

(2000) 04 AHC CK 0060
In the Allahabad High Court
Case No : Writ Petition No. 2775 (M/B) of 1999

Brahma Baksh Singh "Gopal"	Vs	APPELLANT
University of Lucknow and others		RESPONDENT

Date of Decision : 03-04-2000

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 226, 41
Uttar Pradesh State Universities Act, 1973 — Section 21, 7

Citation : AIR 2001 All 244 : (2001) 1 AWC 645 : (2001) 3 UPLBEC 2031

Hon'ble Judges : R.P. Nigam, J; Amarbir Singh Gill, J

Bench : Division Bench

Advocate : D.P. Misra, for the Appellant; C.S.C., Alok Sinha, Subash Vidyarthi and Virendra Misra, for the Respondent

Final Decision : Allowed

Judgement

Amarbir Singh Gill, J.—The petitioner assails order dated June 19, 1999 of the Vice-Chancellor. Lucknow University by which election of the petitioner as President of the Lucknow University Students Union has been set aside.

2. The election process of Lucknow University Students Union (In brief Students Union) for Session 1998-99 was Initiated by notification. The petitioner submitted his nomination papers for the office of President on May 7, 1999. The scrutiny of the nomination papers was conducted on May 8/9, 1999 and the petitioner's name figured in the list of eligible candidates for contesting the election. The election was held on May 15, 1999 and the counting of the votes was completed by mid-night of the same date. The petitioner scored highest number of votes and defeated his nearest rival, opposite party No. 4, Sri Daya Shanker Singh by margin of 216 votes. The Vice-Chancellor issued notification declaring the results of the election on May 16, 1999. However, the election of the petitioner as President was mentioned as subject to decision on the complaint filed by Daya Shanker Singh, opposite party No. 4. The petitioner challenged the conditional declaration of his result as President by way of Writ

Petition No. 2264 (M/B) of 1999 (connected writ petition) seeking a relief of quashing of the condition imposed in the declaration of his election as President and for allowing him to discharge his functions as President of the Students Union. Subsequently by the impugned order dated June 19, 1999, as contained in Annexure-1 to the writ petition, the opposite party No. 2. Vice-chancellor of the University set aside the petitioner's election as President and declared the opposite party No. 4. Daya Shanker Singh as President of the Students Union. The petitioner then filed the instant writ petition against the order of the Vice Chancellor (Annexure-1).

3. The grievance raised in this writ petition is that the action of the Vice-Chancellor emanates from political vendetta, bias and is without jurisdiction and that the Vice-Chancellor could entertain a complaint only in respect of the validity of counting of votes by Returning Officer within 24 hours of the closing of the counting for the purpose of declaration of the result of the election and since counting of votes was not challenged, the Vice-chancellor illegally entertained a complaint challenging the status of the petitioner as student of the University and by the impugned order the petitioner, although was regular student of the University, his status as such has been determined. The petitioner claimed that the period of his research as Ph.D. student was duly extended by Vice-Chancellor in accordance with rules on the recommendation of the Head of the Department and he was regular student of the University and entitled to contest the election. He also claims that likewise there are other students who are continuing as Ph.D. students and they have been allowed to participate in election process and to cast votes.

4. The case of the opposite parties on the contrary is that the petitioner joined his Ph.D. course as a regular student for the session 1994-95 for three years. This period was extended for one year and thereafter he ceased to be regular student in accordance with Paragraph-7 of the Ordinance pertaining to degree of Doctor of Philosophy in the University and his candidature having been accepted by mistake, does not entitle him to be elected as President as only a regular student of the University is eligible for contesting elections of the University Students Union. Besides, the writ petition is not maintainable because the Constitution of Students Union is non-statutory one. The Vice-chancellor is merely a Patron of the Students Union Council and thereby does not act as an Officer of the University.

5. In his separate counter-affidavit. Sri Daya Shanker Singh, opposite party No. 4, has supported the impugned order of the Vice-Chancellor dated June 19, 1999 and has asserted that the petitioner was not a regular student of the University and as such, was ineligible to contest any election in the University Students' Union.

6. The learned counsel for the parties have been heard at length.

7. The controversy in the present writ petition is mainly confined to its

maintainability. It has been contended that no legal right of the petitioner has been infringed as he has no fundamental right of contesting the election and besides that, the Constitution of Students Union being non-statutory, does not entitle the petitioner to seek any relief by way of writ petition.

