

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.851 OF 2016

- 1 JISAM SALAM,
19 years of age,
Son of Abdul Salam,
r/o h.No. 711/16(4),
Green Hill Colony,
Nandanvan Apartment II,
Flat No.F-2, Porvorim,
Bardez-Goa.
 - 2 Ms. NIKITA NAIK,
19 years of age,
Daughter of Vishwanath M. Naik
r/o H.No. 229, K. K. Raikar Saw Mill,
Near Bank of India,
Vaigin Vaddo, Nachinola,
Bardez- Goa. ... Petitioners
- Versus
- 1 GOA UNIVERSITY,
Through its Vice Chancellor,
Having office at Goa University,
Taleigao Plateau,
Taleigao , Goa.
 - 2 VICE CHANCELLOR,
Goa University,
Having office at Goa Univeristy,
Taleigao Plateau,
Taleigao, Goa.
 - 3 MS. DURGA SACHIT NAYAK,
20 years of age,
Sachit Nayak,
r/o. H. No. 356, Dabol wado,
Chapora, Bardez- Goa.
 - 4 MS. RAJESHWARI SAWANT,
19 years of age,
Daughter of Ramdas Sawant,
r/o. H.No. 66/A, Near Bainarchi Deluxe,
Ansabhat, Mapusa- Goa.
 - 5 MS. PRAJAKTA LOTLIKAR,
19 years of age,
Daughter of Premanand Lotlikar,
r/o Zenith Residency, Block 'B'
Flat G-1, Ambekhand,

- Bardez- Goa.
- 6 SIMRAN BATHAM,
19 years of age,
son of Shyam Batham ,
r/o Simplex Chamber II, HG,
3rd floor, Umta vaddo,
Calangute, Bardez- Goa.
 - 7 MR. ALVIN PHILIP OLIVEIRA,
22 years of age
R/o H.No.158, Bhatkar Vaddo,
Porvorim, Bardez- Goa.
 - 8 Ms. SULAKSHA PRAKASH SHETYE,
21 years of age,
Daughter of MR. PRAKASH SHETYE,
r/o. H. No. 677, Mardi wada,
Morjim Pernem Goa.
 - 9 Mr. TUSHAR VAMAN KELKAR,
18 years of age,
Son of VAMAN KELKAR
r/o 8/82, sirsat Wada,
Mapusa – Goa.
 - 10 ST. XAVIER'S COLLEGE,
Through its Principal,
Mapusa, Goa.
- ... Respondents

Mr. A. D. Bhobe with Ms. S. B. Bhobe, Advocate for the petitioner.

Ms. A. Agni, Advocate for respondent no.1.

Mr. Gaurang D. Panandikar, Advocate for respondents No. 3, 4 , 5,
7, 8 and 9.

**CORAM :- ANOOP V. MOHTA &
NUTAN D. SARDESSAI, JJ**

DATE : 16th March, 2017.

ORAL JUDGMENT : (Per ANOOP V. MOHTA, J.)

Rule. Rule made returnable forthwith. Ms. A. Agni, learned

Advocate waives service on behalf of respondent no.1 and Mr. Gaurang D. Panandikar, learned Advocate waives service on behalf of respondents No.3, 4 , 5, 7, 8 and 9. Heard finally by consent of the parties.

2. The petitioners' prayers are as under :

- (a) For an order declaring the elections of the Respondent nos. 4 and 5 to the post of University Faculty Representatives held on 08/08/2016 as illegal and consequently the same be declared as null and void / set aside.
- (b) For a writ of certiorari calling the records and proceedings of the undated order passed by the Respondent no.2 and upon perusing the legality and propriety of the undated order passed by the Respondent no.2, be pleased to quash and set aside the same.
- (c) The Respondent nos.4 be restrained from functioning / performing any duties of University Faculty Representatives, pending the hearing and final disposal of the present petition.

