

(2014) 11 RAJ CK 0043
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8907 of 2014

Saransh Ghiya

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 153-A, 308, 332, 336

Citation : (2015) 2 CDR 845

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : Prateek Kasliwal, for the Appellant; G.S. Gill, Additional Advocate General, for the Respondent

Final Decision : Allowed

Judgement

M.N. Bhandari, J. This writ petition has been filed by the petitioner with following reliefs, which are quoted hereasunder--

"(i) to direct the respondents not to conduct the Rajasthan University Student Union elections till the complete implementation of the recommendation of Lyngdoh Committee in its letter and spirit.

(ii) to direct the respondents to implement the code of conduct in its letter and spirit.

(iii) to direct the respondents to prohibit and debar the candidates from participating in election who have violated the recommendation Lyngdoh Committee and the code of conduct.

(iv) to direct the respondents to ensure that no road/route is being blocked by the candidates or their supporters.

(v) to issue any other order, direction, declaration which this Hon'ble Court deems just fit and proper in the facts and circumstances of the case in favour of the petitioner."

The perusal of the prayers quoted above show a direction on the respondents to conduct Students' Union Elections as per the recommendations of Lyngdoh Committee and Constitution of the Rajasthan University Students' Union. The petitioner has made serious allegation of violation of the direction of the Hon''ble Apex Court for holding Student's Union elections. The University of Rajasthan and police failed in their duties during the course of election. Before averting to other facts, it would be gainful to refer the procedure to be followed during students' union election.

2. A petition regarding students' union election was decided by the Hon''ble Apex Court in the case of University of Kerala Vs. Council, Principals', Colleges, Kerala and Others, . In terms of the earlier order of the Hon''ble Apex Court dated 12.12.2005, Ministry of Human Resource Development, Government of India, constituted a committee headed by Mr. J.M. Lyngdoh. The Committee submitted a report with the recommendations and suggestions for Student's Union Election. The Hon''ble Apex Court issued directions for its implementation with few modifications. Directions given therein were not only for mode of elections but for other related issues. It includes limit of expenditure and financial accountability apart from certain restrictions, which includes disassociation of students' union and students representation from political parties.

3. It has come on record that subsequently when violation of the directions of the Hon''ble Apex Court was brought to its notice, the elections of students' union of Jawahar Lal Nehru University, Delhi were stayed with a clarification to hold fresh election as per the recommendations of the Lyngdoh Committee, as approved by the Hon''ble Apex Court. A separate direction was given to the Superintendent of Police, Puri to register a criminal case against all the students who were indulged in vandalism in Samanta Chandra Shekhar College, Puri.

4. The petitioner is one who has preferred this writ petition alleging violation of the recommendations of Lyngdoh Committee as approved by the Hon''ble Apex Court for the students' union election in the University of Rajasthan and its constituent colleges.

5. This court, prima facie, found violation of the recommendations of Lyngdoh Committee as approved by the Hon''ble Apex Court thus while issuing notices, the declaration of result of the elections was made subject to submission of affidavits by the University so as the Commissioner of Police, Jaipur that norms prescribed by the Hon''ble Apex Court for holding students' union elections were adhered to.

6. In reference to the directions of this court, respondent No. 2 - University of Rajasthan through Registrar and respondent No. 3 - Police Commissioner, Jaipur submitted their affidavits.- In the meanwhile, petitioner submitted an additional affidavit along with photographs to show violation of the recommendations of Lyngdoh Committee as approved by the Hon''ble Apex Court. It shows not only pasting of posters on the walls outside University and college campuses by the

candidates but blocking of the roads for the purpose of rallies also. The photographs also show clashes between the two groups and fights with use of "Lathies". Then efforts of the police to control them. This clearly shows utter disregard to the recommendations of the Lyngdoh Committee in all respects. The posters and cards were even thrown on the road making it filthy. The daily news papers show disruption of traffic in key areas apart from other incidences.

7. It was also brought to the notice that two students were shot dead in Bikaner region in relation to the students' union elections apart from injuries to the police personnel. The report aforesaid was given by the SHO, Sangaria, District - Hanumangarh. The students clashes with police personnel were also reported causing severe injuries to many students and police personnel. The aforesaid facts would be taken into consideration by the court and for that purpose, affidavits submitted by the University so as the Commissioner of Police, Jaipur are relevant and referred hereunder.