8. Right to education has been enshrined under Article 41 of the Constitution providing that "State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to educate, etc." The University of Lucknow has been established under the Uttar Pradesh State Universities Act, 1973, i.e., by an Act of State. The only difference between the fundamental right and Directive Principles of State Policy given in Part-III and IV of the Constitution is that the fundamental rights refer to natural rights already possessed by the individual and protected under the Constitution and the Directive Principles of State Policy enjoin upon the State to provide certain rights to the citizens of India. Once the State takes action by legislation or otherwise to make the right to education available to every eligible person, the statutory right to education stand equal to the fundamental right. The education to be provided in the University is not confined to achieve development of mind only whereas the education also, means the development of overall personality of the student and his development as a useful member of the society. If the education is only confined to knowledge and study of letters, there was hardly any necessity of establishment of schools, colleges or universities and one can educate himself by self-study or correspondence with educating bodies. The education also equally has social elements as education is to prepare the individual to participate in the democratic process which is very life of the nation and the same training of students in the democratic process is achieved partly through the Students' Union.

9. The importance of the Students' Union has been recognised in the report of Kothari Commission. It says :

"11.73. Students Unions.--Student Unions represent an important way of providing student participation in the University life outside the classroom. Properly organised, they help in self-Governance and self-discipline, provide a healthy out-let for students' energies and give the students useful training in the use of democratic methods."

10. If educational democracy or democracy in education is an integral part of all round education, then participation in the activities of the Students Union including contesting election of its office-bearers is as much the right of a student as is the admission to a University.

11. Right to education has been recognised as fundamental right by Supreme Court in its decision *Miss Mohini Jain v. State of Karnataka and others*. AIR 1992 SC 1958. It has been held:

"Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to dignified enjoyment of life. It extends to

the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens."

It has been further held :

"The fundamental rights guaranteed under Part-III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity."

12. Since the petitioner has been denied his right to contest election in the Students Union by the impugned order of the Vice-Chancellor and as such, his right to be a member and contest the election of the Students Union flowing from his right to receive education from the University has been taken away and as such he has a locus to maintain this petition. Even otherwise, the Constitution of the Students Union which is on record of this case appears to be the outcome of the executive action of the University authorities even if it is not expressed as part of or under any Statute of the University or under some Ordinance. The activities of the Union are controlled by the University authorities as shall hereinafter be made out. Section 7 of the State Universities Act, 1973, refers to power and duties of University and amongst others, namely :

(15) to supervise and control the residence and to regulate the discipline of students of the University, the Institute and the constituent of affiliated or associated colleges and to make arrangement for promoting their health.

(17) to do all such acts or things, whether incidental to the powers aforesaid or not, as may be requisite in order to further the objects of the University.

13. The constitution of Lucknow University Students Union provides in Rule 13 that Vice-Chancellor of the University shall be the Patron who shall have power to see that no action of the Union interferes with the maintenance of the discipline in the University and his decision in this connection shall be final. The Senior Librarian under Rule 18 is to be nominated by the Vice-Chancellor from the teaching staff of the University who shall hold office at the pleasure of the Vice-Chancellor as Patron. Rule 51 which refers to the change in the constitution provides as under :

"Changes in the constitution of the Union and the regulations formed thereunder can only be made by the Executive Council of the University either :

(1) On the motion of the Executive Committee, the Union Council and the General Body of the Union, or

(2) On their own initiative, after giving notice to the Executive Committee, and taking into consideration any views that the Executive Committee, the Union

Council and the General Body of Union may express within the time allowed by the Executive Council of the University.

[Emphasis provided]

