
(2019) 03 DEL CK 0221

In the Delhi High Court

Case No : Civil Writ Petition No. 2370 Of 2019, Civil Miscellaneous Application
No. 11060 Of 2019

N Sai Balaji & Ors

APPELLANT

Vs

Jawaharlal Nehru University & Anr

RESPONDENT

Date of Decision : 20-03-2019

Acts Referred:

Citation : (2019) 03 DEL CK 0221

Hon'ble Judges : Yogesh Khanna, J

Bench : Single Bench

Advocate : Akhil Sibal, Govind Manoharan, Abhik Chimni, Shriya Mishra, Monika Arora, Kushal Kumar, Harsh Ahuja, Parveen Singh

Judgement

Yogesh Khanna, J

1. This writ petition has been filed with the following prayers:

"a. Issue a writ, order or direction in the nature of writ of declaration or any other appropriate writ, order or direction declaring the Petitioners the elected office bearers to the JNUSU;

b. Issue a writ, order or direction in the nature of writ of declaration or any other appropriate writ, order or direction quashing Item i under "Any other matter" as recorded in the 278th Executive Meeting held on 15.02.2019;

c. Issue a writ, order or direction in the nature of writ of declaration or any other appropriate writ, order or direction declaring that the Dean of Students (Respondent No.2) has no powers under the Lyngdoh Committee Recommendations as approved by the Hon'ble Supreme Court of India to recognize/derecognize/ nullify the elections to the JNUSU held annually at the Jawaharlal Nehru University;

d. Issue a writ, order or direction in the nature of writ of mandamus or any other appropriate writ, order or direction to the Respondents herein to give effect to

the results of the JNU Students' Union results for the academic year 2018-19 as declared on 18.10.2018 by the JNU Election Committee and perform all consequential acts as per the JNU Act, 1966, its Statutes, Ordinances and Regulations;

e. Issue a writ, order or direction in the nature of writ of mandamus or any other appropriate writ, order or direction to the Respondents herein to give wide publicity by publication on the official notice boards as well as the website regarding the newly elected office bearers to the JNUSU for the academic year 2018-2019; and

f. Issue a writ, order or direction in the nature of writ of certiorari or any other appropriate writ, order or direction striking down the communication dated 12.10.2018 issued by the Respondent No. 2 herein as being arbitrary, illegal and contrary to the Lyngdoh Committee Recommendations as approved by the Hon'ble Supreme Court and JNU Act, 1966, its Statutes, Ordinances and Regulations;

g. Issue a writ, order or direction in the nature of writ of certiorari or any other appropriate writ, order or direction striking down the Press Note dated 13.02.2019 issued by the Respondents herein as being arbitrary, illegal and contrary to the Lyngdoh Committee Recommendations as approved by the Hon'ble Supreme Court and JNU Act, 1966, its Statutes, Ordinances and Regulations; and,

h. Pass any such further order as this Hon'ble Court may deem fit."

2. The recommendations of the committee constituted by the Ministry of Human Resource Development, Government of India under the orders of Supreme Court are noted in *University of Kerala (1) vs. Council, Principals, Colleges, Kerala and Others* (2006) 8 SCC 304 as under :

"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' bodies.

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 following models may be adopted.

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 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.

6.8. 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 are 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 grievances, 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 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 fulfil those duties. In executing those duties it 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.

6.8.6. 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 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 twenty-four hour time constraint.

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? Decisions, orders and rulings of the Grievance Cell must be concurred to by a majority of the Grievance Cell members 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 the 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.

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.

4. We, however, direct modifications in paras 6.6.2 and

6.9.1. The expression "and audited accounts" in para 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 para 6.9.1 i.e. "12 hours" shall be substituted by the words 6 hours"

3. A Notification dated 14.08.2018 issued by the office of Dean of students is as under:

"As per the Guidelines (Clause 6.8 of the Lyngdoh Committee Recommendations), the Vice-Chancellor has constituted a "Grievances Redressal Cell" with immediate effect and until further order, with the following members, with the mandate for the Redressal of election related grievances, including but not limited to breaches of the code of conduct of elections and complaints relating to election-related expenditure:

1. Professor Umesh Ashok Kadam, Dean of Students Chairperson

- 2.Dr.Vandana Mishra,CCP&PT/SSS Member
- 3.Dr.Asheesh kumar,CSSS/SSS Member
- 4.Ms.Dolly Purohit,CHS/SSS Member
- 5.Mr.Rohit Ashok Kumar Mule,CWAS/SIS Member
- 6.AR/DR (IHA) Member Secretary"

4. Admittedly, the elections of the Student Union were held and result was declared on 16.09.2018. As per the guidelines, all the members of the students' union were to submit detail of expenses incurred in elections within two weeks thereafter.