3. The basic events in the background are as under :

Petitioner no.1 is presently in Second Year B.Com., St. Xavier's College, Mapusa. Petitioner no.2 is presently in Second Year B.Sc., St. Xavier's College, Mapusa.

19/07/2016 College of the Petitioners i.e. St. Xavier's College, Mapusa notified that the students who are interested in filling nomination form for

University Class Representative should submit their mark-sheet of the previous examination, bio-data, declaration of the candidates, expenditure statement alongwith the nomination form.

Last date for filling of nomination forms for the post of University Class Representative was till 3 p.m.

22/07/2016 Petitioners submitted the nomination forms for University Class Representative at the counter no.3 of St. Xavier's College, Mapusa, on within the time limit as permitted. The Election Officer however insisted for estimated expenditure details alongwith the form, though it was not requirement of law.

25/07/2016 Petitioners being apprehensive of the petitioners nomination forms may be rejected in view of the time put on the nomination form by the officials of Respondent no.10 at counter no.3, the petitioners out of abundant caution filed an representation placing on record the aforesaid facts.

Respondent no.10, after receipt of the representation dated 25/07/2016 informed the Grievance Redressal, that the nomination forms of the Petitioners were accepted by the College, list of eligible candidates for University Class Representatives was prepared and accordingly

application dated 25/07/2016 was disposed off.

- 29/07/2016 Election of the University Class Representative was conducted by Respondent no.10, in which elections Petitioners no.1, 2 and Respondent no.6 were declared elected.
- 27/07/2016 Respondent no.3 makes a representation to the Grievance Redressal Cell, Goa University , alleging that the nomination form of the Petitioners and one Mr. Alron Agnelo D'Souza were wrongly accepted and on the said ground the Petitioners and Mr. Alron Agnelo D'Souza were required to be disqualified.
- 28/07/2016 The Grievance Redressal Cell, Goa University after considering the contentions of Respondent no.3, for reasons recorded in its order was pleased to reject the complaint dated 27/07/2016 of Respondent no.3.
- 03/08/16 In terms of the Statute of the Goa University Students Council Representative, the Petitioners on being elected as Univesity Class Representative, filled the nomination forms of University Faculty Representatives. The nomination forms of the Petitioners for the post of University Class Representative were in accordance with the Rules and Statute. The elections for the post of University Faculty Representatives were scheduled on 08/08/2016.

06/08/16 Notice published on the notice board of Respondent no.10, under the caption "*Kindly note the following changes in the earlier displayed list of University Class Representatives Elections held on 29/07/2016*". Following remark was put against the names of the Petitioners and the Respondent no.6 in the said notice dated 06/08/2016: "*declared invalid for late submission of form as per University order*".

Notice dated 06/08/2016 further indicated that Respondent nos.4 and 5, who had lost the elections of the University Class Representative were declared to be elected. The note put towards the names of Respondent nos.4 and 5 was "*Next Candidates Elected*". The notice did not disclose the basis and / or any other details for such an endorsement in the said notice.

08/08/16 Petitioners file objections, to notice dated 06/08/2016 which declared the elections of the Petitioners and/or the forms of the Petitioners being invalid.

08/08/16 Respondent no.10 issues notice contending that the nomination forms allegedly submitted by Respondent nos.4 and 5 were scrutinized, found valid and accepted.

08/08/16 Grievance Redressal Cell, Goa University was pleased to inform the Petitioners that the

representations / objections filed by the Petitioners could not be entertained as according to the Grievance Redressal Cell, Goa University, the forms of the Petitioners were held to invalid and the case of Respondent Nos.4 and 5 was accepted on the basis of an order passed by Respondent no.2.

09/08/16 Petitioners vide application requested for a copy of the order passed by the Respondent no.2 as referred to in order dated 08/08/2016 of the Grievance Redressal Cell, Goa University. It was pursuant to the request that a copy of an undated order passed by Respondent no.2 was issued to the Petitioners.

25/08/2016 Therefore this Petition.

