
(2011) 07 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9306 of 2011

Mukesh Kumar Bhakar

APPELLANT

Vs

University of Rajasthan and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Constitution of India, 1950 — Article 15(c), 19(1)(c), 226, 6

Citation : (2012) 1 RLW 615

Hon'ble Judges : Arun Kumar Mishra, C.J;Bela M. Trivedi, J

Bench : Division Bench

Advocate : R.N. Mathur, assisted by Sanchit Tamra, for the Appellant;

Judgement

Bela M. Trivedi, J.—The petitioner, in the writ petition, has questioned the constitutional validity of Article 15(c) of the Constitution of the Rajasthan University Students' Union, 2010 (hereinafter referred to as "Constitution of the Students Union") imposing restriction that the candidate can contest the election only once for any post of the offence bearers in the same Students' Union. The facts in short are that the petitioner has claimed himself to be the student of LL.B. 1st Year, University Law College, University of Rajasthan, Jaipur. He was admitted in the University in the year 2005. He has done Post Graduate studies in Sociology. The petitioner had contested election for the post of President, Rajasthan University Students Union in the year 2010 and was declared unsuccessful. He applied for recounting of the votes, but recounting was not done.

2. It is further averred that the University of Rajasthan has framed the Constitution of the Students Union. It was not published for public notice. The Constitution was approved by the Syndicate on 22.7.2010. Article 6 of the Constitution of the Students' Union provides that there shall be one Union at the University level of all the students of the PG Departments/Units. Article 15(c) of the Constitution of the Students' Union provides that there shall be one Union at the University level of all the students of the PG Departments/Units. Article 15(c)

of the Constitution of the Students Union imposes restriction on number of attempts to contest election. Provision has been made that the students shall not be allowed to contest the election for more than one post at a time and more than once for any post of the office bearers of the same Union any time and not more than twice for the post of Executive Member.

3. It is submitted by the petitioner that the restriction on number of chances to contest election is unreasonable. Classification made is artificial and does not have any nexus with the objectives sought to be achieved. The same is based upon the letter dated 25.6.2010 issued by the State of Rajasthan which was addressed to all the Registrars of all the public Universities and to the Commissioner of College Education with respect to elections of Students' Union in different Universities and Colleges in which reference of Lyngdoh Committee's recommendations and acceptance of the same as directed by the Hon'ble Supreme Court has been made. Direction was issued to the Universities to ensure that the elections of the Students' Union are conducted only in accordance with the recommendations of the Lyngdoh Committee. The decision of the Apex Court in the matter of University of Kerala Vs. Council, Principals, Colleges, Kerala and Others, has been referred to the Larger Bench and the reference is pending.

4. Petitioner has submitted that the restriction imposed under Article 15(c) of the Constitution of the Student's Union is arbitrary, unreasonable, unjust and violative of the principles of participation in democratic process of election. In the Representation of Peoples' Act, 1951, Rajasthan Panchayati Raj Act, 1994 etc., there is no restriction on number of attempts to contest the election. The Rajasthan University has accepted the recommendations made by the State of Rajasthan without application of mind in a mechanical manner. The University has abdicated its autonomy, feasibility of applying conditions have not been taken into consideration.

5. Shri R.N. Mathur, learned Senior Counsel appearing on behalf of the petitioner has submitted that the provision of Article 15(c) of the Constitution of the Students' Union is illegal and arbitrary and violative of democratic rights to contest the election. The restriction is unreasonable. The decision of the Apex Court in University of Kerala (1) (supra) has been referred to the Larger Bench. The State Government could not have written letter dated 25.6.2010 to the Universities to follow the recommendations made by the Lyngdoh Committee. Moreover, there was no reason to implement the recommendations made by the Lyngdoh Committee as directed by the Apex Court as the matter has been referred to the Larger Bench and is pending before the Apex Court.

