

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 20th November, 2014.

+ LPA No.566/2014

ALL INDIA STUDENTS ASSOCIATION (AISA)
& ORS

..... Appellants

Through: Mr. Juno Rahman, Adv.

Versus

THE CHIEF ELECTION OFFICER (DUSU ELECTION 2014-15)
& ANR

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Adv. for
R-1&2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the judgment dated 26th August, 2014 of the learned Single Judge of this Court of dismissal of W.P.(C) No.5465/2014 preferred by the three appellants.

2. Though the appeal came up first before us for admission only on 10th November, 2014 but the counsel for the respondents, the Delhi University and its Chief Election Officer for the Delhi University Students' Union (DUSU) Elections, 2014-2015 having appeared before us on advance notice, we, with consent of counsels, heard the counsels finally on the appeal and reserved judgment.

3. The writ petition from which this appeal arises was preferred, just prior to the DUSU elections scheduled to be held on 12th September, 2014, highlighting the practice prevalent in DUSU elections, of some of the contesting candidates, with a view to having their names listed first / at the top on the ballot paper of the post for which they are contesting the elections, adding the alphabet "A" or "a" before their names. It was pleaded that it was a belief that a large number of electorate / voters not committed to any particular contesting candidate but nevertheless exercising their voting right, exercise the same in favour of whichever candidate's name appears first on the ballot paper without even bothering to go through all the names on the ballot papers and which results in a candidate whose name appears first / at the top or higher up in the ballot paper, winning the election by using unfair means. The petition accordingly sought a direction to the respondents to allot the ballot number and / or serial number in which the names of the contesting candidates appear on the ballot paper, by holding a draw / lottery in a free and fair manner.

4. The learned Single Judge by the impugned judgment dismissed the writ petition *in limine* reasoning that there could not be any interference with election process already begun and the challenge if any to the election could

be made only after the elections are over. It was also observed that the writ petition was premised on lack of awareness and maturity as well as understanding in the voters and which presumption could not be drawn.

5. Though the appeal had come up for consideration first on 29th August, 2014 i.e. well before the elections scheduled on 12th September, 2014 but the hearing thereof was adjourned to 10th November, 2014, as aforesaid.

6. The counsel for the appellants during the hearing on 10th November, 2014 clarified that the purport of the writ petition is not to challenge the elections even for the year 2014 but to set right the malady afflicting the DUSU elections.

7. Though the learned Single Judge has rightly observed that no presumption of the electorate / voters, who are students of an elite university, being so unaware and lacking in awareness, maturity and understanding could be drawn, but from the documents filed by the appellants along with the writ petition, pertaining to the DUSU elections in the year 2012 and 2013, we do indeed find several of the contesting candidates to have prefixed the letters "AAA", "AA", "aa", "A.A", "AAAA", "aaa", "a.a" or a name beginning with the letter "A", to their names, resulting in such altered / changed name being listed at the top of the ballot paper, the names of

contesting candidates wherein are listed alphabetically and which otherwise would have been listed at the bottom of the ballot paper. The contesting candidates having indulged in such a practice, this Court cannot turn a blind eye thereto. Candidates contesting the elections are usually savvier in such matters than the electorate / voters and generally make / are expected to make a study of the voting patterns and of the factors influencing victory and defeat in an election. If such contesting candidates have perceived that having their names first or on the top or higher up on the ballot paper, which appear to be prepared alphabetically, improves their chances of winning the elections then some credence has to be given to the said fact. We may mention that in *Narain Chand Prashar Vs. Prem Kumar Dhumal* AIR 1993 HP 84 also the contention was that owing to names on the ballot paper being not printed in alphabetic order and by getting the name of the returned candidate printed at the top of the ballot paper, the result of the election had been materially altered; however the contention remained to be decided.

8. We are however surprised as to how the contesting candidates are able to so change their names for the purpose of election. In our understanding, admissions to the university are on the basis of particulars, including of name given on the School Leaving Certificate / Certificate of the Board of

Examination on the basis of result whereof admission is secured to the university. Thus, the name of the student on the roll of the university ought to be the same as the name of that student in school. Again, ordinarily the name by which a candidate can be permitted to contest the election ought to be the name of that candidate on the roll of the university and no different. We fail to understand, as to how a student of the university, for the purpose of contesting the election, can be allowed any prefix before his name as entered on the rolls of the university.