Affidavit by the University--

8. It is stated that after announcement of the elections, model code of conduct was released. It was distributed to all the candidates as well as media persons for wide publicity. The election committee was also constituted to assist Chief Election Officer, who was appointed by the Vice-Chancellor of the University in exercise of the powers vested in him under clause 25(b) of the Constitution of the Rajasthan University Students' Union, information about date of the election was given to the Commissioner of Police, Jaipur. It is, however, admitted that the university is having limited sources to monitor activities of the candidates/supporters outside university and college campuses.

9. Reference of efforts to hold the elections in a transparent and peaceful manner has also been given apart from deputation of various officers to monitor the elections. It is, however, admitted that violation of the code of conduct was found in many cases thus a written clarification was called from many candidates whose names have been given in the affidavit. It was even in reference to the provision of the Rajasthan Prevention of Defacement of Property Act, 2006. Those candidates submitted their reply and were under consideration. An assurance was given for compliance of the code of conduct in the elections. In view of above, university has shown their efforts to hold the elections as per model code of conduct and the recommendation of Lyngdoh Committee.

Affidavit filed by the Commissioner of Police, Jaipur -

10. The Commissioner of Police, Jaipur has also submitted affidavit in reference to the order of this court. In para 1 of the affidavit, it is stated that many election rallies were held in various parts of Jaipur City without permission. The clashes between two rival groups of ABVP and NSUI has also been mentioned. The elections on different posts have been fought by the candidates under the banner of ABVP and NSUI apart from other associations and as independent candidates. A reference of FIR bearing No. 382/2014 has also been given stating

that the SHO of Police Station - Gandhi Nagar, Jaipur was severely injured as violent groups of students prevented police officers to control the situation. Relevant parts of the affidavit are quoted hereasunder for ready reference-

"1) That I state On 19.8.2014, the day of filing of nomination of candidates wherein huge election rallies were taken from various part of city without permission by several candidates which culminated in Vivekanand Park of Rajasthan University where rallies of presidential candidates Shankar Gora and Anil Chopra which had, official members of ABVP & NSUI respectively clashed inside the university campus. An FIR numbered 382/14 u/s. 147, 332, 336, 353, 308 IPC was lodged in police station Gandhi Nagar as the SHO of concerned police station was severely injured and police was prevented to officiate at the spot by violent groups. Thus the student candidates violated the following regulations:

6.3.1 During the period of the elections no person, who is not a student on the rolls of the college/university, shall be permitted to take part in the election process in any capacity. Any person, candidate, or member of the student organisation, violating this rule shall be subject to disciplinary proceedings, in addition to the candidature, as the case may be, being revoked.

6.7.7 No candidate shall be permitted to carry out processions, or public meetings, or in any way canvas or distribute propaganda outside the university/ college campus.

6.7.15 Any contravention of any of the above recommendations may make the candidate liable to be stripped of his candidature, or his elected post, as the case may be. The election commission/college/university authorities may also take appropriate disciplinary action against such a violator.

2) That I state that the candidates restored to large scale defacement of property for which seven (7) FIR were lodged in various police stations of the city. This was a clear violation of the following Lyngdoh committee recommendation which holds every candidate jointly liable--

6.7.8 No candidate shall, nor shall his/her supporters, deface or cause any destruction to any property of the university I college campus, for any purpose whatsoever, without the prior written permission of the college/university authorities. All candidates shall be held jointly and, severally liable for any destruction/defacing of any university/college property.

3) That I state that In summary:

FIR's registered under serious sections of the IPC during students election in various police stations of Jaipur commissionerate-12

FIR's registered under Rajasthan defacement of property act during students election in various police stations of Jaipur commissionerate-7.

