
(2006) 02 RAJ CK 0107

In the Rajasthan High Court

Case No : Civil Special Appeal No. 188 of 2002

State of Rajasthan

APPELLANT

Vs

Sarita Choudhary

RESPONDENT

Date of Decision : 03-02-2006

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)
Penal Code, 1860 (IPC) — Section 409, 418, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 13(1)

Citation : (2006) 3 RLW 2507

Hon'ble Judges : N.N. Mathur, J; Manak Lall Mohta, J

Bench : Division Bench

**Advocate : Jagdish Vyas, for M.L. Sukhadia University, for the Appellant;
Mukesh Rajpurohit, for M.D.S. University, for the Respondent**

Judgement

N.N. Mathur, J.—This State appeal is directed against the judgment of the learned Single Judge dt. 20.12.2000, whereby the writ petition filed by respondent has been allowed and the order of the State Government dt. 17.8.2000 containing directions regarding alteration or amendment in the eligibility criteria for contesting election of the Students' Union or Associations in their Constitution, has been quashed and set-aside. A further direction has been given not to interfere with the holding of election of Student's Union at the behest of the State Government or any other agency. It appears that the State Government with a view to bring reforms in the election process and to make functioning of the Students' Union more rational issued directions dt. 17.8.2000 to all the Government and private colleges whether affiliated or non-affiliated with the universities or whether receiving grant-in-aid or not, to provide the eligibility criteria for contesting the elections and other matters connected therewith in the constitution of the institution governing the election and functions of the Student's Union. Accordingly, the colleges have provided restrictions for the students contesting the elections as follows:

6. Eligibility for candidature. - (a) A student who has failed to qualify himself/

herself for promotion to the next higher class shall not be eligible.

(b) A student who has been punished on account of misconduct as referred Under Article 88 of the University Head Book, shall not be eligible.

(c) A student can contest only for one post of the union.

2. In the opinion of the learned Single Judge, the amendment in the Constitution and altering the eligibility criteria for contesting the elections constitute an infringement of fundamental right guaranteed Under Article 19(1)(a) and (c) of the Constitution of India. The learned Judge observed that right to form an association or union is a fundamental right of every citizen including the students of the colleges. The right can only be curtailed or put under cloud by legislative action. The learned Judge further held that the order dt. 17.8.2000 containing directions to amend or alter the eligibility criteria for contesting the elections of the students union or associations passed by the State Government cannot be sustained as the State Government has no authority to pass such executive orders regarding amendment or alternation in the eligibility criteria for contesting the elections of the students unions or associations.

3. While assailing the judgment of the learned Single Judge, it is brought to our notice that as a matter of fact, there is no statutory, provision under which the students union was constituted and, therefore, there was no question of amending the said Constitution by statutory provisions of law. It is further submitted that restrictions have been put in the best interest of the students as such.

4. Having considered the rival contentions, we are of the view that the instant special appeal deserves to be allowed. There is no violation of a fundamental right in the matter of students' elections under Clauses (2) to (6) of Article 19 of the Constitution of India. The rights guaranteed under Article 19(1) are subject to reasonable restrictions, which can be imposed by the State Government. The restrictions put by the State Government are just, fair and reasonable. The object of the restrictions is to discourage the students to continue in the institutions only for the sake of contesting the elections. Such candidates are found to pollute the atmosphere of the colleges or the universities. Thus, the State Government is competent to frame the appropriate rules to control, regulate and run the colleges in a disciplined manner. Thus, in our view, the judgment of the learned Single Judge is not sustainable and deserves to be set-aside.

5. It may be stated that this Court while admitting the petition, noted that the issue involved in the instant appeal is of wider ramification. The Court observed thus:

The question involved in this special appeal is required to be considered from the wider perspective, as students union of a college or university can be said to be the laboratory of democratic governance of the country. We look forward the

future of the country in the hands of the present youth in colleges and universities. Thus, there is a duty cast on the authorities and teachers concerning the colleges and universities responsible for the exemplary good conduct and behaviour of the students in general and office bearers of the students union in particular.

