
(1987) 10 MP CK 0048
In the Madhya Pradesh High Court
Case No : M. P. No. 3018 of 1987

Sanjay Jain and others	Vs	APPELLANT
State of M.P. and others		RESPONDENT

Date of Decision : 27-10-1987

Acts Referred:

Constitution of India, 1950 — Article 12, 19, 19(1)(a), 19(1)(c), 21

Citation : (1988) MPLJ 205

Hon'ble Judges : Ram Pal Singh, J;B.C. Verma, J

Bench : Division Bench

Advocate : P.S. Nair, for the Appellant;

Final Decision : Dismissed

Judgement

Rampal Singh, J.

Heard Shri P.S. Nair, counsel for the petitioners on the question of admission.

The petitioners are all students enrolled in different colleges affiliated to the Rani Durgawati Vishwa Vidyalaya, Jabalpur which is governed by M.P. Vishwa Vidyalaya Adhiniyam, 1973. A Co-ordination Committee has been formed under the Presidentship of Kuladhipathi (Chancellor) u/s 34 of the Adhiniyam. Ordinances Nos. 1 and 2 providing for constitution of the Students' Union in Colleges and Teaching Departments in the University have been formed u/s 37 of the Adhiniyam. Accordingly, for the past few years the students used to elect their representatives to constitute the Union. However, in the 32nd sitting of the Co-ordination Committee held between 29th June and 1st July 1987 (both days inclusive), the committee took a decision whereby all the Principals of the Colleges were vested with discretion either to hold election or to nominate representatives to the various posts in the Union. An order to that effect addressed to the Vice-Chancellor and the Principals of all the Universities and Colleges in the Madhya Pradesh was issued on 22nd July, 1987 by the State Government in the Higher Education Department

Petitioners" contention is that by vesting Such a discretion in the Principals of the Colleges, their right to elect their representatives to the Union has been taken away. This in the democratic set up of this country tantamount to depriving the students of their fundamental right of participation in the education democracy. The right to assemble is taken away. This will come in the way of socially educating the students and in preparing them to be a useful member of the society and a participator in the democratic process. counsel urged that there appears to be no just reason to suddenly deviate from the usual process of election of the office-bearers of the Students" Union. It was added that the order (Annexure-A) issued by the State Government vesting Principals with a discretion without guidelines is capable of being exercised arbitrarily and. without any control. A direction is, therefore, sought for to the Vice-Chancellor of the University to direct holding of elections of the office-bearers of the students" Union in all the Colleges affiliated with the University. After hearing the counsel for the petitioners at length, we are of the opinion that the petition must be dismissed.

Ordinance No. 1 provides for forming a Students" Union in every College and one Students" Union for all the Teaching Department/Schools of Studies of the University. Ordinance No. 2 provides for constitution of the University Students" Union at the Headquarters of the University and says that the University Students" Union shall be a Federation of Students" Unions in Colleges and Teaching Department/Schools of the Studies and the Students" Union in every College or in Teaching Departments/Schools of Studies shall be a member of the Students" Union. Every regular student on the roll of the College or Teaching Department or School of Studies, as the case may be, shall be a member of the Students" Union of the Institution concerned provided he is on the roll on a particular date. The aims and objectives of the Students" Union are said to be to promote disciplined, co-operate, intellectual, civic and cultural life among the students to foster activities to bring out and develop the creative talents of the students, to promote the study and discussions of subjects of National and International importance, to encourage among students awareness of the responsibility of an individual and democratic society and to promote social activities. The eligible students enrolled in the concerned Institution are to elect their class, representatives in the General Council of the College and University Teaching Department Somewhat similar are the objectives of University Students" Union. The professor-in-charge of a College has power to conduct the election of General Council and Executing Council of the Students" Union. Thus, these ordinances provide for constitution of the Students" Unions in Colleges as also in the University and the different office bearers of the Union are to be elected by the duly enrolled students. The change brought about by the impugned decision of the Co-ordination Committee gives a right to the Vice-Chancellor of the University and the Principals of the Colleges either to hold the elections or to nominate the office-bearers of the College and University Unions.

In our opinion, me decision so taken by the Co-ordination Committee violates no

right vested in the students either qua students in the College or University or even as an ordinary citizen. Student taking admission in any college or University first owes a duty to study. To acquire education is certainly a right but is coupled with duty to study. All extracurricular activities in the Schools, Colleges and the University are towards training student in different directions and to conduct their affairs themselves and through their elected representatives. The Students' Union is apparently a creature of a Statute, Apart from the ordinances referred to above, the students enrolled in a Collage or University do not have any right to form a Students' Union. It is this ordinance which provides for the manner in which the Union is to be constituted. It was first thought when the ordinances were initially framed that the students be given free hand in electing their own representatives. Politicking and demagogic leadership was never in contemplation. It appears that the Co-ordination Committee after considering different facts of the matter and taking past experience into consideration, resolved to permit the Vice-Chancellors and Principals of the Universities and Colleges respectively to use their discretion either to nominate the office-bearers of the Unions or to allow the students themselves to elect those office-bearers. The Union still continues. That alone is the requirement of the Ordinances Nos. 1 and 2 referred to above. The Unions are constituted to achieve the aims and objectives provided in the Ordinances and, in our opinion, the Professors, Principals and Teachers of the Students in the University and Colleges undoubtedly are the best persons to judge the mode of appointing office-bearers of those Unions either by election or by nomination. While vesting such a discretion in these authorities, we are of the opinion, that no right of the students has been infringed.

