

ITEM NO.6

COURT NO.5

SECTION XIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).24295/2004

(From the judgement and order dated 24/06/2004 in WP No. 30845/2003

of The HIGH COURT OF KERALA AT ERNAKULAM)

UNIVERSITY OF KERALA

Petitioner(s)

VERSUS

COUNCIL, PRINCIPALS', COLLEGES, KERALA & ORS

Respondent(s)

(With prayer for interim relief and office report)

WITH SLP(C) NO. 24296-24299 of 2004

(With prayer for interim relief and office report)

Date: 22/09/2005 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Petitioner(s)

Mr. R. Sathish, Adv.

For Respondent(s)/

Mr. Gopal Subramaniam, A.S.G.

Union of India

Mr. Abhishek Tewari, Adv.

Mr. P. Parmeswaran, Adv.

Mr. E.M.S. Anam, Adv.

Mr. K.R. Sasiprabhu,Adv.

Mr. G. Prakash,Adv.

Mrs. Beena Prakash,Adv.

Mr. K.D. Dileep Kumar,Adv.

Mr. T.G.Narayanan Nair,Adv.

Mr. M.P. Vinod,Adv.

Mr. Ajay K. Jain,Adv.

Mr. Sajith P.,Adv.

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Mr. M.K. Michael,Adv.

Mr. S.M. Jadhav,Adv.

Mr. K. Rajeev,Adv.

Mr. M.K.D. Namboodiri,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard.

constituted by the We have perused the Report of the Committee c

Ministry of Human Resource Development, Government of India in terms o
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the order of this Court dated 12.12.2005. The Committee headed by Mr. J
.M.

Lyngdoh has submitted the Report making recommendations and suggestions

relating to Students' Union Elections. We are, prima-facie, of the view that the recommendations need acceptance and as an interim measure, we direct the following recommendations to be implemented, subject to such modifications indicated hereinafter.

The recommendations are:-

" 6.1.1 Universities and colleges across the country must ordinarily conduct elections for the appointment of students to student representative bodies. These elections may be conducted in the manner prescribed herein, or in a manner that conforms to the standards prescribed herein.

6.1.2 Where the atmosphere of the university campus is adverse to the conduct of peaceful, free

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and fair elections, the university, its constituent colleges and departments must initiate a system of student representation based on nominations, especially where elections are being held at present.

It would be advisable, however, not to base such nomination system on purely academic merit, as is

being practiced throughout the country.

6.1.3 In cases where elections are not being held, or where the nomination model prevails, the nomination model should be allowed to continue for a limited period of time. It is to be noted that the nomination system suffers from several flaws, and must only be restored to as an INTERIM MEASURE.

6.1.4 Subject to the recommendations in respect of the possible model of elections, all institutions must over a period of 5 years, convert from the nomination model to a structured election model, that may be based on a system of parliamentary (indirect) elections, or on the presidential (direct) system, or a hybrid of both. It is highly desirable that all institutions follow this mechanism of gradual conversion, especially for privately funded institutions that prefer a status quo situation.

6.1.5 All institutions must conduct a review of the student representation mechanism. The first review may be conducted after a period of 2 years of the implementation of the mechanism detailed above, and the second review may be conducted after the 3rd or the 4th year of implementation. The primary objective of

these reviews will be to ascertain the success of the representation and election mechanism in each individual institution, so as to decide whether or not to implement a full-fledged election structure. Needless to say these reviews will be based on a consideration of the views and suggestions of all stakeholders, such as

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students, faculty, administration, student bodies, and parents.

6.1.6 Institutions must, as a primary objective, subject to the pertinent issue of discipline on campus, seek to implement a structured system of student elections by conclusion of a period of 5 years from the date of the implementation of the recommendations.

6.1.7 Subject to the autonomy of the universities in respect of the choice of the mode of election, all universities must institute an apex student representative body that represents all students, colleges, and departments coming under the particular university. In the event that the university is geographically widespread, individual colleges may constitute their own representative bodies, which would further elect representatives for the apex universities

body.

6.1.8 The union/representative body so elected shall only comprise of regular students on the rolls of the institution. No faculty member, nor any member of the administration shall be permitted to hold any post on the executive of such representative body, nor shall be allowed to be a member of any such representative body.