6. Pursuant to the directions of this Court, JNV University Jodhpur, Mohanlal Sukhadia University Udaipur and Maharshi Dayanand Saraswati University Ajmer, placed the Model Conduct for the students. After hearing the parties, this Court by order dt. 23.7.2002 ordered as follows:

7. It is well established that the Courts can issue the authorities appropriate directions in a case where executive failed to perform their obligatory duties or whenever there is a failure on their part to discharge them. In these peculiar facts and circumstances of the case we direct the State of Rajasthan to prepare a common code of conduct for the students unions of subject universities and their constituent colleges for free, fair and impartial elections, to enforce discipline and to ensure growth of the responsible citizenry for development of the country. However, till such statutory rules are framed, we direct as follows:

(i) The universities or the State or the constituent colleges shall constitute an Editorial Board of independent teachers and students and publish quarterly news letter or bulletin with the minimum cost.

(ii) The campaign for contesting the elections shall be restricted to the campus of the university alone and in case of college students union, it will be restricted to the campus of the college alone.

(iii) No student or his supporter or any student organisation shall collect money from public, shop keepers, businessmen, traders and other professionals by coercive means.

(iv) The election expenses by the individual candidate or his/her supporter shall not exceed, in case of President Rs. 25,000/-and other office bearers Rs. 15000/-.

(v) The contesting candidates should submit account of election expenditure within seven days from the date of elections.

(vi) There shall be complete ban on pasting of any sort of poster or slip or writing of slogans, Advertisement on public hoardings, traffic signals, mile stones, boards (indicating the name of the institution, office, locality etc.), public walls.

(vii) There shall be restriction on possession of any weapon, fire-arm, stick, hockey stick, knife, sword, iron rod, chain or stone etc., in any part of the university campus or college premises or the hostel. In case of hockey stick used for playing Hockey, it shall be permitted for limited hour by Vice Chancellor/ Principal/Director/Dean on the recommendation of the authority incharge of discipline and sports.

(viii) There shall be no procession out of the University Campus or the college

premises after the election in the name of victory procession. In case it becomes necessary to pass through a part of the area outside the campus, it shall be with the permission of the concerned Superintendent Police on furnishing the undertaking that they shall not disturb the peace and tranquillity.

(ix) During the elections the university shall provide a limited space for the posters for the pasting of poster or writings by the candidates during the elections.

(x) The university shall provide joint platform to the candidates contesting for each post to deliver speech and also to reply the queries made by the students. Such speeches shall be in presence of the teaching staff nominated by the concerned authorities in the universities or the colleges.

(xi) The oath or affirmation shall be made by the office bearers of the union within 3 days from the date of declaration of the result on the date and time fixed by Vice Chancellor or any person authorised by him in case of university or in case of the college by the Principal or person authorised by him.

(xii) The oath or affirmation shall be administered to the President and other office bearers by the Vice Chancellor or the Principal as the case may be; or the person nominated by them, who has been a university or college teacher for not less than 25 years.

Explanation.-It will be open for the elected candidate to invite the guest of his or her choice on the said occasion as a Chief Guest including a political leader subject to the approval of the Vice Chancellor/Principal/Director/Dean as the case may be. No programme of the students union shall be carried including extending invitation to a guest without the prior approval of said authorities.

(xiii) A candidate who fails to take oath within period of 3 days from the date of declaration of the result of elections, he/she deem to have vacated the office. In rare case for the sufficient reasons on an application by the of elected candidate or a person authorised by him or her the Vice Chancellor/Principal may extend the period not exceeding three days.

Explanation.-The non-availability of the chief guest on the date fixed will not be considered sufficient ground for extending the time;

(xiv) Within three weeks from the date of assuming the office the President of the Union or the Vice President in case of faculty or college shall submit charter of activities which he/she proposed to undertake during the tenure to the Vice Chancellor/Director/Dean/Principal as the case may be. Following shall be obligatory activities on the part of the Students Union:

(a) Inter faculty or intra faculty sports competition;

(b) Lecture or essay competition of a debate or any other similar activities;

(c) Organising the seminar, conference, workshop;

(d) Social Service;

(e) Shram Dan within the University Campus;

(f) Programme showing sensitiveness towards the protection of environment or human rights;

(g) Cultural performance;

(xv) The Students Union will prepare and present the budget to the Vice Chancellor or the Principal. There shall be deliberation on budget as per the existing rules. The authorities shall ensure that appropriate provision is made for each obligatory activity. There shall be ceiling on the expenditure on refreshment, telephone bill, maintenance of office etc. which in no case shall exceed 10% of the students fund collected in the current session.

(xvi) The disbursement of fund shall be made strictly as per the approved budgetary provisions. As far as possible no money shall be paid in hand to any of the office bearers, or student. On submitting the bill the payment shall be made by the office on recommendation of the Advisory Board and approved by the Vice Chancellor/Principal/Director/Dean as the case may be. In a given case where certain amount is advanced to any office bearer, it will be his or her obligation to submit the account within the period specified, in no case later than three weeks.

