

Supreme Court of India

University Of Kerala vs Council,Principals',Colleges,Kerala ... on 8 December, 2011

Bench: Asok Kumar Ganguly, Jagdish Singh Khehar

1

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

I.A. NOS. 22, 23 & 24 IN CIVIL APPEAL NO(s). 887 OF 2009

UNIVERSITY OF KERALA

Appellant (s)

VERSUS

COUNCIL, PRINCIPALS', COLLEGES, KERALA & ORS. Respondent(s)

ORDER

Heard Mr. Gopal Subramaniam, learned amicus curiae, Mr. Sanjay Parikh, learned counsel appearing for the Jawaharlal Nehru University Students' Union, Mr. A.C. Dhanda, learned counsel for Jawaharlal Nehru University (JNU) authorities and also Mr. M.L. Lahoty, learned counsel appearing for the Youth for Equality Students.

The instant matter comes up before us by way of Interlocutory Applications No. 22-23 and 24 filed by the JNU Students' Union and the learned Amicus Curiae respectively.

It appears that by way of judicial intervention, this Court wanted to introduce fairness and transparency in the holding of elections to the Students' Unions in various Universities across the country. The main thrust behind such intervention is because of the fact that the general election scenario in this country is murky and suffering from mob-muscle methods which have deleterious effects on various elections including conduct of free and fair elections to the students' unions. Elections to students' bodies has been badly affected throughout the country. It goes without saying that the students are the future representatives in various democratic bodies like State Legislative Assemblies as well as Parliament in our democratic set up. This Court, therefore, thought that a value based mechanism should be inculcated at a very early stage in the elections of students' bodies so that the same ultimately transforms and improves the quality of general elections to strengthen the democratic governance of the country. This Court, therefore, on the basis of important public

law principles, intervened in the judgment rendered by Kerala High Court where the main controversy in a students' body election was whether the form of elections should be Parliamentary or Presidential.

By an order dated 12th December, 2005, a Division Bench of this Court took note of certain valid suggestions given by Mr. Gopal Subramaniam, the then Additional Solicitor General (presently appearing as amicus curiae before us) in order to ensure free and fair elections to the students' bodies across the country. The learned amicus suggested that there are three areas of serious concern which need immediate attention of this Court. They are:

- (a) Criminalization in Students' Union elections.
- (b) Financial transparency and limits of expenditure.
- (c) Criterion for being eligible to contest elections.

This Court, after hearing Mr. Gopal Subramaniam, the then Additional Solicitor General and the counsel for Principals of the Colleges and the students' bodies, found that the suggestions given by learned amicus are prima facie worth considering and therefore, appointed a Committee consisting of the following persons:

1. Mr. J.S. Lyngdoh, Retd. Chief Election Commissioner
2. Dr. Zoya Hasan
3. Professor Pratap Bhanu Mehta
4. Dr. Dayanand Dongaonkar (Secretary General of the Association of Indian Universities) The said order dated 12th December, 2005 also directs nomination of two other members by the Ministry of Human Resources and Development and one of the members should preferably be a Chartered Accountant to consider the financial angles of such elections.

Pursuant to the aforesaid order of this Court, a Committee was constituted by the Central Government and the said Committee ultimately consisted of the following persons:

Shri J.M. Lyngdoh Chairman  
Chairman Former Chief Election Commissioner  
Prof. Zoya Hasan Member  
Member Professor Centre for Political Studies  
Dr. Pratap Bhanu Mehta Member  
Member President & Chief Executive Centre for Policy Research  
New Delhi  
Prof. Ved Prakash Member  
Member Director National Institute of Educational Planning and Administration (NIEPA)  
New Delhi  
Shri I.P. Singh Member  
Member Retired Deputy Comptroller and Auditor General  
Prof. Dayanand Dongaonkar Convener  
Convener Secretary General Association of Indian Universities  
New Delhi  
The aforesaid Committee upon a very serious exercise gave detailed recommendations. This Court vide its order dated 22nd September, 2006 accepted

those recommendations and directed that those recommendations should thereafter be followed scrupulously in holding elections to the students' bodies in all Universities across the country.

We are happy to note that after those recommendations are given, the standard of fairness in the matter of holding elections to students' bodies across the country has substantially improved.

