

(1996) 02 OHC CK 0016

In the Orissa High Court

Case No : Original Jurin. Case No. 8132 of 1994

Ganeswar Rout

APPELLANT

Vs

Utkal University and Others

RESPONDENT

Date of Decision : 02-02-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Orissa University First Statute, 1990 — Rule 252, 252(4)

Citation : AIR 1996 Ori 145 : (1996) 82 CLT 54

Hon'ble Judges : D.P. Mohapatra, Acting C.J.; P.C. Naik, J

Bench : Division Bench

Advocate : M.M. Basu, S. Jena and K.C. Kanungo, for the Appellant; B.P. Das, B. Pr. Das and D.N. Mohanty, for the Respondent

Final Decision : Partly Allowed

Judgement

P.C. Naik, J.—The petitioner's prayer in this petition under Articles 226 and 227 of the Constitution of India is for issuance of an appropriate writ, direction or order quashing the amendments incorporated in the constitution of the University Student's Union and in particular Rule 14 thereof, for quashing the notice dated 29-11-1994 (Annexure-1) relating to election of office bearers of the University Student's Union and Athletic Club for the session 1994-94 and for a declaration that opposite party No. 3 has no power or authority to exercise over the Student's Union which can only be exercised by the General Body of the said Union.

2. After graduating in Arts with Honours in Anthropology, the petitioner obtained his Master's Degree in Arts in Anthropology from the Utkal University. As a student of the Post-Graduate Department of Anthropology, the petitioner had contested the election for the office of the General Secretary of the University Students Union and was duly elected. The petitioner also obtained to degree in law in 1994 and being desirous of obtaining a Master's Degree, joined the P.G. Department of Law and is continuing as a regular student from September, 1994.

Presently, he is a student of LL.M. Part I of the Utkal University, Vani Vihar, Bhubaneswar.

3. On 29-11-1994 a notice (Annexure-1) was published regarding election of office bearers of the University Students Union and the Athletic Club. The notice, inter alia, provided that only regular students shall take part in the election and a student admitted to a second P.G. Department or continuing in the same class/year for a second or subsequent year shall not be eligible to contest for any post in the election. According to the petitioner, debarring a student admitted to the second P.G. Department or continuing in the same class/year for a second or subsequent year from contesting for any post in the election is not within the statutory powers of opposite party No. 3 and is also violative of the rights guaranteed to all students who are members of the Union, in terms of the constitution of the University Students Union (U.S.U.).

4. It is alleged by the petitioner that as the aforesaid restriction debarred him from contesting for any post in the election, he approached opposite party No. 3 (Chairman, Post Graduate Council of Utkal University) protesting against the said restriction, but opposite party No. 3 expressed his inability to do anything in the matter as the constitution of the Students Union incorporating the amendments had been approved by the P.G. Council in a meeting which was held on 7-4-1993.

5. The case of the petitioner is that as he is a member and thereby a voter, he cannot be prevented from contesting the election in terms of Rule 2 of the constitution of the University Students Union which provides that each student of the P.G. Department of the University is a member of the Union and is eligible for election to any of its offices subject to the provisions of Rule/Articles 8 and 10. The further contention is that the P.G. Council has no authority to amend the constitution or the bye-laws of the Union as the First Statute, 1990 does not confer on the opposite parties any power to amend the bye-laws of the Students Union. It is further submitted that under Rule 40 of the earlier constitution, a proposed amendment was to be considered at the annual meeting of the Union and became effective on being passed by a majority of three-fourth of the members present at the annual meeting and after receiving the approval of the Vice-Chancellor. It is also averred that most of the P.G. students are adults and over the age of 21 and are all eligible voters and cast their vote in the Assembly and other elections and are, therefore, capable of deciding the provisions which should govern them as members of the Union. It is averred that if not quashed, the amendments incorporated shall introduce arbitrariness by the Utkal University authorities in the functioning of Students Union. This is how the matter is now before this Court.

