aforesaid clauses of the Regulations. So far as petitioner No. 1 is concerned he had admittedly passed his B. Tech. Engineering in the year 1999 and thereafter admitted in M. Tech course in the month of August, 2003 and therefore there has been a break of more than 3 years as contemplated by proviso (a) to Clause 5 of the Regulations as amended by Office Memo dated 15.09.2004. In view of the aforesaid factual position and in view of the provisions applicable it cannot be said that the University has committed any illegality in declaring the petitioners ineligible for contesting the elections on the posts of President and Secretary of the Students' Union, respectively.

13. So far as the contention raised on behalf of the petitioners on the basis of the letter of the Chief Election Officer dated 22.09.2004 is concerned it would be worthwhile to reproduce the contents of the said letter:--

"Dear Mr. Faizan Khan,

We have accepted your demand and allow all the candidates who filed their nominations to contest the elections for A.M.U. Students' Union. Please come down from the top of the water tank."

14. From the facts as noted in the said letter it is apparently clear that the said letter has been written by the Chief Election Officer only for the purposes of ensuring the safety of the person concerned (petitioner No. 2) who had climbed on the top of a water tank. In any view of the matter the Chief Election Officer cannot permit a candidate to contest the election of the Students' Union contrary to the provisions of the Statutes and the Regulations referred to above and in such circumstances the letter of the Chief Election Officer dated 22.09.2004 relied upon by the petitioners is of no consequence nor can it confer a right upon the petitioners to plead that they had been declared legible for participating the elections contrary to the provisions of the Regulations. In the opinion of the Court no authority, including the Chief Election Officer, has any competence to issue an undertaking not contemplated by the statutory provisions or to act in contravention of the statutory provisions. The said letter dated 22.09.2004 had been issued subsequent to the declaration of the list of valid candidates by the Chief Election Officer to be precise on 20th September, 2004 and the said decision of the Chief Election Officer had become final in view of Clauses 6 and 9 of the Regulations, referred to above. Such a decision of the Chief Election Officer cannot be said to have been revoked or recalled on the basis of the letter dated 22.09.2004. It may also be noticed that the Chief Election Officer, by means of subsequent letter dated 23.09.2004, informed the candidate concerned (petitioner No. 2) that the Patron/Vice Chancellor has not accepted his request for permitting all the students to contest the elections. Thus whatever the worth the letter dated 22.09.2004 had stood negatived in view of the subsequent letter dated 23.09.2004 which has been enclosed as annexure-11 to the writ petition.

15. So far as the grievance made by the petitioners against the permission granted by the University to Sri Farooq Khan, Nafis Ahmad and Naseem Ashraf,

[para 12 (i), (ii) and (iii) of the writ petition] to contest the elections of the Students' Union, suffice it to point out that the aforesaid students had not been expelled by the University and therefore mere act of misconduct or indiscipline in itself is not a ground for declaring a candidate ineligible. The language of Clause 3, as amended vide Office Memo dated 15.09.2004, leaves no room for doubt that for declaring a student ineligible for contesting the elections his expulsion from the rolls of the University on the charge of indiscipline and gross misconduct, is necessary. Since the aforesaid three candidates have not been expelled from the rolls of the University nor any such allegation has been made by the petitioners in the writ petition or in the rejoinder affidavit, in the opinion of the Court the University has not committed any illegality in permitting the aforesaid three students, namely Farooq Khan, Nafis Ahmad and Naseem Ashraf, to contest of the elections of the Students' Union.

16. The submission of the petitioners that the words "expelled from the rolls of the University" would qualify only the students judged guilty of gross misconduct is based on misreading of Clause 3 inasmuch as the said words "expelled from the rolls of the University" would be applicable equally in the case of the students who have been judged guilty of indiscipline or gross misconduct. If a student has been found guilty of indiscipline or gross misconduct but has been awarded punishment other than the punishment of expulsion from the rolls of the University such a student has not been declared ineligible for contesting the elections of the Students' Union under the Regulations.

17. It is worthwhile to compare the unamended Regulation 3 with the amended Regulation 3, as amended by Office Memo dated 15.09.2004. Earlier ineligibility of a student to contest the election of the Students' Union was dependent only upon his been judged guilty of indiscipline and gross misconduct. However, because of the agitation of the students the said clause was amended and the conditions of the student having been expelled on being found guilty of indiscipline or gross misconduct, was substituted. Similarly in Proviso (a) to Clause 5 of the Regulations the period of break in the unamended clause was one year. However, because of the agitation of the students the said period was extended to 3 years, vide Officer Memo dated 15.09.2004.

18. Even otherwise the petitioners have not impleaded the aforesaid 3 students, namely Farooq Khan, Nafis Ahmad and Naseem Ashraf, as respondents in the writ petition and therefore the petitioners cannot be permitted to raise any grievance or to seek any relief in respect of the aforesaid there persons having participated in the elections.

19. In view of the aforesaid this Court has no hesitation to hold that the contentions raised by the petitioners are unsustainable in the eye of law and are to be rejected. The writ petition is accordingly dismissed. No orders as to costs.