(xvii) In case the an office bearer fails to submit the account:

(a) His/Her name shall be shown in the quarterly magazine as a defaulter.

(b) He/She shall not be permitted to appear in the examination;

8. These directions shall be followed as aid and incidental to and supplemental to existing rules. In case of conflict the directions of this Court shall prevail. A candidate found guilty of committing breach of any of the aforesaid directions shall deem to have committed misconduct and he shall be dealt with in accordance with the directions given hereinafter.

9. There shall be an Election Tribunal constituted by the respective Vice Chancellor and Secretary Higher Education, Government of Rajasthan or any person authorised by him. The Tribunal shall be headed by a Senior Professor. Out of the two other members one shall be a teacher having teaching experience of 20 years and has worked at least for 3 years as an authority to maintain discipline to the university or the college. The Tribunal shall have power to remove the President or other office bearer in case he/she found guilty of committing violation of any of the aforesaid rules.

10. The Tribunal may disqualify a candidate guilty of breach of the rules to contest the elections for the next two years or the Tribunal may recommend to the university debarring the student from appearing at the examination.

11. The Tribunal shall hold the inquiry on the basis of affidavits filed before it. On application filed, the Tribunal in its discretion may permit to cross-examine the

deponent.

12. In case of an election petition on the basis of misconduct during the elections, it shall be decided as far as possible within a period of two weeks.

13. Any pamphlet, poster or slogan or name of the candidate found written on the prohibited places including the traffic or other boards shall be sufficient to presume that the same has been put by the concerned candidate unless otherwise proved.

14. Any person found creating false evidence with a view to get an elected candidate removed shall be liable to be prosecuted and payment of compensation. The printer, publisher, painter or any person facilitating the offence shall also be liable to prosecution.

15. The university will remove the posters pasted on the board within and around the campus and re-write for the convenience of the people before the election programme for the Students Union if declared. The Collector and District Magistrate in which the university or college is situated get such posters outside the university or college premises i.e., the city or town removed, walls of public places cleaned within two weeks. All the concern departments and local bodies will comply with the directions of the collector. The persons companies, institutions) spoiling the boards shall be visited with penalty under the law. Such persons not complying with the directions of the Collector or local body or Traffic Police shall be liable to be prosecuted.

16. The Secretary, Education, Government of Rajasthan will ensure compliance of the directions given in this order. He shall submit compliance report on or before the next date of hearing. The Registrars of all the three universities will also submit the compliance report.

17. A copy of this order be sent to the Secretary, Education, Government of Rajasthan as well as the Registrars of all the three universities. The Registrar of the concerned university shall circulate the copy of the order to its constituent colleges. The Secretary, Education, Government of Rajasthan will circulate the copy of the order to all the Collectors and the District Magistrate.

7. At one stage, this Court considered the rights of the students to contest the college elections. This Court by its order dt. 25.8.2003 observed as follows:

It is a misnomer that right to election in a democracy is a fundamental right. It is well established law that a right to election is not a fundamental right but a statutory right. It further depends upon the construction of the various provisions of a particular Statute giving such right. Recently, the Kerala High Court on a petition filed by Sojan Francis, an SFI student and second year degree student of St. Thomas College, Pala Kaottaiyan, put complete ban on political activism of a college or university campus having ruled that the ban on election of Students Union does not involve "negation of fundamental rights". We have our own reservations as to the correctness of the ruling given by the Kerala High Court.

However, it appears that the Hon"ble Judges constituting the Division Bench while giving the said ruling had noted the spiraling campus violence. It was recorded that in the recent years in the State of Kerala, the C.P.M. backed Students Federation of India (S.F.I.) lost thirty of its leaders in union clashes and the students wing of the Congress Kerala Students Union about 10. The BJP Akhil Bhartiya Vidhyarthi Parishad (ABVP) saw three of its student activists drowned in the Pumba River following a campus skirmish. It was observed that the university and the colleges are worst hit by campus politicking and violence. The things went to the extent that the bright students shun the college. It is observed that the castism and mafia culture has been imported in the campus by the students supported by few selfish teachers. It is also observed that such students are also financed by the political parties. We make it clear that we have no intention to say that there should be a complete ban on holding Students Union elections or contesting elections under the banner of a political party. The majority of the students in the College Campus are above 18 years of age and they cannot be denied organizational freedom. The colleges are training camps for the future politicians. But as we have already observed in our earlier order that the Students Union is a laboratory of the democratic governance, we further make it clear that we dis-approve the campus violence and not campus politics. In our view, the campus politics need be cleansed of violence and educational institutions should not be allowed to become laboratories of political parties.