FIR's registered for blocking traffic and highway during students election in

various police stations of Jaipur commissionerate-1

Vehicles seized for suspicious usage during students election viz ferrying students/printed material or otherwise in various police stations of Jaipur commissionerate-20

Rallies where vehicles on large scale were used-6

4) That I state it is pertinent to note that the dean, Student's Welfare Rajasthan University in it's letter no;5149-58 on 5.8.14 addressed to the commissioner of police, Jaipur (ANNEXURE-5) had himself mentioned that due to limited resources available with the university it is not possible for the university to monitor the activities of candidates/supporters and other students outside the campus and had sought concerted feedback from various departments. In compliance to the same the SHO, Gandhi Nagar, Jaipur had WRITTEN AN ADVISORY AND STATUS REPORT OF THE CONDUCT OF ELECTIONS to the Dean, Student's Welfare, Rajasthan University on 20.8.14 dated 8416 (ANNEXURE-6) but no action whatsoever was taken against the erring candidates.

5) That I state the primary responsibility of reporting any act of acute lawlessness shall be reported to police by university/college authorities not later than 12 hours of alleged commission of offence. But the act of vandalism and lawlessness on campus on 19.8.2014 where the SHO, Gandhi Nagar, Jaipur was severely injured was not reported to police authorities by any means whatsoever and it was only then that FIR was registered suo motu by the police.

6.9.1 Any instance of acute lawlessness or the commission of a criminal offence shall be reported to the police by the university/college authorities as soon as possible, but not later than 12 hours after alleged commission of the offence.

6) That I state that it has become evident that there is no effective mechanism to monitor the expenditure incurred by candidates in the student's election. Secret reports by intelligence agencies in this election and in previous elections point out that the students are captive resource for wily land mafias, criminal and other anti social elements to be used in their sinister plans and their field of action by indoctrinating them under garb of student election and making them habitual to easy money. Unless there is effective mechanism of the type of expenditure monitors as in vidhan sabha elections there is a inkling in security agencies that above fears may come true.

7) That I state that Another lacunae left in the overall conduct of the elections was the timely issuance of identification cards by the university authorities to the genuine students of Rajasthan University and their constituent colleges. Had the ID cards issued for a fortnight before the elections the proper check on the students versus outsiders on the campus could have been streamlined. In reality the ID card were issued to the students only two days prior to the elections which gave default advantage to the outsiders in the campus to create their presence and influence the students.

8) That I state that the Apex court in its order while accepting the Lyngdoh committee report had stipulated the role of police authorities only so far as to provide adequate police protection to the academic community involved in the process of student's union election in the university and colleges, in this regard the requirement of force was assessed and the requisition from the office of Chief Election Officer, RUSU election 2014 through their letter 61100-19 dated 19.8.14 was obtained (ANNEXURE-7) and detailed police deployment order through order No. 2717 dated 22.08.14 was issued from office of the Deputy Commissioner of police, Jaipur East (ANNEXURE-8) which had total deployed strength of more than 1200 police personnel with striking reserves as well to cope up with any untoward happening. It was due to this elaborate exercise planned and executed that election day proceedings went off smoothly. In this regard news cuttings (ANNEXURE-9) also flashed light over the whole scenario."

11. The paras quoted above reveals that no effective mechanism was there to monitor the elections. As per secret report by the intelligence, not only in the present but previous elections also, involvement of land mafia, criminals and other antisocial elements is found. The students are having captive resources for elections. The availability of outsiders in the campuses has also been reported. The affidavit filed by the Commissioner of Police shows violation of recommendation of Lyngdoh Committee so as the directions of the Hon''ble Supreme Court. The affidavit is duly supported by the documents.

12. Petitioner, thereupon, submitted further affidavit to show that elections were held in violation of the recommendation of Lyngdoh Committee as approved by the Hon''ble Apex Court. The facts available on record thus show and prove that students'' union elections were held not only in violation of recommendation of Lyngdoh Committee but the model code of conduct issued by the University of Rajasthan and the Constitution of the Rajasthan University Students Union.

13. In the background aforesaid, such elections should have been cancelled by the university itself to give sanctity of the recommendations of Lyngdoh Committee as were accepted by the Hon''ble Apex Court. It is due to the failure on the part of the university in doing so, this court need to pass appropriate orders, but, before that, it is necessary to give reference of few applications submitted by the candidates for impleadment and giving relevant facts.