Counsel for the petitioner urged that the fundamental right which the students have is to form an association and impugned directions by the Co-ordination Committee affecting changes in the manner of appointment of office-bearers of the Union takes away this right of the students. We have earlier stated that a primary right and also a duty of the students is to study. In *Abhay Kumar Yadav vs. K. Srinivasan and other*, AIR 1981 Del 381, it has been rightly pointed out that merely being on the rolls for politicking and demargogic leadership does not make a student a bona fide student.

It may be conceded that once a student is admitted in some University or College, he has to be educated and must be given equal opportunity with others to educate himself. Shri K. Subbarao, the former Chief Justice of India in his "Enforcement of Basic Human Rights, in Law and the Commonwealth, published by the Fourth Commonwealth Law Conference, New Delhi, 1971" said that the "Economic Rights" do not exist in nature. They have to be created. A right to work, to education, to livelihood, to equal pay, to security; to leisure and such other are very desirable rights. But unless a State creates conditions by positive action, such rights cannot come into existence. Article 41 of the Constitution of India also provides that "the State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to

education etc." This has led Deshpande, J. of the Delhi High Court in *Anand Vardhan Chandel vs. University of Delhi* and another, AIR 1978 Del 308, to opine that once the State takes action by legislation or otherwise to make the right to education available to every eligible person, the statutory right or the statutory facility should stand in practice on the footing of a fundamental right. The learned Judge further observed that if educational democracy or democracy in Education is an integral part of alround education, then the participation in the activities of the Students' Union including contesting election to its office bearers is as much a right of student as is the admission to University. The learned Judge considered a right to participation in Students' Union established and run by the University which is "State" under Article 12 of the Constitution to be a fundamental right for the reasons that: (1) It involves the right to assemble within the meaning of Article 19(1)(b), (2) it involves the right to form associations or Unions within the meaning of Sub-clause (c) of Article 19(1) and (3) the right to education through participation in Students' Union is also a right to freedom of speech and expression guaranteed by Article 19(1)(a). A right to education was also held included in Article 21 of the Constitution. In *Chandel's* case (*supra*) a student who sought admission on a latter date in University was not allowed to participate in the election to the post of Vice-President and his nomination paper was rejected because he tendered his nomination paper after expiry of the time fixed far the purpose. It is through interim constitution of the Delhi University Students' Union that the right to education including participation in the Students' Union came into existence and became available to a bona fide student duly enrolled in the Demi University. The Court found that when a student was lawfully enrolled only a day before the last date assigned for filing nomination paper for election to some office of the Union, "it cannot be said that sufficient time was given to him to know the newly admitted students and to prepare himself for the election and to file nomination paper on any one day." It was held that "the action of the University Authorities firstly, in fixing the date of the commencement of the year and secondly, in rejecting the nomination paper resulted, therefore, in the denial of the exercise of the fundamental right to education by the petitioner." In its final analysis the relief was granted to the petitioner in *Anand Vardhan Chandel's* case (*supra*) on the ground that the right to election as office bearer in the Union in accordance with the terms of interim constitution of the Delhi University Students' Union was in face denied to the petitioner. Such rights the denial of which led the Court to hold in peitioner's favour, flew from the interim constitution of Delhi Student's Union and came into existence only by positive action of bringing into existence the constitution.

We would immediately concede to the students enrolled in airy University or a College a right to education and also as ordinary citizen a right to form an association. The ordinary right which is enjoyed by all citizens to form association/Union well flows from Article 19(1)(c). Qua citizens the students can well form such association or Unions. That certainly will have no reference to a right which is conferred by a particular statute to act as a body which is a

creation of statute itself. In the present case what we find is that the students enrolled in Colleges and Teaching Departments of the University have been given a statutory right to form Students' Union with definite aims and objectives under Ordinances Nos. 1 and 2 framed in exercise of powers u/s 37 of the M.P. Vishwa Vidyalaya Adhiniyam, 1973. The Ordinances also provide for constitution of General Council and the Executive Committee of the Union. The Unions still continue and are very much in existence. By the impugned action only the mode of appointment of office bearers has been changed. The Principal of the Colleges and the Vice-Chancellors of the Universities have been given a discretion either to hold election of the office bearers of the Union or to appoint them. the exercise of this discretion is also not left unguided. While appointing the office bearers the Principals and the Vice-Chancellors are required to follow the guidelines prescribed for similar elections in Model Colleges. It, therefore, cannot be said that the vesting of such discretion in the Head of the Colleges and Universities is open to any vice. We are of the opinion that suitable guidelines have been provided for exercise of this discretion. We may add that the Heads of the Colleges and Universities are persons with high qualifications and vast experience in the field of education. They can well feel the pulse of the students and must be deemed to be always interested in their welfare and in giving the best of education. It is very just and reasonable to vest them with discretion to adopt ways to educate their students. We, therefore, see no reason to hold that in vesting the Heads of the Universities and Colleges with a discretion in the matter of selecting office bearers of the Students' Union, any of the rights vested in the students either under the Constitution of India or under the Ordinances Nos, 1 and 2 framed u/s 37 of the M.P. Vishwa Vidyalaya Adhtaiyam, 1973 has been infringed.

We would, therefore, dismiss this petition.