6. The Constitutionality of the provision of Article 15(c) of the Constitution of the Students' Union has been put in question by the petitioner. The same is quoted below:-

15(c) Provided that

No student shall be allowed to contest for more than one post at a time and more than once for any post of the office bearers of the same Union any time; and not more than twice for the post of an Executive Member.

7. It is apparent that the restrictions have been imposed on a student (1) from contesting election for more than one post at a time; (2) no student can contest more than once for any post of the office bearers of the same Union any time; (3) not more than twice for the post of Executive Member.

8. The aforesaid provision of Article 15(c) has been framed on the basis of the direction issued by the Apex Court in *University of Kerala (1) (supra)*. The Apex Court had appointed Committee headed by Shri J.M. Lyngdoh. The Committee has submitted the recommendations and suggestions. The Apex Court in *University of Kerala (1) (supra)* vide order dated 22.9.2006 has issued direction to follow the recommendations. Following recommendations have been made in para 6.5.6. relating to eligibility criteria for candidates:-

6.5.6. The candidate shall have one opportunity to contest for the post of office-bearer, and two opportunities to contest for the post of an executive member.

9. The Apex Court has observed that the recommendations and suggestions be implemented. The recommendations be adopted as an interim measure and shall be followed in all college/university elections to be held hereinafter, until further orders. The Apex Court directed communication of the order to the respective States and Union Territories so that necessary steps can be taken to ensure compliance of the order.

10. The State of Rajasthan had issued communication in compliance of the aforesaid order of the Apex Court to follow the commendations made by the Lyngdoh Committee, and accordingly, the University has framed the Constitution of the Students' Union containing aims and objectives, organizational structure, Functions of the Union, Chief Patron, powers and functions of the Chief Patron, eligibility criteria and office bearers. It also contains provision with respect to meetings, quorum, code of conduct, grievance redressal mechanism and other miscellaneous provisions.

11. 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 Vs. Council, Principals, Colleges, Kerala and Others*, , 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.

12. 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 Student's 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 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.

13. We find no force in the submission that the University had abdicated its powers to the directive issued by the State Government. In fact, directive has been issued by the Apex Court which is binding upon the State as well as the Universities. Apart from that, it is open to the Universities to make such provision. There is nothing illegal or unconstitutional in the provision in question contained in Article 15(c) of the Constitution of the Students' Union so as to call for any interference by this Court.

14. In Rajasthan High Court Advocates Association and Another Vs. State of Rajasthan and Others, , the following questions with respect to lawlessness during Student Unions' elections were referred to the Full Bench for consideration:-

(1) Whether keeping in view the present educational scenario of violence and indiscipline among Students in Universities and Colleges and in order to secure good academic atmosphere, the students union be continued to be constituted by democratic process of election or by selection on the basis of performance in examination?

(2) Whether the judgement/orders/directions passed by the principal seat at Jodhpur are applicable only to the 17 district and the judgment/order/directions passed by the Bench at Jaipur Would not be applicable to the aforesaid 17 districts under the Jodhpur jurisdiction/

(3) Whether elections should be held in the education institutions in the State of Rajasthan and if the answer to the question be in affirmative, what would be the time frame, mode of election and the regulating authority to conduct such

election?

15. The Full Bench considering the directions of the State Government issued on 1.12.2009 has observed that now all the elections in the colleges and universities in entire State of Rajasthan would be conducted in accordance with the procedure prescribed in Lyngdoh Committee's report and for that purpose, it is for the State and the Universities etc. to make appropriate amendments in the rules framed for conducting the elections of the students' unions in consonance with the Lyngdoh Committee's report. The Full Bench also considered the previous decisions rendered by the Division Bench in Arvind Singh Rathore & Anr. vs. State of Rajasthan & Ors., (2005 (1) WLC (Raj.) 14 and Suo Motu Vs. State of Rajasthan and Others, decided on 5.5.2005. In the instant case, the provision in question has been made pursuant to the directive of the Apex Court and in consonance with the report of the Lyngdoh Committee and therefore, it cannot be said that power has been exercised by the University in illegal or arbitrary manner.

16. 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.