14. One Jeevan Ranjan Datonia, who was one of the candidates in the election of Rajasthan University students'' union and shown to have fought the election in strict compliance of the recommendation of Lyngdoh Committee, has alleged violation of the recommendation by other candidates, which includes clashes between the students apart from pasting of posters on the walls. It is also stated that many students were equipped with arms and incurred huge money apart from involving vehicles in the election in an illegal manner. He observed fast against those who had participated in the election in violation of recommendations of Lyngdoh Committee as approved by the Hon''ble Apex Court apart from model code of conduct and Constitution of Rajasthan University

Students" Union. He has filed certain photographs showing injuries to the police officials apart from clashes between the students with "lathies" and injuries even to the students. One of the photographs shows "lathi-charge" apart from other fact. Photograph No. 41 along with affidavit of Mr. Jeevan Deepak Datonia shows movement of vehicles in such a manner which may have taken life of many students if they would not have been moved to save themselves. Photograph No. 42 along with his affidavit shows total road-jam thus the affidavit aforesaid literally supports contents of the writ petition.

15. The other application was moved by one Yogesh Kumar Meena, who has participated in the election for the post of President and adhered to the norms. Mr. Yogesh Kumar Meena and Mr. Jeevan Deepak Datonia were heard by this court as their applications for impleadment were earlier considered by this court. The applicants therein were allowed to intervene in the case. The documents show that the students had not adhered to the model code of conduct for holding elections.

16. Other application was moved by Annu Kanwar and Monika Choudhary. They had contested the election for the post of Vice President and General Secretary for the Department of Law and shown to have incurred amount within the prescribed limit. Para 5 of the said application, however, admit that some of the students have crossed the limit of expenditure and were even involved in criminal activities. The prayer was accordingly made to take action against those candidates by nullifying their candidature. The application aforesaid admits violation of the norms prescribed for holding election, but by others.

17. Last application in this regard was submitted by one Anil Chopra. Learned senior counsel Mr. Ashok Gaur, appearing for him, submitted that applicant is a necessary party. He had participated in the election and adhered to the norms prescribed for it. It is submitted that if result of the election is not declared, it will cause hardship.

18. The application aforesaid was considered and the applicant was allowed to address the court. During course of arguments, Mr. Gaur though admitted violation of norms prescribed for the election but prayed for its condonation with a direction to allow the university to declare the result. The documents available on record show violation of direction of Hon"ble Apex Court by Anil Chopra as an individual and by NSUI, as an organization, on whose banner, he contested the election.

19. The candidates have been heard even in the representative capacity.

20. None of the parties appeared therein submitted any other argument than have been referred to above.

21. The facts which now requires consideration by this court is as to whether it should remain a silent spectator despite violation of recommendations of Lyngdoh Committee as approved by the Hon"ble Supreme Court or should

intervene in the Students Union Elections. I find violation of various recommendations of Lyngdoh Committee as approved by the Hon"ble Apex Court in the case of University of Kerala (supra). For ready reference, few recommendations on the relevant aspects of election, as approved by the Hon"ble Apex Court, are quoted hereunder--

6.2 Modes of elections

6.2.1. A system of direct election of the office-bearers of the student body, whereby all students of all constituent colleges, as well as all students of university departments vote directly for the office-bearers. This model may be followed in smaller universities with well-defined single campuses (for e.g. JNU/ University of Hyderabad), and with a relatively smaller student population. A graphic representation of this model is annexed herewith at Annexure IV-A.

In respect of universities with large, widespread campuses and large student bodies either of the following models may be adopted.

6.2.2. A system of elections, where colleges and campuses directly elect college and campus office-bearers, as well as university representatives. The university representatives form an electoral college, which shall elect the university student union office-bearers. A graphic representation of this model is annexed herewith at Annexure IV-B.,

6.2.3 A system of elections where on one hand, directly elected class representatives elect the office-bearers of the college as well as the university representatives, and the campus itself directly elects the campus office bearers and the university representatives. The university representatives shall form an electoral college, which shall elect the office-bearer of the university student union. A graphic representation of this model is annexed herewith at Annexure IV-C.

6.2.4. A "system of election wherein class representatives shall be directly elected in the colleges and universities" campus and they in turn shall elect the office-bearers for the college unions and the university campus union. Also they shall elect their representatives for university student union. These elected representatives from colleges and university campus shall form the electoral college, which shall elect the office-bearers of the university student union. This model shall be applicable to large universities with a large number of affiliated colleges. A graphic representation of this model is annexed herewith at Annexure IV-D.