6.2 Modes of Elections

6.2.1 A system of direct election of the office bearers of the student body, whereby all students of all constituent colleges, as well as all students of university departments vote directly for the office bearers. This model may be followed in smaller universities with well-defined single campuses (for e.g. JNU/University of Hyderabad, and with a relatively smaller student population. A graphic representation of this model is annexed herewith at Annexure IV-A.

In respect of universities with large, widespread campuses and large student bodies either of the

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following models may be adopted.

6.2.2 A system of elections, where colleges and campuses directly elect college and campus office

bearers, as well as university representatives. The university representatives form an electoral college, which shall elect the university student union office bearers. A graphic representation of this model is annexed herewith at Annexure-IV-B.

6.2.3 A system of elections where on one hand, directly elected college and campus office bearers, as well as university representatives. The university representative form an electoral college, which shall elect the university student union office bearers. A graphic representation of this model is annexed herewith at Annexure IV-B.

6.2.3 A system of elections where on one hand, directly elected class representative elect the office bearers of the college as well as the university representatives, and the campus itself directly elects the campus office bearers and the university representatives. The university representatives shall form an electoral college, which shall elect the office bearer of the university student union. A graphic representation of this model is annexed herewith at Annexure IV-C.

6.2.4 A system of election wherein class representatives shall be directly elected in the colleges and universities campus and they in turn shall elect the office bearers for

the college unions and the university campus union.

Also they shall elect their representatives for university

student union. These elected representative from

colleges and university campus shall form the electoral

college, which shall elect the office bearers of the

university student union. This model shall be applicable

to large university with large number of affiliated

colleges. A graphic representation of this model is

annexed herewith at Annexure IV-D.

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6.3 Disassociation of Student Elections and Student Representation from Political Parties.

6.3.1 During the period of the elections no person, who is not a student on the rolls of the college/university, shall be permitted to take part in the election process in any capacity. Any person, candidate, or member of the student organisation, violating this rule shall be subject to disciplinary proceedings, in addition to the candidature, as the case may be being revoked.

6.4 Frequency and Duration of Election Process

6.4.1 It is recommended that the entire process of elections, commencing from the date of filing of nomination papers to

the date of declaration of results, including the campaign period, should not exceed 10 days.

6.4.2 It is further recommended that elections be held on a yearly basis and that the same should be held between 6 to 8 weeks from the date of commencement of the academic session.

6.5 Eligibility Criteria for Candidates

6.5.1 Under graduate students between the ages of 17 and 22 may contest elections. This age range may be appropriately relaxed in the case of professional colleges, where courses often range between 4 to 5 years.

6.5.2. For Post Graduate Students the maximum age limit to legitimately contest and election would be 24 - 25 years.

6.5.3 For research Students the maximum age limit to legitimately contest an election would be 28 years.

6.5.4 Although, the Committee would refrain from prescribing any particular minimum marks to be attained by candidate, the candidate should in no event have any academic arrears in the year of contesting the election.

6.5.5 The candidate should have attained the minimum percentage of attendance as prescribed by the university or 75% attendance, whichever is higher.

6.5.6 The candidate shall have one opportunity to contest for the post of office bearer, and two opportunities to contest for the post of an executive member.

6.5.7 The candidate shall not have a previous criminal record, that is to say he should not have been tried and/or convicted of any criminal offence or misdemeanor. The candidate shall also not have been subject to any disciplinary action by the University authorities.

6.5.8 The candidate must be a regular, full time student of the college/university and should not be a distance/proximate education student.

That is to say that all eligible candidates must be enrolled in a full time course, the course duration being at least one year.

6.6 Election - Related Expenditure and Financial Accountability

6.6.1 The maximum permitted expenditure per candidate shall be Rs.5000/-.

6.6.2 Each candidate shall, within two weeks of the declaration of the result, submit complete and audited accounts to the college/university authorities.

The college/university shall publish such audited accounts within

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2 days of submission of such accounts, through a suitable medium so that any member of the student body may freely examine the same.

6.6.3 The election of the candidate will be nullified in the event of any non-compliance or in the event of any excessive expenditure.

6.6.4 With the view to prevent the inflow of funds from political parties into the student election process, the candidates are specially barred from utilizing funds from any other sources than voluntary contributions from the student body.

6.7 Code of Conduct for Candidates and Elections Administrators

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6.7.1 No candidate shall indulge in, nor shall abet, any activity, which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic, or between any group(s) of students.

