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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 13th December, 2018

Pronounced on: 18th December, 2018

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W.P.(C) 10722/2018, CM APPL.41775/2018, 50847/2018

SUNNY CHHILLAR

..... Petitioner

Through: Mr.P.Chidambaram, Mr.Anoop George Choudhari, Sr. Advocates with Mr.Aman Pawar, Mr.V.Elan Chezhiyan, Mr.Jawaid Hussain Khan, Mr.Yogesh Sharma, Mr.Rashid N. Azam, Mr.Vivek Kumar, Ms.Komal Vashishtha, Mr.Mahinder Pareek, Mr.Anis Manzar, Mr.Sunil Kumar, Mr.Rajat Sharma and Mr.Aditya Ranjan, Advocates

versus

UNIVERSITY OF DELHI AND ANR.

.... Respondents

Through: Ms.Pinky Anand, ASG with Mr.Mohinder J.S.Rupal, Ms.Saudamini Sharma, and Mr.Chakitan Vikram Shekher, Advocates for respondent No.1/DU.

Mr.Amit Singh Chadha, Sr Advocate with Mr.Sindhu Sinha, Mr.Sandeep Mahapatra, Mr.Sahil Monga and Mr.Vikrant Goyal, Advocates for applicant in CM No.50847/2018.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

W.P.(C) 10722/2018, CM APPL.41775/2018

1. The brief facts of the case as alleged by the petitioner are:

- a) On 12.09.2018 DUSU Elections 2018-2019 were conducted;
- b) on 14.09.2018 DUSU Elections 2018-2019 results were declared in which the Respondent No.2 was elected for the post of President;
- c) on 17.09.2018 the petitioner filed a writ petition (C) No.9805 of 2018 before this Court in which the petitioner challenged the elections and its results due to EVM frauds. This Court issued notice and secured the EVMs;
- d) in the meantime, on 18.09.2018 the petitioner came to know through a letter obtained by the Chairman, Tamil Nadu Congress Committee (SC Department) from Controller of Examinations, Thiruvalluvar University, Serkadum, Vellore, Tamil Nadu 632115 stating interalia *"With reference to the above, it is informed that the copy of the certificate of following candidate has been verified and found that the said certificate is Not GENUINE. It is a FAKE CERTIFICATE."*;
- e) immediately on 19.09.2018 the petitioner filed a complaint with the Vice-Chancellor, University of Delhi. Since no action was taken by respondent No.1 nor any direction was made despite complaint and reminders/request made to the respondent No.1 by the petitioner,

the petitioner filed a writ petition W.P. (C) No.10441 of 2018 dated 27.09.2018 before this Court for cancelling the admission of the petitioner;

f) in the meantime on 02.10.2018 the petitioner came to know the respondent no. 2 had pursued a regular course during the year 2013-16 in the College of Vocational Studies (CVS) in the University of Delhi, hence it is alleged that the respondent no.2 have not only committed forgery of creating documents but also played fraud with the University of Delhi. The petitioner has obtained the attendance sheet from the web site of the college (<http://www.cvs.edu.in/upload/Eco-B-VI-SEM.pdf>) and (<http://www.cvs.edu.in/upload/Eco-B-V-SEM.pdf>) and came to know about the vital additional material facts and grounds necessary to deliver justice and moved an application for withdrawal of the writ petition W.P.(C) No.10441/2018, filed on dated 27.09.2018 with liberty to re-file a fresh writ petition with facts subsequently found;

g) on 08.10.2018 this petition was listed in Court for hearing and learned counsel for respondent No.1 sought time to obtain instructions and matter was adjourned to 09.10.2018;

h) on 09.10.2018 since Bench could not assemble, the matter was adjourned to 15.10.2018, however, for same reason the matter was adjourned to 23.10.2018;

- i)* on 23.10.2018, the matter was adjourned to 30.10.2018 at the request of learned counsel for respondent No.1;
- j)* on 25.10.2018, petitioner filed an additional affidavit along with annexure (media reports and letter dated 03.10.2018, showing his concern that the respondent No.1/ University deliberately delayed the enquiry and action against the respondent No.2 so that the period of two months from the date of declaration of election result could pass and re-election deliberately avoided to give undue benefit of ABVP so that on vacancy the post of President could be filled up by Vice President DUSU 2018 (ABVP candidate);
- k)* on 30.10.2018, it was submitted on behalf of the respondents that verification process is likely to be completed on or before 12.11.2018, hence the matter was also adjourned to 12.11.2018;
- l)* on 12.11.2018, learned ASG submitted the report of verification is likely to be available by the evening and this Court while adjourning the matter to 20.11.2018 directed *“let the verification report be placed on record under cover of an appropriate index with an advance copy given to learned counsel for the petitioner.”*
- m)* on 17.11.2018 an additional affidavit was filed on behalf of petitioner regarding deliberate delay by respondent

No.1 in enquiry and action against respondent No.2 saying it was preplanned and intentional to defeat objective and purpose of Lyngdoh Committee recommendation/ guidelines with political move to occupy post of President DUSU by ABVP and to avoid re-election; hence, this petition.

