

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

WP(C).No. 32393 of 2010 (Y)

PETITIONERS :

1. REJIKUMAR
KARIMPOLIL HOUSE, PARIYARAM P.O,
KADAMUY, KOTTAYAM - 686 021.
2. ANILKUMAR P.A, PLAMTHOTTAM,AMARA P.O,
CHANGANACHERRY, KOTTAYAM 686 546.
3. SUNITHAKUMARI T.K,AKKIKUDY HOUSE,
THENGODE P.O, KAKKANAD 682 030, ERNAKULAM DISTRICT.
4. MINI C.B, CHEERATH HOUSE,WADAKKANCHERRY
P.O, THRISSUR DISTRICT, PIN - 680 582.
5. THUSHARA K.T, THADATHIL HOUSE,
KUREEKAD P.O, THIRUVANKULAM, ERNAKULAM 682 305.
6. BINOY BHASKAR,KANDRACHYIL,VAZHOOR P.O,
KODUNGOOR, KOTTAYAM 686 504.
7. SANTHOSH O.K,OLICKAL,VAZHAVARA P.O,
KATTAPPANA, IDUKKI DISTRICT.
8. JAYASOORYAN K.K,KABANI HOUSE,
KADUTHURUTHY P.O, KOTTAYAM 686604.
9. REKHA RAJ,D PALACE,KUDAMALLOOR P.O,
KOTTAYAM DISTRICT.
10. AJESH C.A,CHUNDAYIL HOUSE,PULPALLY P.O,
WAYANAD DISTRICT, PIN - 673 579.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS :

1. U.G.C., BY THE MEMBER SECRETARY,
UNIVERSITY GRANTS, COMMISSION
NEW DELHI - 110 001.

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2. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM-01.
3. SECRETARY TO GOVERNMENT, DEPARTMENT OF
HIGHER EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM-01
4. DIRECTOR OF COLLEGIATE EDUCATION
THIRUVANANTHAPURAM - 695 001.
5. UNIVERSITY OF KERALA, REPRESENTED BY THE
REGISTRAR, UNIVERSITY OF KERALA
THIRUVANANTHAPURAM - 695 001.
6. MAHATMA GANDHI UNIVERSITY
REPRESENTED BY THE REGISTRAR, M.G UNIVERSITY
KOTTAYAM-01.
7. KANNUR UNIVERSITY, REPRESENTED BY THE
REGISTRAR, KANNUR UNIVERSITY, KANNUR-01.
8. SREE SANKARACHARYA UNIVERSITY,
REPRESENTED BY THE REGISTRAR
SREE SANKARACHARYA UNIVERSITY, KALADY-683 574.
9. THE SECRETARY, N.S.S COLLEGES CENTRAL
COMMITTEE, [MANAGER N.S.S COLLEGES] N.S.S HEAD, OFFICE
CHANGANACHERRY-2.
10. THE MANAGING DIRECTOR, S.N TRUST
[MANAGER COLLEGES UNDER SN TRUST] KUDUKKAD P.O.,
KOTTAPPURAM KOLLAM 691 536.
11. THE PRESIDENT THIRUVITHAMCORE DEVASWOM
BOARD, DEVASWOM JUNCTION, NANDHANCODE
THIRUVANANTHAPURAM- 695 001. [AS THE MANAGER OF
COLLEGES UNDER THE TRAVANCORE DEVASWOM BOARD]
12. THE MANAGER, CHRISTIAN COLLEGE, KATTUKKADA
KOTTAKKADU P.O, THIRUVANANTHAPURAM-695572.
13. THE SECRETARY, IQBAL COLLEGE TRUST
MOOKODU, KARAKULAM P.O, EANIKKARA
THIRUVANANTHAPURAM- 695564.
[AS THE MANAGER OF COLLEGES UNDER IQBAL COLLEGE
TRUST]
14. THE MANAGER, MANNANIA ISLAMIC CHARITABLE
TRUST, MANNANIA COLLEGE OF ARTS & SCIENCE, PANGODE
THIRUVANANTHAPURAM - 695 609.
15. THE PRESIDENT THE MALANKARA SYRIAN
CATHOLIC MANAGEMENT BETHANY HILLS, NALANCHIRA P.O.,
THIRUVANANTHAPURAM 695 015.

