



HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2951 of 2026 (M/S)

Mukesh Pandey

.....Petitioner

Versus

State of Uttarakhand and Others

.....Respondents

Present:-

Mr. Dushyant Mainali, Advocate for the petitioner.

Mr. S.N. Babulkar, Advocate General assisted by Mr. Amrinder Pratap Singh, Additional Advocate General, Mr. Puran Singh Bisht, Chief Standing Counsel, Mr. Pradeep Hariya, Additional Chief Standing Counsel and Mr. Akshit Gururani, Brief Holder for the State.

Mr. Rajeev Singh Bisht, Advocate for the Kumaon University.

With

Writ Petition No. 2908 of 2026 (M/S)

Bharat Kesarwani

.....Petitioner

Versus

State of Uttarakhand and Others

.....Respondents

Present:-

Mr. Abhishek Singh Rawat, Advocate for the petitioner.

Mr. S.N. Babulkar, Advocate General assisted by Mr. Amrinder Pratap Singh, Additional Advocate General, Mr. Puran Singh Bisht, Chief Standing Counsel, Mr. Pradeep Hariya, Additional Chief Standing Counsel and Mr. Akshit Gururani, Brief Holder for the State.

Mr. Rajeev Singh Bisht, Advocate for the Kumaon University.

With

Writ Petition No. 2949 of 2026 (M/S)

Ajay Kumar

.....Petitioner

Versus

State of Uttarakhand and Others

.....Respondents

Present:-

Mr. Dushyant Mainali, Advocate for the petitioner.

Mr. S.N. Babulkar, Advocate General assisted by Mr. Amrinder Pratap Singh, Additional Advocate General, Mr. Puran Singh Bisht, Chief

Standing Counsel, Mr. Pradeep Hariya, Additional Chief Standing Counsel and Mr. Akshit Gururani, Brief Holder for the State.

Ms. Mamta Bisht, Advocate for the Kumaon University.

With

Writ Petition No. 2950 of 2026 (M/S)

Manas Arya

.....Petitioner

Versus

State of Uttarakhand and Others

.....Respondents

Present:-

Mr. Saurav Adhikari and Ms. Poorvi Chaudhary, Advocate for the petitioner.

Mr. S.N. Babulkar, Advocate General assisted by Mr. Amrinder Pratap Singh, Additional Advocate General, Mr. Puran Singh Bisht, Chief Standing Counsel, Mr. Pradeep Hariya, Additional Chief Standing Counsel and Mr. Akshit Gururani, Brief Holder for the State.

Ms. Mamta Bisht, Advocate for the Kumaon University.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

Since common questions of law and facts are involved in all these petitions, they are heard together and being decided by this common judgment. However, for sake of convenience, facts would be referred from Writ Petition (M/S) No. 2951 of 2026 and parties shall be referred to accordingly, unless otherwise specifically specified.

2. The petitioners are students, who intended to contest the student union election. Petitioners Bharat Kesarwani, Ajay Kumar and Mukesh Pandey intended to contest the student union election to the post of Treasurer and petitioner Manas Arya intended to contest the election to the post of Joint Secretary. All

the colleges are affiliated to the Kumaun University, Nainital ("the University").

3. On 10.09.2026, the Registrar of the University issued a press communique thereby informing that student union election of all the affiliated colleges shall be held on 29.09.2026 and for the University, it shall be held on 01.10.2026. Thereafter, on 17.09.2026, which is annexure no. 1 to the writ petition, the State Government made a communication to the Vice Chancellor of the Government Universities that since the strength of girl students in the Universities is more than 65%, in the student union election, they may be given 50% reservation. Post Government Order dated 17.09.2026, the University issued an office order dated 18.09.2026, whereby various positions were reserved in the student union election for the girl students. For the purpose of instant petitions, it is sufficient to mention that the positions of Joint Secretary and Treasurer were reserved for girl students. Petitioners Bharat Kesarwani, Ajay Kumar and Mukesh Pandey intended to contest the student union election to the post of Treasurer and petitioner Manas Arya intended to contest the election to the post of Joint Secretary.