8. In the same order, we expressed our anxiety for a, proper academic atmosphere in the colleges and the University Campus. Thus, we fixed the priorities in the colleges and Universities as follows:

- (i) Declaration of the result of examinations conducted during the last Academic Sessions;
- (ii) Completion of the admission process;
- (iii) Cleaning of the University or College Campus;
- (iv) Arranging classes in the orderly manner;
- (v) Ensuring availability of the teachers in the classes;
- (vi) Ensuring the attendance of the students in the classes;
- (vii) Ensuring strict compliance of the pre-conditions imposed for holding Students. Union elections;
- (viii) Preparation of budget; and
- (ix) Academic activities to be taken up by the Students Union.

9. In the said order, we also considered the concept of collective fine on a group or section of the students in the event of indiscipline including spoiling the college or the University Campus. At one stage, we found that the JNV University

was not cooperative, more particularly in the matter of finance. Thus, a detailed order in that regard was passed on 14.2.2005. The attention was invited of the JNV University towards the directions contained in sub-para (xiv) to para 7 in our order dt. 23.7.2002. The Registrar, JNV University, Jodhpur was asked to file affidavit with respect to misuse of the students' fund. After hearing the Registrar, this Court by order dt. 25.8.2004 passed the order as follows:

Pursuant to the directions of this Court, Smt. Prabha Tak, Registrar as well as Shri R.P. Sharma, Financial Adviser are present. Mr. R.P. Sharma is not in a position to explain the details of the accounts. A huge amount of Rs. 11,55,000/- and Rs. 4,34,000/- have been given in the hands of Students' Union in disobedience of the orders of this Court dt. 23.7.2002. Registrar has also produced the record in compliance of our direction. The record be deposited with the Deputy Registrar (Judicial). He shall prepare an inventory of the record and give a receipt of the same. The record, shall be kept in safe custody.

A notice may also be given to the Principal Secretary (Finance), Government of Rajasthan, Jaipur. He shall depute a team of officers to look into the record and make a report to this Court within a period of six weeks. A copy of this order be sent to the Chief Secretary and he shall ensure the compliance of the order of this Court.

10. A committee headed by the Director, Treasury and Accounts, Jaipur was constituted by the Principal Secretary, Finance and Planning, Government of Rajasthan. The report was submitted to this Court supported by the affidavit of the Secretary Finance. It was noticed that for the academic session 2002-03, the President of the Student's Union submitted proposed charter of the activities with budget provisions for Rs. 5,36,160/-. The budget was approved in accordance with the directions of this Court. However the Students' Union made a demand for Rs. 14.25 lacs for organising an International Youth Festival. Shri L.S. Rathore Vice Chancellor at the relevant time directed to make payment to the President to the tune of Rs. 12 lacs either from PTET surplus fund or private students examination fee. The Order was not carried out, as certain objections were raised by the Financial Adviser. The interim Vice Chancellor Shri Khem Raj Choudhary, IAS, also raised certain queries. It was pointed out that such payment shall be in disregard to the orders of the High Court. Relevant directions are extracted as follows:

(xv) The Students Union will prepare and present the budget to the Vice Chancellor or the Principal. There shall be deliberation on budget as per the existing rules. The authorities shall ensure that appropriate provision is made for each obligatory activity. There shall be ceiling on the expenditure on refreshment, telephone bill, maintenance of office etc. which in no case shall exceed 10% of the students fund collected in the current session.

(xvi) The disbursement of fund shall be made strictly as per the approved budgetary provisions. As far as possible no money shall be paid in hand to any of

the office bearers, or student. On submitting the bill the payment shall be made by the office on recommendation of the Advisory Board and approved by the Vice Chancellor/Principal/Director/Dean as the case may be. In a given case where certain amount is advanced to any office bearer, it will be his or her obligation to submit the account within the period specified, in no case later than three weeks.

