
(2008) 02 AHC CK 0287
In the Allahabad High Court

Vishnu Gopal Gupta

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Citation : (2008) 6 AWC 5710

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri M.A. Qadeer, learned Senior Counsel assisted by Sri Ateeq Ahamad Khan, learned Counsel for the petitioner, learned Standing Counsel for the respondents and perused the record.

2. The petitioner was declared elected as President of the Union of D.B.S. College Students Union Election 2007-08, Kanpur. He was administered oath of office. Thereafter on 30.8.2007 the petitioner was called upon to submit his explanation within 3 days by respondent No. 2 to the objections mentioned as point Nos. 1,2 and 3 in the notice which were similar to the objections as were received at the time of finalization of the candidature of the petitioner. The petitioner submitted his reply/explanation on 1.9.2007. Thereafter he was called upon by the Committee to give his explanation. As the matter had remained unactioned and no decision had been taken by the Committee on the explanation submitted by the petitioner pursuant to the aforesaid notice, the petitioner filed Writ Petition No. 44505 of 2007 which was disposed of vide judgment and order dated 3.10.2007 directing the authority concerned to take final decision in the matter.

3. The grievance of the petitioner is that after the aforesaid order and judgment dated 3.10.2007 he was served with an undated notice from the Principal of the College informing him that the Grievance Redressal Committee had taken a decision declaring the election of the petitioner as null and void. The petitioner also submitted his appeal on 31.10.2007 against the decision declaring him

elections null and void which was also rejected vide order dated 1.11.2007.

4. In the aforesaid backdrop the petitioner has come up in this writ petition for quashing the undated letter issued by respondent No. 4 appended as Annexure-12 to the writ petition declaring his election as null and void as well as the order dated 1.11.2007 in appeal appended as Annexure-16 to the writ petition.

5. Sri M.A. Qadeer, learned Senior Counsel appearing for the petitioner has placed reliance upon paragraph 6.5.7 of the judgment of the Apex Court in SLP (Civil) No. 24295 of 2004, University of Kerala versus Council Principals Colleges Kerala and others and has urged that the petitioner has not been given an opportunity of hearing and even copy of the order was not provided to him. The relevant paragraphs 6.5.7 and 6.8 of the aforesaid judgment of the Apex Court in the University of Kerala (supra) is as under:

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 misdemeanor. The candidate shall also not have been subjected to any disciplinary action by the University authorities....

6.8 Grievance Redressal Mechanism.

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Any party adversely affected by a decision of the Grievance cell may file an appeal with the institutional head within twenty fours after the adverse decision is announced. The institutional head shall have discretionary appellate jurisdiction over the Grievance cell in all cases in which error on the part of the Grievance cell is charged.

The decision of the Grievance cell shall stand and shall have full effect until the appeal is heard and decided by the Institutional head.

The institutional head shall hear appeals of Grievance cell rulings as soon as possible but not within twenty four (24) hours after the Grievance cell delivers to the appellant and the institutional head a copy of its written opinion in the case. Appeal may be heard prior to this time but only if the appellant waives the right to a written opinion and the institutional head agrees to accept the waiver.

The institutional head can issue suitable orders to suspend or halt the operation of the ruling issued by the Grievance cell until the appeals are decided.

The institutional head shall review findings of the Grievance cell when appealed. The institutional head may affirm or overturn the decision of the Grievance cell, or modify the sanctions imposed.

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6. The attention of the Court has been drawn by the learned Counsel for the petitioner towards order which has been appended as Annexure-12 to the writ petition wherein the election of the petitioner has been declared as null and void which is as under:

Mh0ch0,l0 dkyst dkuiej Nk=&la?k pquko 2007 & 2008

KkrO; gS fd mDr pquko izfdz;k fyaxnksg lfefr dh fjiksZV ,oa ekuuh; loksZPp U;k;ky; ds }kjk izkIr funsZ"kks ds vUrZxr lapkfyR dh x;h gS A ftlds vuqlkj pquko lfefr dh frfFk ds mijkUr rhu lIrk rd fot;h ?kksf"kr izR;kf"k;ksa ds izfr vkifRr;kWa izkIr fd;s tkus dk izko/kku gS A vr% 19 vxLr 2007 dks lEIUu pquko ds ckn 10 flrEcj 2007 rd vkifRr;kWa izkIr djus dk le; j[kk x;k A bl le;kof/k esa lEcU/kR Ik{kksa dks fyf[kr :i ls lwpuk nsdj muls vko;"d izek.k miyC/k djkus dks dgk x;k ,oa 14 flrEcj 2007 dks Jh fo".kq xksiky xqIrk vkRet Lo0 jTtu yky xqIrk ,oa Jh fufu volLFkh vkRet Jh ujs"k volLFkh dks Loa; mifLFkr gksdj viuk i{k j[kus dks dgk x;k A

vkifRr fuLrkj.k lfefr us ,d er ls fuEufyf[kr fu.kZ; izsf"kr fd;k A

The election of Mr. Vishnu Gopal Gupta as President of Students Union D.B.S. College, Kanpur should be declared null and void on ground of his previous criminal record.