2. The entire case hinges upon interpretation of clause No.6.10.4 of the recommendation of the Lyngdoh Committee, stated as under:-

“6.10.4 In the event of the office of any major post of office bearer falling vacant within two months of elections, re-elections should be conducted; otherwise the Vice President may be promoted to the post of President and Joint Secretary to the post of Secretary, as the case may be.”

3. It is submitted by the learned senior counsel for the petitioner even if we go by clause 6.10.4 of the Lyngdoh Committee recommendations as accepted by the Supreme Court and upon which even the respondent No.1 University places its reliance on, the respondent No.1 is bound to order fresh elections for the post of President.

4. It is the case of the petitioner the respondent No.2 was never qualified to be nominated to the post of President for the elections and though the University / respondent No.1 was made aware of the fake mark sheets /degree of respondent No.2 on 19.09.2018 itself but the respondent No.1 delayed such verification for one reason or the other and ultimately the University got the verification done on 13.11.2018 and hence the deliberate delay on the part of the university/respondent No.1 should raise an adverse inference against respondent No.1 University.

5. On other hand, respondent No.1 had averred in the counter affidavit that Dean of Student Welfare (DSW), Delhi University received a complaint dated 18.09.2018 from the petitioner herein on 19.09.2018 and it was forwarded it to the Head of Department, Buddhist Studies, by the DSW vide letter dated 21.09.2018 for necessary action. The Head of Department, Buddhist Studies met the DSW on 25.09.2018 to discuss about the complaint. The Head of Department, Buddhist Studies then vide letter dated 26.09.2018 had informed the DSW that it had been decided in the meeting of the Admission Committee of the Department held on 26.09.2018 that the mark sheet and qualification degree certificate submitted by the respondent No.2 are to be verified. The Head of Department, Buddhist Studies further informed vide the same letter that a letter will be sent to the Registrar of Tamil Nadu University immediately to check the authenticity of the documents submitted by the respondent No.2. The minutes of the meeting of the Admission Committee with the Head of Department, Buddhist Studies of dated 26.09.2018 and the letter dated 26.09.2018 wherein the Head of Department, Buddhist Studies had agreed to get the mark sheet verified was annexed.

6. A letter dated 27.09.2018 was thus sent by the Head of Department, Buddhist Studies to the Registrar of Tamil Nadu University by registered post annexing therewith all six mark sheets of BA semester submitted by the respondent No.2 with request to verify and authenticate the mark sheets. Since the Department of Buddhist Studies did not receive any response until one week, another letter was sent on 08.10.2018 and again on 16.10.2018. In the meanwhile, the present

matter was listed on 08.10.2018 and case was adjourned to 09.10.2018 to enable the counsel on behalf of the respondent No.1 to obtain instructions. The communication was received by the Department of Buddhist Studies for the first time from Controller of Examinations, Thiruvalluvar University, Tamil Nadu on 15.10.2018 that a fee of Rs.500/- for issue of genuineness certificate is required to be deposited. Hence, the Head of Department, Buddhist Studies deposited Rs.500/- through NEFT on 25.10.2018 in the account of Thiruvalluvar University. A SMS to the Registrar of Tamil Nadu University was also sent by Head of Department, Buddhist Studies to which the response was the Tamil Nadu University will look into the matter.

7. The Head of Department, Buddhist Studies again vide its letter dated 29.10.2018 intimated the Registrar of Delhi University of all the developments regarding the verification process and it sent the emails to the Registrar, Tamil Nadu University on 05.11.2018, 06.11.2018 and 09.11.2018 regarding the verification process.

8. On 10.11.2018, Head of Department, Buddhist Studies again sent SMS to the Registrar of Tamil Nadu University to which the response was received on the same date informing not to worry on the issue. In the meanwhile, the matter was listed on 13.10.2018 and this development was apprised to this Court. Since no response from Tamil Nadu University till 12.11.2018 was received, so the request was made to renotify the present matter to 20.11.2018. However, the Controller of the Examinations, Tamil Nadu University sent a letter dated 13.11.2018 to the Head of Department, Buddhist Studies, Delhi University informing

the Head that certificate /degree of respondent No.2 is not genuine and its fake certificate.