4. The petitioner Mukesh Pandey challenged the Government Order dated 17.09.2026 as well as the office order of the University dated 18.09.2026, by which this reservation was provided to the girl students. The other petitioners challenged the office order dated 18.09.2026 issued by the University.

5. Heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioner Bharat Kesarwani submits that the impugned office order by which the reservation was provided for the first time to the girl students was issued by the University on 18.09.2026 and 100% reservation was given for the post of Treasurer and Joint Secretary and the remaining positions were kept open for all. He would submit that the reservation that was provided by the office order dated 18.09.2026 of the University makes it approximately 42% reservation to the girl students, whereas this communication itself says that 50% positions should be reserved for the girl students. He would submit that there is a channel for making such amendment in view of the Lyngdoh Committee recommendation, which has not been followed.

7. Learned counsel appearing for the petitioners Manas Arya adopts the arguments made on behalf of the petitioner Bharat Kesarwani. In addition to it, it is argued that the Constitution of the student union has been promulgated by the University and its Article 19 provides provision for amendment in the Constitution. He would submit that the Constitution of the student union makes provision for reservation and if any amendment was to be made, it ought to have been included in the Constitution of the student union by the University first and thereafter it ought to have been implemented. Hence, it is argued that the office order dated 18.09.2026 issued by the University is bad in the eyes of law and deserves to be quashed.

8. Learned counsel appearing for the petitioners Ajay Kumar and Mukesh Pandey adopts the arguments that have been

made on behalf of other petitioners. He would also raise the following points in his submission:-

- (i) The State Government could not have issued Government Order dated 17.09.2026 providing reservation in the student union election. He would submit that that Section 66A of the Uttarakhand State University Act, 1973 ("Act of 1973") does not empower the State Government to make indulgence by virtue of impugned Government Order dated 17.09.2026, as it is not a policy matter. In support of his argument, learned counsel has relied upon the judgment of the Hon'ble Allahabad High Court in the case of Committee of Management, S.M. College, Chandausi, Moradabad and others v. State of U.P. and another, 2005 AIR Allahabad 126.

In the case of Committee of Management (*supra*), the Hon'ble Allahabad High Court, *inter alia*, observed **"Since the University itself cannot frame ordinance under Section 51(g) of the Act providing for constitution of Students Union in affiliated degree colleges as well as for election of office bearers of the Students' Union in affiliated degree colleges, any direction issued by the State Government under Section 66A of the Act requiring the University to frame ordinance for constitution of Student's Union and election of its office bearers in affiliated degree colleges, on the face of it would be inconsistent with the provisions of the Act and, therefore is unsustainable"**.

- (ii) Learned counsel also submits that pursuant to the recommendation of the Lyngdoh Committee, the framework was approved by the Hon'ble Supreme Court in the case of *University of Kerala v. Council, Principals' College, Kerala and others*, (2006) 8 SCC 304, and para 6.10 makes provision with regard to the student representations and it provides that the student representation should be regulated by the statute. In the instant case, it is argued that it has not been done.

In the case of *University of Kerala (supra)*, the Hon'ble Supreme Court, in para 6.10. observed as follows:-

“6.10. Miscellaneous recommendations

6.10.1. Student representation is essential to the overall development of students and, therefore, it is recommended that university statutes should expressly provide for student representation.

6.10.2. Student representation should be regulated by statute (either a Central statute, State statute or individual university statutes), incorporating the recommendations prescribed herein.

6.10.3. The institution should organise leadership-training programs with the help of professional organisations so as to groom and instil in students leadership qualities.

6.10.4. In the event of the office of any major post of office-bearers falling vacant within two months of elections, re-elections should be conducted; otherwise the Vice-President may be promoted to the post of President and Joint Secretary to the post of Secretary, as the case may be.”