9. Unfortunately, the said question, in the aforesaid perspective was not raised in the writ petition. The writ petition was filed presuming that such practice of allowing on the ballot paper, a name different from that appearing on the rolls of the university, is legitimate and seeking a direction to the university to decide the sequence of names on the ballot paper by holding a draw / lottery, instead of challenging the said practice. Axiomatically, the said question remained to be considered by the learned Single Judge.

10. Naturally, the counsel for the respondent University also did not have instructions as to why such practice is permitted. All that he could reply in response to our query was that the university has a procedure for allowing change of name.

11. We however do not feel the need to remand the matter for decision on the said aspect or to entertain and keep this appeal pending and invite response of the respondent University on the aforesaid aspect.

12. We do not find any error in the practice prevalent in the respondent University of publishing the names of contesting candidates on the ballot paper in alphabetical order. Such practice, of following alphabetical order, while preparing lists is well established. Instance of roll numbers for any examination being allotted as per alphabetical order can be cited. Thus, no grievance can be made of the said practice being followed by the respondent University and in our view the appellants have no right to seek a direction for the seriatim in which the names of the contesting candidates are to be mentioned on the ballot paper being decided by holding a draw / lottery. We may however on a lighter note add that modern age parents are known to give weightage to the effect of the alphabet with which the name given by them to the child commences on the placement of the child throughout his / her life in the lists that are prepared in alphabetical order of the names.

13. We may mention that Section 38 of the Representation of People Act, 1951 read with Rule 10 of the Conduct of Elections Rules, 1961 also provides for preparation of the list of contesting candidates with the names

of the candidates therein arranged alphabetically and Rule 30(2) provides for the names of the candidates on the ballot paper to be arranged in the same order in which they appear in the said list. Though no judgment is required to be cited on this aspect the statutory provisions being clear but mention may be made of *Pothula Rama Rao Vs. Pendyala Venakata Krishna Rao* (2007) 11 SCC 1 and of *Piyush Jain Vs. Election Commission of India* 109 (2004) DLT 470. Mention may also be made of *Adv. Joice George Vs. Election Commissioner of India* AIR 2014 Kerala 107 where though the term 'Adv.' (Advocate) was prefixed to the name of the contesting candidate, to distinguish him from another candidate with the same name but the placement in the ballot paper arranged in alphabetical order did not treat the said candidate's name as beginning with letter 'A'; on this ground the election was sought to be challenged. However, the issue remained to be adjudicated as the petition was dismissed on other grounds.

14. The Supreme Court of the United States also in *Feist Publications, Inc. Vs. Rural Telephone Service Company, Inc.* MANU/USSC/0089/1991 held that the practice of arranging the names in a Directory alphabetically is an age-old practice, firmly rooted in tradition and so commonplace that it has come to be expected as a matter of course and is rather inevitable.

15. We are however of the opinion that the practice, if followed by the respondent University of allowing such prefixes to the name for the purposes solely of election, is flawed. The name by which a candidate is allowed to contest the election should be the name on the rolls of the university and which name would be, as aforesaid, the same as the name of such student in the School Leaving Certificate. The name in School Leaving Certificate is generally the name given at birth. Though a change of name is possible but the same entails effecting publication in the prescribed newspapers of such change and thereafter having such change notified / published in the Delhi Gazette. Similarly, the schools also have a procedure for effecting change in name. At least the Central Board of Secondary Education (CBSE) to our knowledge has a detailed procedure for change of name. After all, if a candidate has changed his name in school itself for the purposes of contesting a student election in university then nothing can be done about it! Else, we do not understand, as to why the University, if at all allowing such a practice, is so allowing. We presume that the respondent University also would have a detailed procedure for change of name. Even if there is procedure prevalent in the university permitting change of name, the same should be permissible after contesting in the election and which are normally

held soon after the beginning of the academic session. We are further of the view that once the candidate has so changed his name, even if for the purpose of election, in the ensuing year he/she ought not be permitted to thereafter revert to the original name and should be ready to obtain his University Leaving Certificate/Degree also with such changed name.

16. We however do not deem it appropriate to issue directions in aforesaid terms to the respondent University inasmuch as owing to the appellants having not raised the issue in the correct perspective, the occasion for having the views of the university thereon has not arisen. We prefer to dispose of this appeal with a direction to the respondent University to within three months herefrom consider and take a decision on the aforesaid aspect. Of course, if the respondent University differs from the opinion aforesaid expressed by this Court, reasons therefor be recorded and a copy of the said decision be communicated to the appellants. The appellants in that case would be entitled to avail their remedies.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

NOVEMBER 20, 2014/bs