

CHAPTER IV

Student's Union

The problem of participation in the students' union activities has also been brought to the law courts. In A.V. Chandel v. Delhi University,¹ the question before the Delhi High Court was whether the right to education including the right to participate in the activities of the University Students' Union could be spelt out of clauses (a), (b) and (c) of article 19(1) and article 21 of the Constitution of India. In this case the petitioner was an applicant for admission to M.A. (Philosophy). His name appeared in the third list and he took admission on 10th August, 1977. The petitioner wanted to contest the election to the post of Vice-President of the students' union and he filed the nomination paper but the Chief Election Officer did not accept the same on the ground that he failed to file it on time which was fixed at 2 p.m. on 10th August, 1977. Against this order a writ petition was filed. It was argued on behalf of the petitioner that he had a fundamental right to education which included participation in the activities of the students' union and this right was denied to him as no sufficient time was given to file his nomination. On the other hand it was defended that no such fundamental right was guaranteed

1. A.I.R. 1978 Del. 308.

under article 19(1) read with article 21; that action was taken under the constitution of the students' union which was not an action of the state attracting the fundamental rights.

The Delhi High Court rejected the contentions of the respondents and allowed the petition. V.S. Deshpande, J., (as he then was) accepted the argument that the alleged action attracted the said fundamental rights. Accepting the application of article 19(1)(b) relating to freedom of assembly the learned judge opined.

Without an assembly there can be no social education or preparation of a student to be a useful member of society and a participator in the democratic process. The democracy in education leads to democracy in Government. 2

As regards the application of article 19(1)(c) the court pointed out that the students' union could not come into existence unless the students were allowed to form association or a union and as such the action would attract the fundamental right to form associations or unions within the meaning of article 19(1)(c).³ Dealing with the freedom of speech in article 19(1)(a) the learned judge observed that the right to participation included "a right to hear what other

2. Id. at 312.

3. Ibid

participants have to say and to make his own contribution to the discussion".⁴ The court also covered the said right under article 21 relating to personal liberty when it opined,

Human liberty is incomplete if man is denied the right to associate with others and discuss corporate problems with colleagues and participate in the corporate life. ⁵

The Delhi High Court, applying the said articles to the facts of the instant case concluded that as no "sufficient time was given (to the petitioner) to know the newly admitted students and to prepare himself for the election and to file nomination paper on any one day",⁶ and, therefore, it "resulted" in the denial of the exercise of the fundamental right to education by the petitioner. The court quashed the order but refrained from giving any further relief to the petitioner because the existing office bearers were not parties to the present writ petition, and moreover the academic year of the University had almost ended.

The court in Chandel's case defined the importance and function of education. According to Justice Deshpande education means,

4. Id. at 313.

5. Id. at 314.

6. Id. at 317.

both the development of the mind and personality of the individual and his development as a useful member of the society.... The primary social function of education is to prepare the individual to participate in the democratic process which is the very life of the nation. The training of student in the democratic process is achieved partly through Students' Unions. 7

This case will go down in history as a landmark case in the field of education where the right to education was given the status of fundamental right guaranteed under the Constitution of India.

The Delhi High Court in a subsequent case,⁸ however, rejected the application of fundamental rights to education. In this case the petitioner was suspended from the rolls of a polytechnic institute on the ground of stabbing another student and against this he claimed the protection of the fundamental right to form an association and to contest the election. Justice Wad did not deal with the question whether the right to education was covered by the fundamental right chapter. However he took the stand that: "(E)ven if it is assumed⁹ that right to take education is a fundamental right", there was no violation of such right in the present case. The learned judge restricted the said right and observed:

7. Id. at 311.

8. Abhay Kumar v. K. Srinivasan, A.I.R. 1981 Del. 381.

9. Id. at 383.

(A) student involved in criminal cases arising out of such violence and unfair practice cannot claim any such right. Primary right (and also a duty) of a student is to study. Merely being on rolls for politicking and demagogic leadership does not make a student a bona fide student. 10

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~~10. Ibid.~~

10. Ibid.