5. The university by its letter dated 09.10.2018 asked the students' union to submit complete audited accounts as also the original bills for expenses incurred in JNU Student Union Elections 2018-19 by the evening till 5 PM in the office of Dean, which documents were submitted by the students, yet the Dean desired as under:

"This is with reference to the collective original bills for the expenditure incurred during JNUSU elections 2018-19 submitted on 09.10.218 in the office of the Dean of Students. In this connection, it is informed that the bills submitted are not in accordance with Clause 6.6.2 of the Lyndoh Committee Recommendations (LCR) which clearly provides that;_

6.6.2: Each candidate shall, within two weeks of the declaration of the result suit complete and audited accounts to the College/University authorities. The college/ University shall publish such audited accounts, within 2 days of the submission of such accounts, through a suitable medium so that any member of the student body may freely examine the same.

It is further informed that each candidate is required to submit original bills bearing GST number and not be self attested by each Candidate, failing which clause 6.6.3 will be applied which clearly provides that:

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. In view of the above, it is again informed that the bills submitted by you are not in order as per the format required for audit."

6. The students' union represented to the Dean vide its letter dated 15.10.2018 as under:

"We are the 19 students who have run a combined campaign for JNUSU elections 2018-19 and incurred a total expenditure of total of Rs 92,634 which was shared equally and hence , each of us individually spent Rs 4875.5/- and submitted our detailed statement on 28' September, 2018, The format in which we submitted the expenditure is exactly the same in which we have submitted "accounts every year since implementation of the Lyngdoh Committee Recommendations (LCR),

from the year 2012. The DoS has never raised any query regarding -that format in all these years since the Match 2012 elections -not even this selfsame Administration raised any query about the format in the past two years.

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However we were shocked to see a letter dated 12th October from the DoS asking us to produce GST bills and to have each and every such bill counter-signed by all the 19 candidates! We are willing to counter-sign the bills submitted by the 19 candidates provided the DoS gives us an opportunity. We would like to bring to the notice of the DoS that we are not liable to know whether the concerned shop from which we bought articles is eligible for GST or not. There are numerous shops in and around JNU whose turnover is less than the prescribed limit under GST rules, above which the law applies."

7. On 18.12.2018 the students' union wrote to the Rector-I JNU as follows :

"It has come to our notice that a CDC meeting is to take place on 18 December 2018. As an elected office-bearer of the JNU Students Union it is most unfortunate that the agenda has not been shared with us and neither have the Students Union representatives been invited to represent the interest of the student community in the CDC. It is also against the procedural norms of the university to confirm the minutes of the last meeting where the JNUSU was present. Student representation is mandatory for the conduct of the CDC and if this plea is ignored we shall have to proceed to higher authorities and legal channels to nullify the decisions taken at this meeting, if need be."

8. On 09.01.2018 the Assistant Registrar (Estate) wrote as follows :

"I am desired to refer to your letter dated 27.11.2018 vide which you have sought copies of some documents relating to CDC and shop allotment in JNU. In the ibid letter you have stated yourself to be the Vice-President, JNUSU and the current Convener on behalf of JNUSU. In this regard, I am further desired to inform you that the Estate Branch has not received any notification regarding newly elected office bearers of JNUSU. As such, you may not be treated as the Convener (CDC) from JNUSU side. Hence, your request cannot be acceded to."

9. In 278th meeting, held on 15.02.2019 of JNU the above issue was taken up in the category of Any Other Matter and it was resolved :

"1. Dean of Students apprised the Executive Council that election results of JNUSU for 2018 have not been notified so far because the contesting students have not submitted the complete accounts as required which is violation of the Lyndogh Committee recommendations approved by the Hon'ble Supreme Court of India. He also pointed out that despite this, some of the Schools/Centres have been inviting such students to attend meetings of various bodies of their Schools/Centres.

