

sbw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

PUBLIC INTEREST LITIGATION (L) NO.75 OF 2015

Suresh Patilkhede

..Petitioner

-Versus-

State of Maharashtra & Ors.

..Respondents

.....

Mr. Pankaj Kowli a/w M. A. Chaudhary & Arun S. Agarwal i/b. U. M. Jhaveri for the Petitioner.

Mr. M. D. Naik, AGP, for the Respondent-State.

Mr. A.A. Kumbhakoni, Senior Advocate, a/w Shardul Singh, for the Respondent Nos.2 and 5.

Mr. Rui Rodrigues for the Respondent No.3.

.....

**CORAM: MOHIT S. SHAH, C. J. AND
A. K. MENON, JJ.**

DATE :- 3 JULY 2015.

PC.:

Leave to amend the Petition. The amendment to be carried out forthwith.

2] This Petition under Article 226 of the Constitution, seeks to challenge the validity of the provisions of Section 12 of the Maharashtra Universities Act, 1994 and the advertisement issued thereunder inviting applications for the posts of Vice Chancellor in the University of Mumbai and the Shivaji University of Kolhapur on the ground that the above statutory provisions are “void ab-initio, inoperative and not in accordance with the minimum qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the

Maintenance of Standards in (Higher Education) Regulations 2010.

The Petitioner is also challenging the appointment of the Search Committee under the above provisions for recommending the panel of suitable persons selected for the office of Vice Chancellor of each of the above Universities as illegal and contrary to the UGC Regulations 2010.

3] (A) Regulation 7.3.0 reads as under:-

“7.3.0 VICE CHANCELLOR :

Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice-Chancellors. The Vice-Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization.

The selection of Vice-Chancellor should be through proper identification of a Panel of 3-5 names by a Search Committee through a Public Notification or nomination or a talent search process or in combination. The members of the above Search Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the search committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance to be given in writing along with the panel to be submitted to the Visitor/Chancellor. In respect of State and Central Universities, the following shall be the constitution of the Search Committee.

- (a) a nominee of the Visitor/Chancellor, who should be the Chairperson of the Committee.*
- (b) a nominee of the Chairman, University Grants Commission.*
- (c) a nominee of the Syndicate/Executive Council/Board of*

Management of the University.

- iii. The Visitor/Chancellor shall appoint the Vice-Chancellor out of the Panel of names recommended by the Search Committee.*
- iv. The conditions of service of the Vice-Chancellor shall be prescribed in the Statutes of the Universities concerned in conformity with these Regulations.*
- v. The term of office of the Vice-Chancellor shall form part of the service period of the incumbent concerned making him/her eligible for all service related benefits.”*

(B) Order dated 15 February 2011.

(C) Section 12 of Maharashtra Universities Act, 1994.

4] This very Petitioner had earlier filed Public Interest Litigation (L)No.80 of 2011 mounting the same challenge to the appointment of Search Committee for recommending a panel of suitable persons for the selection of the Vice Chancellor of Pune University on the same ground. The Petition came to be dismissed by a Division Bench of this Court to which one of us (Chief Justice) was a party.

5] By the judgment dated 11 May 2012, this Court noted that while adopting the UGC Regulations 2010, the State Government had in the order dated 15 February 2011 specifically mentioned that the State Government had decided not to adopt Regulation 7.2.0 and 7.3.0 on which strong reliance was placed by the Petitioners. This Court accepted the contention of the learned Advocate General of the State of Maharashtra that the Regulation 7.3.0 was directory and that non-adoption of a directory Regulation 7.3.0 would not render the State legislation or the Government Order dated 15 February 2011 invalid or unconstitutional.

6] The Petitioner did not challenge the above judgment dated 11 May 2012 in PIL(L) No.80 of 2011 wherein this Court had examined the scheme of the Maharashtra Universities Act, 1994 and the UGC Regulations, 2010.

7] The Petitioner has, however, now filed this second Petition challenging the Constitution of the Search Committee for selecting suitable persons for the posts of Vice Chancellor of University of Mumbai and of the Shivaji University of Kolhapur on the same grounds by mounting a similar challenge. The Petitioner has now, also challenged the constitutional validity of Section 12 of the Maharashtra Universities Act, 1994 on the same ground which challenge was available to the Petitioner when the first PIL was filed in the year 2011. This PIL would, therefore, be hit by the principles of constructive Res Judicata.

8] The learned counsel for the Petitioner submits that after dismissal of Petition(L) No.80 of 2011, in another case arising from Madurai ***Kalyani Mathivanan V/s. K. V. Jeyaraj & Ors. JT 2015 (3) SC 473***, the Supreme Court has not accepted the reasoning of this Court that the UGC Regulations 2010 were not traceable to clause (e) or clause (g) of Section 26(1) of the UGC Act, 1956 and also the reasoning of this Court that UGC Regulations being a subordinate legislation under an Act of Parliament cannot override plenary legislation enacted by the State Legislature.

9] We have carefully gone through the judgment of the Supreme Court in Kalyani Mathivanan's case (supra). The Supreme Court has in

terms held in the above judgment that UGC Regulations 2010 are mandatory to all the teachers and other academic staff in all the Central Universities and Colleges thereunder and the institutions deemed to be Universities whose maintenance expenditure is met by the UGC Regulations. However, the Supreme Court has further held that the UGC Regulations 2010 are directory for the Universities, Colleges and other higher educational institutions under the purview of the State Legislation as the matter has been left to the State Government to adopt and implement the scheme. Mumbai University and Shivaji University of Kolhapur are admittedly Universities established under a State Legislation.

10] Apart from giving the above finding regarding the mandatory or directory nature of the UGC Regulations, depending on whether they are being applied to Central Universities or to State Universities, the Supreme Court has specifically confirmed the finding of this Court in the above judgment dated 11 May 2012 that Regulation 7.3.0 has to be treated as recommendatory in nature in so far as it relates to Universities and Colleges under the State Legislation.

11] In view of the above specific finding of the Supreme Court upholding the finding of this Court that Regulation 7.3.0 has to be treated as recommendatory in nature insofar as it relates to Universities and Colleges under the Maharashtra Universities Act, 1994, we are of the view that the decision of the Supreme Court supports the case of the Respondents rather than the case of the Petitioner.

12] In view of the above discussion, we find no merit in the Petition. The Petition is, therefore, dismissed.

CHIEF JUSTICE

(A. K. MENON, J.)

wadhwa