14. It is not disputed that the elections to the Students Union are being conducted under the same constitution which carries the seal of University of Lucknow. The opposite parties have disputed the framing of the constitution by the University either under any statute or Ordinance of the Executive Council and it has categorically been asserted that the record of University does not indicate if the constitution of the Students Union came into existence in 1951, as alleged by the petitioner. The petitioner being a student did not know as to when the Constitution came into existence and since when the elections of the Students Union are being held. The Vice-Chancellor being Patron of the University Students Union cannot claim that he had no knowledge as to when its constitution came into existence. The University of Lucknow was already established earlier to coming into force of State Universities Act, 1973 and the existence of Students Union or the Constitution of the University Students Union can be in existence may be since the inception of the Lucknow University. Since Rule 51 of the Constitution of the Lucknow University Students Union provides that any change in the Constitution can be made by the Executive Council of the University only which u/s 21 of the State Universities Act, 1973, has power to make, amend, repeal statutes and Ordinance of the University. It brings the Constitution of the Students Union within the ambit of Statute and Ordinances of the University which the Executive Council has power to make, amend or repeal. The power to amend the Constitution of Students Union can be exercised suo motu by the Executive Council further confirms that the Constitution of Students Union is outcome of an action of the University authorities which may not be legislative but Executive one which is available to the University u/s 7 (17) of the State Universities Act. 1973, which empowers the University to do all such act or things which is incidental to the power as may be requisite in order to further the objects of the University. Section 7 of the State Universities Act. 1973, refers to the powers and duties of the Universities. The Constitution of the Students Union is linked with the power of the University u/s 7 (15). If framing of Constitution of the Students Union was not the outcome of executive action of the University authorities, how did the Vice-Chancellor come to exercise his authority of nominating a member of teaching staff of the University as Senior Librarian for the Students Union and also as Chief Electoral Officer or in his absence, to nominate any other member of the teaching staff to conduct election of the Union in accordance with the Rules. Rule 13 of the Constitution of the Students Union provides that the Vice-Chancellor of the University shall be the Patron, who is responsible for the maintenance of discipline in the University. It has been contended that the statutory authority cannot have any power which is not given by the Statute and since there is no provision in the University Act or the University Statutes or Ordinances in respect of Students Union, its constitution was self executing. However, as already referred to above, the University has

power u/s 7 of the State Universities Act, 1973, to act executively in furtherance of its object. Undisputedly the University by definition is an institution designed to impart instruction or education. The purpose of education is comprehensive enough to include the development of all round personality of a student. The powers exercised by the University authorities including the Vice-Chancellor and the Executive Council show the action taken by these authorities under the Constitution of Students Union, is nothing but an executive action of these authorities in official capacity under the Universities Act. Even if the Constitution of Students Union was not there at all, the University authorities could govern the activities of the students in exercise of the executive power of the University. Such action is, therefore, State action because the University authorities are acting only in exercise of the powers given to the University authorities by the State Universities Act, 1973. In the circumstances, constitution of the Students Union has been framed under the executive action of the University and it confirms to the rules and regulation as required by the Executive Council for its approval. The students of the University become member and participate in its activities in exercise of the fundamental right to form association or Union available under Article 19(1)(a)(b) of the Constitution of India. One of the objections raised by the opposite parties against the maintainability of the present writ petition was the alternative remedy available to the petitioner u/s 68 of the Uttar Pradesh State Universities Act, 1973, which provides as under :

"68. Reference to the Chancellor.--If any question arises whether any person has been duly elected or appointed as, or is entitled to be, member of any authority or other body of the University, or whether any decision of any authority or officer of the University (including any question as to the validity of a Statute, Ordinance or Regulation, not being a Statute or Ordinance made or approved by the State Government or by the Chancellor) is in conformity with this Act or the Statutes or the Ordinance made thereunder the matter shall be referred to the Chancellor and the decision of the Chancellor thereon shall be final :

Provided that no reference under this Section shall be made :

(a) more than three months after the date when the question could have been raised for the first time :

(b) by any person other than an authority or officer of the University or a person aggrieved :

Provided further that the Chancellor may in exceptional circumstances :

(a) act suo motu or entertain a reference after the expiry of the period mentioned in the preceding proviso;

(b) where the matter referred relates to a dispute about the election, and the eligibility of the person so elected is in doubt, pass such orders of stay as he thinks just and expedient ;

(c)....

Such an objection of the opposite parties further confirms that the constitution of the Students Union has been accepted as part of Statute or Ordinance made by the University authorities. Moreso, the impugned order dated June 19, 1999, was not passed by the Patron of the Students Union but by the opposite party No. 2 as Vice-Chancellor, an authority of the University whose actions are amenable to judicial review. The impugned order takes away status of the petitioner as student of the University which itself affects his statutory right to education which he can challenge by way of the writ petition.

15. The Supreme Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, , has observed that Article 226 of the Constitution confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the High Court seeking a relief under Article 226 of the Constitution. It is not disputed that the Vice-Chancellor of the University performs duties of public nature. Any action by the Vice-Chancellor which is not in conformity with law is amenable to judicial review. In a recent decision of the Supreme Court in *U. P. State Cooperative Bank Limited v. Chandra Bhan Dubey* 1990 (1) SCC 791, it has been observed :

".....The Constitution is not a statute. It is a fountain head of all statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual, right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him."

