

# RAJASTHAN HIGH COURT

Rajpal Sharma

Vs.

University of Rajasthan

S.B. Civil Writ Petition No. 3765 of 2005

(Narendra Kumar Jain, J.)

12.07.2005

## JUDGMENT

**Narendra Kumar Jain, J.**

1. The petitioners have filed this writ petition under Article 226 of the Constitution of India with the following prayers:-

1. by issuing an appropriate writ, order or direction the impugned order dated 14.5.2005 passed by the non-petitioner No. 3 against the petitioners may kindly be quashed and set aside.
2. by issuing an appropriate writ, order or direction the non-petitioners may be directed to allow the petitioners to continue their offices of Rajasthan University Students' Union as President and General Secretary respectively in accordance with the Constitution of the Rajasthan University Students' Union.

2. The brief facts of the case as pleaded in the writ petition are that petitioners were elected as President University Students' Union (for short 'Union') on 21st August, 2004. The tenure of the offices of the office-bearers of the Union is prescribed under Section 20 of the Constitution of the Rajasthan University Students' union which is one year from the date of elections or till the next election whichever is earlier, therefore, their tenure is upto 20th August, 2005. However, non-petitioner No. 3 Dean, Students' Welfare, *University of Rajasthan, Jaipur* has advised the petitioners vide order dated 14.5.2005 to hand over the charge of the offices immediately. The said order dated 14th May, 2005 has been issued in pursuance of order dated 11th May, 2005 issued by Vice-Chancellor, *University of Rajasthan, Jaipur*. The order dated 11th May, 2005 issued by Vice-Chancellor has been issued on the basis of decision of the

Hon'ble High Court given in D.B. Special Appeal (Civil) No. 188/2002 dated 25th August 2003 regarding term of office-bearers of the Rajasthan University Students' Union. The petitioners have pleaded that the non-petitioner No. 1 has miss-interpreted the order of Division Bench dated 25.8.2003 which was not relating to the University of Rajasthan. It has also been pleaded that impugned orders are contrary to Section 20 of the constitution of Rajasthan University Students' Union, therefore, they are liable to be set aside and appropriate writ, order or direction are required to be issued to allow the petitioners to continue their offices of Rajasthan University Students' Union as President and General Secretary respectively.

3. A notice to show cause was given to the respondents who have filed their reply to the writ petition wherein the contents of the writ petition have not been admitted as mentioned. In para 7 of the reply, it has been pleaded that it is true that in the judgment under reference in Special Appeal No. 188/2002, a specific reference in regard to three universities has been given but the directions are as such are quite material and taking judgment to be a judgment in rem, the order under challenge has been passed. It has further been pleaded that judgment of the Hon'ble Division Bench in suo moto petition also becomes material because if the educational environment is required to be uplifted, then neither the elections have to be permitted nor the continuance of office-bearers, more so when a shabby picture is printed on account of union activities.

4. Learned counsel for the petitioners has argued that impugned orders dated 11th May, 2005 as well as 14th May, 2005 have been issued on the basis of judgment of Division Bench dated 25th August 2003 in D.B. Special Appeal (Civil) No. 188/2002 but the said judgment is not applicable on the University of Rajasthan. He submits that the said judgment has been passed in respect of three Universities namely Jai Narain Vyas University, Jodhpur, Maharshi Dayanand Swami University, Ajmer and Mohan Lal Sukhadia University, Udaipur. He submits that University of Rajasthan was not a party to the aforesaid Special Appeal, therefore, the said judgment is not binding upon the respondents. He further submits that before passing the impugned order, principle of natural justice was not followed. He also submits that constitution of Rajasthan University Students' Union has been framed by the University of Rajasthan itself in exercise of executive powers, therefore, it is binding on them and as per Section 20 of the said constitution, the term of officer-bearers of the Union is one year from the date of election or till the next election whichever is earlier. In support of his contention he

has referred a Division Bench judgment of this Court in *Bharat Bhushan Pareek v. University of Rajasthan & Anr.*, <sup>1</sup> He submits that Division Bench recognized the rights of the Union under the provisions of constitution of the Union and directed the respondents to hold elections in University of Rajasthan in accordance with the constitution.