6.6. Election-related expenditure and financial accountability

6.6.1 The maximum permitted expenditure per candidate shall be Rs. 5000.

6.6.2. Each candidate shall, within two weeks of the declaration of the result, submit complete and audited accounts to the college/university authorities. The college/university shall publish such audited accounts within 2 days of

submission of such accounts, through a suitable medium so that any member of the student body may freely examine the same.

6.6.3. The election of the -candidate" will be nullified in the event of any noncompliance or in the event of any excessive expenditure.

6.6.4. With the view to prevent the inflow of funds from political parties into the student election process, the candidates are specially barred from utilising funds from any other sources than voluntary contributions from the student body.

6.7. Code of conduct for candidates and election administrators

6.7.1. No candidate shall indulge in, nor shall abet, any activity, which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic, or between any group(s) of students.

6.7.2. Criticism of other candidates, when made, shall be confined to their policies and programs, past record and work. Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the other candidates or supporters of such other candidates. Criticism of other candidates, or their supporters based on unverified allegations or distortion shall be avoided.

6.7.3. There shall be no appeal to caste or communal feelings for securing votes. Places of worship, within or without the campus shall not be used for election propaganda.

6.7.4. All candidates shall be prohibited from indulging or abetting, all activities which are considered to be "corrupt practices" and offences, such as bribing of voters, intimidation of voters, impersonation of voters, canvassing or the use of propaganda within 100 metres of polling stations, holding public meetings during the period of 24 hours ending with the hour fixed for the close of the poll, and the transport and conveyance of voters to and from polling stations.

6.7.5. No candidate shall be permitted to make use of printed posters, printed pamphlets, or any other printed material for the purpose of canvassing. Candidates may only utilise handmade posters for the purpose of canvassing, provided that such handmade posters are procured within the expenditure limit set out hereinabove.

6.7.6. Candidates may only utilise handmade posters at certain places in the campus, which shall be notified in advance by the Election Commission/university authority.

6.7.7. No candidate shall be permitted to carry out processions, or public meetings, or in any way canvass or distribute propaganda outside the university/ college campus.

6.7.8. No candidate shall, nor shall his/her supporters, deface or cause any

destruction to any property of the university/college campus, for any purpose whatsoever, without the prior written permission of the college/university authorities. All candidates shall be held jointly and severally liable for any destruction/defacing of any university/college property.

6.7.9. During the election period the candidates may hold processions and/or public meetings, provided that such processions and/or public meetings do not, in any manner, disturb the classes and other academic and co-curricular activities of the college/university. Further, such procession/public meeting may not be held without the previous written permission of the college/university authority.

6.7.10. The use of loudspeakers, vehicles and animals for the purpose of canvassing shall be prohibited.

6.7.11. On the day of polling, student organisations and candidates shall--

(i) cooperate with the officers on election duty to ensure peaceful and orderly polling and complete freedom to the voters to exercise their franchise without being subjected to any annoyance or obstruction;

(ii) not serve or distribute any eatables, or other solid and liquid consumables, except water on polling day;

(iii) not hand out any propaganda on the polling day.

6.7.12. Excepting the voters, no one without a valid pass/letters of authority from the Election Commission or from the college/university authorities shall enter the polling booths.

6.7.13. The Election Commission/college/university authorities shall appoint impartial observers. In the case of deemed universities and self-financed institutions, government servants may be appointed as observers. If the candidates have any specific complaint or problem regarding the conduct of the elections they may bring the same to the notice of the observer.

Observers shall also be appointed to oversee the process of nomination of students in institutions that are following the nomination model of student representation.

6.7.14 All candidates shall be jointly responsible for ensuring the cleaning up of the polling area within 48 hours of the conclusion of polling.

6.7.15. Any contravention of any of the above recommendations may make the candidate liable to be stripped off his candidature, or his elected post, as the case may be. The Election Commission/college/university authorities may also take appropriate disciplinary action against such a violator.

6.7.16. In addition to the abovementioned code of conduct, it is also recommended that certain provisions of the Penal Code, 1860 (Section 153-A and Chapter IX-A "Offences relating to election"), may also be made applicable to student elections.

