

Vikas Singh Vs Banaras Hindu University and Another

Court: Allahabad High Court

Date of Decision: Sept. 20, 2012

Acts Referred: Constitution of India, 1950 " Article 144, 19 Finance Act, 1994 " Section 76, 78, 85

Citation: (2013) 2 ADJ 211 : (2013) 2 AWC 1376

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Advocate: U.N. Sharma, Chandan Sharma, Abhishek Rai, Rastrapati Khare and Anjana Chaturvedi, for the Appellant; Hem Pratap Singh, Arun Prakash Srivastava and K.R.S. Jadaun, for the Respondent

Final Decision: Allowed

Judgement

A.P. Sahi, J.

These two writ petitions raise a challenge to the Ordinances of the Banaras Hindu University Students' Council framed by

the University pursuant to the: directions issued by the Apex Court in the case of University of Kerala Vs. Council, Principals", Colleges, Kerala

and Others, , It is to be noted that the matter has been referred to a larger Bench vide orders of the Supreme Court in 2010 (1) SCC 353.

However, again on an interim application further directions modifying the earlier directions have been issued by the Apex Court on 8.12.2011

which order has also been brought on record. The petitioner, Vikas Singh, is a Ph.D. Student of the respondent University doing his research in

Hindi from the Arts Faculty and is a student on the rolls of the respondent University.

2. Praveen Kumar Singh who is the petitioner in the second writ petition is also a research student of the same university.

3. The basic challenge in the writ petitions is to the inclusion of certain provisions that defy the judgment of the Apex Court and for that this Court

framed the following questions vide its order dated 13th September 2012 calling upon the University to answer the petition which is as under:

Heard Sri U.N. Sharma, learned Senior Counsel for the petitioner.

The challenge in this petition is to the vires of clause 4.1.1, 4.1.2 and 4.1.3 of the Ordinance of Banaras Hindu University Students' Council; copy

whereof has been filed as Annexure-1 to the writ petition, on the ground that they are ultra vires, the directions issued by the Supreme Court

accepting the recommendations of Lyngdoh Committee report in the order passed in the case of University of Kerala Vs. Council, Principals",

Colleges, Kerala and Others, . It is to be noted that the said case has been referred to a larger Bench vide order reported in (2010) 1 SCC 353.

Sri Sharma contends that the recommendations, which have been directed to be implemented, contain a stipulation in paragraph No. 3 (6.1.8) of

the 2006 order where a prohibitory recommendation has been made clearly reciting that the Union or the representative body so elected shall only

be comprised of regular students on the rolls of the institution and no Faculty Member or any Member of Administration shall be permitted to hold

any post on the executive body of such representative body nor shall be allowed to be a Member of any such representative body.

The contention, therefore, is that the offending provisions, which are under challenge and referred to herein above, place the Vice-Chancellor as a

patron, with powers to him to nominate one person of the University as Chairperson and the Dean of the students of the University as the ex-

officio Vice-Chairperson of the students Council. Sri Sharma, therefore, contends that the aforesaid provision, being ultra vires to the aforesaid

direction of the Supreme Court as accepted, deserves to be set aside as the same interferes with the constitution of the Council as laid down by the

Apex Court.

Sri V.K. Singh; learned Senior Counsel, assisted by Sri K.R.S. Jadaun, for the University prays for time to obtain instructions and assist the Court

as this is a purely legal issue.

Put up on Tuesday next.

4. Sri V.K. Singh learned senior counsel, alongwith Sri K.R.S. Jaudan and Sri Hem Pratap Singh, has explained the case of the University through

an affidavit filed by the Deputy Registrar (Academic) stating therein that the composition of the Students" Council doss not include any faculty

member or administrative officer of the University and he has invited the attention of the Court to the relevant clauses which shall be discussed

hereinafter to contend that they do not in any way violate either the directions of the Apex Court or the recommendations of the Lyngdoh

Committee.

5. Advancing the submissions on be-half of the petitioners in both the writ petitions Sri U.N. Sharma, learned Senior Counsel and Sri Rashtrapati

Khare have urged that the formulation of the ordinances are clearly in violation of the directions of the Apex Court which has approved the report

of the Lyngdoh Committee particularly Ordinance Nos. 4.1.1, 4.1.2 and 4.1.3. They further submit that on account of this incorrect incorporation

in the ordinances, contrary to the aforesaid order of the Supreme Court, all other ordinances in relation to the affairs of the students' council are

also directly affected inasmuch as the Vice-Chancellor of the Banaras Hindu University in exercise of his powers as Patron of the Council has been

conferred with wide powers and he has also been mantled with the power of appointing one of the professors of the University as Chair-Person of

the students' council. It is further pointed out that the Chair-Person, namely, a Professor of the University has again been extended wide powers

under the provisions of the said ordinances for which the attention of the Court has been invited to the provisions of Ordinance No. 9.1, 9.2, 11.1,