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16. THE MANAGER, SYRO MALANKARA CATHOLIC CHURCH, ST. JOHNS COLLEGE, ACHAL PUNALLOOR, KOLLAM 691 305.
17. THE MANAGER, ST. STEPHANS COLLEGE, MULLOOR COLLEGE P.O, PATHANAPURAM KOLLAM 689 695.
18. THE MANAGER, T.K.M COLLEGE TRUST, T.K.M ARTS & SCIENCE COLLEGE, KOLLAM - 691 005.
19. THE MANAGER, M.O.C COLLEGES, DEVALOKAM, KOTTAYAM - 686 038.
20. THE CHAIRMAN & MANAGER, M.S.M COLLEGE, KAYAMKULAM, ALAPPUZHA, 690 502.
21. THE MANAGER, C.S.I MANAGEMENT COLLEGES C.S.I BISHOP HOUSE, KOTTAYAM - 686 001.
22. THE MANAGER, ST. STEPHANS COLLEGE UZHAVOOR, KOTTAYAM - 686 001.
23. THE MANAGER, ALPHONSA COLLEGE, ARUNAPURAM P.O, PALA KOTTAYAM DISTRICT 686 574.
24. THE PRESIDENT & MANAGER, K.G COLLEGE PAMPADY KOTTAYAM 686 502.
25. THE MANAGER, B.K COLLEGE, AMALAGIRI P.O, KOTTAYAM 686 036.
26. THE MANAGER, MALANKARA ORTHODOX COLLEGES MANAGEMENT BASELIUS COLLEGE, K.K ROAD KOTTAYAM 686 001.
27. THE MANAGER, B.C.M COLLEGE, K.K ROAD, KOTTAYAM 686 001.
28. THE MANAGER, MARTHOMA MANAGEMENT COLLEGES, THIRUVALLA 689 103.
29. THE MANAGER, ST. THOMAS COLLEGE KOZHENCHERRY 689 641 PATHANAMTHITTA DISTRICT.
30. THE MANAGER, S.A.S SNDP YOGAM COLLEGE KONNI, PATHANAMTHITTA 689 691.
31. THE MANAGER, CHRISTIAN COLLEGE, ANGADICAL, CHENGANNUR 689 122.
32. THE MANAGER, MARIAN COLLEGE, KUTTIKKANAM, IDUKKI 685 531.

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33. THE MANAGER,NEW MANS COLLEGE
THODUPUZZHA IDUKKI 685 585.
34. THE MANAGER,PAVANATMA COLLEGE
MURIKKASSERRY, IDUKKI 685 604.
35. THE MANAGER,ST.XAVIERS COLLEGE,
KOTHAVARA P.O, VAIKOM , KOTTAYAM 686 607.
36. THE SECRETARY AND MANAGER ST.PETERS
COLLEGE TRUST, ST.PETERS COLLEGE, KOLENCHERRY
ERNAKULAM 682 311.
37. THE MANAGER,MORNING STAR HOME SCIENCE
COLLEGE, ANGAMALY SOUTH, ERNAKULAM DISTRICT-683 573
38. THE MANAGER,S.D COLLEGE,NIRMAL A.C
STREET, ALAPUZZHA 688 001.
39. THE MANAGING DIRECTOR,SREE SANKARA
COLLEGE KALADY MATTOOR, ERNAKULAM 683 574.
40. THE MANAGER,RAJAGIRI COLLEGE OF SOCIAL
SCIENCE, RAJAGIRI P.O, KALAMASSERY
ERNAKULAM-04.
41. THE MANAGER,NIRMALA COLLEGE,
MOOVATTUPUZZHA 686661.
42. THE CHAIRMAN,AL AMEEN EDUCATIONAL TRUST
EDATHALA, ALUVA 683 561.
43. THE PRESIDENT & MANAGER,BHARATHA MATHA
COLLEGE, THRIKKAKARA, ANXILIARY BISHOP
ARCHDIOCESE OF ERNAKULAM & ANGAMALY-682 028.
44. THE MANAGER,UNION CHRISTIAN COLLEGE
ALUVA - 683 102.
45. THE MANAGER,MARTHOMA COLLEGE OF WOMEN
PERUMBAVOOR, ERNAKULAM DISTRICT 683 542.
46. THE MANAGER,C.D.M.E.A,SIR SYED COLLEGE,
THALIPARAMBA, KANNUR 670 141.
47. C.M.I MANAGER,ST.JOSEPHS COLLEGE
DEVAGIRI, CALICUT 673 008.
48. THE MANAGER,ST.MARYS COLLEGE,MALANKARA
ORTHODOX SYRIAN CHURCH OF THE EAST, SULTHAN BATHERY
WAYANAD 673 592.