6.9. Maintaining law and order on the campus during the election process

6.9.1. Any instance of acute lawlessness or the commission of a criminal offence shall be reported to the police by the university/college authorities as soon as possible, but not later than 12 hours after the alleged commission of the offence.

4. We, however, direct modifications in paras 6.6.2 and 6.9.1. The expression "and audited accounts" in para 6.6.2 shall be substituted by the words "and certified accounts" (to be certified by the candidate). Similarly, the period of "12 hours" indicated in para 6.9.1 i.e. "12 hours" shall be substituted by the words "6 hours".

22. As per paras quoted above, candidate was not permitted to make use of printed posters, pamphlet or printed material for canvassing. The candidates were however permitted to use hand made posters, provided expenses remains within limits of permissible expenditure. The posters can however be pasted in the notified areas of the university but bare perusal of photographs on record, show pasting of posters/pamphlets outside university/college campuses making huge garbage therefrom. It is apart from rallies and clashes between the groups. The FIR has also been lodged as police personnel were also injured. The violence by the students has also been reported. The affidavit submitted by the Commissioner of Police, Jaipur refers about all the violations. The way elections have been held shows clear violation of model code of conduct, recommendations of Lyngdoh Committee as approved by the Hon''ble Apex Court. It is not only in the present elections but in previous elections also, involvement of land mafia and anti-social elements has been pointed out by the Commissioner of Police. It seems to be due to direct elections held by the university as per the provisions of the Constitution of the Rajasthan University Students'' Union.

23. The State Government should consider as to why other mode suggested by Lyngdoh Committee and approved by the Hon''ble Supreme Court at para 6.2.4 should not be applied, It is when students'' union elections are of a large university with number of constituent colleges. Para 6."2.4 of the judgment of the Hon''ble Supreme Court is quoted hereunder for ready reference--

"6.2.4 - A system of election wherein class representatives shall be directly elected in the college and universities'' campus and they in turn shall elect the office-bearers for the college unions and the university campus union. Also they shall elect their representatives for university student union. These elected representatives from colleges and university campus shall form the electoral college, which shall elect the office-bearers of the university -student union. This model shall be applicable to large universities with a large number of affiliated colleges. A graphic representation of this model is annexed herewith at Annexure IV-D."

24. Para aforesaid provides for mode of election, which includes indirect election, where all the students of the university so as constituent colleges apart from

other departments, elect office bearers indirectly like in Jawahar Lal Nehru University and University of Hyderabad. They are large universities having wide spread campuses and large number of students with constituent and affiliated colleges. One class representative would be elected directly and, in turn, they would elect office bearers of the university students' union and in constituent colleges. The aforesaid model was provided for a large university with number of constituent or affiliated colleges as is in the present case. The mode of election given in para 6.2.4 of the judgment seems to stop violation of the norms for conducting election which may happen in large universities. As per the affidavit of the Commissioner of Police, Jaipur, involvement of land mafia and anti-social elements with huge money apart from involvement of outsiders has been reported in the election and even in previous elections, which is based on intelligence reports.

25. In view of the aforesaid, when violation of model code of conduct so as the Constitution of the Students' Union apart from directions of the Hon'ble Supreme Court exist, this court is left with no option but to direct the university to cancel the elections held on 23.8.2014. It is looking to the fact that polling has already taken place. If the polling would not have taken place then a direction could have been given to allow only those students in the election, who have adhered to the norms. The cancellation of election would, however, be with the liberty to hold elections after submitting an affidavit before this Court that it would be conducted without violation of recommendations of Lyngdoh Committee as approved by the Hon'ble Apex Court.

26. The University of Rajasthan so as the State Government are, however, directed to effectively consider as to why the election should not be held in the manner provided under para 6.2.4 of the judgment in the case of University of Kerala (supra). It is to avoid participation of large number of students in direct elections and the type of incidences reported in this case. Necessary consideration, as directed above, would be made by the State of Rajasthan. They would also be at liberty to even bring legislation to bar Students' Union Elections, if it cannot be conducted with adherence to the recommendations of Lyngdoh Committee as approved by the Hon'ble Apex Court. The writ petition is allowed with the aforesaid.