11.2 and 11.3. It is urged that the distribution of powers between Patron, the Chairperson and the Vice-Chairperson clearly indicates a deep and

pervasive control of these authorities over the council by their inclusion, which according to the petitioners is clearly prohibited in terms of

paragraph 6.1.8 of the report of the Lyngdoh Committee as approved by the Apex Court in paragraph 3 of the order in the case of University of

Kerala (supra). They further contend that this control by the inclusion of these Office Bearers clearly amounts to an exercise of powers over the

representative body and the executive body of the students' council in spite of having been prohibited and hence the aforesaid provisions, by which

the Vice-Chancellor, one Professor of the University and the Dean of students have been included, are ultra vires the orders passed by the Apex

Court and the report of the Lyngdoh Committee as accepted in the case of University of Kerala (supra).

6. In order to appreciate the controversy as raised in the present petition it would be appropriate to extract Clause 6.1.8 as contained in paragraph

3 of the Judgment of the Apex Court and the same is quoted hereinafter:

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.

7. On the strength of the aforesaid directions, it is urged that the provisions of the Ordinances of the Students' Council to the extent they are hit by

the aforesaid direction deserves to be annulled. For this, learned counsel for the petitioners have again particularly invited the attention of the Court

to the offending Ordinances 4.1.1, 4.1.2 and 4.1.3 which are extracted hereinafter:

4.1.1. The Vice-Chancellor of the Banaras Hindu University shall be the Patron of the Banaras Hindu University student's Council. The Patron

shall take all necessary steps to ensure that the student's council functions in accordance with this Ordinance.

4.1.2 The Patron shall nominate one of the professors of the university as the Chairperson of the Banaras Hindu University student's council.

4.1.3 The Dean of the students, BHU will be ex-officio Vice-Chairperson of the Banaras Hindu University student's Council.

8. The submission, therefore, of the learned counsel for the petitioners is clearly to the effect that the inclusion of these three authorities in the

students council amounts to an indirect method of exercise of full control over the students' council that is in teeth of the Judgment of the Apex

Court.

9. Sri V.K. Singh, learned Senior Counsel for the University contends that the University has had a glorious history in the past and it has been

functioning since its inception but on account of certain intervening events, the University had faced a large number of students' problem that had

widely affected the academic atmosphere of the University resulting in total disruption of the academic process for which the University was

established.

10. He has invited the attention of the Court to the objects and reasons as well as the various comments for the purpose of demonstrating that the

University was established for a very exalted purpose of providing higher education, but with the passage of time during recent years the University

had also to take the extreme step of abolishing the union. It would be worthwhile extracting the affidavit filed on behalf the University from

paragraph 3 to paragraph 12 of the counter-affidavit filed today.

3. That the University used to have the old kind of Students' Union till 1986 when it was abolished. The same model is being sought to be

reintroduced. Till that time frequent violence, lathicharge, arson and rampage by the students was an order of the day, when lead to frequent

closures of the University sine-die regularly, some-times once a year and sometimes twice a year. The inertia continued till the sine-die closure in

1987. The academic session was enormously delayed and even the brilliant students used to complete the three years degree course in five or six

years. In such a situation, even talking about excellence in education or research was paradox.

4. That the University did not have a Students' Union for six years, during such, the academic sessions were regularised, the University started

having entrance test for admissions and the situation started returning back to normalcy with students completing three years degree course in three

years itself. An atmosphere of teaching-learning became available in the University.

5. That the Students' Union elections were reintroduced in the old form in 1992 and it continued till 1997 when the University has to abolish it

again. This phase also witnessed an equivalent situation of violence, rampage and arson and the University was forced closed sine-die in 1994 and

again in 1997. The violence during the chain of events leading to sine-die in 1997 was to an extent that two students had to loose their lives. The

situation worsened to such an extent that for the next ten years, the idea of a Students" Union in BHU was frightening.

6. That the experience of Students" Union in BHU has been very bitter, partly due to the peculiar socio-economic setting of this relatively deprived

region. The University imparts quality higher education to the talented poor who are only interested in education and are fearful of the aftermath of

Students Union election. Varanasi is situated in relatively backward Eastern-UP and is very close to the other under developed states of Bihar,

Jharkhand, Chhattisgarh and Madhya Pradesh.

7. That given the socio-economic setting of this University, the hope and aspirations of the people of this entire region from a University of the

stature of BHU can easily be estimated.

8. That the period often years from 1997-2007, devoid of any Student Union, witnessed a phase of unprecedented growth and development in

every field of activity particularly teaching-learning and research. The University rose from a status of disorder, backwardness and mediocrity to

gain the status of order, punctuality, contemporariness, and excellence in every field, culminating in the University being declared the best University

of India in a survey jointly conducted by India Today- Neilson in 2010. Since then, the University, has maintained its position among the top three

Universities of the Country in consecutive surveys by the same agencies. Other agencies have also given the University and its various faculties

similar ratings.