6.7.2 Criticism of other candidates, when made, shall be confined to their policies and programs, past record and work. Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the

other candidates or supporters of such other candidates.

Criticism of other candidates, or their supporters based on unverified allegations or distortion shall be avoided.

6.7.3 There shall be no appeal to caste or communal feelings for securing votes. Places of worship, within or without the campus shall not be used for election propaganda.

6.7.4 All candidates shall be prohibited from indulging or abetting, all activities which are considered to be "corrupt practices" and offences, such as bribing of voters, intimidation of voters, impersonation of voters canvassing or the use of propaganda within 100 meters of polling stations, holding public meetings during the period of 24 hours ending with the hour fixed for the close of the poll, and the transport and conveyance of voters to and from polling station.

6.7.5 No candidate shall be permitted to make use of printed posters, printed pamphlets, or any other printed material for the purpose of canvassing. Candidates may only utilize hand-made posters for the purpose of canvassing, provided that such hand-made posters are procured within the expenditure limit set out herein above.

6.7.6 Candidates may only utilize hand-made posters at certain places in the campus, which shall be notified in

advance by the election commission/university authority.

6.7.7 No candidate shall be permitted to carry out processions, or public meetings, or in any way canvass or

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distribute propaganda outside the university/college campus.

6.7.8 No candidate shall, nor shall his/her supporters, deface or cause any destruction to any property of the university / college campus, for any purpose whatsoever, without the prior written permission of the college/university authorities. All candidates shall be held jointly and severally liable for any destruction/defacing of any university/college property.

6.7.9 During the election period the candidates may hold processions and / or public meetings, provided that such processions and/or public meetings do not, in any manner, disturb the classes and other academic and co-curricular activities of the college/ university. Further, such procession/ public meeting may not be held without the period written permission of the college/university authority.

6.7.10 The use of loudspeakers, vehicles and animals for the purpose of canvassing shall be prohibited.

6.7.11 On the day of polling, student organizations and

candidates shall -

(i) co-operate with the officers on election duty to ensure peaceful and orderly polling and complete freedom to the voters to exercise their franchise without being subjected to any annoyance or obstruction;

(ii) not serve or distribute any eatables, or other solid and liquid consumables, except water on polling day;

(iii) not hand out any propaganda on the polling day.

6.7.12 Excepting the voters, no one without a valid pass/letters of authority from the election commission or from the college/university authorities shall enter the polling booths.

6.7.13 The election commission/college/ university authorities shall appoint impartial observers. In the case of deemed universities and self-financed institutions, government servants may be appointed as observers. If the

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candidates have any specific complaint or problem regarding the conduct of the elections they may bring the same to the notice of the observer.

Observers shall also be appointed to oversee the process of nomination of students in institutions that are following the nominations model of student representation.

6.7.14 All candidates shall be jointly responsible for ensuring the cleaning up of the polling area within 48 hours of the conclusion of polling.

6.7.15 Any contravention of any of the above recommendations may make the candidate liable to be stripped of his candidature, or his elected post, as the case may be. The election commission/ college/ university authorities may also take appropriate disciplinary action against such a violator.

6.7.16 In addition to the above-mentioned code of conduct, it is also recommended that certain provisions of the Indian Penal Code, 1860 (Section 153-A and Chapter IX-A - "Offences Relating to Election"), may also be made applicable to student elections.

6.8 Grievances Redressal Mechanism

6.8.1 There should be a Grievances Redressal Cell with the Dean (Student Welfare) / teacher in charge of student affairs as its chairman. In addition, one senior faculty member, one senior administrative officer and two final year students - one boy and one girl (till the election results declared, students can be nominated on the basis of merit and/or participation in the co-curricular activities in the previous year). The grievance cell shall be mandated with

the redressal of election-related grievance, including, but not limited to breaches of the code of conduct of elections and complaints relating to election-related expenditure. This cell would be the regular unit of the institution.

6.8.2 In pursuit of its duties, the grievance cell may prosecute violators of any aspect of the code of conduct or

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the rulings of the grievance cell. The grievance cell shall serve as the court of original jurisdiction. The institutional head shall have appellate jurisdiction over issues of law and fact in all cases or controversies arising out of the conduct of the elections in which the grievance cell has issued a final decision. Upon review, the institutional head may revoke or modify the sanctions imposed by the grievance cell.