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49. THE MANAGER,ZAMORINS GURUVAYOORAPPAN
COLLEGE, KOZHIKODE 673 001.
50. SUPERIOR GENERAL MANAGER,ALL SAINTS
COLLEGE, THIRUVANANTHAPURAM 695 007.
51. RECTOR AND MANAGER,
LOYOLA COLLEGE OF SOCIAL SCIENCES,
SREEKARIYAM P.O., THIRUVANANTHAPURAM-695 017.
52. THE MANAGER,
MANAGEMENT BOARD, ST.XAVIER'S COLLEGE, THUMBA
THIRUVANANTHAPURAM-695 586.
53. THE MANAGER,
LATIN CATHOLIC DIOCESE
FATHIMA MATHA NATIONAL COLLEGE, KOLLAM - 691 001.
54. THE MANAGER,
BISHOP MOORE COLLEGE, MAVELIKKARA - 690 110.
55. THE MANAGER,
ASSUMPTION COLLEGE, CHANGANASSERRY - 686 101.
56. THE MANAGER,
DEVAMATHA COLLEGE, ST.MARY'S SYRIAN CATHOLIC
FORANA CHURCH, KURAVILANGAD, KOTTAYAM-686 633.
57. THE MANAGER,
ST.DOMINIC COLLEGE, ST.OMINIC CATHEDRAL, KANJIRAPPALLY
KOTTAYAM - 686 512.
58. THE MANAGER,
KURIAKOSE ELIAS COLLEGE, MANNANAM P.O.
KOTTAYAM - 686 561.
59. THE MANAGER,
ST.MARY'S COLLEGE, MANNARVADU P.O.
KOTTAYAM - 686 032.
60. THE MANAGER,
MANAGING BOARD, S.B.COLLEGE, CHANGANACHERRY
PIN - 686 122.
61. THE MANAGER,
ST.GEORGE'S COLLEGE, ARUVITHURA, ERATTUPETTA
KOTTYAM - 686 122.
62. THE MANAGER,
HENRY BAKER COLLEGE, MELUKAVUMATTOM P.O.
KOTTAYAM - 686 652.

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63. THE MANAGER,
CATHOLICATE COLLEGE, KAKKAMKUNNU
PATHANAMTHITTA - 689 001.
64. THE MANAGER,
BISHOP ABRAHAM MEMORIAL COLLEGE
THURITHICADU - 689 597.
65. THE MANAGER,
ST.THOMAS VALLIYAPALLY EDAVAKA, ST.THOMAS COLLEGE
PAZHAVANGADI, RANNI, PATHANAMTHITTA - 689 673.
66. THE MANAGER,
THE MUSLIM EDUCATIONAL SOCIETY'S COLLEGE
HEAD QUARTERS, BUND ROAD, CALICUT - 673 001.
67. THE MANAGER,
(CMI CONGREGATION ST.JOSEPH'S PROVINCE)
ST.JOSEPH'S COLLEGE, MOOLAMATTAM, ARAKULAM P.O.
MOOLAMATTOM, IDUKKI - 685 591.
68. THE MANAGER,
SREE NARAYANA ARTS & SCIENCE COLLEGE
(SNDP UNION KOTTAYAM), KUMARAKOM, KOTTAYAM-685 563
69. THE MANAGER,
BASELIOS POULOSE II CATHOLICOS COLLEGE
BASELIOS MOUNT PIRAVOM, ERNAKULAM - 686 664.
70. THE MANAGER,
SREE SANKARA TRUST, S.S.V.VOLLEGE, PERUMBAAVOOR
VALANCHIRANGARA, ERNAKULAM - 683 556.
71. THE MANAGER,
MAR ATHUNASIS COLLEGE ASSOCIATION
KOTHAMANGALAM COLLEGE P.O., ERNAKULAM - 686 666.
72. THE MANAGER,
ST.PETER'S COLLEGE TRUST, KOLENCHERRY
ERNAKULAM - 682 311.
73. THE MANAGER,
ST.PAUL'S COLLEGE, THE ARCH DIOCESE OF VERAPOLY
H.M.T.COLONY, KALAMASSERRY, ERNAKULAM - 683 503.
74. THE MANAGER,
ST.ALBERT'S COLLEGE, BANERJI ROAD, KOCHI - 682 018
75. THE MANAGER,
CARMELITE SISTERS OF SAINT TERESA
ST.THERASA'S COLLEGE, ERNAKULAM - 682 011.