9. It is also alleged that after the receipt of the letter dated 13.11.2018 from the Controller of Examinations, Tamil Nadu University, the Head of Department, Buddhist Studies held a meeting of the Admission Committee on 14.11.2018 and cancelled the admission of the respondent No.2 in MA Part – I and informed the respondent No.1. The Registrar of Delhi University then informed the office of Proctor, University of Delhi who in turn informed these developments to the Chief Election Officer, DUSU Elections Committee of 2018 vide letter dated 17.11.2018 with a request to convene a meeting and accordingly an emergent meeting of the Election Committee was convened on 19.11.2018 to deliberate on the election status of respondent No.2 as President of DUSU 2018 in the light of new revelations. The Election Committee then decided the election of respondent No.2 is invalid and post of DUSU President of 2018 falls vacant henceforth. Hence, it is the case of respondent No.1 that post of President of DUSU Elections 2018 has fallen vacant on 19.11.2018, when the Election Committee 2018, viz. the competent authority had decided on the elections status of respondent No.2 as President of DUSU, 2018 elections.

10. It is also averred by the respondent No.1 / Delhi University that they had received representation on 19.11.2018 from Shakti Singh, Vice President of 2018 to promote him to the post of President on the basis of applicable recommendations of Lyngdoh Committee and such representation has been placed before the DUSU election Committee

who has deliberated at length on various aspects and is now seized of the matter.

11. Hence, the counter affidavit as filed along with the supporting documents do show there was no unreasonable delay on the part of the respondent No.1 to get the mark sheets verified from the concerned university.

12. Now, I come to the second contention raised by the petitioner viz the respondent No.2 was never qualified for his nomination, hence his nomination ought not to have been accepted and that on verifying his mark sheet being fake and his admission having stood cancelled, his disqualification should relate back to the date of his nomination and hence his elections be declared to be void.

13. In support of his contention, the learned senior counsel relied upon *K. Prabhakaran and Ors. vs. P. Jayarajan and Ors.* [1969] 1 SCR 277 wherein the Court held:-

“38. The decision of this Court in Amrit Lal Ambalal Patel v. Himathbhai Gomanbhai Patel and Anr. MANU/SC/0345/1968: lends support to the principle that the crucial date for determining whether a candidate is not qualified or is disqualified is the date of scrutiny of nominations and a subsequent event which has the effect of wiping out the disqualification has to be ignored.”

14. It was also argued the ratio of *K.Prabhakaran* (supra) was reaffirmed in *Ravikant S. Patil vs. Sarvahhouma S Bagali* (2007) 1 SCC 673 which held the election of respondent to be void as the disqualification of respondent would relate back to the date of notification/elections and fresh elections were declared.

15. The judgments cited above by the learned senior counsel for the petitioner are, primarily, under the Representation of the People Act, 1951 and those interpret Section 100 (1)(d)(i) of the said Act i.e. *if there is any improper acceptance of any nomination of a candidate*, then the High Court would declare the election of the returned candidate to be void.

16. Would this Act apply to the students' union election? The Representation of the Peoples Act, 1950 is an Act to provide for the allocation of seats in, and the delimitation of constituencies for the purpose of elections to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls (the manner of filling seats in the Councils of States to be filled by representatives of (Union Territories) and matters connected therewith. This Act primarily relate to the elections to the House of People and Legislator of States, hence, would not apply to DUSU election.

17. Here we need to look into the Lyngdoh Committee recommendations and the Constitution of DUSU which shall be relevant for the purpose. Neither the Lyngdoh Committee recommendations nor the Constitution of the DUSU has any such like clause as Section 100 of the Representation of the People Act which empowers the High Court to declare the elections void in case of improper acceptance of any nomination. The Lyngdoh recommendations and the Constitution of DUSU rather speaks of *disqualifications* and *vacancy* arisen thereof.

18. Hence, the moot question in the present case would not be the date to which the disqualification of a member would relate to, but the date on which the post has fallen *vacant* per clause 6.10.4 of the Lyngdoh recommendations.

19. It is not in doubt Lyngdoh recommendations have been duly accepted by the Supreme Court in *University of Kerala vs. Council of Principals of Colleges, Kerala and Others* (2011) 14 SCC 357 and relied upon by the Division Bench of this Court in *Abhishek Verma vs University of Delhi and Others* MANU/DE/2273/2017. Since such recommendations have been accepted by the Supreme Court, hence is the law declared.

20. Now if one peruse the Constitution of the DUSU one find Article 12 relates to disqualification of office bearers and it notes:-

“12. Disqualifications of the Office bearers

1. No member of the Union shall be entitled to hold any post of office bearer, if,

(i) He/she has exceeded the age of 25 year on the 16th August of the year in which he/she wishes to seek election; or

(ii) He/she completed more than 7 year from the 1st July of the calendar year of passing +2 examination to the 30th June immediately preceding the election;

(iii) He/she has been convicted of a criminal offence including moral turpitude, or he/she has been punished by the University/College for an act which is coercive in nature and constitutes a threat to life and property; or

(iv) He/she has been found guilty of and punished for the use of unfair means in any examination of a University or Board.