Taking a serious view of this, the Council decided that Registrar would issue a

Circular to all Deans of Schools/ Chairpersons of Centres/ Special Centres not to allow those students to attend meetings of various bodies at School/Centre level."

10. Hence the petitioners press their CM No.11060/2019 with prayer (a) and (b):

"a) An ex-parte ad-interim order staying the resolution passed as Item 1 under "Any other matter" as recorded in the 278th Executive Meeting held on 15.02.2019 during the pendency of the instant writ petition;

b) An ex-parte ad-interim order directing that the Respondents to permit the participation of the petitioners/applicants in the various committees/councils as per JNU Manual annexed as "Annexure P-2" of the instant writ petition during the pendency of the instant petition;"

11. The effect of the impugned resolution would be the students shall not be invited in the meetings of Academic Council, Board of Students, Health Advisory Committee, Campus Development Committee, Standing Committee on Admissions and other Committees, meant for the welfare of the students.

12. It was argued on behalf of the University on 27.08.2018 the petitioner was put to an advance notice of clause 6.2 of the Lyngdoh recommendation vide which the candidates were required to submit their audited accounts within two weeks from the date of declaration of the result and if they do not submit, the Dean shall not notify the final result. It is alleged by the University the elections were held and the result was declared on 16.09.2018. On 04.10.2018 and on 09.10.2018 JNUSU office was asked to submit accounts/expenses (original bills) incurred in conducting the JNUSU elections 2018-19 lest per Clause 6.6.2 and 6.6.3 the elections shall be nullified.

13. It is alleged the petitioner was time and again informed qua the compliance of clause 6.6.2 of Lyngdoh recommendation but despite that the JNUSU failed to submit its accounts of expenditure and hence the elections 2018-19 were never notified and the petitioners even failed to approach the Grievance Cell.

14. Heard.

15. A bare perusal of the recommendations would reveal the Supreme Court never asked for audited accounts and rather required filing of certified accounts, which infact were submitted in the same manner as were being submitted since the year 2012 and as lately as in 2016 and in 2017. Admittedly, no format was ever prescribed to the Students prior to elections as to how and in what manner they need to submit their election expenses, hence they, allegedly followed the past practices.

16. Neither the university ever demanded original bills since 2012 nor those be of GST compliances, but allegedly demanded it for the first time in 2018-19 and that too after the results were declared. Now if the University was to change its past practice it ought to have put the students to advance notice qua their duty to file separate accounts, submit original Bills, with GST no. etc. Prima facie,

after the elections the University cannot, allege breach of Lyngdoh recommendations. None of the letters relied upon by the University were addressed to contesting candidates.

17. Much reliance is though placed by the University on clause 6.6.3 which says the election of the candidates shall be nullified in the event of its non-compliance or if excessive expenditure is incurred, but it is equally important to know who shall decide such non-compliance? The answer is the Grievance Redressal Cell, as is noted in clause 6.8.1 of the recommendations. The arguments of the University viz. the petitioner ought to have approach the Redressal Cell, is misconceived since the complaint is made against the Union and not by the Union. Thus, without referring the issue of expenses to the Grievance Redressal Committee, the Council on its own could not have restrained the JNUSU to attend various committee meetings meant for student's welfare.

18. Thus in the circumstances, it would be appropriate if the matter be taken up by the Grievance Redressal Cell, constituted vide notification dated 14.8.2018, who shall decide, per Lyngdoh recommendations and per past practice since 2012 a) if the candidates committed default in non-filing of the certified accounts; and b) the manner such accounts were being filed since 2012 till last year and then only to decide if there was any non-compliance as alleged, of course, on giving the student's union, a right of hearing. Report be filed within two months. The matter be now listed on 17th July, 2019 and till then the Minutes dated 15.02.2019, so far it relate to the issue of circular to all Deans of Schools/ Chairperson of Centres/Special Centres restraining the students to attend meetings of various bodies at School/Centre level shall be kept in abeyance as no prejudice shall be caused in attending such welfare meetings by Students' Union.

19. Notice is thus issued. The respondent to file counter affidavit within six weeks from today within an advance copy to learned counsel for the petitioner. Rejoinder, if any, be filed within six weeks thereafter.

20. List on 17.07.2019.