6.8.3 In carrying out the duties of the office, the Grievance cell shall conduct proceedings and hearing necessary to fulfill those duties. In executing those duties they shall have the authority:

(i) to issue a writ of subpoena to compel candidates, agents, and workers, and to request students to appear and give testimony, as well as produce necessary records; and

(ii) to inspect the financial reports of any candidate and make these records available for public scrutiny upon

request.

6.8.4 Members of the Grievance cell are prohibited from filing complaints. Any other student may file a complaint with the Grievance cell, within a period of 3 weeks from the date of declaration of results. All complaints must be filed under the name of the student filing the complaint. The Grievance cell shall act on all complaints within 24 hours after they are received by either dismissing them or calling a hearing.

6.8.5 The Grievance cell may dismiss a complaint if:

(iii) the complaint was not filed within the time frame prescribed in Recommendation 8.4 above;

(iv) the complaint fails to state a cause of action for which relief may be granted.

(v) the complainant has not and/or likely will not suffer injury or damage.

6.8.6 If a complaint is not dismissed, then a hearing must be held. The Grievance cell shall inform, in writing, or via e-mail, the complaining party and individuals or groups

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named in the complaint of the time and place of the hearing.

The parties are not considered notified until they have received a copy of the complaint.

6.8.7. The hearing shall be held at the earliest possible time, but not within twenty-four (24) hours after receipt of the notice described above, unless all parties agree to waive the 24-hour time constraint.

6.8.8 At the time, notice of hearing is issued, the Grievance Cell, by majority vote, may issue a temporary restraining order, if it determines that such action is necessary to prevent undue or adverse effects on any individual or entity. Any restraining order, once issued, will remain in effect until a decision of the Grievance Cell is announced after the hearing or until rescinded by the Grievance Cell.

6.8.9 All Grievance Cell hearing, proceedings, and meetings must be open to the public.

6.8.10 All parties of the Grievance Cell hearing shall present themselves at the hearing, may be accompanied by any other student from which they can receive counsel, and have the option to be represented by that counsel.

6.8.11 For any hearing, a majority of sitting Grievance Cell members must be in attendance with the Chair of the Grievance Cell presiding. In the absence of the Chair, the responsibility to preside shall fall to an Grievance Cell member designated by the Chair.

6.8.12 The Grievance cell determine the format for the hearing, but must require that both the complaining and responding parties appear physically before the board to discuss the issues through a complaint, answered, rebuttal, and rejoinder format. The purpose of the hearing is to gather the information necessary to make a decision, order, or ruling that will resolve an election dispute. To effectuate this purpose, the following rules should prevail at all hearings:

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* Complaining parties shall be allowed no more than two witnesses, however, the Grievance cell may call witnesses as required. If said witnesses are unable to appear at the hearing, signed affidavits may be submitted to the Grievance Cell Chair for the purpose of testifying by proxy.

* All questions and discussions by the parties in dispute shall be directed to the Grievance Cell.

* There shall be no direct or cross-examination of any party or witness by complaining or responding parties during hearings.

* Reasonable time limits may be set by the Grievance Cell provided they give fair and equal treatment

to both sides.

* The complaining party shall bear the burden of proof.

* Decisions, orders and rulings of the Grievance Cell must be concurred to by a majority of the Grievance Cell present and shall be announced as soon as possible after the hearing. The Grievance cell shall issue a written opinion of the ruling within 12 hours of announcement of the decision.

The written opinion must set forth the findings of fact by the Grievance Cell and the conclusions of law in support of it. Written opinions shall set a precedent for a time period of three election cycles for Grievance Cell ruling, and shall guide the Grievance Cell in its proceedings. Upon consideration of prior written opinions, the grievance cell may negate the decision, but must provide written documentation of reasons for doing so.

* If the decision of the Greivance Cell is appealed to the institutional head, the Grievance Cell must immediately submits its ruling to the commission.

* The Grievance Cell shall select the remedy or sanction most appropriate to both the type and severity of the infraction, as well as the stand of mind or intent of the

violator as determined by the Grievance Cell. Possible remedies and sanctions include, but are not limited to, fines, suspension of campaigning privileges, and disqualification from the election.

