

RAJASTHAN HIGH COURT

State of Rajasthan

Vs.

Sarita Choudhary

Civil Special Appeal No. 188 of 2002

(N.N. Mathur and O.P. Bishnoi, JJ.)

25.08.2003

JUDGEMENT

N. N. Mathur and O. P. Bishnoi, JJ.

1. Pursuant to the directions of this Court dated 18th August, 2003, the Secretary Education, the Director College Education and the Registrars of all the three Universities are present in person. The respective parties have submitted their compliance reports, which we have perused.

2. The question involved in the instant Special Appeal as recorded in the order dated 3-4-2002 is as follows:

"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 to 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."

3. It was noted 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 under memorandum dated 17-8-2000 to all the Government and private Colleges whether affiliated or not 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 Students Union. The State Government provided restrictions under Clause 6 for the students contesting election. It was observed that the object of the restriction is to discourage the students to continue in the Institution only for the sake of contesting the election. With the past experience, it was observed that such candidates are found to pollute the atmosphere of the College or the Universities. This Court issued notice to Jai Narain Vyas University, Jodhpur, Mohanlal Sukhadia University, Udaipur and Maharshi Dayanand Saraswati University, Ajmer as well as to the Presidents of Students Union for all the three Universities. While the State of Rajasthan as well as the said three Universities filed their reply and furnished the requisite information to this Court, none of the Students Union put-in appearance and placed their point of view before the Court. On the basis of the material placed and deliberations, this Court by order dated 23rd July, 2002 while directing the State Government to prepare a common Code of Conduct for Students Union of the said Universities and their constituent Colleges for free, fair and impartial elections to enforce discipline and to ensure growth of the responsible citizens for development of the Country, issued wide ranging directions. In addition to the Educational authorities viz. the Vice- Chancellors of all the three Universities, the Secretary, Higher Education and the Director, College Education, this Court also directed the Collector cum District Magistrate as well as the Superintendent of Police to oversee the compliance of the orders of this Court. After elections, the compliance reports were submitted by the respective parties. The interim directions issued by this Court were found to be useful, as the Students Union elections went on peacefully in all the three Universities and the affiliated Colleges except an unfortunate incident in Bikaner. It was reported that in the Dungar College, one Sri Shivilal Godara, the NSUI candidate won the election and after election, tension emerged on account of procession in which one person died. Number of persons including 14 police officials were injured. For the Academic Session 2003-04 even before declaration of the Election Programme, some of the over-enthusiastic students started election campaigning not only in disregard to the Code of Conduct for Students Union Elections but in utter disrespect to the orders of the Court. It is reported in the newspaper that in District Jhalawar, four students lost their lives during campaigning for Students Union Elections. Thus, this Court by order dated 7th August, 2003 issued notice to the Secretary, Education Department and Registrars of all the three Universities. By interim order dated 18th August, 2003, holding of election of Students Union in all the three Universities as well as the affiliated Colleges of the said Universities has been stayed. As none of the Students Union have put-in

appearance, we are deprived of the benefit of knowing their point of view on a subject of wide ramification i.e. the Code of Conduct for Students Union Election. However, we had an occasion to read a loose observation from one of the students claiming himself to be the Students' leader, appearing in one of the newspapers to the effect that holding of Students Union Election is a fundamental right in democracy and one can not be deprived of such right. We would have appreciated the appearance of such student with a view to learn from his wisdom. 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 activities 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 Election or contesting elections under the banner of political party. The majority of the students in the College Campus are above 18 years of age and they can not be denied organizational freedom. The Colleges are training Campus 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 disapprove 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.

4. The directions given by this Court from time to time are expected to be read in

correct perspective as observed above. When we have asked to cleanse the College Campus, it means to emulate and inculcate a culture in the heart of every student that the College or the University Campus is a temple of education and it is bounden duty of every teacher and student to keep cleanliness in the entire University Campus and not to spoil it by writing slogans or pasting posters. All the students must understand that discipline is the need of the hour. This is what is the requirement and essence of the directions given by this Court in the instant Special appeal from time to time. If the said directions are observed by the students and teachers punctually, faithfully and religiously, they are not doing anything extra but they are doing a service to the Nation. Disobedience of the directions of this Court is not simply a Contempt of Court by a student or a teacher or an authority but a dis- service to the Nation.