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76. THE MANAGER,
AQUINAS COLLEGE OF EDUCATION, EDAKOCHIN
KOCHI - 682 006.
77. THE MANAGER,
ST.MICHAEL'S COLLEGE, MAYITHARA, CHERTHALA
ALAPPUZHA - 688 539.
78. THE MANAGER,
MERCY COLLEGE, JAI CHRISTO EDUCATIONAL AGENCY
JAI CHRISTO PROVINCIAL HOUSE, PALAKKAD - 678 004.
79. THE MANAGER,
COCHIN DEVASWOM BOARD COLLEGE, ROUND
THRISSUR - 680 001.
80. THE MANAGER,
CMC EDUCATIONAL AGENCY, CARMEL COLLEGE, MALA P.O.
THRISSUR - 680 732.
81. THE MANAGER,
CORPORATE MANAGEMENT CMC EDUCATIONAL SOCIETY
ST.MARY'S COLLEGE, ROUND, THRISSUR - 680 001.
82. THE MANAGER,
ST.ALOYSIUS COLLEGE, ELTHURUTHU, THRISSUR-680 611.
83. THE MANAGER,
ST.THOMAS COLLEGE, THRISSUR - 1.
84. THE MANAGER,
FRANCISCAN CLARI ST. CONGREGATION EDUCATIONAL
AGENCY, LITTLE FLOWER COLLEGE, GURUVAYOOR-680 101.
85. THE MANAGER,
ST.JOSEPH'S COLLEGE, IRINJALAKUDA - 680 121.
86. THE MANAGER,
PRAJYOTHI NIKETAN COLLEGE
CHRISTIAN CHARITABLE SOCIETY, PUDUKKAD
THRISSUR - 680 301.
87. THE MANAGER,
GURUVAYOOR DEVASWOM MANAGING COMMITTEE
SREE KRISHNA COLLEGE, GURUVAYOOR DEVASWOM BOARD
GURUVAYOOR - 680 101.
88. THE MANAGER,
VIMALA COLLEGE, CMC EDUCATIONAL SOCIETY
THRISSUR - 680 001.

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89. THE MANAGER,
AMAL COLLEGE MANAGING COMMITTEE, SANTHIGRAMAM
MYLAND P.O., ERANHIMAGAD, NILAMBUR
MALAPPURAM - 679 343.
90. THE MANAGER,
ANSAR ARABIC COLLEGE COMMITTEE, VALAVANNUR
MALAPPURAM - 676 551.
91. THE MANAGER,
ANVARUL ISLAM ARABIC COLLEGE COMMITTEE, KUNIYIL
KIZHUPARAMBA, MALAPPURAM - 673 639.
92. THE MANAGER,
ANVARUL ISLAM WOMEN ARABIC COLLEGE
KORALA JUMIYYATHUL ULAMA, MOGAM, MALAPPURAM-673642
93. THE MANAGER,
EMEA COLLEGE OF ARTS & SCIENCE, KUMMINIPARAMBA P.O.
KONDOTTI, MALAPPURAM - 673 638.
94. THE MANAGER,
FAROOK COLLEGE, FAROOK COLLEGE P.O.
KOZHIKODE - 673 632.
95. THE MANAGER,
MAHATMA GANDHI COLLEGE, IRITTY P.O., KEEZHUR
KANNUR - 670 703.
96. THE MANAGER,
MALABAR CHRISTIAN COLLEGE, CALICUT - 673 001.
97. THE MANAGER,
MARTHOMA COLLEGE, MARTHOMA COLLEGE CHUNGATHARA
EDUCATIONAL SOCIETY, CHUNGATHARA
MALAPPURAM - 679 334.
98. THE MANAGER,
MARY MATHA ARTS & SCIENCE COLLEGE
DIOCESE OF MANANTHAVADY, VEMOM, WAYANAD-670 645.
99. THE MANAGER,
MEA SULLAMUSSULAM SCIENCE COLLEGE
MUSLIM EDUCATIONAL ASSOCIATION, AREACODE, UGRAPURAM
MALAPPURAM - 673 639.
100. THE MANAGER,
MUHAMMED ABDU REHIMAN MEMORIAL ORPHANGE COLLEGE
MUKKAM, MUSLIM ORPHANAGE COMMITTEE MUKKAM, MANNASSERRY
KOZHIKODE - 673 602.

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101. THE MANAGER,
S.E.S. COLLEGE, MUSLIM EDUCATIONAL FOUNDATION, PANOOR
VIDYAGIRI, THUVAKKUNNU, KALLIKKANDY
KANNUR - 670 693.
102. THE MANAGER,
NIRMALAGIRI COLLEGE, NIRMALAGIRI P.O.
KANNUR - 670 701.
103. THE MANAGER,
P.K.M.COLLEGE OF EDUCATION, MUDAMPAM, KAITHUPURAM
KANNUR - 670 631.
104. THE MANAGER,
PAZHASSI RAJA COLLEGE, PULPULLY, WAYANAD-673 579.
105. THE MANAGER,
PROVIDANCE WOMENS COLLEGE, MALAPARAMBA
CALICUT - 673 009.
106. THE MANAGER,
P.S.M.O.COLLEGE, POCKER SAHIB MEMORANDUM ORPHANAGE
COLLEGE SOCIETY, TIRURANGADI, MALAPPURAM - 676 306
107. THE MANAGER,
P.SANKAR MEMORIAL SNDP YOGAM ARTS AND SCIENCE
COLLEGE, CORPORATE MANAGEMENT OF SNDP YOGAM, COLLEGE
KOYILANDY, KOZHIKODE - 673 305.
108. THE MANAGER,
ROUSATHAL ULOOM ARABIC COLLEGE
ROUZATHUL ULOOM ASSOCIATION, FAROOK COLLEGE
KOZHIKODE - 673 632.
109. THE MANAGER,
S.E.S.COLLEGE, SREEKANDAPURAM EDUCATIONAL SOCIETY
SREEKANDAPURAM, KANNUR - 670 631.
110. THE MANAGER,
ST.PIOUS COLLEGE (THE CORPORATE EDUCATIONAL
AGENCY OF COLLEGES DIOCESE OF KOTTAYAM), RAJAPURAM
KASARAGOD - 671 532.
111. THE MANAGER,
SULLAMUSSALAM ARABIC COLLEGE, JUMIYATHUL MUJAHIDEEN
ARECODE, MALAPPURAM - 673 639.
112. THE MANAGER,
SUNNIVVA ARABIC COLLEGE, SUNNI EDUCATIONAL TRUST
CHENNAMANGALLUR, MUKKAM, CHENNAMANGALLUR
KOZHIKODE - 673 602.