POINTS FOR DETERMINATION:

1. Whether the undated order of Respondent no.2, holding the nomination forms of the Petitioners as invalid and further declaring Respondent nos. 4 and 5(who wee defeated in the elections to the post of University Class Representative held on 29/07/2016) as elected for the post of University Class Representative, is an order which apart from being illegal has been passed in breach and violation of the principles of natural justice of the Petitioners?
2. Whether Respondent no.2 had no jurisdiction to consider issues with regards to the validity of the nominations forms filed by the Petitioners, after 29/07/2016 and more particularly in the absence of any opportunity to the

Petitioners to defend such proceedings assuming the same to be maintainable?

3. Whether the elections of Respondent nos.4 and 5 to the post of University Faculty Representatives held on 08/08/2016 are illegal and consequently the same be declared as null and void/ set aside.
4. Any election required to be conducted within a framework of law, Regulations and Rules so declared in advance. So also the election program, procedure including timely submission of nomination forms by the candidates/ scrutiny of nominations/ withdrawals of candidature/ records of votes and counting of votes. There cannot be any issue that all the concerns are bound by Regulations and Rules.
5. Admittedly, the petitioners were not heard when the Vice Chancellor of Goa University (R2), had passed the order :

Order

Having examined

- (a) The appeal dated 2 August 2016 filed by Ms. Durga Nayak, TY Bsc student, St. Xavier's College, Mapsa, against the decision of the Grievance Redressal Cell (GRS) dated 28th July 2016 on her complaint to the GRC dated 27th July 2016,
- (b) Decision of GRC dated 28 July 2016;
- (c) Letter of the Returning Office, St. Xavier's College, Dr. Maria Fonseca dated 2 August 2016 together with CCTV footage;
- (d) The CCTV footage in presence of Ms. Nayak and Dr.

Fonseca;

And having heard both Ms. Nayak and Dr. Fonseca both individually and together,

I note the following:

(a) Both Ms. Nayak and Dr. Fonseca agree that the Office of the College has recorded honesty on each nomination form the time of submission of each nomination form as per the clock in the Office of the College

(2) The time recorded from the clock in the Office of the College shall serve as the official time for all practical purposes related to filing of nominations.

(3) The time of submission of the above forms was 3.00pm on 22 July 2016.

Keeping the above in view, I issue the following order:

Every valid nomination form must have the time recorded on it by the Office of the College as at or prior to the time limit given for filing of nominations, i.e. 3.00pm on 22 July 2016. Any form with the recorded time of submission after this time limit, i.e. after 3.00pm on 22 July 2016, is invalid."

6. The reference though made to the decision of GRC (dated 28/07/2016) but no observation has been made in this regard and specifically to the findings so recorded in the decision by the Grievance Redressal Committee :

"The GRC then called on the complainant in person and asked her to give more explanation on her grievance.

In the light of the explanation given by the Election Officer and the complainant the GRC decided that the form submitted by the students shall be treated as valid and hence the decision of the E.O. stands and appeal is

disposed.”

7. Presence of complainant and the Election Officer reflect that they were heard but not the petitioners. This fact has been recorded even by the Election Officer that the candidates were present before 3.00p.m. and ready to submit the form. In our view this goes to the root of the matter. It is unacceptable situation that they would not fill their nominations within the time prescribed i.e. before 3.00p.m. The Election Officer, however, as recorded insisted that the petitioners to submit the expenditure detail which was not actually required.