(Emphasis provided)

16. The impugned order passed by the Vice-Chancellor holding the petitioner to be not a regular student of the University and thereby ineligible to contest the election adversely affected the statutory rights of the petitioner to education as well as fundamental rights available under Article 19(1)(a)(b) of the Constitution of India. The present writ petition, in the circumstances, is maintainable under Article 226 of the Constitution of India.

17. The case of the opposite parties is that the petitioner is no more regular student of the University and as such was ineligible to contest the election of the Students Union. It has been indicated that the petitioner was enrolled as a Ph.D. student for the academic session 1994-95 and since he could not submit his thesis within three years and the extended period of one year, he ceased to be a regular student of the University in accordance with paragraph 7 of the Ordinance of the Lucknow University in regard to Doctor of Philosophy which

reads as under :

"7. Ordinarily a candidate shall be required to submit his thesis within three years of the date of his admission to the Ph.D. programme but not earlier than six terms in any case. The Vice-Chancellor may on the recommendation of the Supervisor, the Head of the Department and Dean of the Faculty concerned extend the maximum period of three years by one more year. If the candidate is unable to submit his thesis within the prescribed period including the extended period, he shall cease to be a regular student of the University and shall not be entitled to the facilities extended to a regular student. Such candidates may, however, under special circumstances of their case, be permitted by the Vice-Chancellor to submit their thesis within a maximum period of seven years including the four year period of their studentship on the recommendation of the Supervisor, Head of the Department and the Dean of the Faculty concerned. The registration of the candidate who does not submit his thesis within seven years from the date of his admission, shall be deemed to be cancelled, and he shall not be allowed to submit his thesis.

A candidate may be permitted to modify the title of his thesis with the permission of the Vice-chancellor on the recommendation of the Supervisor, Head of the Department and the Dean of the Faculty concerned not later than six months before the submission of thesis."

18. A bare perusal of the aforesaid provision of the University Ordinance enables a student of the Ph.D. course to seek extension for submission of the thesis after expiry of four years upto seven years. It is not disputed that during the extended period, he is to pay the fees of the University and is not debarred from continuing his research work in the University under his guide. The intention behind denial of status of a regular student to a Ph.D. student after expiry of four years appears only in respect of facilities like the use of hostel accommodation, etc. whereas he does not cease to be a student after four years of his enrolment even if he is not considered to be a regular student. It is indicated itself that his registration is to be cancelled only if he does not submit his thesis within seven years from the date of his admission, i.e., he ceases to be a student of the University only when his registration is cancelled.

19. The denial of status of a regular student under Para 7 of Ordinance is in the wake of non-submission of the thesis within extended period of four years but if under special circumstances, the Vice-Chancellor extends his period of submission of the thesis, it appears that such a student cannot be denied the facilities of a regular student as well because the disability on account of non-submission of the thesis within four years of the date of his admission stands extended to seven years by implication. Be that as it may, it is to be seen whether a student of the University who is not a regular student is or is not entitled to be a member of the Students Union and participate in its activities like contesting of election of the Union. In this respect, the constitution of the Students Union is required to be referred to. Under Chapter II of the constitution

of Students Union Rule 4 refers to membership. It provides :

"4 (i) Membership.--The members of the Union shall be :

(a) Ordinary members.

(b) associate members.

(c) honorary members.

(d) life members.

(ii) Every student enrolled in the Faculties of Arts, Science. Commerce and law, except those belonging to the Associated Colleges, shall be an ordinary member of the Union and shall pay Re. 1 per term as membership fee which shall be collected along with his University fees. Accordingly students of the Associated and constituent colleges shall not be members of the Lucknow University Union.

(iii)

(iv).

(v)

(vi) At all elections only ordinary members shall exercise the right to vote.

(Emphasis provided)

20. Rule 4 (ii) above provides that every student who is enrolled in a faculty of the University can be a ordinary member of the Union and Rule 4 (vi) provides that only ordinary member has a right to vote. Admittedly the petitioner was enrolled as a student in the University during the 1994-95 session and his period of studies after expiry of four years was extended by the Vice-Chancellor in accordance with the requirement of Para 7 of the Ordinance.