* Any fine or total amount of fines against a candidate in an election cycle may not exceed the spending limit as defined herein above.

* If, after a hearing, the Grievance Cell finds that provisions of this Code were violated by a candidate, or a candidate's agent or workers, the Grievance Cell may restrict the candidate, or the candidates agents or workers, from engaging in some or all campaign activities for some or all of the remainder of the campaign. If an order is issued covering only part of the remaining period, it shall take effect immediately so that after its termination, the candidate will have an opportunity to resume campaigning during the days immediately prior to and including the election days.

* If, after a hearing, the Grievance Cell finds that provisions of either this Code or decisions, opinions, orders, or ruling of the Grievance Cell have been willfully and blatantly violated by a candidate, or a candidate's agents or workers, the Grievance Cell may disqualify the candidate.

* Any party adversely affected by a decision of the Grievance Cell may file an appeal with the institutional head within twenty four (24) hours after the adverse decision is announced. The institutional head shall have discretionary appellate jurisdiction over the Grievance Cell in all cases in which error on the part of the Grievance Cell is charged.

* The decision of the Grievance cell shall stand and shall have full effect until the appeal is heard and decided by the institutional head.

* The institutional head shall hear appeals of Grievance Cell rulings as soon as possible, but not within

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twenty four (24) hours after the Grievance cell delivers to the Appellant and the institutional head a copy of its written opinion in the case. Appeal may be heard prior to this time, but only if the Appellant waives the right to a written opinion and the institutional head agrees to accept the waiver.

* The institutional head can issue suitable orders to suspend or halt the operation of the ruling issued by the Grievance Cell until the appeals are decided.

* The institutional head shall review findings of the

Grievance cell when appealed. The institutional head may affirm or overturn the decision of the Grievance cell, or modify the sanctions imposed.

6.9 Maintaining Law and Order on the Campus during the Election Process

6.9.1 Any instance of acute lawlessness or the commission of a criminal offence shall be reported to the police by the university/ college authorities as soon as possible, but not later than 12 hours after the alleged commission of the offence.

6.10 Miscellaneous Recommendations

6.10.1 Student representation is essential to the overall development of students, and, therefore, it is recommended that university statutes should expressly provide for student representation.

6.10.2 Student representation should be regulated by statute (either a Central Statute, State Statute or individual university statutes), incorporating the recommendations prescribed herein.

6.10.3 The institution should organize leadership-training programs with the help of professional organizations so as to groom and instill in students leadership qualities.

6.10.4 In the event of the office of any major post of office

bearers falling vacant within two months of elections, re-

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elections should be conducted; otherwise the Vice President

may be promoted to be post of President and Joint

Secretary to the post of Secretary, as the case may be."

We, however, direct modifications in paragraphs 6.6.2 and 6.9.1.

The expression "and audited accounts" in paragraph 6.6.2 shall be substituted

by the words "and certified accounts" (to be certified by the candidate)

Similarly, the period of "12 hours" indicated in paragraph 6.9.1. i.e. "12

hours" shall be substituted by the words "6 hours".

Learned counsel for the parties are permitted to submit their

suggestions/views regarding elaborations in respect of the aforesaid

recommendations as well as other suggestions/views given by the Committee as

regards the grievances mechanism and the other suggestions as regards the

schedules etc. The suggestions/views shall be filed within four weeks.

Call these matters on 06.11.2006.

During the course of hearing of the petition, Mr. Gopal

Subramaniam, learned Additional Solicitor General brought to our notice the

need for a direction to provide security to the academic community who are

involved in the process of Students' Union Elections in the Universities and the

Colleges. It was suggested that to ensure protection to them, the

Superintendent of Police, In-charge of the area shall provide enough polic

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protection and shall ensure that no untoward incident takes place by providing

adequate number of police personnel to be posted near the place of elections.

The suggestions appear to be wholesome. We direct that the suggestions given

be implemented as and when the necessity so arises. It is made clear that the

recommendations made, which we have accepted to be adopted as an interim

measure, shall be followed in all College/University Elections, to be held

hereinafter, until further orders.

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This order shall be communicated to the respective States and Union

Territories by Mr. Gopal

Subramaniam, learned Additional Solicitor General so that necessary steps

can be taken to ensure compliance of our order.

(Neena Verma)

Court Master

(Radha R. Bhatia)

Court Master