5. Learned counsel for the respondents contended that the impugned orders are based on judgments of Division Bench delivered at Principal Bench of this Court at Jodhpur in D.B. Special Appeal (Civil) No. 188/2002 wherein number of directions have been issued including a direction that term of entire office-bearers of the students union shall expire automatically on the last day of session. He submits that session has come to an end, therefore, following the directions of the Division Bench, the orders dated 11.5.2005 as well as 14.5.2005 were passed. Therefore, there is no illegality in passing the said orders. He further submits that neither any statutory right nor any fundamental right of the petitioners has been violated, therefore, there was no need of giving any notice to the petitioners. He further contended that Division Bench of this court in a latest judgment in *Suo Moto v. State of Rajasthan*, <sup>2</sup> vide order dated 5th May 2005 has directed the State Government that it will ensure that no election of students' union in any educational institution of universities will take place. He further submits that Hon'ble Supreme Court in the case of *University of Delhi and Another v. Anand Vardhan Chandal*, <sup>3</sup> has held that right to participate in student union activities and to contest union election is not a fundamental right. He further submits that the constitution of students' union is not a statute; therefore, any right based on such executive instructions cannot be enforced by filing writ petition before this court under article 226 of the Constitution.

6. I have considered the submissions of both the parties.

7. The Division Bench of this court, at Principal Seat, at Jodhpur passed certain directions vide order dated 25th August 2003 in 2003 in D.B. Special Appeal No. 188/2002 : RLW 2004(3) Raj. 1671. Direction No. (iv) as contained in para 8 of the order reads as under :-

(iv) - "As we have taken the view that the very purpose of the Students Union is to impart training to the students for future participation in the democratic governance. The term of the Students Union runs parallel to the running of the

classes. With the commencement of the written examination, the term of the Students Union comes to an end. Thus, before an office-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 Session."

8. Respondent No. 2 Vice-Chancellor, University of Rajasthan passed the order dated 11.5.2005 (Annexure-3) which reads as under:-

The Dean  
Students Welfare  
University of Rajasthan

*Jaipur*

Dear Sir,

This has reference to the decision of the Hon'ble High Court in D.B. Civil Special Appeal No. 188/2002 dated 25.8.2003 regarding term of the office-bearers of the Rajasthan University Students' Union. The Hon'ble High Court decided as under:-

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

This is for information and necessary action. A copy of this may be given to all the Departments and office-bearers of the RUSU.

Yours faithfully

Sd/-

(K.L. Sharma)

9. On the basis of the above order dated 11.5.2005 respondent No. 3, passed an order dated 14.5.2005, which also reads as under :-

OFFICE ORDER

This is in compliance to the decision of the Hon'ble High Court in D.B. Civil Special Appeal No. 188/2002 dated 25.8.2003 and consequently the order of the Vice-Chancellor issued vide letter No. VCS/2005/0953 dated 11.5.2005

regarding term of office-bearers of the Rajasthan University Students' Union. I am enclosing herewith copy of the order dated 25.8.2003 for your perusal and consideration, contents of which are self-explanatory.

You are, therefore, advised to kindly hand over the charge of the office immediately to the undersigned so that proper action may be taken as per orders of the Hon'ble High Court.

Sd/-

(Prof. B.S. Bijnaria)

Dean Students' Welfare

10. The Division Bench in Bharat Bhushan's case (supra) considered the rights of students to elect representatives of their Union. The Division Bench held that "though, there is no specific provision for framing the constitution of the Students' Union, but in our opinion, in the exercise of powers conferred under Section 4 of the Act, in exercise of the executive powers, the constitution of the Rajasthan University Students' Union, *Jaipur*, was first of all framed on April 8, 1979." The Division Bench further held that "A look at Section 18 of the Act (University of Rajasthan Act, 1949) will show that it relates to the composition and term of office of the Senate and it has to consist of Ex-officio Members. Under clauses (xiii-A) the President of the Central Union (Students) of the university is also to be an Ex-officio Member, the said clause (xiii-A) was added by the University of Rajasthan (Amendment) Ordinance (No. 6) of 1974. Thus the very fact that the President of the Central Union (Students) of the University has to be an Ex-officio Member of the Senate, goes to show that there is statutory recognition, not only of the President but also of the Students' Union of the University." Therefore Division Bench issued directions to the non-petitioners to hold the elections in accordance with the constitution of the Students' Union.

