

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH

C.W.P. No _____ of 2007
(Public Interest Litigation)

Burning Brain Society through its Chairperson, Hemant Goswami, S/o Sh
B. M. Goswami of #3, Glass office, Shivalikview Business Arcade, Sector
17-E, Chandigarh 160017

.....Petitioner

Versus

1. Union of India through Secretary, Ministry of Human Resource
Development, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi
2. Chandigarh Administration through Education-cum-Home Secretary,
Deluxe Building, Sector 9-D, Chandigarh.
3. Panjab University, Chandigarh through its Registrar.

..... Respondents

Civil Writ Petition under Articles 226/227 of
Constitution of India for issuance of writ of

Certiorari quashing the impugned "*Constitution of Students' Organisation for the teaching departments of the University*" (Annexure P-3) which has been passed by respondent no.3 in open contravention of the directions of the Hon'ble Supreme Court given in the matter of SLP number 24295/2004 titled as *University of Kerala versus Council, Principals', Colleges, Kerala & Others* vide order dated 22/09/2006 and writ of Mandamus for directing the respondents to implement the directions of the Supreme Court in letter and spirit with further prayer for issuance of any other appropriate writ, order or direction.

Respectively Showeth:

1. That the Petitioner is a Civil Society Organisation registered in India as a non-political, charitable society under the Societies Registration Act 1860 and is competent to invoke the extra-ordinary Writ jurisdiction of this Hon'ble Court under Articles 226 / 227 of the Constitution of India by way of this Public Interest Litigation. The Chairperson of the petitioner society is authorized to institute and file litigation in public interest on behalf of the petitioner society.
2. That the petitioner is actively engaged in various social, public interest and civil rights activities concerning the youngsters and the public in general. "Burning Brain Society" (Hereinafter referred as "BBS" in abbreviated form) also works for providing guidance to the young

people and to help them find a positive and healthy direction in life. Emphasis is laid on to contribute in a field for which one has aptitude and interest instead of getting into aberrations and following others with herd mentality. BBS also works against Tobacco & Substance abuse and aggressively follows a policy of encouraging positive activities and discourages aberrations by providing proper guidance & information. BBS is also engaged in making movies and documentaries on cultural heritage, education and topics of self help (distributed free-of-cost) to help youngsters.

3. That the university and the college campuses have been witnessing a massive show of money and muscle power at the time of students' union elections. Most of the student leaders are facing a number of criminal cases for serious offences. Some of the related media reports are being collectively annexed herewith as **Annexure P-1**. Therefore, a need was felt at all levels to bring some reforms in the Students' Union elections.
4. That in the matter of SLP number 24295/2004 titled as *University of Kerala versus Council, Principals', Colleges, Kerala & Others*, the Hon'ble Supreme Court directed the Government of India to constitute a committee for making recommendations and suggestions relating to Students' Union Elections. In terms of the said order, the Ministry of Human Resource Development, Government of India constituted a committee headed by Mr J M Lyngdoh, former Chief Election Commissioner.
5. That the committee submitted its report making its recommendations and suggestions, which was accepted and directed to be implemented

by the Hon'ble Supreme Court vide its order dated 22/09/2006. The Hon'ble Supreme Court vide its order observed as under:

“.....We have perused the Report of the Committee constituted by the Ministry of Human Resource Development, Government of India in terms of the order of this court dated 12.12.2005. The committee headed by Mr. J M Lyngdoh has submitted the report making recommendations and suggestions relating to Students' Union Elections. We are, prima facie, of the view that the recommendations need acceptance and as an interim measure, we direct the following recommendations to be implemented, subject to such modifications indicated hereinafter.....”

6. That the Hon'ble Supreme Court directed the Respondent number 1 to ensure compliance of the order as:

“.....It is made clear that the recommendations made, which we have accepted to be adopted as an interim measure, shall be followed in all College/ University Elections, to be held hereinafter, until further orders.