21. The petitioner joined the Ph.D. course in the session 1994-95 and his date of enrolment as regular student is to be counted from the date of payment of fees. Admittedly the petitioner paid his fees on February 22, 1995. The period of four years came to an end on February 21, 1999, whereafter the petitioner was given extension under Paragraph-7 of the Ordinance. Annexure-5 of the writ petition is the order of extension granted by the Vice-Chancellor for the next session to the petitioner for fifth year of his study as Ph.D. student. He was also issued a certificate of being a bona fide student of Faculty of Art of the Lucknow University. He deposited the requisite fees for the session 1998-99 which fact is not disputed. The extension granted to the petitioner by the Vice-Chancellor to continue as Ph.D. student for session 1998-99 was in accordance with the rules and regulations of the University and as such, the continuance of the petitioner as student of the University was not in question on the date of notification of the election. As already indicated above, even if the objection of the opposite party No. 4 is accepted then by implication, the petitioner ceased to be a regular student of the University after expiry of four years of his studies, the petitioner

still continued enrolled as a student of the University and as such ordinary member of the Students Union eligible to contest the election. In paragraph 26 of the writ petition, the petitioner gave names of Ph.D. students who were continuing the studies of Ph.D. in the fifth year and one of them even studying in 7 year. The petitioner categorically asserted that these students were being allowed to continue and are being treated as regular students of the Lucknow University and they did cast their votes as students of the University despite the fact that they already completed four years as Ph.D. students. The corresponding reply in the counter-affidavit of the University and the Vice-Chancellor does not dispute that these students cast their votes in the elections of the University and it only averred that no student is being treated as a regular student against the provisions of the Ordinance. The action of the Vice-Chancellor holding the petitioner as not eligible to contest the election on account of his having ceased to be a regular student of the University was in utter disregard of the rules of the Constitution of Students Union. It has been contended by the learned counsel for the opposite parties that although the petitioner was given extension for studies as Ph.D. student of the University by mistake, he was issued the certificate of bona fide student of the University as well as his nomination was found to be correct by mistake, is in these circumstances belied by the rules of the Lucknow University Students Union. As already indicated, the enrolment of the petitioner as student of the University could come to end only after cancellation of his registration, as such till the cancellation of the registration, the petitioner continued to be a student of the University and as such entitled to continue as ordinary member of the Students Union and thus was eligible to contest the election.

22. The impugned order passed by the Vice-Chancellor appears not in consonance with the election rules and was without jurisdiction. Rules framed for the conduct of the proceeding of the Union or its Committees and the election of office bearers have been incorporated in Appendix-A which forms part of the Constitution of Lucknow University Students Union. The following relevant rules are reproduced :

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6. A scrutiny shall be held of all nomination papers by the R.O. in the presence of the candidates and their proposers and seconders.

7. If the Returning Officer considers a nomination paper irregular or invalid, he shall bring the matter to the notice of the Patron whose decision as to its validity shall be final.

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21. The R. O. shall announce the time on the day after the poll and place at which the counting of the votes shall take place. The counting shall be finished within two days of the poll.

22. The R. O. shall count the votes in the presence of the candidates or their agent authorised by the candidates who may wish to be present and he appoint a certain member of persons to help him in the counting.

23. While counting votes, the R. O. shall decide the validity of each vote and in case of doubt, his decision shall be final.

24. The result of the count shall be immediately communicated to the Patron, who shall announce the result after allowing twenty-four hours for any complaint.

25. (a) Any complaint against the proper counting of votes must be made to the Patron within twenty-four hours of the conclusion of the count.

(b) If any complaint is made about the count the Patron shall investigate the matter either personally or through some person appointed by him. The Patron's decision on the matter shall be final"

(Emphasis provided)

23. It has not been disputed that the petitioner was declared elected at the counting when he defeated his nearest rival, opposite party No. 4 by 216 votes. There was no complaint in respect of counting which was required to be made to the Vice-chancellor within twenty four hours for the purpose of declaration of the result by him as Patron. There is no rule which empowers the Patron (Vice-

