

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 6th September, 2011.

+ W.P.(C) 6412/2011

MS. BHAWANA Petitioner
Through: Mr Rakesh Kumar, Adv.

Versus

UNIVERSITY OF DELHI & ORS Respondent
Through: Ms Maninder Acharya with Mr Yashish
Chandra, Adv for respondent Nos.1 to 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. The petitioner is a student of the first semester of the B.A Programme of the respondent No.5 Swami Shardhanand College; she was admitted to the college on 12th July, 2011; she, in pursuance to the notification of the

elections of Delhi University Students Union (DUSU), filed her nomination for the posts of President, vice-president, Secretary and Joint Secretary. It is the case of the petitioner that though she was required to submit a photocopy of the identity card alongwith the nomination form but upon the petitioner representing that identity card had not been issued by the respondent No.5 college till then, the respondent No.2 being the election incharge, directed the petitioner to deposit the admission/fee slip alongwith her photograph, in substitution of the identity card.

2. This writ petition has been filed, aggrieved from the rejection of her nomination for the reason of her inability to produce the identity card. It is the contention of the petitioner that the respondent No.5 college having not issued the identity card to new students till then, the rejection of the nomination for the reason of inability to produce the identity card is illegal.

3. Notice of the petition was issued. However since the petitioner had not placed the election notification to show the requirements for contesting the election, the counsel for the respondent university was directed to produce the same. Though a question was also raised as to the

maintainability of the writ petition with respect to DUSU elections, in as much as DUSU does not appear to be an adjunct of the Delhi University but the counsel for university states that her instructions are not to oppose maintainability of the petition since the Vice Chancellor is the patron of DUSU. In the circumstances, the said question is not addressed in this petition.

4. The counsel for the university has today produced the press release dated 3rd August, 2011 appointing a Chief Election Officer for conduct of the election; the order dated 4th August, 2011 of appointment of the Chief Returning Officer, Returning Officer and laying down the schedule of the election and the nomination form which the candidates were required to fill.

5. As per the terms and conditions printed on the nomination form, the students desirous of contesting election were required to produce their identity card and were entitled to withdraw their candidature /nomination for a particular post only on production of the identity card. It is thus the contention of the counsel for the university that the petitioner was aware as far back as on 4th August, 2011 that the identity card was a must for

participating in the elections and the petitioner cannot now be heard to make the grievance of rejection of her nomination for being unable to produce the identity cards. It is further contended that the petitioner under rules of the election was not entitled to simultaneously contest for more than one post but admittedly filled up her nomination for four posts. It is contended that the petitioner is thus in any case in violation of the rules of the election. It is also controverted that the petitioner could be permitted to contest election by producing any other proof of identity in substitution of the identity card.

6. The counsel for the petitioner on the contrary has contended that the petitioner could not be punished for something for which she is not responsible; the identity card was to be issued by the respondent No.5 college and which had not issued the identity cards till the relevant date. It is further contended that the identity card could easily be substituted by photograph attested by the college as in fact was submitted by the petitioner. Reliance is also placed on the guidelines for the conduct of election which permit the candidates to enter in a college or hostel premises for canvassing either with an identity card or identity slip issued by the Chief Election

Officer. Though it is admitted that the petitioner filled up nomination form for four posts, it is contended that the petitioner would have withdrawn her nomination for three posts and contested for only one post; that it is the usual practice to fill up nomination for more than one post but before the stipulated date withdraw nomination for posts other than that desired to be elected to. It is contended that upon the nomination of the petitioner having been accepted for the post of president, the petitioner would have withdrawn the nomination for the other posts.

7. A perusal of the nomination form shows that the same, besides being required to be filled up and signed by the candidate, is also required to be attested by the concerned college/department; the same is also to bear the photograph of the candidate. It as such has been enquired from the counsel for the university whether the college/department having sponsored the name of the candidate for participation in the election, any doubt as to the identity for which identity card may be required, can be entertained.

8. The counsel for the respondent university has however contended that the university having provided for the production of the identity card, the

rejection of nomination for non production thereof cannot be said to be contrary to the rules or the law.

9. Having considered the matter, I am of the opinion that howsoever unnecessary and impractical the rule regarding the identity card may be, the fact remains that the petitioner participated in the electoral process on the terms prescribed therein. The version of the petitioner that she was verbally told that she could substitute the identity card with admission slip or any other document cannot be accepted. Once a rule has been stipulated and the rule does not show that any official was entitled to waive the same, the version of the petitioner of waiver thereof is unacceptable. The petitioner having participated in electoral process in accordance with the rules prescribed therefor and as per which rules, without identity card she was not entitled to participate in the election, no merit is found in the petition.

10. The counsel for the petitioner at this stage has contended that the procedure may be corrected for future. It may however be noticed that the petitioner has in the present petition not challenged the rules of the election. If the petitioner is desirous of challenging the same, the petitioner would be

at liberty to do so but the same cannot be the subject matter of the present writ petition.

11. The petition is, therefore, dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 06, 2011
mb.