

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) Nos. 11333/2009, 11334/2009, 11335/2009 & 11336/2009**

% **Date of Decision : 01.09.2009**

DEEPAK NEGI & ANR.	 Petitioners in WPC 11333.
LALIT KUMAR	 Petitioner in WPC 11334.
ASHOK KHARE	 Petitioner in WPC 11335.
AA ROHIT CHAHAL	 Petitioner in WPC 11336.
Through Mr.Aman Lekhi, Mr.Sudhir Nandrajog, Mr. Vineet Malhotra, Mr. K. Singhal, Mr.Ajay Dignpaul, Mr. Lalit Kumar, Mr.Hari Om Gupta, advocates.	

versus

UNIVERSITY OF DELHI & ORS.	 Respondents.
Through Mr. V.P.Singh, Sr. Advocate with Mr.Mohinder J.S. Rupal, Mr.Jinu Merlyin Abraham, advocates.	

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

SANJIV KHANNA, J. :

1. The four writ petitioners above have impugned action of the Chief Election Officer in deleting their names in the 'list of candidates' for the Delhi University Students' Union (hereinafter referred to as DUSU, for short) Elections 2009-10.
2. By Press Release dated 8th August, 2009, the schedule for

elections to DUSU was announced by the Vice Chancellor in his capacity as the Patron. The Schedule of Election is as under :-

“SCHEDULE OF ELECTION

Last date for receipt of Nomination Papers	Tuesday, the 25 th August, 2009 upto 3.00 p.m.
Scrutiny of Nomination Papers	Tuesday, the 25 th August, 2009 at 3.15 p.m.
Publication of list of duly Nominated Candidates	Tuesday, the 25 th August, 2009 at 5.00 p.m.
Submission of Bank Draft as Security Deposit by duly Nominated Candidates	Wednesday, 26 th August, 2009 up to 3.00 p.m.
Last date for Withdrawal of Nominations	Thursday, the 27 th August, 2009 up to 12.00 noon.
Publication of final list of Candidates	Thursday, the 27 th August, 2009 up to 4.00 p.m.
Date of Election	Friday, the 4 th September, 2009
Timings of Voting	Day Classes 8.30 a.m. to 12.30 a.m. Evening Classes: 3.00 p.m. to 7.00 p.m.
Counting of Votes	Date, time and venue to be announced later

3. The Supreme Court in ***University of Kerala versus Council,***

Principals', Colleges, Kerala and others (2006) 9 SCALE 493 has passed an interim order on the basis of the recommendations made by Mr. J.M. Lyngdoh for conduct of Students' Union Elections in India. Subsequently, Delhi University issued Code of Conduct for candidates contesting DUSU elections, 2009-10 based on the directions of the Supreme Court.

4. The petitioners herein had submitted their nomination papers as candidates for different posts on 25th August, 2009 before 3.00 p.m. In terms of the Schedule of Elections, preliminary scrutiny was done and lists of candidates who were provisionally found to be in order for different posts were published. The notice published specifically stated that the candidates mentioned in the said lists were provisionally found to be in order. Note 1 to the said lists reads as under:-

“The above list is Provisional subject to further detailed verification.”

5. On 27th August, 2009 another notice was published giving list of candidates for different posts. The said list was published after the last date and time for withdrawal of nominations. The names of the four petitioners were included in the list of candidates published on 27th August, 2009 but with asterisk mark and a note applicable to them, which reads as under:

“.....The candidates are required to collect their show cause notice from the Election Office by 7.00 p.m. on 27.8.2009 and submit their explanation and appear in person at 4.00 p.m. on 28.8.2009. Failure to submit the reply and appear in person will automatically disqualify the candidature.”

6. The petitioners collected the show cause notices dated 27th August, 2009 and furnished their explanations both in writing and orally on 28th August, 2009. They were confronted with the material and evidence against them.

7. On 28th August, 2009, final list of candidates for different posts was published. The petitioners' names did not find mention in the said list.

8. Learned counsel for the petitioners submitted that they have not been informed about their disqualification and thus they do not know the reasons for their disqualification. Learned counsel for the respondent-Delhi University, on the other hand, has produced before this Court Memorandum dated 28th August, 2009 issued to the four petitioners stating that on careful examination of records including the print materials/posters and the video recordings available with the election office, the candidature of the petitioners has been cancelled. It is further stated that the said memorandum has been sent through courier on 29th August, 2009. Photocopy of the Memorandum dated

28th August, 2009 and the courier receipts have been furnished to the petitioners. It is stated that the petitioners were shown printed election posters as well as video recordings of the police, Delhi University and news channels. The video recordings establish violation of Code of Conduct. The petitioners were confronted with the said material and asked to respond. It is stated that in view of the ample and definite evidence available to establish and show that there was violation of Code of Conduct the petitioners' candidatures have been cancelled. My attention in this regard has been drawn to Clauses 12, 14, 15 and 16 of the Code of Conduct which read as under:-

“12. All candidates shall be prohibited from indulging or abetting, all activities which are considered to be ‘corrupt practices’ and offences, such as bribing of voters, intimidation of voters, impersonation of voters; canvassing or the use of propaganda within 100 meters of polling centers, holding public meeting, during the period of 24 hours ending with the hour fixed for the close of the poll, and the transport and conveyance of voters to and from polling centers shall also be prohibited.

13. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

14. No candidate shall be permitted to make use of printed posters, printed pamphlet, or any other printed material for the purpose of canvassing. Candidates may only utilize handmade posters for the

purpose of canvassing, provided that such handmade posters are procured within the expenditure limit set out herein above.

15. Candidates may only utilize handmade posters at certain designated places in the Campus, which shall be notified in advance by the College/University authority.

16. No candidate shall, nor shall his/her supporters, deface or cause any destruction to any property of the University/College Campus, for any purpose whatsoever. All candidates shall be held jointly and severally liable for the destruction/defacing of any University/College property.”

9. In view of the aforesaid position, I do not think that the principles of natural justice have been violated. The respondents before taking any action had issued show cause notices stating that large scale violation of the Supreme Court directions as well as the Code of Conduct had been noticed. The petitioners were asked to respond and appear in person. Thereupon they were confronted with evidence and material available. After hearing the petitioners and examining their response to the material and evidence, memorandum dated 28th August, 2009, has been issued cancelling the candidatures of the petitioners.

10. Similarly, the contention of the petitioners that after notices dated 25th August, 2009 and 27th August, 2009 were published

mentioning the list of candidates for different posts, memorandum of cancellation of candidature is not warranted and authorized by law is without merit. Notice dated 25th August, 2009 had specifically mentioned that preliminary scrutiny had been carried out and list of candidates who were provisionally found to be suitable was published . Note 1, which has been quoted above, was categorical that the provisional list was subject to detailed verification. The second notice dated 27th August, 2009 again had a specific note that the petitioners herein who had asterisk marks against them, were required to collect their show cause notices and submit explanation by appearing in person at 4.00 p.m. on 28th August, 2009. Thus notice dated 27th August, 2009 was qualified and subject to the note mentioned in the said notice.

11. The last contention of the petitioners was that the question of disqualification or violation of the directions of the Supreme Court or the Code of Conduct can only be examined by the Grievance Redressal Cell in terms of para 6.8 of the interim order passed by the Supreme Court. My attention was drawn to various sub-paras of 6.8 and it was stated that the Chief Election Officer does not have jurisdiction to cancel the candidatures of the petitioners. Para 6.8 in ***University of Kerala*** (supra) provides for grievance redressal

mechanism by formation of Grievance Redressal Cell to go into the grievances of election relating matters including but not limited to Code of Conduct and complaints relating to expenditure, etc. However, in the present case, complaints were received of violation of the Code of Conduct on 21st August, 2009 and 25th August, 2009. The material and evidence was made available to the respondents. As per the schedule of election quoted above, nominations were received upto 3.00 p.m. on 25th August, 2009 and the nomination forms were scrutinized immediately thereafter. The list of nominated candidates was published at 5.00 p.m. on 25th August, 2009. At that time complaints of violation of Code of Conduct were available along with the material with the respondents but it was not possible to verify the complaints and reject or accept the nominations. Thus only provisional list subject to verification was published. The last date for withdrawal of nominations was 27th August, 2009 upto 12.00 noon and a final list of candidates was published on the same date at 4.00 p.m. Before the said date, complaints for violation of Code of Conduct had not been verified and no order was passed thereon. After examining the material and evidence available with the respondents, the final list was published on 27th August, 2009 carrying the note, quoted above, stating that the candidatures of the students against

asterisk marks was provisional and they should respond to the show cause notice and appear for hearing and give response. In the present case, therefore, the candidature of the petitioners has been rejected at the time of scrutiny by the Chief Election Officer for violation of the Code of Conduct. As per Rule 16 of the Constitution of DUSU, the Patron i.e. the Vice Chancellor appoints the Chief Election Officer and other election officers every year. It is the duty of the Chief Election officer to conduct elections of the office bearers. The said Rule 16(i) reads as under:-

“16. Election

(i) The Patron will appoint every year a Chief Election officer and other Election Officers who shall arrange to conduct the elections of the office-bearers and the members of the Central Council of the Union for that year in various Colleges and Institutions of the University.

(ii) The Staff-Adviser of the Union conduct the elections of the members of the Executive Committee of the Union.”

12. Thus the Chief Election Officer has rejected nominations of the petitioners at the time of scrutiny for violation of the Code of Conduct. Reference to the Grievance Redressal Cell was not required. The Chief Election Officer has acted in terms of the constitution of DUSU and in conformity with Clause 19 of the Code of Conduct. It may be appropriate here to reproduce Clause 19 of the Code of Conduct for

DUSU Elections 2009-10 which is as under :-

“19. Contravention of any of the above provisions of Code of Conduct may make the candidate liable to be stripped of his candidature, or his elected post, as the case may be. The College/University authorities may also take appropriate disciplinary action against such a violator.”

In view of the aforesaid, I do not find any merit in the present Writ Petitions and the same are dismissed.

DASTI under signature of the Court Master.

SANJIV KHANNA, J.

SEPTEMBER 01, 2009.
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