

RAJASTHAN HIGH COURT

Suresh Swami

Vs.

State of Rajasthan

Civil W. P. Nos. 3124, 3135, 3128, 3155, 3169 and 3560 of 2000

(Rajesh Balia, J.)

20.12.2000

ORDER

Rajesh Balia, J.

1. Since all these six writ petitions raise common questions of law and facts and, therefore, they were heard together and are being disposed of by a common order.
2. The petitioners have challenged the legality of the Order dated 17-8-2000, passed by the Director, College Education, Govt. of Rajasthan, Jaipur whereby directions have been given for the amendment of the Constitution of Students Unions of the Govt. Colleges or private colleges whether affiliated or not affiliated with the Universities; or whether receiving grant-in-aid or not receiving grant-in-aid, from the State Govt.
3. The Order dated 17-8-2000 specifically provides that in order to bring reforms in the process of election of Students Unions, the Chancellor Co- ordination Committee and the State Govt. have decided to amend the constitution of the Students' Unions of the Colleges governing their colleges. These writ petitions have been filed by the aspirants, who wanted to contest the elections of the Students' Unions or the persons regularly admitted to the colleges who have a right to participate in the elections on the ground that since the Students' Unions are formed under their own constitution and lays down the eligibility criteria for contesting the elections and other matters connected therewith, the State Govt. is having no right or authority to issue directions for the amendment of the constitution of Students' Unions by an executive order as it infringes fundamental rights flowing from the democratic set up of the Unions and also results into restrictions on the formation of the Students' Unions and matters

connected therewith.

4. It has been contended that the constitution of the Students' Unions provide for method of amending the Constitution and the authority who may amend the Constitution. It also lays down the eligibility criteria for any student to contest the elections and any alteration in those conditions by any authority not envisaged in the Constitution and varying terms and conditions of eligibility by an authority outside the Constitution is *ultra vires* and unconstitutional. In this connection, reliance has been placed on the preamble as well as Article 19 of the Constitution.

5. On the other hand, learned counsel appearing for the respondents urged that these amendments have been made with a view to bring reform in the election process and to make functioning of the Students' Union more rational. The restrictions have been put forth by these amendments in the interest of the students and, therefore, they can safely be termed to be reasonable restrictions, which the State Govt. is authorized to impose and the conditions for eligibility laid down in the order dated 17-8-2000 cannot be said to be unreasonable so as to be violative of Article 19 of the Constitution of India.

6. It is not in dispute before me that the directions contained in the Order dated 17-8-2000 are in exercise of the executive authority of the State and not a legislative document. However, it is contended by Mr. M. R. Singhvi, learned counsel appearing for the respondents that in the absence of any legislative instrument governing the field of election for Students' Unions, the executive power of the State Govt. under Article 162 of the Constitution extends to the issuance of instructions in the field over which the State Legislature could have enacted the law and, therefore, the order under challenge does not infringe any provision of the Constitution or affect any right of the petitioner beyond the constitutional limits. Thus, the common premise in all the cases is that Students' Unions in each Govt. college in question is formed and constituted under the voluntary document called as Constitution given by the students themselves for the purposes of forming their Union laying down the conditions for eligibility and other matters incidental to formation of Union.

7. The Constitution so governing elections also lays down the eligibility criteria for contesting the elections. The impugned notification by making alteration in eligibility criteria for contesting the elections by the students in the respective colleges envisage

amendment in the Constitution. The question then arises is whether the State Govt. has authority to do so. In this connection, it may be noticed by way of illustration. The Constitution of Students' Union operating in CH. B.R.G. Govt. Girls P. G. College, Sri Ganganagar lays down in Article 2 that the Principal of the College will be the Patron of the Students' Union and he/she will nominate any faculty member as Union adviser. The Patron will reserve the right to amend any Article of the Constitution which he/she deems necessary. Article 6 of that Constitution deals with eligibility for candidature, which reads as under:

- "6. Eligibility for candidature: (a) A student who has failed to qualify herself (on) date 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.

8. The impugned directions contained in the Order dated 17-8-2000 has been issued by the Principal but it has been issued as per the directions of the State Govt. and also alters the eligibility criteria. The short ground on which, in my opinion, this petition must succeed is that this intervention by the State Govt. is in violation of fundamental rights guaranteed under Article 19 of the Constitution of India. Apart from the fact that we the people of India having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation, our Constitution has also devised mechanism to protect certain basic and fundamental rights which are necessary to preserve this basic concept of the democracy, one of such provision is Article 19(1) of the Constitution, which reads as under:

- "19. Protection of certain rights regarding freedom of speech, etc. (1) All citizens shall have the right-
- (a) to freedom of speech and expression;
- (b) to assemble peacefully and without arms;
- (c) to form association or unions;
- (d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) [Omitted by the Constitution (44th Amendment) Act, 1973.]

(g) to practise any profession or to carry on any occupation, trade or business."

9. As stated above, sub-clause (a) of Clause (1) of Article 19 of the Constitution recognises the right to freedom of speech and expression whereas sub-clause (b) recognises right to assemble peacefully and without arms. Sub-clause (c) of Clause (1) of Article 19 provides right to form Associations or Unions. Under Clauses (2) to (6) of Article 19 of the Constitution of India, these rights have been subjected to reasonable restrictions that can be imposed by the State Govt. by making any law. From the bare reading of Article 19 it is apparent that forming of Association or Union is one of the fundamental rights recognized under Article 19. The permissible limit of the State interference in respect of right to form Association or Union has been laid down in Clause (4) of Article 19 of the Constitution which reads as under;

"(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

10. Thus, it is clear that Clause (4) of Article 19 of the Constitution enables the State Govt. to make law imposing reasonable restrictions on exercise of the said right in the interest of the sovereignty and integrity of India or public order or morality.