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7. Learned Counsel for the petitioner has also drawn the attention of the Court towards Annexure-8 to the writ petition which is an order passed by the Court of C.M.M. Kanpur Nagar in Case Crime No. 31577 of 2008, State versus Rahul Bhatt has passed an order dated 10.8.2007 by which the petitioner had been issued warning by the Court.

The order dated 10.8.2007 is as under:

U;k;ky; lh0,e0,e0 dkuiej eq0la0 3157@06 ljdkj cuke jkgqy HkVV

;w0,l0 13 th0 ,DV ih0,l0 xksfoUn uxj

,l0,p0cks0 xksfoUn uxj

mijksDr okn esa eqyfte fo".kq iq= jTtu yky fuoklh Mh0 2 ,e0 vkbZ0 th0 xqtSuh ih-,l- xksfoUn uxj v-u- ds U;k;ky; esa gkftj vkdj viuk mijksDr okn Qslyk djok fy;k gS A eqfYte mijksDr dks iqu% u djus dh psrkouh nsdj NksM+kk x;k A

ch- vks- g0 @ vLi"V

eksgj U;k;ky; phQ esV?ksiksyhVu eftLV?sV dkuiej uxj 10-08-07

8. On the basis he submits that it is evident from perusal of the of the order that it was passed on 10.8.2007 whereas the election was held on 19.8.2007 as such the order for declaring the election of the petitioner as null and void could not have been passed as the petitioner was not having previous criminal record.

The impugned order has also been challenged on the ground that the authorities have not applied their minds to the facts and circumstances of the case and have passed the impugned order arbitrarily without giving an opportunity of hearing to the petitioner.

9. It appears from the judgment of the Apex Court aforesaid that Lyngdoh Committee had been constituted for addressing itself to the various problems of the Students' Union Elections and other stated problems. It is apparent from the impugned order that it has been passed on 27.10.2007 declaring the petitioner as null and void on the ground of previous criminal record. It appears from the Grievance Redressal Mechanism that after hearing the Grievance cell may disqualify a candidate. It also provides for an appeal with the Institutional Head within twenty-four after the adverse decision is taken by the Grievance cell against a candidate and that the decision of the Grievance cell shall stand and shall have full effect until the appeal is heard and decided by the Institutional Head. In my opinion, the word "previous criminal record" in the order dated 27.10.2007 appended as Annexure-12 to the writ petition refers to the judgment dated 10.8.2007 appended as Annexure-8 to the writ petition. A perusal of the order shows that it is not only in respect of time when the candidate had filled up his nomination form for the election 2007-08 which was held on 19.8.2007 which shows that the elections were being held according to report of Lyngdoh Committee and the directions of the Apex Court which provides three months period after election during which objections may be received against an elected candidate. The Grievance cell could also look into any conduct after hearing the candidate and disqualify him if in its view the candidate had violated the opinion, order or rulings etc. therefore, all acts and misconducts including criminal or otherwise of the candidature can be looked into by the Grievance cell up to period of three months from the date of election. A perusal of the order dated 10.8.2007 also shows that the petitioner had appeared in the Court on that date and had submitted that a settlement had been arrived at between the parties and in that context Court had issued warning and closed the case thereafter.

10. To my mind, the sentence of issuing warning by the Court has nexus with punishment. Undisputedly, the petitioner was tried but was not sentenced to jail imprisonment for the reason that he had settled the matter out side the Court which in the instant case is a punishment awarded to the petitioner for his criminal activity. Once, it is admitted by the parties that some offence has been committed which has been settled by the parties out side the Court and if punishment is ordered by the Court it would basically come within the ambit of the phrase "tried and convicted" by the Court used in paragraphs 6.6. and in the Lyngdoh Committee report for the purpose of disqualification of a candidate from elections.

11. It is not in dispute by the petitioner that he had appeared before the Court of C.M.M. Kanpur Nagar in case Crime No. 31577 of 2006, State v. Rahul Bhatt, u/s 13 of the Gambling Act. Since it has not been denied by the petitioner that the

order dated 10.8.2007 was not passed by the Court of C.M.M., Kanpur Nagar in the aforesaid criminal case in which he has been issued warning, the order of declaring the election of the petitioner as null and void requires no interference by this Court. For the reasons stated above, the writ petition is dismissed. No order as to cost.