Afterwards, notice of this Court was drawn to certain complaints to the effect that elections were taking place not in accordance with those recommendations. This Court vide an order dated 24th October, 2008, issued notice of contempt to the Vice Chancellor and the Registrar of the Jawaharlal Nehru University and also stayed the JNU elections which were scheduled to be held on 3rd November, 2008 as they are not being held in accordance with the Lyngdoh Committee recommendations which were accepted by this Court.

Pursuant to such notice of contempt, the University authorities appeared before this Court and made it clear that the elections in JNU are held under the Jawaharlal Nehru University Act and the student bodies are holding such elections as autonomous bodies and the JNU authorities do not have much control in those matters.

Since the elections to the student bodies of JNU were stayed pursuant to the aforesaid order of this Court dated 24th October, 2008, interlocutory applications were filed by the student bodies seeking leave of this Court for the holding of elections in accordance with the Lyngdoh Committee recommendations and if necessary by seeking certain suitable modifications to the existing norms so that elections are held in a manner which is substantially in tune with the recommendations of the Lyngdoh Committee.

It may also be noticed that prayers were also made for vacation of the order of the stay issued by this Court on 24th October, 2008.

We have heard learned counsel for the parties and the amicus in connection with the aforesaid prayers and after hearing parties, we pass the following order.

This Court is confronted with two competing claims of public interest: On the one hand, the Court has to ensure purity in the election process and on the other hand, is the right to exercise the vitally important liberty of the students to choose their representative through election. This Court has held that this right to choose one's representative through an election is virtually an extension of one's fundamental right to freedom of expression (See *Union of India Vs. Association of Democratic Reforms & Anr.* (2002) 5 SCC

294). Thus, it partakes of the character of a fundamental right.

We thought that such a right cannot be possibly stifled by a Court order. Thus, we are trying to strike a balance and in doing so, we have followed the concept of reasonable restrictions, which is a part of our Constitutional doctrine.

We have been told by the learned counsel appearing for the University that JNU is primarily a research oriented University. There are some students in the language courses but JNU is basically a post-graduate University. JNU being primarily a research oriented university, it has certain unique and distinct features of its own.

We have heard learned Amicus Curiae on the areas of relaxation which have been sought by the students' union and also considered the suggestions given by learned amicus.

One of the issues is for the time period of holding of elections. After considering the suggestions given by the learned amicus and learned counsel for the parties, we do not think that any variation in Lyngdoh Committee recommendation in that aspect is called for.

The next suggestion is coming up on the question of age restriction of candidates. After considering the suggestions given by learned amicus and also after hearing learned counsel appearing for the students' bodies, we accept the suggestion given by learned amicus that for research students, the maximum age limit which can be fixed for them to legitimately contest the election could be enhanced to 30 years.

Insofar as attendance criteria is concerned, we have been told by the learned counsel appearing for the University authorities that in JNU, for research students no attendance is taken. Therefore, the stipulation given in the Lyngdoh Committee recommendation about 75% attendance is not applicable insofar as election by research students of JNU is concerned.

So far as the repeat criteria is concerned, we do not think that any change is required. We reiterate that the elections should be held in accordance with the Lyngdoh Committee recommendations.

Similarly, in cases of criminal record of candidates, the recommendation of Lyngdoh Committee should be followed.

Insofar as the use of printed material and pamphlets is concerned, we accept the suggestions given by the learned amicus that photostat copies of pamphlets and manifestos may be permitted within the limit of Rs. 5000/- as recommended by the Lyngdoh Committee.

Insofar as grievance mechanism is concerned, we think no change is called for.

Since we are of the view that the recommendations of the Lyngdoh Committee are very salutary in nature, we have not allowed any major changes except those which are absolutely necessary.

We hope that elections may be satisfactorily held in view of the relaxations permitted by this order.

With the above directions, the interlocutory applications stand disposed of.

Before parting with the matter, this Court records its profound appreciation for the very competent assistance rendered by the learned amicus in resolving these issues, which are of vital importance.

.....J.

(ASOK KUMAR GANGULY) .....J.

(JAGDISH SINGH KHEHAR) NEW DELHI, 8-12-2011