11. Thus, it is evident that no provision could be made beyond the budget deliberated in the Students Forum and approved. However, the present Vice Chancellor Dr. Naseem Bhatia sanctioned an amount of Rs. 15.90 lacs for organising the International Youth Festival and the amount was given to the office bearers of the Students' Union. A cheque in the sum of Rs. 12.09 lacs was issued in the name of Ishwar Balawat, President. Student's Union and Rs. 3 lacs' cheque was issued in the name of Shri Kishan Bhati. The committee found that the vouchers presented in the Student's Union were manipulated and funds were drawn fraudulently. The committee pointed out serious lapses, which led to the embezzlement of the huge amount. Some of the lapses pointed out, are referred as follows:

(i) In spite of the fact that the sanction was for a sum of Rs. 15.90 lacs, the Students' Union submitted a claim for Rs. 19,55,556/-;

(ii) Most of the purchases were found to be made from the firms which cannot be termed as firms of repute as they are not even registered with the Commercial Taxes Department. Bills of the Firms lacs RST/CST numbers, printed numbers and in some cases, even the regular bill/invoice format;

(iii) A sum of Rs. 4,36,245 was withdrawn in the name of a tent house. On verification, it was found to be a Bill for Rs. 1,36,245,-. The figure "1" was manipulated to make it "4" and thereby payment was made of excess amount of Rs. 3 lacs. The said bill was presented by Shri Ishwar Balawat, President of the Students' Union. Thus, Shri Balawat committed forgery and misappropriated a sum of Rs. 3 lacs on this count alone; and

(iv) There is a bill in the name of M/s. Sanklecha Tent House for a sum of Rs. 41,440/-, whereas the actual bill is only for Rs. 4,144/-. This bill has also been presented by Shri Balawat. This way more than Rs. 37,296/- has been withdrawn by the President of the Student's Union. There are many instances of such forgery and misappropriation given in the report. This clearly shows that there has been forgery and misappropriation of the huge amount by the office bearers of the Students' Union. Prima facie, there is a case against known and unknown persons for the offences u/s 409, 467, 468, 471, 420, 418 and 477-A, IPC read with Section 34/120-B, IPC and Sections 13(1)(e) & (d) of the Prevention of Corruption Act. 1988.

12. The committee has recommended for a detailed administrative/police inquiry. The committee has also expressed that there is a violation of the orders of this Court. We are of the view that the unintentional but immature act of Vice Chancellor Dr. Naseem Bhatia has not only led to forgery and misappropriation of

huge amount by the young students, which may adversely affect their future career but has also frustrated the endeavour of this Court to educate the students a clean and honest democratic governance, Particularly financial transparency and limits on expenditure, by continuous mandamus.

13. A Division Bench of this Court at Jaipur Bench in D.B. Civil Writ Petition No. 5746/2003 by order dt. 5.5.2005 has put a complete ban on holding of students' elections. In another Writ Petition No. 2800/2005 Arvind Singh v. State, by order dt. 18.5.2005, a reference has been made to the larger bench on the controversy of the students' election. A special leave to appeal against the order dt. 5.5.2005 passed in Suo Moto case i.e. D.B. Civil Writ Petition No. 5746/2003, has been preferred and the matter is pending before the Apex Court. Six member committee headed by former Chief Election Commissioner Shri J.M. Lyngdoh is engaged in framing guidelines for conduct of Students' Union elections in the Universities and Colleges. In view of this, we are not inclined to proceed further in the matter.

14. Considering all the facts and circumstances of the case, the instant special appeal is disposed of as follows:

(i) The special appeal is allowed and the order of the learned Single Judge dt. 20.12.2000 is set-aside. The writ petition stands dismissed;

(ii) The interim directions given by this Court as to conduct of Student's Union and discipline except holding of elections shall remain in force, unless otherwise directed by the Apex Court or this Court;

(iii) Keeping in view our order dt. 3.4.2002 and subsequent orders regulating the students' election and functioning of the Students' Union and the act of the Vice Chancellor, JNV University, Jodhpur sanctioning the amount in favour of the students circumventing the orders of this Court, we direct the State Government and the Chancellor to initiate an appropriate administrative enquiry against the persons responsible. The State Government is further directed to initiate police action against the officers, teachers and the students, known and unknown, against whom there is a prima facie case of forgery, conspiracy, abetment and misappropriation of huge students' fund. The amount be recovered from such persons and deposited in the students' fund. It is made clear that in the event of administrative/police action in pursuance of this order any observation made by us, in this order will not have any reflection on the merit of such enquiry or investigation;

(v) A compliance report be submitted to this Court within a period of three months from today; and

(v) A copy of this order be sent forthwith to the Chief Secretary and Chancellor for appropriate action.