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113. THE MANAGER,
UNITY WOMENS COLLEGE, MUSLIM EDUCATIONAL AND
CULTURAL ASSOCIATION MANJERI, NARUKARA
MALAPPURAM - 696 122.

114. THE MANAGER,
W.M.O.ARTS AND SCIENCE COLLEGE
WAYANAD MUSLIM ORPHANAGE, MUTTIL, WAYANAD-673 122.

ADDL. R115 IMPEADED :

115. UNIVERSITY OF CALICUT,
REPRESENTED BY THE REGISTRAR,
UNIVERSITY OF CALICUT, THENHIPALAM,
KOZHIKODE DISTRICT - 673633.

ADDL. R 115 IS IMPEADED AS PER ORDER DT 25/5/2015 IN
IA NO.15668/2010

R1 BY ADV. SRI.S.KRISHNAMOORTHY, CGC
R2 TO R4 BY SPL. GOVERNMENT PLEADER SRI. C.K.JAYAKUMAR
R5 BY ADV. SRI.M.RAJAGOPALAN NAIR, SC,
R5 BY ADV. SRI.GEORGE POONTHOTTAM,SC,
R6 BY ADV. SRI.VARUGHESE M.EASO, SC, M.G.UNIVERSITY
BY SRI.P.K.VIJAYA MOHAN, SC
R7 BY ADVS. SRI.M.SASEENDRAN,SC,KANNUR UNIVERSITY
SRI.GEORGE JACOB (JOSE)
R8 BY ADV. SRI.P.C.SASIDHARAN,SC,SREE SANKARACHARY
BY ADV. SRI.ARUN B.VARGHESE,SC,

R10 BY ADVS. SRI.A.N.RAJAN BABU
SRI.P.GOPALAKRISHNAN (MVA)
R11 BY ADV. SRI.K.N.VENUGOPALA PANICKER, SC, TDB
BY ADV.SRI.M.V.S.NAMBOOTHIRI, SC,

R12 BY ADV. SRI.R.T.PRADEEP
R44 BY ADVS. SRI.SAJI VARGHESE
SMT.MARIAM MATHAI

R39 BY ADVS. SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

R20 BY ADVS. SRI.R.RAJASEKHARAN PILLAI
SRI.R.SREEDHARAN NAIR
SMT.SABINA JAYAN
SMT.MINI.V.A.

R23 BY ADV. SRI.GEORGEKUTTY MATHEW
R35,74,78,80,81 BY SRI.BABU VARGHESE SENIOR ADVOCATE
R83 TO 85,88,97 BY ADV. SRI.BABU VARGHESE SENIOR ADVOCATE
R106 BY ADV. SRI.BABU VARGHESE SENIOR ADVOCATE
R35,74,78,80,81 R83-85,88,97 & R106 BY ADV. SRI.JOHNSON T. JOHN
R86 BY ADV. SMT.A.M.FASEENA
R32 BY ADVS. SRI.TONY GEORGE KANNANTHANAM
SRI.MATHEW K. SIMON
R42 BY ADVS. SMT.ASHA ELIZABETH MATHEW
SRI.K.M.ABDUL MAJEED
SRI.MUHAMMED SUHAILKHAN
SRI.LIJOY P.VARGHESE