- (iii) The elections are scheduled to be held on 29.09.2026 was pronounced by the Registrar on 10.09.2026. Thereafter, the reservation was implemented without proper channel.
- (iv) The Government Order dated 17.09.2026 could not have been adopted by the University the way it has been done. It has not gone through the Executive Council, etc. which is competent to make changes in

the constitution of the student union. Hence, it is argued that both the Government Orders dated 17.09.2026 and office order dated 18.09.2026 are liable to be quashed, as they are not in accordance with law.

9. On the other hand, learned counsel for the University, Mr. Rajeev Singh Bisht, submits that the number of girl students in the University is more than 65%. The Director, Higher Education, State of Uttarakhand has taken note of this situation and since last year has issued directions to the Universities. He would submit that Sri Dev Suman Uttarakhand University has already adopted this direction in the last year. It is argued that post Government Order dated 17.09.2026, an emergency meeting of Executive Council of the University was convened on 18.09.2026, which approved the proposal for implementation of reservation for various positions in the student union election.

10. Learned counsel submits that the Executive Council is the highest body, who could make amendments in the constitution of the student union and could effectively deal with the affairs of the matter. He would refer to Section 21 of the Act of 1973. Particularly, he would refer to clause (xvii) of Section 21, which reads as under:-

“21. Powers and duties of Executive Council. (1)
The Executive Council shall be the principal executive body of the University and subject to the provisions of this Act, have the following powers, namely –
.....
.....
.....
(xvii) to regulate and determine all other matters concerning the University as well as Institutes, constituent, affiliated and associated colleges in

accordance with this Act, the Statutes and the Ordinances.”

11. Learned counsel further submits that no right of the petitioner is being defeated; there has been no fundamental right to contest elections. It is argued that the election was notified on 23.09.2026 and prior to it, reservation was notified by the State Government by virtue of the Government Order dated 17.09.2026 and the Office order dated 18.09.2026.

12. Learned Advocate General, who appears for the State, submits that the State Government is empowered to issue Government orders under Article 162 of the Constitution of India and in the instant matter, the Government Order dated 17.09.2026 has been issued keeping in view the pious obligation of the State under Article 15(3) of the Constitution of India so as to take proactive steps for upliftment of the women. He would submit that this aspect has been dealt with by the Hon’ble Supreme Court in the case of Government of A.P. v. P.B. Vijayakumar and another, (1994) 4 SCC 520.

13. In the case of Government of A.P. (*supra*), the Hon’ble Supreme Court, in paras 6 and 7 observed as under:-

“6..... Therefore, in dealing with employment under the State, it has to bear in mind both Articles 15 and 16 — the former being a more general provision and the latter, a more specific provision. Since Article 16 does not touch upon any special provision for women being made by the State, it cannot in any manner derogate from the power conferred upon the State in this connection under Article 15(3). This power conferred by Article 15(3) is wide enough to cover the entire range of State activity including employment under the State.”

7. The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for

centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women. An important limb of this concept of gender equality is creating job opportunities for women. To say that under Article 15(3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this article. Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3), is not whittled down in any manner by Article 16.

14. Further, in the case of Government of A.P. (*supra*), the Hon'ble Supreme Court observed that **“What then is meant by “any special provision for women” in Article 15(3)? This “special provision”, which the State may make to improve women's participation in all activities under the supervision and control of the State can be in the form of either affirmative action or reservation”.**

15. Learned Advocate General would submit that the reservation, which is horizontal in nature in the instant case may be enforced by virtue of the Government Order, which has force of law. He would refer to the judgment in the case of Indra Sawhney and others v. Union of India, 1992 Supp (3) SCC 210, wherein after noting the arguments and case laws on the subject, in para 740, the Hon'ble Supreme Court observed that **“It would, therefore, follow that until a law is made or rules are issued under Article 309 with respect to reservation in favour of backward classes,**

it would always be open to the Executive Government to provide for reservation of appointments/posts in favour of Backward Classes by an executive order.”