5. As far as this Court is concerned, we have expressed ourselves and issued directions from time to time and, as such, nothing more is required to be done at our end. We hope and trust that Students and Teachers of the concerned Universities in the State of Rajasthan and their affiliated Colleges will follow the Code of Conduct and the directions given by this Court from time to time considering it to be their "dharma".

6. Our anxiety is to have a proper academic atmosphere in a College or University Campus. Therefore, in our view, the Colleges and Universities are expected to fix their priorities as follows:

- (i) Declaration of the result of examinations conducted during the last Academic Session;
- (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.

7. We have also heard learned counsel for the parties on the question of group or collective fine. We do not wish to invoke the concept of collective or group fine for spoiling the College Campus before the commencement of the election of the students Union for the Session 2003-04. However, we simply explain the concept with a view to invoke the same, if such eventuality arises. The concept of collective fine involves the levy of fine on a group or section of Society. In other words, while fine is a mode of punishment which implies imposition of fine on a wrong doer or persons collective fine implies the imposition of fine for the inhabitants of a particular locality, caste or segment of populations, who have facilitated in some form or the other, the commission of such wrong. In the instant case, this Court can consider to impose fine on 21 students identified to have spoiled the Campus of JNV University. We had, in our mind, to impose of Rs. 20,000/- on each students and that would have been a group fine. We could also consider the act of other students in not opposing such activities and thereby abetting the commission of wrong and, as such, could impose fine of Rs. 20/- on each student. We are told that total strength of the students in the JNV University is about 18000. If the provisions are invoked, the University can collect Rs. 3,60,000/- by way of collective fine and Rs. 4,20,000/- by way of group fine. Thus, the amount collected by way of collective and group fine could have been utilized for white wash and re- writing of the Boards etc. However, we are not invoking the concept of collective or group fine for the present. We hope and trust that in future, the students and teachers will not give an occasion to invoke such provision.

8. We adjourn the hearing of the case with the following directions :

(i) The State Government is directed to establish a separate Cell to monitor and ensure regular and strict compliance of the directions of this Court given from time to time in the instant Special Appeal;

(ii) As we are satisfied that all the three Universities and their affiliated Colleges have become vigilant and they have taken effective steps for compliance of the directions of this Court, the ad interim order staying Students Union Elections in all the three Universities and their affiliated Colleges is vacated;

(iii) The Secretary, Higher Education, Government of Rajasthan is directed that on being satisfied of the compliance of the directions of this Court, a common Election Programme for all the three Universities and their affiliated Colleges, Governmental or Non-governmental, be prepared. In connection with the

Students Union Election, it will be open for the Secretary, Higher Education, to issue appropriate directions not only to the Universities or the Colleges but also to the respective District Magistrate and the Superintendent of Police;

(iv) As we have taken the view that the very purpose of Students Union is to impart training to the students for future participation in the democratic governance, as such, the term of the Students Union runs parallel to running of the classes . With the commencement of the written examination, the term of the Students Union will also come to an end. Thus, before an officer bearer is allowed to appear at the examination, his entire account should be cleared and also he should vacate the premises occupying as an office bearer. In this context, we may remind the recommendations by the Committee of the Vice Chancellors as extracted in our order dated 23rd July, 2002, which reads thus :

"The term of the entire office bearers of the Students Union shall expire automatically on the last date of the Session."

(v) We further make it clear that the Students Union has no role to play in the matter of admissions in different Faculties as well as the Examination Programme;

(vi) As regards the directions pertaining to the news letter, we clarify that it is not to be a piece of literature but informative to the students containing the activities of the Students Union. It must contain the account of every penny, paid to the office bearer. The idea is that there must be complete transparency as to the working of the Students Union;

(vii) The directions pertaining to the attendance and snap test is vacated;

(viii) Issue of the application dated 23-8-2003 received under the signatures of Sri Jugta Ram Soda and Ram Chandra Chaudhary, claiming themselves to be the students of JNV Universities, Jodhpur, returnable on the next date of hearing. The notice will go to the JNV University. The relevant record of suspension of the students and revocation shall be kept ready for perusal of the Court.

9. List the matter on 13th Oct., 2003.

Order accordingly.