This order shall be communicated to the respective States and Union Territories by Mr. Gopal Subramaniam, learned Additional Solicitor General so that necessary steps can be taken to ensure compliance of our order.....”

7. That in terms of the said order, the respondent no. 1 was directed to ensure compliance of the order throughout the country and respondent no. 2 was responsible to ensure the implementation of the recommendations in the Union Territory of Chandigarh. A copy of the order dated 22/09/2006 passed by the Hon'ble Supreme Court is annexed herewith as **Annexure P-2**.

8. That recently, the respondent no 3 Panjab University, Chandigarh has passed an elaborate document titled "*Constitution of Students' Organisation for the teaching departments of the University*". A copy of this Constitution is annexed herewith as **Annexure P-3**.

9. That contents and intents of Annexure P-3 make it clear that respondent no 3 has violated and ignored the spirit of the order passed by the Hon'ble Supreme Court vide Annexure P-2 by approving with intent to enforce the impugned constitution. Most of the eligibility criteria prescribed by the Hon'ble Supreme Court for contesting the Students' Union elections has been illegally manipulated and relaxed in open contravention and disrespect of the Hon'ble Supreme Court. Some of the major contraventions committed by respondent no 3 in the said constitution are being brought to the notice of this Hon'ble High Court by way of this petition.

10. That para no. 6.5.7 of the Hon'ble Supreme Court order is as follows:

"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 misdemeanor. The candidate shall also not have been subject to any disciplinary action by the University authorities."

It is obvious that the Supreme Court in its interim order Annexure P-2 debarred students of both categories i.e. i) who were tried for any criminal offence and ii) who were convicted. The words are very clear and postulate that "Criminal record" signifies that the candidate should not have been tried **and / or** convicted. Now the Panjab University is confining itself to the persons who have been **tried and convicted** of any criminal

offence. Point No. 3 of the clause VII which relates to the qualifications prescribed in the impugned constitution, which would make a candidate ineligible to seek election to the Office Bearers (President, Vice President, Secretary, Joint Secretary) and to the Students' Council reads as follows:

"3. he has a previous criminal record i.e. to say that he should not have been tried and convicted of any criminal offence. The candidate shall also not have been subject to any disciplinary action by the University authorities."

11. That the simple and literal meaning of the orders of the Hon'ble Supreme Court is that the Court intends to debar all those candidates who have been even tried for any criminal offence. It is not limited to conviction. By framing the impugned constitution, the Panjab University has completely changed the context of the orders and resultantly, persons who have been tried and are being tried but not yet convicted, would not be debarred from contesting the election to the Students' Council.

12. That another important aspect of the student / candidate who are eligible to contest election is their academic record. The orders of the Supreme Court in paragraph 6.5.4 postulates as under:

"Although, the Committee would refrain from prescribing any particular minimum marks to be attained by the candidate, the candidate in no event have any academic arrears in the year of contesting the elections."

The quintessence of the Hon'ble Supreme Court order is that the candidate should in no event have any academic arrears in the year of election. It simply means that the candidate who is placed in compartment or re-appear would not be eligible for contesting the election as he/ she shall be in academic arrears. On the other hand, the Panjab University, in the impugned constitution at Point No.7 under the Qualification clause lays down the following:

"7. he has any academic arrears in the year immediately preceeding the year in which he is contesting the election.

Further provided that the candidate, who has not been able to clear his/her backlog in the chances admissible under the regulation, he/she shall be deemed to have been in the academic arrear and hence, will not be eligible to contest the election to the Council."

It is clear that this clause is repugnant to the orders of the Hon'ble Supreme Court which postulated no academic arrears. It is submitted that in various degree courses being run by Panjab University, a candidate gets a number of admissible chances for clearing the re-appear exams. For instance, a candidate getting a reappear in the first semester of LLB is allowed to appear again and again upto five years for clearing his academic arrear. The impugned constitution of Panjab University contemplates that a candidate who has further chance to appear would not be considered as in academic arrears for the purpose of the election to the Student Council. As a matter of fact, when the chances to appear exhaust, the candidate is no more said to be in arrears, but he is declared as FAIL and his candidature is suspended.