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R94 BY ADV. SRI.A.A.ABUL HASSAN
R100,112 BY ADVS. SMT.S.KARTHIKA
BY ADV. SRI.M.S.UNNIKRISHNAN
R18 BY ADV. SRI.N.SUGATHAN
SMT.VARSHA BHASKAR
R89,91 BY ADV. SRI.K.M.FIROZ
BY ADV. SMT.M.SHAJNA
R90,93,99,R108 &113 BY ADV. SRI.K.M.FIROZ
R55 & R60 BY ADV. SRI.GEORGE JACOB (JOSE)
R19,22, 24 TO 27,33 & 34, 41,47, 56 TO 58, 61, 63,
R73, 75 & R109 BY ADVS. SRI.BABY ISSAC ILLICKAL
SRI.ISAAC KURUVILLA ILLIKAL
R92 BY ADV. SMT.A.M.FASEENA
R29,31,52,53 R17, 28, R45 & R101 BY ADV. SRI.BABU VARGHESE
SENIOR ADVOCAT
R29,31,52,53, 17, 28, 45 & R101 BY ADV. SRI.JOHNSON T. JOHN
R57 BY ADV. SRI.ISAAC KURUVILLA ILLIKAL
R102 BY ADV. SRI.GEORGE MECHERIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-02-2015, ALONG WITH WPC. 33205/2010, WPC. 9140/2013,
THE COURT ON 25-05-2015 DELIVERED THE FOLLOWING:

bp

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APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE LETTER DT 25/8/2007 TOGETHER WITH GUIDELINES FOR RESERVATION (2006) ISSUED BY THE UGC.
- P2: COPY OF THE NEMO DT SEPTEMBER 2010 ISSUED BY THE UGC.
- P3: COPY OF G.O. (MS) NO. 260/2010 DT 20/8/2010.
- P4: COPY OF THE NOTIFICATION.

RESPONDENT'S EXHIBITS :

- EXT.R74(A): COPY OF THE ORDER DT 11/8/2008 ISSUED BY THE NATIONAL COMMISSION FOR MINORITY EDUCATION INSTITUTIONS.
- EXT.R86(A): COPY OF THE MEMORANDUM OF ASSOCIATION TOGETHER WITH BYE LAWS OF THE SOCIETY.
- EXT.R86(B): COPY OF THE CERTIFICATE OF REGISTRATION ALONG WITH THE PROCEEDINGS OF THE REGISTRAR F SOCIETIES, THRISSUR.
- EXT.R86(C): COPY OF THE LETTER NO. 7531/B3/94/H.EDN. DT 26/9/199410 ISSUED BY THE GOVERNMENT OF KERALA.
- EXT.R86(D): COPY OF THE DIRECT PAYMENT AGREEMENT DT 23/6/1995.
- EXT.R86(E): COPY OF THE APPLICATION DT 5/3/2010 BEFORE THE GOVT. OF KERALA FOR DECLARATION OF THE MINORITY.
- EXT.R92(A): COPY OF THE MEMORANDUM OF ASSOCIATION TOGETHER WITH THE BYE-LAW OF THE ANVARUL ISLAM SANGHAM.
- EXT.R92(B): COPY OF THE CERTIFICATE OF REGISTRATION OF THE KERALA JAMINATHUL ALEMA.
- EXT.R92(C): COPY OF THE MEMORANDUM OF ASSOCIATION AND THE BYE-LAW OF THE KERALA JAMIATHTHUL ULEMA.
- EXT.R92(D): COPY OF THE ORDER DT 27/9/1970 OF THE CALICUT UNIVIERSTY.
- EXT.R92(E): COPY OF THE ORDER DT 5/10/2010 OF THE CALICUT UNIVERSITY.
- EXT.R92(F): COPY OF THE ORDER DT 9/11/2010 OF THE CALICUT UNIVERSITY.
- EXT.R94(A): COPY OF THE MEMORANDUM OF ASSOCIATION TOGETHER WITH BYE- LAWS OF THE ROUZATHUL ULOOM ASSOCIATION.

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- EXT.R94(B): COPY OF THE ORDER IN F.NO. 84 OF 2007-37871 DT 15/12/2009
ISSUED BY THE NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS, GOVT. OF INDIA, NEW DELHI.**
- EXT.R94(C): COPY OF THE DIRECT PAYMENT AGREEMENT DT 6/10/1972.**
- EXT. R55(A): COPY OF THE CERTIFICATE DT 8/1/2010 ISSUED BY THE NATIONAL
COMMISSION FOR MINORITY EDUCATION INSTITUTIONS.**
- EXT.R60(A): COPY OF THE CERTIFICATE DT 28/9/2010 ISSUED BY THE NATIONAL
COMMISSION FOR MINORITY EDUCATION INSTITUTIONS.**
- EXT.R71(A): COPY OF THE CERTIFICATE DT 27/9/2010 ISSUED BY THE NATIONAL
COMMISSION FOR MINORITY EDUCATION INSTITUTIONS.**

//TRUE COPY//

P.S. TO JUDGE

bp

A.M.SHAFIQUE, J

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**W.P.C.Nos.32393 & 33205 of 2010
and 9140 of 2013**

Dated this the 25th day of May 2015

J U D G M E N T

Since common questions arise for consideration in these writ petitions, the same are decided together.