Chancellor) to cancel the election of a successful candidate otherwise on account of wrong counting. The Returning Officer admittedly found the nomination paper of the petitioner correct in all respects. There was no complaint or dispute raised at the time of his nomination or when his name was placed on the notice board in the list of all candidates contesting for various offices in accordance with Rule 9. On the contrary, the complaint was made by opposite party No. 4 to the Vice-Chancellor alleging that the petitioner was ineligible to contest the election being not a regular student. The Vice-Chancellor proceeded to hold an enquiry which is not envisaged in the election rules nor empowers him to cancel the election if there was no dispute in respect of counting of the votes. A perusal of the impugned order further would reveal that in passing the order of cancellation of election of the petitioner, the Vice-chancellor has followed the earlier decision taken in case of Manoj Kumar Tiwari in the year 1994. The opposite party Nos. 1 and 2, University of Lucknow and the Vice-Chancellor along with their counter-affidavit placed on record photo copy of the order dated July 28, 1994, relating to election held on May 8, 1994. A perusal of this order would indicate that Manoj Kumar Tiwari had scored the highest vote defeating Arvind Singh "Gope" and Manoj Kumar Tiwari was declared elected. After declaration of result, the defeated candidate made a representation that Manoj Kumar Tiwari was not eligible. An enquiry was conducted by the Admission Committee of the University and found that Sri Manoj Kumar Tiwari at the time of his admission had submitted false certificates and as such his candidature was cancelled and since Sri Tiwari was not a student, he automatically ceased to be President of the Union. However, the constitution of Students Union being silent about such an eventuality, the Executive Committee of the Students Union in its meeting held on July 26 and 27, 1994, resolved that Sri Manoj Kumar Tiwari was ineligible to contest the election, the question of his being properly elected does not arise and as such the next candidate Sri Arvind Singh "Cope" should be elected President. Acting on the resolution of the Executive Committee, the then Vice-Chancellor cancelled the election of Sri Tiwari and declared Sri Arvind Singh "Gope" as elected. However, in the instant case, the Vice-Chancellor followed the precedent only to the extent of declaring the defeated candidate as elected, to the office of President otherwise the procedure adopted in respect of the dispute raised in the election pertaining to the year 1994 was not followed. In this case, the Vice-chancellor said to have appointed Justice J. K. Mathur (retired) as an Enquiry Officer whose report has not been placed on record and the petitioner was served with a notice on May 24, 1999 informing him of appointment of Justice J. K. Mathur (retired) as Enquiry Officer in respect of the complaint made by Daya Shanker Singh, opposite party No. 4 and the petitioner was required to submit his reply on or earlier to May 29, 1999. The petitioner filed his reply on May 31, 1999, raising objection to the holding of enquiry which was not concerning the counting of votes and keeping his right reserved, the petitioner demanded to know under which Statute or Ordinance the enquiry was being conducted against him. The petitioner was again served with another letter dated June 3, 1999, copy of which is Annexure-3 to the counter-affidavit, allowing further three days

to the petitioner to file reply, i.e., by June 6, 1999. The petitioner then wrote a letter (Annexure-11) to the Registrar that he has received the notice only on June 6, 1999 and informed that his letter has not been replied and asked for further three weeks time to represent his case. It appears that the request of the petitioner was not accepted and the petitioner was not allowed to participate in the enquiry and the report of the Enquiry Officer was obtained whereafter the impugned order was passed. Strangely enough, in the counter-affidavit filed on behalf of the University and the Vice-chancellor, it has been denied that any enquiry was conducted.

24. Yet another plea has been raised against the maintainability of the present writ petition. It is argued that this Court in Writ Petition No. 2166 (M/B) of 1999. Harsh Mishra and another v. Lucknow Christian Post Graduate College, Gola Ganj, Lucknow and others, has taken a view that the writ petition under Article 226 of the Constitution of India in the matter of election with respect to Union of the College, is not maintainable. This petition was dismissed in limine as not maintainable when objection was taken that elections of the office bearer of the College are not statutory in character nor they are held under any statute. It is well-settled that a petition dismissed in limine and not on merits is not a precedent and even does not operate as res-judicata between the parties to the writ petition. Besides it has also been ruled by the Supreme Court" in Executive Committee of Vaish Degree College, Shamli and others v. Lakshmi Narain and others AIR 1976 SC 888, that an affiliated college is not a creation of any statute and cannot maintain writ petition. However, it has already been discussed above that the constitution of the Students Union has been framed under the statute or the ordinance of the University under its executive action and is of statutory nature. Besides the question involved in this case did not only pertain to the election of the petitioner but mainly was cancellation of his status as student of the University.

25. In the circumstances, the impugned order by which the petitioner has been deprived of his status as a student of the University, has been passed without affording any opportunity to the petitioner which is against the principle of natural justice. The action of the Vice-Chancellor, opposite party No. 2, in the circumstance, was not Justified being not in consonance with the rules and regulation pertaining to the election of the office-bearer of the students of the Lucknow University, is required to be quashed. The petitioner was duly elected President of the University Students Union in the last elections. The office-bearer of the Union admittedly functions till the end of academic session which has come to an end by now and a new session has started. In the circumstances no relief by way of mandamus at this stage can be issued in respect of election of the petitioner as President of the Union restoring the petitioner as the President of the Union.

26. This petition is allowed. The order dated 19.6.1999 as contained in Annexure-1 passed by the opposite party No. 2, Vice-Chancellor of the University

is quashed.