
(2006) 12 AHC CK 0157
In the Allahabad High Court

Pradeep Kumar Singh and Krishna Pratap Singh	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2006) 12 AHC CK 0157

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Saran, J.—Heard Sri Raj Kumar Ojha, learned Counsel for the petitioners as well as learned Standing Counsel appearing for the respondent No. 1, Sri Neeraj Tripathi, learned Counsel appearing for the respondent No. 2 (Chancellor) and Sri B.D. Pandey, learned Counsel appearing for the respondents No. 3 to 5 (University). Sri B.D. Pandey, Advocate has also been arrayed as respondent No. 6/7 and thus he appears in person also.

2. This writ petition has been filed with the following prayers:

- a. issue writ order or direction in the nature of Certiorari quashing the Order dated 07/12/06 passed by the respondent No. 3 (annexure No. 1) and consequential orders passed thereof, and Legal Advise/Order dated 07/12/06 tendered by the respondent No. 6 (7) (Annexure No. 2)
- b. issue writ order or direction in the nature of mandamus commanding and directing the respondent No. 3 and 6 not to give effect to the legal advise (annexure No. 2) so tendered by the respondent No. 6 (7), during the pendency of the writ petition.
- c. issue writ order or direction in the nature of mandamus, in the light of Citation University of Kerala Vs. Council, Principals", Colleges, Kerala and Others, as the same is binding upon the Sub Ordinate Courts under Article 141 of the

Constitution of India and the Judgment and Order dated 15/12/06 passed by the Single Judge of this Hon''ble Court in CMWP No. 67893/06 Sri Kant Mishra and Ors. v. State of U.P. and ors District Gorakhpur is not binding upon this Court comprising of Hon''ble Single Judge and the Hon''ble Court in the interest of justice and to meet the ends of justice, interpret the law (Citation University of Kerala Vs. Council, Principals'', Colleges, Kerala and Others, in accordance with law.

d. issue any other writ order or direction as this this Hon''ble Court deems fit and proper in the circumstances of the case.

e. award cost of the Petition to the Petitioner.

3. Brief facts of this case are that an election of the Students'' Union of Deen Dayal Upadhyay Gorakhpur University has been notified on 20.12.2006. (Earlier also the elections were notified on 28.11.2006 but had been postponed.) The petitioner No. 1 wishes to contest the election of the Students'' Union. He, however, does not dispute that there are several criminal cases pending against him. It is also not disputed that he has been charge-sheeted in some criminal cases in which criminal trials are going on. It is also a fact that the petitioner No. 1 is already behind bars under the National Security Act. However, he contends that he has not been convicted by any Court of law and thus would be entitled to contest the Students'' Union election.

4. Regarding this, it may be mentioned that paragraph 6.5.7 of the judgment of the Apex Court in the case of University of Kerala Vs. Council, Principals'', Colleges, Kerala and Others, provides for a bar on a candidate, who has previous criminal record, from contesting the election. The relevant paragraph 6.5.7 of the judgment is reproduced below:

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.

5. In the case of Sri Kant Mishra v. State of U.P. Writ Petition No. 67893 of 2006 decided on 15.12.2006, this Court, while interpreting the aforesaid paragraph 6.5.7, has held that any student against whom any trial in a criminal case is going on would be disqualified to participate in the Students'' Union election.

6. The submission of the learned Counsel for the petitioners is that had it been the intention of the Apex Court to debar a student who was facing any criminal trial from contesting the election, the same would have been categorically mentioned in the judgment and since the words used in the judgment are that a candidate who has been tried and/or convicted of any criminal offence, hence until there is an order of conviction, the candidate would be entitled to participate in the election.

7. On a bare reading of the said paragraph, it is clear that the candidate should

not have been tried and/or convicted of any criminal offence or misdemeanour. Once charge-sheet has been submitted, it would be deemed that the person is being tried of an offence, and as such I am in respectful agreement with the judgment given in the case of Sri Kant Mishra (*supra*) which holds that the students against whom any trial is going on would be disqualified from participating in the Students' Union election. There is no other interpretation which can be given to the observation of the Supreme Court made in paragraph 6.5.7 of the judgment in the case of University of Kerala (*supra*). Such interpretation is in line with the report of the Lyngdoh Committee which recommends that the criminal elements amongst the students should be kept away from the Students' Union elections. It would be a different case where a mere First Information Report had been lodged against a student but charge had not been framed. The charge is framed only after the trial court applies its mind and *prima-facie* finds that the case is worthy of being tried and as such once the charge-sheet has been filed against a candidate, such person is necessarily to be tried of criminal charge.

8. In the present case, the petitioner No. 1 is being tried in not one or two cases, but in several cases, including cases of moral turpitude, and is also lodged in jail under National Security Act. As such, even if assuming that the interpretation of paragraph 6.5.7 of the Supreme Court judgment would have been in his favour (which is not so), then too this Court would have declined to exercise its discretionary equity jurisdiction in favour of such a person and permit him to contest the Students' Union election.

9. Not only this, this writ petition appears to have been filed to scandalize the University as well as the lawyer who had given his fair legal opinion with regard to the interpretation of the Supreme Court judgment. Surprisingly, not only the order passed by the University, but, it is the opinion of the lawyer which has also been challenged in this writ petition. A client is entitled to seek legal opinion from his lawyer for arriving at a correct conclusion and correct interpretation of law. It is the order passed on the basis of any such legal opinion which can be challenged and not the legal opinion itself. Not only that the petitioners have challenged the legal opinion of the counsel but have also impleaded the counsel by name as a respondent. This action of the petitioner cannot be condoned as in case if the same is permitted, then no lawyer would be able to give his free and fair opinion to his client or else he would always be under threat of being dragged to Court because of having given such opinion. The communication between the counsel and his client is a privileged communication which cannot be, and should not be, made public without consent, and/or challenged in a Court of law. It appears that in this case, the same has been done deliberately and with ulterior motive, only to scandalize the lawyer, which action of the petitioners is highly deprecated.

10. In such view of the matter, this Court is of the opinion that this writ petition is not only devoid of merit but has been filed with malicious intention and in

order to scandalize the University, as well as its lawyer. This writ petition thus deserves to be dismissed with exemplary costs, which this Court assesses at Rs. 50,000/-. The costs may be deposited by, the petitioner with the Registrar General of this Court within one month from today, failing which the Registrar General of this Court shall have the same recovered as arrears of land revenue through the District Magistrate, Gorakhpur. On such costs being deposited, a sum of Rs. 10,000/- shall be paid to the University's counsel Sri B.D. Pandey as costs for having faced humiliation in Court and mental agony. Out of the remaining amount, half (i.e. Rs. 20,000/-) shall be deposited with the High Court Legal Services Committee and the balance half (Rs. 20,000/-) with the Allahabad High Court Mediation and Conciliation Centre.

11. This writ petition is, accordingly, dismissed with costs.