2. The petitioners in W.P.C.No.32393/2010 are members of scheduled caste community. They claim to have the requisite qualification for being appointed as Lecturers in the Colleges affiliated to the Universities in the State of Kerala. But, according to them, the reservation as contemplated by Rules 14 to 17 of Kerala State and Subordinate Service Rules (for short 'KS & SSR') is not implemented in regard to appointment to various teaching and non-teaching posts under the aided colleges affiliated to the Universities in State of Kerala.

3. According to the petitioners, the facility of reservation is now provided only in the Colleges/Department

directly run by the Universities and the Government, whereas the rules of reservation is not applied to aided colleges. Petitioners rely upon guidelines issued by University Grants Commission (UGC) prescribing the reservation policy for the year 2006 which is produced as Ext.P1. By Ext.P1, UGC by virtue of its powers under Section 20(1) of the University Grants Commission Act, 1956 (hereinafter referred to as 'the UGC Act') had directed effective implementation of the reservation policy in the Central Universities and those institutions deemed to be Universities receiving aid from the public funds except in minority institutions under Article 30(1) of the Constitution of India. UGC had issued the guidelines indicating that reservation is applicable to all teaching posts such as the post of Lecturers, Readers, Professors or by whatever other nomenclature the posts are known, and to all posts of non-teaching staff of all the Universities, Deemed Universities, Colleges and other grant-in-aid or research institutions and

centres. The extent of reservation in such educational institutions is stated to be 15% for Scheduled Castes and 7.5% for Scheduled Tribes. Other guidelines to be followed in the matter of selecting the candidates are also mentioned. Further, clause 16 indicates that action should be initiated by the Universities so as to effect necessary amendments to the Acts/Statutes for the statutory support for reservation.

4. It is contended that despite circulating Ext.P1 guidelines to all the Universities, the same has not been implemented so far. The petitioners submits that the number of teachers in the aided colleges in the State would come to 7199 of which the number of teachers belonging to SC/ST is only 11. Petitioners also rely upon Exts.P3 and P4 to further indicate that the reservation policy has not been adhered to by various colleges. On this basis, it is contended that non-implementation of reservation for candidates belonging to SC/ST would lead to infringement of

the fundamental rights of the petitioners and similarly situated candidates and therefore petitioners seek for a direction to implement Ext.P1 in the recruitment of various teaching and non-teaching posts in the aided colleges in the State and for other consequential reliefs.

5. In W.P.C.No.33205/2010, the petitioners seek the very same relief as sought for in W.P.C.No.32393/2010. They are persons belonging to Scheduled Tribe community, qualified and aspiring to the post of teaching staff in various colleges in the State of Kerala. They also seek for appropriate amendments to be made in the University Acts/Statutes for providing reservation to teaching staff of SC/ST categories in aided colleges and also for a direction to the 2nd respondent to reduce the extent of demand from respondents 3 to 27 to grant-in-aid in proportion to the deficiency of implementation of Ext.P1 guidelines.

6. In W.P.C.No.9140/2013, the petitioner being a member of Scheduled Caste community and being qualified

for appointment to the post of Lecturer, complains of the Universities/Colleges not following the reservation policy of UGC and seeks to declare Rule 10 of The Kerala University (Conditions of Service of Teachers and members of Non Teaching Staff) First Statutes, 1979 as unjust and illegal for not providing reservation to SC/ST candidates. Similar declaration is sought for with reference to identical provision in the Calicut University First Statute and the M.G.University First Statute. Petitioner also seeks for a direction to provide reservation for SC/ST candidates in the aided colleges.

7. Counter affidavit has been filed by various respondents. The Minority Institutions have filed counter affidavits inter alia stating that Ext.P1 guidelines is not applicable to such institutions coming within the purview of Article 30(1) of the Constitution of India. Under such circumstances, there is no necessity to consider whether Ext.P1 can be made applicable to such minority institutions. Therefore, in this judgment, I am not considering the

reservation policy to be followed by minority institutions and what has been considered is only with reference to the reservation policy to be followed by aided non-minority institutions.

8. The Cochin University of Science and Technology has filed an affidavit in W.P.C.No.33205/2010 indicating that the University is observing the provision of Clauses (a), (b) and (c) of Rule 14 and the provisions of Rules 15, 16 and 17A of the KS & SSR, 1958 as amended from time to time. According to them, they are bound to follow the State Government Rules on reservation of teaching and non-teaching posts as per the provisions of Cochin University of Science and Technology Act, 1986.

9. The University Grants Commission has filed counter affidavit in W.P.C.No.9140/2013. It is stated by them that the State Universities including their affiliated and Constituent colleges have to follow the percentage of reservation for SC/ST as prescribed by the State

Government. Reference is also made to Ext.R7(c) communication issued on 10/01/2012 to all the Universities for strict compliance of Reservation Policy and for filling up of remaining identified backlog vacancies for SC/ST and OBCs as on 01/11/2008 and persons with disabilities as on 15/11/2009 by 31/03/2012.