13. That para 6.5.6 of the Supreme Court order postulates as under:

“The candidate shall have one opportunity to contest for the post of office bearer, and two opportunities to contest for the post of an executive member.”

The Respondent no 3 has illegally replaced the word **contested** with **elected**. Point 5 of the qualification clause of the impugned constitution reads as under:

“he has already been elected earlier to the same office to which he is contesting. In case of executive member, he has been elected twice as Executive Member immediately preceding the year of his contesting the election.”

Clearly, the respondent no 3 has made two contraventions here. Firstly, the Hon'ble Supreme Court in its order have treated contest for the post of office bearers without giving any further latitude to the number of different offices. Secondly, the Hon'ble Supreme Court has not differentiated into “contest” and “elect”. Whereas the impugned constitution has sought to defeat the orders of the Hon'ble Supreme Court on both counts in its eagerness to make ineligible politically oriented students, as eligible to contest repeatedly for one or the other office.

14. That para 6.5.5 of Supreme Court order reads as under:

“The candidate should have attained the minimum percentage of attendance as prescribed by the university or 75% attendance, whichever is higher”

The respondent no 3 has rather totally changed the orders of the Hon'ble Supreme Court in this regard by adding an explanation to point 4 of the qualifications clause of the impugned constitution, which reads as under:

“For the purpose of this, any student who has appeared and passed in the preceding examination held in April-May/ or promoted to the next class shall be considered to have fulfilled this condition.”

It is submitted that firstly the orders of the Hon'ble Supreme Court do not refer to the required percentage of attendance in the previous class as has been made out by respondent no 3. The words employed by Hon'ble Supreme Court in its orders as quoted above can only mean to refer to the present class while studying in which, a student is seeking election; maybe till the date of nominations. Secondly, the explanation added by respondent no 3 does not take into consideration that a candidate may be allowed to appear in exams despite not having fulfilled the minimum attendance requirement, by condoning his shortage of lectures, but then the very purpose of this condonation is to enable the bonafide students to appear in exams to save their academic career, and not to make politicians eligible to contest elections again and again.

15. That the patrons of the student parties who are sitting in the senate/ syndicate have managed to get this impugned constitution passed just to make the ineligible politicians eligible to seek election, whereas the whole intent and purpose of the proceedings before the Hon'ble Supreme Court and of the recommendations of the committee and of the orders made by the Hon'ble Supreme Court is to make the educational institutions get rid of those politicians and keep them out of the process of Students' Union elections.

16. That besides manipulating the qualifications for the candidates, the respondent no. 3 has also contravened with the directions of the Hon'ble Supreme Court by diluting the role and authority of the elected

Students' Union. Para 6.1.8 of the order of the Hon'ble Supreme Court reads as under:

"6.1.8 The 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."

The respondent no. 3 has contravened with the above direction by inserting the Dean Student Welfare in the executive committee and subjecting all the decisions of the Students' Council to the approval of the Dean Student Welfare. Clause III of the impugned constitution (Annexure P-3) reads as:

"6.1.8 The Punjab University Campus Students' Council shall comprise of regular students on the rolls of the Teaching Departments on the campus. No faculty member, nor any member of the administration shall be permitted to hold any post on the executive of the council. However, the Dean Student Welfare shall act as advisor to the Students' Council. All the decisions of the Students' Council shall be subject to the approval of the Dean Student Welfare to ensure that the decisions are in consonance with Panjab University Rules and Regulations.

The Executive Committee of the Students' Council shall consist of Dean Student Welfare as Advisor, four office bearers elected by student community and five members elected by the Departmental Representatives from among themselves. The executive Committee shall be responsible to the Council."