9. That prior to 29th June, 2012 the University had Four (04) Institutes namely, Institute of Technology, Institute of Medical Sciences, Institute of

Agricultural Sciences and Institute of Environmental and Sustainable Development, Sixteen (16) Faculties with 135 Departments/Schools and

independent interdisciplinary Centres for Research and Studies. Most of these Units are actively involved in Research and Studies which is amply

reflected in the performance of the University indicated in the above paras. Further, consequent upon Institute of Technology (Amendment) Act

2012 coming into force from 29th June, 2012 the erstwhile Institute of Technology has gained the status of Indian Institute of Technology (Baranas

Hindu University) as an independent entity within the Campus of Banaras Hindu University. The Campus is so far seamless. Simultaneously, Faculty

of Science and Faculty of Management Studies have been recommended by the Academic Council and Executive Council of the University for

conversion into the Institute of Science and Institute of Management Studies, respectively. Therefore, the complexity of the Banaras Hindu

University is reflected in the spectrum of Institutions/Faculties within its seamless boundaries. Any student unrest in any of its Units is likely to

adversely affect the teaching-learning environment of other Units actively involved in conduction of different programmes and research.

10. That the Executive Council of the University is working on providing greater autonomy to the Faculties/ Institutes within its ambit. Accordingly,

vide Executive Council Resolution No. 2 dated 15th march, 2012, the Executive Council of the University has resolved to constitute a Committee

for working out details of certain academic, administrative and financial powers to Institutes and Faculties with a view of increasing the autonomy

of these Units. The idea is to move forward towards a federal arrangement where its various constituents may have more freedom in the decision

making process.

11. That consequent upon receipt of reference from the University Grants Commission regarding acceptance of Lyngdoh Committee

recommendations by the Hon'ble Supreme Court, the University in 2007, instituted a mechanism for constitution of a Students' Council which was

based on "nomination model" as provided in paras 6.1.2 and 6.1.3 of the said recommendations. Subsequently review of the initial model was

conducted as per the provisions contained in para 6.1.4 of the said recommendation and by the end of the 5th year, i.e., from the Academic

Session 2011-12 the University substituted the nomination model by "structured election model". The experience was amply encouraging and many

student welfare activities were taken up, under the aegis of the BHU Students' Council, by the University during this period such as Earn While

Learn, tobacco free campus, environment friendly campus, job placement drives, etc.

12. That the elections to the Students' Council in the last academic session 2011-12, were held on the "structured election model" having a three-

tier election process. The Students' Council so formed had all elected representatives among the students and a senior Professor as its Chairman

for guiding the students in their activities and also for the important work of handling significant funds of Earn While Learn Scheme. This year also,

the University is going for election to the Students' Council in the same model after fine tuning its Constitution for liberalizing it further. The revised

Constitution has been considered and approved by the Executive Council in its last meeting.

11. Sri Singh further contends that in order to abide by the directions issued by the Supreme Court the University framed the Ordinances keeping

in view the provisions of the Central Universities Act, 2009 and other models of students' representative bodies of some other universities. The

submission of Sri Singh is that the control which is sought to be exercised is in the interest of the students as well as of the University and in order

to strike a balance certain functions which are supervisory in nature have been allocated under the Ordinances to the Patron, Chairperson and

Vice-Chairperson. He contends that so far as the other parts of the Ordinances are concerned, they are in conformity with the recommendations of

the Lyngdoh Committee report and in these circumstances the contention of the petitioners that the constitution of the students' council is being

altered is not correct.

12. With the aid of the averments contained in the counter-affidavit he further submits that merely by the inclusion of the Vice-Chancellor as

Patron, a Professor of the University as Vice-Chairperson and the Dean Student Welfare as the Vice-Chairperson, does not in any way affect the

running of the Students' Council or its administration exclusively by the students. The control as reflected in the ordinances is only supervisory and

it does not take away the right of the Union to function according to the ordinances. He further submits that this in no way affects the rights of

students to associate themselves as a students' council.

13. He further contends that in order to prevent any future derailing of the academic atmosphere or any adverse effect in the teaching, learning and

research environment of the University, this system of check and balance has been introduced in the Ordinances which in no way affects any of the

fundamental or legal rights of those who intend to get themselves elected on the students' council. The submission, therefore, is that in the absence

of any such contravention as pointed out by the learned counsel for the petitioners, there is no reason to interfere with the ordinances as

complained of by the petitioners.