16. Learned Advocate General also submits that the petitioners’ no right has been defeated. The right to elect or contest election is neither a fundamental right nor a common law right. He refers to the judgment in the case of Vishwanath Pratap Singh v. Election Commission of India & another, 2022 SCC OnLine SCC 2213, wherein the Hon’ble Supreme Court observed that **“The right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute”**. The Hon’ble Supreme Court in the case of Vishwanath Pratap Singh (*supra*), has referred to the principle of law as laid down in the case of Javed v. State of Haryana, (2003) 8 SCC 369, wherein the Hon’ble Supreme Court observed as follows:-

“22. Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right — a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or holding, an elective statutory office.

23. Reiterating the law laid down in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* [(1952) 1 SCC 94 : AIR 1952 SC 64 : 1952 SCR 218] and *Jagan Nath v. Jaswant Singh* [AIR 1954 SC 210 : 1954 SCR 892] this Court held in *Jyoti Basu v. Debi Ghosal* [(1982) 1 SCC 691] : (SCC p. 696, para 8)

“8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a

fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation.”

17. Learned Advocate submits that the petitions are misconceived and deserve to be dismissed at the stage of admission itself. There is no merit in the writ petitions.

18. Learned counsel for the University Mr. Rajeev Singh Bisht has further argued that the constitution of the student union was promulgated by the University, which has provided a forum for redressal of such grievances in complaint redressal forum, wherein complaint may be filed within three weeks after declaration of results. Therefore, it is argued that at this stage when election is already scheduled and nominations have already been done, no interference is warranted.

19. When these lines were dictated, it is admitted to the learned counsel for the parties that time for nomination to contest the election has already been over. The election is scheduled for 29.09.2026 in the colleges and for 01.10.2026 in the University.

20. The question is – whether there is any gross violation, which may warrant an interference by this Court at this stage? What are under challenge is the Government Order dated 17.09.2026 and the office order dated 18.09.2026 of the University, by which reservation has been granted to certain positions in the student union election. In the instant matter, what is impugned is the reservation that has been provided to the post of Joint

Secretary and the Treasurer. Law is well settled that right to contest election is not a fundamental right. In the instant case, the petitioners have not been stopped from contesting election to an unreserved post. They are free to contest election to some other post.

21. The State Government may issue Government Orders under Article 162 of the Constitution of India. In the instant matter, the impugned Government Order dated 17.09.2026 has been issued under Article 15(3) of the Constitution of India so as to make better provision for girl students in the University, so as to provide them proper representation. What is argued on behalf of the petitioner Bharat Kesarwani is that the office order dated 18.09.2026 speaks only reservation about 50% to the girl students in student union election, whereas in the present case it is about 42% only. It makes less affect on the validity of this notification.

22. It is the case of the University that on 18.09.2026, the Executive Council of the University resolved to give effect to the Government Order dated 17.09.2026. This fact is undisputed because this finds mention in the office order dated 18.09.2026.

23. Reference has been made to constitution of student union, Article 19, which deals with amendment in the constitution. It deals with the amendment proposed by the student unions. In fact, it finds mention under Article 19(D) and according to it, if student union proposes any amendment, it can come through the Head of the Institution to the Vice Chancellor. It does not speak of amendment that is incorporated by the Vice Chancellor itself or by the Executive Council. It is not also disputed that the amendment

in the constitution of student union could be proposed by the Executive Council and in the instant matter, the Executive Council has taken a call on 18.09.2026. Merely because formal amendment has not been incorporated in the constitution of student union, it does not invalidate the office order dated 18.09.2026.

24. Therefore, having considered the entire facts, this Court is of the view that there is no merit in the writ petitions. The writ petitions fail and are liable to be dismissed.

25. The writ petitions are dismissed *in limine*.

(Ravindra Maithani, J)
25.09.2026

Avneet/