17. That the order of the Hon'ble Supreme Court is a law binding on all courts within the territory of India under Article 141 and therefore, all the educational institutions in the entire country including all the Universities, Colleges and other educational institutions are required to follow the law of the land. Under article 144, it is the constitutional obligation of all the universities in the country and all Colleges to implement the interim orders passed by the Hon'ble Supreme Court in letter and spirit and there was constitutional obligation on all the universities and colleges to act in the aid of the Hon'ble Supreme Court. In fact, if the impugned constitution (Annexure P-3) is allowed to continue to operate, it would amount to serious Contempt of the Hon'ble Supreme Court. Article 144 of the constitution of India is being reproduced herein:

“144 Civil and judicial authorities to act in aid of the Supreme Court

All authorities, civil and judicial in the territory of India shall act in the aid of the Supreme Court.”

18. That the law points involved in this Writ petition are as follows: -

- i. Whether the constitution framed by the Panjab University for the Election to the Panjab University Campus Students Council is in conflict with the orders of the Hon'ble Supreme Court dated 22.9.2006?
- ii. Whether the orders issued by the Hon'ble Supreme Court in Special Leave Petition No. 24295 / 2004 are binding on the Panjab University and its affiliated Colleges?
- iii. Whether any university can frame and implement its constitution in contravention to the directions of the Hon'ble Supreme Court?

iv. Whether the respondent nos. 1 and 2 can allow the respondent no. 3 to implement the impugned constitution?

19. That the petitioner has not filed any such Writ petition in this Hon'ble Court or Supreme Court of India.

20. That the matter is of vital general importance affecting the entire student community and requires intervention of this Hon'ble Court to direct the respondents to strictly adhere and implement the orders of the Supreme Court in letter and spirit.

21. That it is a fit case in which this Hon'ble Court may be pleased to intervene and issue the necessary directions for the observance of the orders of the Hon'ble Supreme Court, Annexure P-2.

22. That there is no other effective and efficacious remedy available to the petitioner except approaching this Hon'ble Court under Article 226/227 of the Constitution of India.

It is, therefore, respectfully prayed, that an Order, Writ or direction in the nature of Writ of Certiorari or any other appropriate Writ be issued quashing the impugned constitution Annexure P-3;

And

Writ, order or direction in the nature of Writ of Mandamus be issued, directing the Panjab University respondent no. 2 to strictly adhere and implement the order of the Hon'ble Supreme Court in the matter of holding of elections for the formation of Students Council;

And

Any other order, this Hon'ble Court deems fit and proper in the circumstances of this case be also made.

And

Filing of certified and fair typed copies of annexures may kindly be dispensed with, and permission to file Photostat copies be granted.

INTERIM PRAYER

As an interim measure, in the interest of justice, the impugned constitution Annexure P-3 may kindly be stayed and Respondent no 3 be restrained from notifying/ holding the election to the Students' Council till this Hon'ble Court examines the issues involved in the writ petition.

Place: Chandigarh

Date:-

PETITIONER

(H C ARORA, ABHISHEK ARORA)

ADVOCATES

COUNSELS FOR THE PETITIONER

Verification:

Verified that the contents of paragraphs 1 to 17 and 19 to 22 are true and correct to my knowledge and contents of para no. 18 are believed to be true and correct on the basis of received legal advice. No part of it is false and nothing material has been concealed therein.

Chandigarh

Dated:

PETITIONER

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH.

C.W.P. No _____ of 2007
(Public Interest Litigation)

Burning Brain Society

....Petitioner

Versus

Union of India and others

....Respondent

Affidavit of Hemant Goswami, S/o Sh B. M. Goswami
aged about 36 years, Chairperson of Burning Brain
Society, #3 Glass office, Shivalikview Business
Arcade, Sector 17-E, Chandigarh 160017.