6. In response to the notice, a common counter-affidavit has been filed by the opposite parties i.e. the Utkal University, Registrar and Chairman, Post Graduate Council, Utkal University opposing the petition. It is averred that as the petitioner had himself contested the election for the post of General Secretary for the session 1993-94 under the amended provisions, he cannot now be permitted to

challenge the same. It is the case of the opposite parties that P.G. Council exercises powers over the Students Union under Rule 252-4(c) and (j) of the Statutes and the amendments were carried in exercise of those powers. It is further averred that the P.G. Council has the power to regulate the activities of Students Union including its election keeping in view the welfare and discipline of the students in exercise of powers under Rule 252-4(c) and (j). It is further averred that the restriction introduced in Rule 14(b) became necessary for discouraging students who are more interested in politics than in studies and for which purpose they prefer to continue as students year after year only for the purpose of contesting the elections. It is further averred that election to offices of the Students Union is being sponsored by political parties and the Students Union elections are becoming political battles of rival parties which sponsor persons to continue as students year after year only for the purpose of election. The opposite parties have, however, frankly admitted in paragraph 6 of the counter that except the provision contained in Rule 252-4(c), the statute does not contain any provision relating to the Students Union or its constitution,

7. In the counter-affidavit, it is also stated that the P.G. Council has the power to frame or amend the constitution and the amendments are valid having been approved by the P.G. Council which consists of heads of all the P.G. Teaching Departments of the University and thereafter have also received the approval of the Vice-Chancellor.

8. In our opinion, the questions which arise for consideration are whether or not the P.G Council has the power to amend the constitution of the Students Union and whether or not the amendments introduced in the constitution of the Students Union are sustainable.

9. Before proceeding further, it will be appropriate to quote Clause (4) of Rule 252 of the Orissa University First Statutes, 1990, which relates to constitution of P.G. Council, and reads thus:

"252(4). Subject to the powers and decisions of the Syndicate the Post-Graduate Council may perform the functions and discharge the duties in relation to the matters of:

- (a) determination of general policy in regard to the Post-Graduate studies and research;
- (b) determination of principles for award of free-studentship and S.S.G. grants;
- (c) students discipline and welfare;
- (d) publication of magazines and prospectus;
- (e) principles for selection of students for admission into different courses/ departments and colleges subject to regulations, if any, framed by the Academic Council;
- (f) principles of admission of students to the Hostels and discipline;

(g) developing and sponsoring subjects/ projects which are inter-disciplinary, inter-faculty in character in collaboration with Industries/Departments and other organisations;

(h) taking steps for establishment of schools of studies in different inter-connected subjects and departments;

(i) enforce the guidelines of the University Grnats Commission issued from time to time on the subject of work and responsibility of teachers; and

(j) shall perform such other function that may be assigned to it by the Syndicate or the Academic Council from time to time."

Under clause (4), the P. G. Council has the power to provide for students disipline and welfare but as fairly conceded by the opposite parties Rule 252 is silent as regards to Students Union or its constitution. Except Rule 252", no other provision has been brought to our notice vesting in the P. G. Council power to frame the constitution of the Students Union or to amend the same unilaterally.

10. Chapter VIII of the Utkal University P. G. Teaching Departments" Calendar for 1992-93 relates to the Students Union and Societies. Rules 40 and 41 relate to amendment of rules and contain the power to amend the rules. Rules 40 and 41 read as under :

"40. a) Amendments to any of these rules shall be considered in the Annual Meeting of the Union.

b) No amendment will be in order which is not duly seconded, and of which a week clear notice has not been received.

c) An amendment before it becomes effective, must be passed by a majority of three-fourth of the members present at the Annual Meeting and must receive the approval of the Vice-Chancellor,

41. All amendments will come into effect immediately after obtaining the approval of the Vice-Chancellor.

Thus, the constitution contemplated that amendments to the rules could only be made by the students union but would be effective only on being approved by the Vice-Chancellor. But in view of the First Statutes of 1990 of the Utkal University, the P. G. Council in their meeting hled on 9-4-1993 approved a constitution which is printed in the calendar of 1993-94 which is slightly different from the one which is contained in the Calender 1992-93. The power to amend the constitution of the Students Union as contained in the Calendar 1993-94 is found in Rules 22 and 23 which read as under :

"22. Amendments to the rules of the constitution may be suggested by the Executive Committee of the Students Union or by the P. G. Council.

23. All suggested amendments will be discussed in the P. G. Council and will come into effect on recommendation of the P. G. Council and formal approval of

the same by the Chairman."

These rules are subject-matter of challenge as according to the petitioner, the Union will be dominated by the P. G. Council which will be free to indirectly control it being in a position to change or amend the constitution according to its will. However, the main dispute relates to the restriction introduced in Rule 14(b) which provides that a member admitted to a second P. G. Department or continuing in the same class/ year for a second or subsequent year shall not be eligible to contest for any post in the election. In order to appreciate the controversy, in-our opinion, it is necessary to refer to some relevant provisions contained in the constitution of the Students Union which are quoted below in extenso.