14. Having heard learned counsel for the parties and having considered their submissions, there is no doubt that the Right to Freedom of

Association is guaranteed under Article 19 of the Constitution of India subject to reasonable restrictions as contained and provided for in sub

clause 4 of Article 19. While considering any person's right to freedom of association it has also construed that the freedom of association of such

individuals when they form an association has to be determined by their wishes and any external imposition either statutory or non statutory cannot

travel beyond reasonable restrictions. The same also cannot be prohibitory in nature nor the association can be compelled to have any member of

a particular choice. This law came to be settled way back almost half of a century in the case of Smt. Damyanti Naranga Vs. The Union of India

(UOI) and Others, , Paragraphs 6 to 9. A Students" Council was, therefore, contemplated to be established in order to augment the basic training

of students and individuals for participation in the larger democratic process of the country. It is this laudable object which was kept in mind when

the Lyngdoh Committee submitted its report.

15. Sri Singh has his apprehension and which are not unreal, namely, that the laudable object with which such students" unions and councils are to

be established, is being hampered by ominous incidents that have been noticed widely not only through the State but through out the country. The

rampage with which such students" union elections are conducted in flagrant violation of the Code of Conduct of Elections leaves no room for

doubt that the apprehension of Sri Singh who represents the University is well founded.

16. Nonetheless, so far as the directions of the Apex Court are concerned they have to be followed and in view of the provisions of Article 144 of

the Constitution of India this Court is also duty bound to implement the same.

17. In the instant case this Court has to confine itself only to the directions of the Supreme Court given in the case of University of Kerala (supra)

where it has been categorically laid down that neither the representative body, nor the executive body of the students" council can be represented

through either a faculty member or a member of the administration of the University.

18. In the aforesaid circumstances and in view of the said provision as approved by the Apex Court it is absolutely clear that the students" council

has to be formed only from amongst the elected representatives of the students on the rolls of the University and no one else. Even though the

directions are of the Supreme Court as an interim measure, needless to emphasize that so long as there is no statutory law, the Supreme Court is

empowered under the Constitution to issue directions which still hold water till today and no law or ordinances can be framed contrary to the said

directions issued by the Supreme Court.

19. In the light of the aforesaid conclusions drawn, there cannot be a second opinion that the University was also bound by the said directions to

incorporate the said provisions religiously to protect and preserve the nature of the Constitution of the students" council. If the same has to be

followed strictly, then the only conclusion is that the students" council cannot have either a member of the faculty or of the administration as an

office bearer of the representative body or the executive body of the students" council.

20. It is trite law that so far as the statutory provisions are concerned, the law is clear to the effect that if the same requires a thing to be done in a

particular manner, then it cannot be done in a different manner and has to be done in that manner alone. The law, therefore, right from 1876

Chancery Division Taylor v. Taylor, till date is the same. The direction of the Supreme Court cannot be termed to be a statute, but its directions

has to be followed like a law validly framed.

21. In the circumstances it was not open to the University at all to have incorporated any provision bringing either the Vice-Chancellor or the

Professor or the Dean of the students on the executive or legislative body of the students" council except to the extent as provided for by the

Supreme Court and contained in the Lyngdoh Committee report approved by it. In the opinion of the Court this direction of the Supreme Court

which is in the shape of a specific rule has been clearly violated and, therefore, the provisions of under challenge are ultra vires to the aforesaid

directions and cannot be legally sustained. They have to be struck down as they bring about a substantial change in the constitution of the students"

council by including the faculty members or members of the administration on the students" council that clearly violates paragraph 6.1.8 as

contained in the Supreme Court judgment.

22. The fall out of the aforesaid conclusion is that the provisions contained as for example the Patron, the Chairperson and Vice-Chancellor and

their functions will have to be drastically altered accordingly. In the aforesaid circumstances the University will, therefore, have to reframe the

Ordinances before proceeding to hold the elections of the Office Bearers with regard to which the challenge has been raised in the present writ

petition.

23. Both the writ petitions are, therefore, allowed and the provisions to which the challenge has been raised and mentioned hereinabove are hereby

struck down with a direction to the University to proceed to frame ordinances only in accordance with the directions given by the Apex Court and

in the event the University finds that a working formula for such a students" council will have to be balanced so as to involve the University, then in

that event the only option left to the University is to approach the Apex Court for receiving any directions in case they are so required in order to

set up a broader frame work of the constitution of the students" council.

24. So long as the University is unable to do so, this Court can only issue a direction to comply with the directions of the Apex Court and none

other. Accordingly the writ petition is allowed. The consequential elections which are proposed to be held for which voting is reported to take

place on 21st to 23rd September, 2012 shall have to be adjourned till such provisions are made so that the elections are held in accordance with

the ordinances to be now framed by the University as observed hereinabove. It shall, therefore, be open to the University to put in abeyance the

proposed elections that are scheduled to be held as indicated herein above. The writ petition is allowed.