In support of

CIVIL WRIT PETITION under article 226/227

I, the above named deponent, do hereby solemnly affirm and declare as
under :-

1. That the deponent has gone through the contents of the
accompanying captioned writ petition and have properly & completely
understood the true import & meaning thereof.

2. That the petition has been drafted as per my instructions and its contents are correct and as per my directions. The contents of paragraphs 1 to 17 and 19 to 22 are true and correct to my knowledge and contents of para no. 18 are believed to be true and correct on the basis of received legal advice. These may kindly be read as part of this affidavit.

Place:- Chandigarh

Date:-

DEPONENT

VERIFICATION:-

It is verified that the contents of para no. 1 to 2 of my above affidavit are true and correct to my knowledge, no part of it is false, and nothing material has been concealed therein.

Place:- Chandigarh

Date:-

DEPONENT

LIST & DATES OF EVENTS

- 12/12/2005 In the matter of SLP No. 24295/ 2004 titled as *University of Kerala Vs. Council, Principals', Colleges, Kerala & Others*, Hon'ble Supreme Court directed the Government of India to constitute a committee for making recommendations and suggestions relating to Students' Union Elections. In terms of the said order, the Ministry of Human Resource Development, Government of India constituted a committee headed by Mr. J.M. Lyngdoh, Former Chief Election Commissioner.
- 22/9/2006 The Hon'ble Supreme Court passed an order accepting the recommendations made by the above said committee and as an interim measure, directed respective States and Union Territories to take necessary steps for the implementation of the said recommendations, subject to such modifications as indicated therein.
- The said directions were given by the Hon'ble Supreme Court with the object to decriminalize the Students' Elections in universities and colleges and to ensure that only the students, who are serious in attending lectures and do not have any unsatisfactory academic record contest the elections; and also the students who treat the opportunity to study as a means to become professional leaders by contesting elections to various posts in the Students' Unions, should not be permitted to contest such elections.

July, 2007

Panjab University (Respondent No. 3) senate constituted a committee to comply with the order/ directions of the Hon'ble Supreme Court. The university has passed and approved a *Constitution of Students' Organizations for the Teaching Departments of the University*. The qualifications for contesting the elections are in loud and open contravention of the directions of the Hon'ble Supreme Court.

Hence, this writ petition is being filed before this Hon'ble Court.

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH.

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Note :- No notice of caveat petition has been received by the petitioner.

Note:-1. The main law points involved in the writ petition are in para no. 18 at page nos. 13 and 14 of the writ petition.

2. Relevant Rules and Statues:- Constitution of India

3. Any Other Case:- Nil

Place:- Chandigarh
Date:-

(H C ARORA, ABHISHEK ARORA)
ADVOCATES
COUNSELS FOR THE PETITIONER

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH.

C.M. No. _____ / 2007
In
C.W.P. No _____ of 2007
(Public Interest Litigation)

Burning Brain Society

...Petitioner

Versus

Union of India and others

....Respondents

Application Under Section 151 C. P. C. for
granting exemption from filing the certified &
fair typed copies of the annexures and
permission to file the Photostat copies of the
same.

Respectfully Showeth:-

1. That this application is being filed with the accompanying civil writ petition before this Hon'ble Court and this application may be read as a part of grounds of writ petition.
2. That filing of the annexures are necessary for the kind perusal of this Hon'ble Court. Due to paucity of time petitioner is unable to produce the certified copies of the annexures before this Hon'ble Court.
3. That the all the annexures are quite legible. It may take lot of time to retype.

4. That in the interest of justice filing of fair typed and certified copies of the annexures may kindly be exempted so that petition could be heard by this Hon'ble Court on merit.

It is therefore respectfully prayed that this application may kindly be allowed and filing of certified & fair typed copies of annexures be dispensed with and permission to place on record the photostat copies of the same.

Place:- Chandigarh

Date:-

(H C ARORA, ABHISHEK ARORA)

ADVOCATES

COUNSELS FOR THE PETITIONER