"2. Membership of the Union

(a) Each student of the Post-Graduate Department of the University is a member of the Union and is eligible for election to any of its offices subject to the provisions of articles 8 and 10. No one whose name is not on the rolls of a Department and who has not paid his tuition and annual fees can be a member of the Union.

b) Every student of the University shall pay an annual subscription as may be determined by the authorities from time to time.

8. The Vice-President

a) The Vice-President must be a member of the Union and must not belong to the final year class.

b) In the absence of the President, the Vice-President shall assume all the functions and discharge the duties of the President.

14. Election

a) Once in the beginning of each academic session, on such date as the Chairman may appoint, ordinarily not later than six weeks from the last date of admission, the General Election shall be held for different offices of the Union, provided that the normal conditions prevail. In the event of delay, the elected student representatives may elect the Office Bearers within a month by indirect election as may be decided by the P. G. Council.

b) Subject to other provisions of the constitution, all members of the Union, are eligible to contest in the election provided that a member cannot contest for more than on epost and also provided that a member admitted to a second P. G. Department or continuing in the same class/year for a second or subsequent year shall not be eligible to contest for any post in the election.

c) Nominations for election duly proposed and seconded by bona fide membes shall be filed with the consent of the nominee at least four clear days prior to the election by personal appearance before the Adviser or his nominee.

- d) Every member of the Union shall have a right to vote in the election and no member shall cast more than one vote for each office to be filed.
- e) Election shall be conducted by secret ballot and votes shall be recorded and attested in such a manner as the Chairman shall determine.
- f) At the time of counting of the ballot papers, the candidate or his/her authorised agent is expected to be present.
- g) Any objection made by the candidate or the agent at the time of counting has to be given in writing to the Adviser whose decision thereon shall be final.
- h) The candidate obtaining largest number of votes shall be declared elected.

In case two or more candidates obtain equal number of votes and election of the successful candidate shall be determined by lot.

j) The Advisor may make informal announcement of the results of the election before the final declaration of the results by the Chairman. Where there is a difference of not more than three votes between the winning and the next candidate and a request is made in writing by the concerned candidate within one hour of the informal announcement a recounting may be ordered by the Chairman.

k) After all objections are cleared off and a recoutning, if ordered by the Chairman as per the provisions of Rule 14(j) has been done, results would be finalised by the tellers and on that basis the final results would be announced by the Chairman on receipt of necessary documents from the Adviser."

l) The declaration of the results by the Chairman shall be final and there shall be no recounting thereafter.

m) Ordinarily, oath taking shall be held on the next working day after the declaration of results and the Union Body elect shall arrange for this."

11. The restriction introduced in Rule 14(b) (supra) is defended on the ground that it will discourage students from becoming interested in politics and also do away with the influence of political parties which are taking undue interest in college elections.

12. As seen above, under Rule 2 of the Constitution of the University Students Union, each student of the P, G. Department of the University is a member of the Union and is eligible for election to any of its offices subject to provisions of Rules 8 and 10. Rule 8 provides that a Vice-President must not belong to the final year class and under Rule 10, the Joint General-Secretary must be belong to the final year class. Subject to these restrictions, Rule 2 contains no bar on any member of the Students" Union from contesting any election. Rule 2(a) does not debar a student admitted to a second P. G. Department or continuing in the same class/ year for a second or subsequent year for being eligible to contest for any post in the election"nor does it provide for two types of members, one who joins the

Department for the first time and the other who is admitted to second P. G. Department or continuing in the same class/ year for a second or subsequent year. Thus, on a plain reading of this rule, all students irrespective of whether they have joined the Department for the first time or are repeaters, become members of the Union and thereby become eligible for contesting election to any office subject to course to restriction contained in Rules 8 and 10. Rule 14, intact, relates to the conduct of elections and not to the eligibility of a member of contest the same. Mere perusal of Clauses (a), (c) to (n) clearly indicates this. Clause (b), however, seems to be a misfit in Rule 14 quoted above. In substance, Clause (b) to Rule 14 tries to restrict the operation of Rule 2(a) under which every student of the P. G. Department is a member and is eligible to contest the election to any office of the Union. In our opinion, in view of the specific provisions contained in Rule 2(a), the restriction contained in the later part of clause (b) of Rule 14 restricting the students of P. G. Department cannot prevail.