Explanation:

A mere warning issued against a student will not be deemed to be a punishment for the purpose of this clause.

2) No elected office-bearers shall be entitled to hold the same office twice.”

21. The Constitution of DUSU thus provides for disqualification of an office bearer if he or she has been found guilty and punished for the use of unfair means in any examination of a University or Board. Similarly,

the Lyngdoh Committee recommendations also provides for the mode of elections; grievance redressal mechanism; the applicability of certain provisions of the Indian Penal Code 1860 qua the offences relating to the elections; and more specifically clause 6.10.4 which speaks of the post having fallen vacant. Thus, a resort to Section 100 of the Representation of People Act, 1951 in DUSU election would not be desirable and this specific provision cannot be read either into DUSU Constitution or Lyngdoh recommendations by necessary implication.

22. The Lyngdoh recommendations speak about the vacancy. It, of course, is an automatic consequence of disqualification, but such disqualification need to be declared by an appropriate authority as was held in *Consumer Education and Research Society vs Union of India* 2009 (1) SCALE 708 the Court held:-

"29. xxxx However in many cases, the Election Commission may not even know about the occurrence of the disqualification. Furthermore, the very occurrence of disqualification is likely to be disputed in most cases. Therefore, even though the occurrence of a vacancy is an automatic consequence of incurring a disqualification, the same would arise only after the disqualification is declared by the decision of the appropriate authority (President, Speaker, or Chairman of the House as the case may be).

xxxx xxxx

35. There is no doubt that the disqualification, when declared by the President will become operative from the date the Member accepted the 'office of profit'. It is also not in doubt that the vacation of the seat is consequential. However, the question is whether the seat of the Member become vacant without anything more when a person accepts an 'office of profit'? The obvious answer is 'no'. If the Member does not make a voluntary declaration that he/she has incurred a disqualification and if no one raises a dispute about the same, the Member would continue in spite of accepting an office of profit. There is nothing strange about this position. We have already noted that when a person who has incurred a disqualification offers himself /herself as a candidate and is subsequently elected and if no one objects and if the Returning Officer accepts the nomination and if no election petition is filed challenging the election, then he/she would continue as a Member in spite of the disqualification. Therefore, our considered opinion is that while a disqualification results in the vacation of the seat of a Member, the vacancy occurs only when the President decides and declares the disqualification under Article 103."

23. Similarly, if any candidate or office bearer of DUSU entails any disqualification it needs to be declared by an authority. The said authority under Article 25 of the DUSU Constitution is *Patron* as the said provision notes the decision of the Patron shall be final for any question relating to the interpretation of this Constitution or any rules framed thereunder.

24. The gist of the Lyngdoh recommendation, even otherwise, supports the primarily role of a University in imparting education to the students and rules out the conduct of re-election except in the instance of any major post of office bearer falling vacant in the first two months of elections. The jurisprudence for the time frame of two months stipulated in clause 6.10.4 is to ensure no re-elections happens after two months of elections as the tenure of union is only one year and the academic session does not get disturbed because of elections and/or re-elections.

25. Needless to say conducting students' union elections at the University of Delhi is a huge, prolonged, challenging and strenuous process. It involves hundreds of Colleges, Departments, Faculties, Centres, Schools, and Institutes affiliated with the University. It also involves lakhs of students and has a direct bearing on the academic activities of all students and their Colleges, Departments, Faculties, Centres, Schools, and Institutes and even law enforcement agencies are necessarily involved during the election process.

26. Admittedly on receipt of communication dated 13.11.2018 from Thiruvalluvar University about fake certificate of respondent No.2, the

Department of Buddhist Studies had cancelled the admission of respondent No.2 on 14.11.2018 and consequent upon the communication from the Head, Department of Buddhist Studies about such cancellation of admission, the competent authority of University of Delhi instructed the Election Committee to convene its meeting. The Election Committee in its meeting on 19.11.2018 had *declared* the post of DUSU President *vacant* on his disqualification. Having said so, respondent No.1 has no other option but to act under clause 6.10.4 of the Lyngdoh recommendation as accepted by the Supreme Court.

27. Thus where no unreasonable delay is found on the part of the respondent No.1 to seek verification I see no reason why this Court should issue directions (i) and (ii), as asked for, on account of reasons stated above and especially when the respondent No.1 is inclined to act per *Lyngdoh* recommendations. There is no merit in this petition and same is accordingly dismissed.

CM APPL No. 50847/2018

28. In view of the above, this application also stands disposed of.

YOGESH KHANNA, J.

DECEMBER 18, 2018

DU