8. The Counsel appearing for the parties have raised and referring to the relevant Statute in Goa University Act, 1994 clauses (i) and (ii) (Schedule SSA-7) which is regarding the benefits. The Counsel appearing for the parties have raised and referring to the relevant Statute including Clause No. SSA-7(ix), SSA-7(x) and SSA-7(xii), there cannot be any issue as already recorded that the concerned parties are required to follow procedure. There was no requirement to submit the permitted expenditure form alongwith the nomination form. The Rule itself provides that the candidates required to submit the same within two weeks of the declaration of the election results. Therefore, the insistence to submit the expenditure form alongwith the form was

an obstruction and indirectly prevented the petitioner to fill the form before 3p.m. The form should have been accepted. Even the Election Officer is bound by the procedure of law by accepting or rejecting such nomination form or other forms. In this background merely because the petitioner was five minutes late in filling the form alongwith the expenditure form so insisted cannot be the reason to treat their form as illegal or invalid as done in the present case. The presence and endorsement that all relevant documents to be submitted before 3.00 p.m. should not be the position even on record at the time of accepting the nomination form filed by the petitioners. Five minutes delay so recorded wrongly in the background by the Election Officer in our view should not have been raised against the petitioners as done in the present matter.

9. There is no remedy available under the Statute to clarify this position and accept the submission before the GRC The Election Officer should have accepted the form without unrequired document, which was not mandated by the concerned Statute.

10. The observation of the GRC ought to have been considered which was admittedly not done while passing the order undated but, however, through the affidavit it reflects it is dated 02/08/2016, no opportunity as recorded above was given to the

petitioners to clarify his position in respect of the decision of the GRC so recorded above endorsing that the petitioners who are present with the Form prior to 3.00 p.m., there is no mention about insistence by the Election Officer for submission of those expenditure charges or details which were not the requirements of the law and that resulted in five minutes delay in submitting the Form.

11. Before the declaration / decision by the Grievance Committee and before final decision by the Vice Chancellor the voting results were declared by the college on 29/07/2016 declaring all the petitioners as elected. However, after the decisions of GRC and the Respondent no.2, the college by reversing earlier election results declared the changes in the list of university Class Representatives election declaring Batham Simran Shyam(Sr. No.4), Salam Jisam Adbulsalam (Sr. No.5) and Naik Nikita Vishwanath(Sr.No.7) as invalid candidates. The revised list accordingly published on 05/08/2016. The University ultimately published the final list of University Class Representatives on 05/08/2016 for the academic year 2016-2017. We have noted and gone through the provisions of Statute which nowhere permits the college to declare the next candidate as elected though admittedly they lost the election to the petitioners. If there is no provision available to make such declaration there was no reason for the college / respondent no.10

to declare and publish such revised list of University Class Representative. We are not concerned with the other candidates who are even otherwise elected however such declaration by the college in favour of the respondents who were declared as next candidate elected, without any provision of law and/or even the authority is impermissible, unsustainable and required to be quashed and set aside for the reasons so stated above .

12. The submission is made that the election and publication of revised list as already taken effect since 29-07-2016 / 05-08-2016 and the next election will be taken within a period of 3-4 months as the tenure would expire by August 2017. We would have accepted the submission in the normal situation to avoid and not to disturb the position on record. Even we would not have entertained the present petition, at this stage, however considering the reversal decision of election based upon no provision of the Act, Statute and Election Law, we are inclined to entertain the Writ Petition by keeping in mind Article 226 of the Constitution of India, as there is no efficacious remedy available to the petitioners to challenge such action, as well as, inaction on the part of the concerned respondents, at the relevant time.

13. In our view, this is a case where we have to pass order in the interest of justice and also for the fact that such election is held

every year in the University of the college. Therefore, the impugned action/inaction needs to be noted by all to avoid complications like this in the following years.

14. Therefore, we are inclined to allow the petition in terms of prayer clauses (a) and (b) and consequence of the same should be restoring the college result dated 29/07/2016 of the petitioners as elected. Therefore, following :

ORDER

(a) The petition is allowed, in terms of prayer clauses (a) and (b).

(b) We direct the respondent no.10 / college to restore the first list of candidates dated 29/07/2016 as University Class Representative for the academic year 2016-2017 covering the petitioners.

15. Rule is made absolute in the aforesaid terms. No costs.

NUTAN D. SARDESSAI,J.

ANOOP V. MOHTA,J.

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