11. That the controversy involved in the present case is different than the controversy involved in the case of Bharat Bhushan (supra). In the present case, the controversy is about "the tenure of the office-bearers of the Rajasthan University Student's Union." Whether it should be one year from the date of election or till the next election, whichever is earlier as contained in the constitution of the Rajasthan University Students' Union, Jaipur or it should expire automatically on the last date of the Session, as directed by Hon'ble Division Bench vide order dated 25.8.2003 in D.B. Special Appeal (Civil) No. 188/2002. The Division Bench in Bharat Bhushan Pareek's case (supra) held that statutory recognition of the President of the Central Union

(Students' of the University and also to the Student's Union, after examining Section 18 of the University of Rajasthan Act, 1946 and consequently directed the non-petitioners to hold election of Students' Union. However the division Bench did not recognize any right of office-bearers of the Students' Union under 'constitution' of Rajasthan University Students' Union, *Jaipur* as statutory right. On the other hand, the Division Bench in D.B. Civil Special Appeal No. 188/2002 specifically directed that the term of the entire office-bearers of the Students Union shall expire on the last date of Session. The term of the Students Union runs parallel to the running of the classes. With the commencement of the written examination, the term of the Students' Union comes to an end. Thus, before an office-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. The constitution of Students' Union has no statutory force whereas judgment of Division bench in DBSA No. 188/2002 has binding force. It is true that respondent university was not a party to DBSA No. 188/02, but directions issued were just and reasonable. The Vice-Chancellor, by virtue of Section 4 of the Students' Union constitution, is the pattern (Patron ?) of the Rajasthan University Students' Union. The pattern (Patron ?) has to exercise a general supervision in respect of anybody under (his) jurisdiction. The Vice-Chancellor was justified and fully competent to issue order dated 11.5.2005 seeking compliance of the order of Division Bench in D.B. Special Appeal (Civil) No. 188/2002 in Rajasthan University Students' Union, Jaipur, which was under his jurisdiction.

12. The Hon'ble Supreme Court in *University of Delhi v. Anand Vardhan Chandal* (supra) held that right to participate in Students' Union activities and to contest student's election is not a fundamental right. Para-4 of the said judgment is reproduced as under:

"We are of the view that the High Court fell into patent error in holding that once the University admits a student, the right to contents (contest ?) the students union election is a part of the right of education and as such is fundamental right. This in *N.P. Punnuswamy v. Returning Officer, Namakkal Constituency* (SCR at P. 236) has authoritatively held that right to participate in elections to the State Assemblies and Parliament is not a fundamental right. It is only a statutory right. Participation in the student union activities including elections cannot be placed on a higher pedestal."

13. The above discussion of facts and law will reveal that petitioners have neither any statutory right nor any fundamental right to hold their posts in the Rajasthan University students' union after expiry of session and as such it cannot be said that orders dated 11.5.2005 and 14.5.2005 Annexures 1 and 3 are contrary to any statutory law or contrary to the provisions of constitution. Therefore, there is no infringement of statutory or constitutional right of the petitioners so as to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution. Rather the said orders have been passed on the basis of directions of D.B. of the High Court in D.B. Special Appeal No. 188/2002 dated 25th August 2003, therefore, I do not find any substance in any of the learned counsel for the petitioners. Consequently, the writ petition fails and is hereby dismissed. No order as to costs.

Petition dismissed.

Cases Referred.

1. (1989(1) RLR 121).
2. (D.B. Civil Writ Petition No. 5746/2003)
3. (2000(1) SCC 648)