11. The question which now crops up for consideration is whether the constitutional mandate of permitting the State to make law imposing reasonable restrictions on exercise of the said right in the interest of the sovereignty and integrity of India or public order or morality extends to the exercise of the executive power without making law?

12. In my opinion, the contention of the learned counsel appearing for the respondents that executive power of the State under Article 162 is co-extensive with the legislative power of the State and is exercisable in the matter not covered by any legislative enactment cannot extend to interference with the fundamental rights except in accordance with the law made by the legislative authority as envisaged in Part III of the Constitution. The interpretational field in this regard is not virgin.

13. Clause (2) of Article 13 of the Constitution prohibits the State from making any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. Thus, plainly speaking the authority of the State to make law in contravention of Part III of the Constitution itself has been taken away and, therefore, the question of exercising executive power in that field where even the law cannot be made cannot be said to be existing. It may further be relevant to notice that for the purpose of Article 13 which uses the expression 'any law' in the context of affecting fundamental rights guaranteed under Part III of the Constitution has been defined to include any Ordinance, Order or Notification or Regulation and it does not include executive directions.

14. The Supreme Court in the case of *Bishan Dass v. State of Punjab*,¹ referring to its earlier decision in *Wazir Chand v. State of Himachal Pradesh*,² held that the State or its Executive Officers cannot interfere with the right of others unless they can point to some specific rule of law which authorises their acts.

15. The Supreme Court in the case of *Kharak Singh v. State of U.P.*,³ was dealing with the proposition explicitly what is meant by 'law' in the context of restrictions on State from making any law to impose reasonable restrictions on the freedom guaranteed under Article 19 of the Constitution. Before entering on the details of the case before it, the Court posed two-fold enquiry for its pursuit: (1) whether the impugned regulations do not constitute an infringement of any of the freedom guaranteed by Part III of the Constitution which are invoked by the petitioner, and (2) whether even if they were, they have been framed "in the interests of the general public and public order" and to enable the police to discharge its duties in a more efficient manner and were, therefore, reasonable restrictions on that freedom. The U.P. Police Regulations were held to be not a statutory document, the provisions of which were sought to be defended on the ground of reasonable restrictions. The Court negated the proposition by holding (Para 5) :

"Pausing here, it is necessary to point out that the second point urged is without any legal basis for if the petitioner were able to establish that the impugned regulations constitute an infringement of any of the freedoms guaranteed to him by the Constitution then the only manner in which this violation of the fundamental rights could be defended would be by justifying the impugned

action by reference to a valid law, that is, be it a statute, a statutory rule or a statutory regulation. Though the learned counsel for the respondent started by attempting such a justification by invoking Section 12 of the Indian Police Act, he gave this up and conceded that the regulations contained in Chapter XX had no such statutory basis but merely executive of departmental instructions framed for the guidance of the Police Officers. They would not, therefore, be 'a law', which the State is entitled to make under the relevant Clauses (2) to (6) of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Article 19 (1), nor would the same be "a procedure established by law" within Article 21."

16. This principle was re-stated by the Court in *State of M.P. v. Bharat Singh*,³ *Satwant Singh Sawhney v. Dr. Ramarathnam, Assistant Passport Officer, New Delhi*,⁴ *Smt. Indira Nehru Gandhi v. Raj Narain*,⁵ and *M/s. Bishamber Dayal Chandra Mohan v. State of U.P.*⁶ Therefore, the contention of the learned counsel for the respondents that by dint of any executive directions, fundamental rights can be put under restraint by justifying those executive instructions to be reasonable restrictions in the exercise of fundamental rights does not require further consideration.

17. The next question which calls for considerations is whether the amendment in the Constitution and altering the eligibility criteria for contesting the elections constitute an infringement of fundamental rights guaranteed under Article 19 (1) (c) and 19 (1) (a) of the Constitution. In the facts and circumstances of this case, I am of the opinion that amendment in the Constitution and altering the eligibility criteria for contesting the elections constitute an infringement of fundamental right guaranteed under Articles 19 (1) (a) and (c) of the Constitution of India. Right to form an Association or Union being a fundamental right of every citizen including the students of the colleges, that right can only be curtailed or put under cloud by legislative action. Therefore, the order dated 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 Govt. cannot be sustained as the State Govt. has no authority to pass such executive orders regarding amendment or alteration in the eligibility criteria for contesting the elections of the Students' Unions or Associations.

18. Accordingly, these writ petitions are allowed and the impugned order dated 17-8-2000 containing directions regarding alteration or amendment in the eligibility criteria

for contesting the elections of Students' Unions or Associations in their constitution is set aside and quashed. The respondents are directed not to interfere with the holding of elections of Students' Unions at the behest of the State Govt. or any other agency. There shall be no order as to costs.

Petitions allowed.

Cases Referred.

1. AIR 1961 SC 1570
2. AIR 1954 SC 415
3. AIR 1963 SC 1295
4. AIR 1967 SC 1836
5. AIR 1975 SC 2299
6. AIR 1982 SC 33