13. The contention of the opposite parties that the restriction has been imposed to do away with the interference or patronage of political parties, and to prevent students from becoming more interested in politics than in studies cannot be accepted. Once a provision is made for students union and elections, bona fide students of the institution who are members of the Union have the right, subject to reasonable restriction, to contest for any office. The fact that he is a student and a member of the Union gives the petitioner this right and Rule 2(a) of the Constitution itself recognises the right. As there are elections, there is bound to be some amount of politics involved in it as politics in our country has become the way of life. Practically every P, G. student is an adult and a voter who casts his vote in the general election and is old enough to understand his responsibility. If political parties have started interfering in the matters relating to colleges/university students union, it is unfortunate, but such interference, if any, cannot be helped. Indeed, even elections to private associations and also the Cantonment Boards which are not to be on political lines are now being contested on party basis though without showing it as such. The living example of political patronage to University Students Union Election is the Election of Delhi University Students Union. These are some of the aspects of which the Court can take note. What is happening with the students union of Delhi University is also happening or likely to happen elsewhere and we think that debarring a student admitted to a second P. G. Department or a repeater candidate from contesting the election will put an end to the interest of political parties in college election is, in our opinion, a wishful thinking. If political influence has entered the students life and in the activities of the Union, it is bound to be there irrespective of the fact whether a student contests for the first time or the second time, it cannot be avoided. We are also not impressed with the contention of the opposite parties that permitting a student to contest more than once will mean that he is more interested in politics and not in studies, nor are we prepared to accept the submission that it is not proper for a student to hold any office more than once. Since it is a question of election, a person can be

elected any number of times as long as the electorate prefers him. Even the Representation of People Act does not restrict the number of times a person can contest the election or for being elected. Indeed, it is seen that once a person is elected, he continues to contest the elections times without number and if for some reason he is not able to contest or in case of his demise, opportunity is given to one of his dependants or family members to contest the election. If in view of the prevailing circumstances, a student desires to contest each election of the Students Union, we see no harm in it, for if he is not wanted, the electorate is free to reject him.

14. It cannot be denied that in our country, politics is now more or less a profession and finding that other professional opportunities are very limited, it is quite possible that a student keeps changing Department in order to contest elections so that he may come in contact with professional politicians or political parties with a view to entering the profession of politics. If this is his aim, one can hardly blame him. for he has every right to choose politics as his profession. For bringing politics to the Students Union Elections and Institutions, politicians and not the students are to be blamed.

15. We have seen that once a person joins the Post Graduate Department, he becomes a student of the P. G. Department and automatically acquires membership of the students' union. He thus becomes a voter and subject to provisions of Articles/ Rules 8 and 10 of the Constitution of the Union becomes eligible for election to any office of the Union. In this view of the matter, we feel, the restriction that a member admitted to a second P. G. Department or who continues in the same class/year for a second or subsequent year will not be eligible to contest for any post in the election cannot be said to be reasonable. A right of any student who is a member of the Union and a voter thereof to contest the election any number of time cannot, in our opinion, be curtailed. That part of the provisions which contains this restriction in Rule 14 of the Constitution of the Students' Union therefore cannot be sustained.

16. The petitioner also challenges the jurisdiction of the P. G. Council to amend the constitution. It is urged that there is no provision under which the P. G. Council can exercise powers to amend the constitution. According to the opposite parties, the power to introduce the restrictions by amending the constitution of the Students' Union flows from Rule 252 of the First Statutes. Though the University has fairly conceded that no specific power is contained in the said Rule relating to the constitution of the Students Union, it cannot be denied that the constitution under which the petitioner claims a right to contest the election was itself approved by the P. G. Council in terms of the First Statutes of 1990 of the Utkal University. Clause 4(c) of Rule 252 of the Statutes, no doubt, refers to matters relating to Students' discipline and welfare. In our opinion, the terms are wide enough to include within its fold the power to frame the constitution of the students union and matters relating to election to the said Union. We may also make a reference to the rules of P. G. Council which were approved by the

Syndicate which provide for the formation and functions of the P. G. Council. Rule 13 thereof provides for functions that may be assigned to the P. G. Council. Amongst others the P. G. Council has been assigned matters relating to "students" affairs". The constitution of the Students" Union and framing of provisions relating to elections to various offices of the Students" Union are definitely matters which relate to "students" affairs". Therefore, the contention that the P. G. Council does not have the power to amend the constitution of the Students" Union, cannot be accepted.

17. In view of the discussions made above, it is declared that that portion of Rule 14(b) of the Constitution of the University Students Union which provides that a member admitted to a second P. G. Department or continuing in the same class/ year for a second or subsequent year shall not be eligible to contest for any post in the election, is unsustainable and is, therefore, held to be inoperative.

The writ application is partly allowed, but in the circumstances, without any order as to costs.

D.P. Mohapatra, A.C.J.

18. I agree.