
(2006) 12 AHC CK 0054
In the Allahabad High Court

Shri Kant Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-12-2006

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2007) 1 AWC 885(1)

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Judgement

S.N. Srivastava, J.—Heard learned Counsel for the petitioner and learned Counsel for Deen Dayal Upadhyay Gorakhpur University as well as learned Standing Counsel and perused the materials on record.

2. On the consent of learned Counsel for the parties, this writ petition is being disposed of finally.

3. From the materials on record, it transpires that according to the directions contained in the judgment of the Apex Court in *University of Kerala v. Council, Principals, Colleges, Kerala and Ors.*, Deen Dayal Upadhyay Gorakhpur University, Gorakhpur has framed Ordinance and in accordance with the newly enforced Ordinance, namely, Deen Dayal Upadhyay Gorakhpur University, Gorakhpur Students' Union Ordinance, election proceedings were initiated and election programme was published, nomination papers were filed and accepted on 4th December, 2006. It further appears from the record that at the time of scrutiny of nomination papers of the candidates, it was found that some candidates have criminal history and the trial is going on, but they have filed their nomination papers alongwith an affidavit to the contrary. It further appears that some dispute arose on this issue and University sought legal opinion from its Counsel. It also appears that on 7th December, 2006, University also sought legal opinion of the Learned Advocate General, Uttar Pradesh, but it appears that the opinion has not been given so far to the University by the learned Advocate General.

4. Considered arguments of learned Counsel for the parties and the relevant provisions under the Ordinance as well as the directions contained in the judgment of the Apex Court (Supra).

5. The Apex Court in Paragraph 6.5.7. of the judgment has clearly directed that a 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 misdemeanour. Paragraph 6.5.7. of the judgment is being reproduced below:

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 misdemeanour. The candidate shall also not have been subject to any disciplinary action by the university authorities.

6. Similar is the provision of Section 11 (Aa)(iii) of the Ordinance of Deen Deen Dayal Upadhyay Gorakhpur University, Gorakhpur enforced by the University.

7. In view of the discussions made above, it is clear that any student against whom any trial in a criminal case is going on is disqualified to participate in the Students' Union's election. In case any such student has filed his nomination papers with a wrong affidavit, the nomination paper of that student/candidate could be rejected.

8. The intention for establishing Students' Union is to create discipline in the students' community and to prepare them for the constitutional democracy under the Constitution of India which has been accepted by the people of India. Such students who have criminal backgrounds cannot be permitted to enter into the Students' politics. Moreover, the judgment of the Apex Court in University of Kerala (Supra) is binding on all the Courts under Article 141 of the Constitution of India, the same is being reproduced below:

141. Law declared by Supreme Court to be binding on all Courts:

The law declared by the Supreme Court shall be binding on all Courts within the territory of India.

9. In view of the discussions made above, it is made clear that University authorities are competent to pass appropriate orders in case any student files nomination with a false affidavit and such nomination could be cancelled by the University authorities and University authorities are also fully competent to proceed with the election with the remaining candidates found eligible to contest election in view of the fact that election process has already commenced.

10. With the result, writ petition is disposed of with the direction that University authorities shall proceed with the election after fixing a date for election of Students' union on the basis of remaining nomination of eligible candidates in accordance with the newly enforced Ordinance and the elections shall be held as early as possible, but not beyond one month from the date of production of a certified copy of this order.

11. In view of the judgment of the Apex Court in University of Kerala (Supra), the State Government is directed to deploy the required number of Police Force including P.A.C. personnel and shall also take all effective steps to ensure peaceful conduct of election and for safety and security of the Teaching and Non-teaching staff associated with the election work of the Students Union.