10. The learned counsel appearing for Sree Sankaracharya University submits that they follow the reservation policy in terms with Rule 14 to 17 of KS & SSR. In regard to other non-minority aided colleges, the matter has been argued by Sri.Rajan Babu and Sri.Gopal, learned counsel for such respondents. They submitted that in the absence of any statutory provision which enables the Universities to prescribe reservation to SC/ST candidates in aided colleges, there is no obligation on their part to comply with the same. Learned counsel also relied upon various statutory provisions in the Universities Act and Statutes to contend that no provision has been made either in the Act or

in the Statute to give such reservation. Reference is also made to a Division Bench judgment of this Court in **S.N College v. N.Ravindran** [2001(3) KLT 938] where a Division Bench of this Court was considering the question relating to the qualification to the post of Principal. That was a case in which the appointment of a person as Principal was under challenge. The University Appellate Tribunal having set aside the order of appointment, directed another person to be appointed. The question involved was regarding the qualification of the Principal to be appointed. Reference was made to the UGC scheme of 1998 which was implemented as per Government notification dated 21/12/1999 wherein Ph.D was made an essential qualification for appointment to the post of Principal. The management took a contention that they appointed the 2nd respondent by order dated 01/09/2000 on the basis of the University Statute. Division Bench held at paragraphs 8, 9 and 10 as under:

"8. S. 57 of the Kerala University Act stipulates that conditions of service of teachers of the affiliated

colleges are to be prescribed by the University. As per S. 58 of the Kerala University Act, teachers of colleges shall possess such qualifications as may be prescribed by regulations by Academic Council. As has already been indicated the said scheme was brought in by the Regulations of the Kerala University as per amendment made in the Regulation by academic council on 10.12.1990 which has not been amended yet in line with UGC Scheme. In fact in CCC 721/2000 which was filed in connection with O.P. 12665/2000 State Government filed a statement stating that UGC Scheme was introduced from 1.1.1986 based on the directions from the Government of India. The qualification for the post of Lecturers/Principals etc. of Universities and Colleges were prescribed by the U.G.C. and Government passed GO(P)171/99/H.Edn. dated 21.12.1999 for implementation of the said scheme. Unless and until amendments are effected in the University statutes the same would not be applicable to the private colleges. Management of private colleges are not bound to follow the same.

9. The Apex Court in University of Delhi v. Raj Singh & Ors. (AIR 1995 SC 336) upheld that the validity of the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a University and Institutions affiliated to it) Regulations, 1991. It was ordered that the Delhi University was

obliged under law to comply with the provisions contained therein and was directed selection of Lecturers strictly in accordance with the said Regulations. While holding so, Apex Court also considered the consequences of non-complying with the U.G.C. Regulations.

In this connection it is profitable to refer para. 21 of the said judgment. We may extract the relevant para. 21 of the said judgment.

“The provisions of clause of the said Regulations are, therefore, recommendatory in character. It would be open to a University to comply with the provisions of clause 2 by employing as lecturers only such persons as fulfil the requirement as to qualification for the appropriate subject provided in the schedule to the said Regulations. It would also be open, in specific cases, for the University to seek the prior approval of the U.G.C. to relax these requirements. Yet again, it would be open to the University not to comply with the provisions of clause 2, in which case, in the event that it failed to satisfy the U.G.C. that it had done so for good cause, it would lose its grant from the U.G.C. The said Regulations do not impinge upon the power of the University to select its teachers. The University may still select its lecturers by written test and interview or either. Successful candidates at the basic eligibility test prescribed by the said Regulations are

awarded no marks or ranks and, therefore, all who have cleared it stand at the same level. There is, therefore, no element of selection in the process. The University's autonomy is not entrenched upon by the said Regulations."

We may also refer to para. 24 of the judgment wherein Apex Court held as follows :

"Put shortly, the Delhi University is mandated to comply with the said Regulations. As analysed above, therefore, the Delhi University may appoint as a lecturer in itself and its affiliated colleges one who has cleared the test prescribed by the said regulations. Or it may seek prior approval for the relaxation of this requirement in a specific case, or it may appoint as lecturer one who does not meet this requirement without having first obtained the UGC's approval, in which event it would, if a failed to show cause for its failure to abide by the said Regulations to the satisfaction of the U.G.C. forfeit its grant from the U.G.C. If however, it did show cause to the satisfaction of the U.G.C. it not only would not forfeit its grant but the appointment made without obtaining the U.G.C.'s prior approval would stand regularised."

We may indicate it is entirely for the State Government and the University authorities to regulate their affairs and face the consequences of non-compliance with the U.G.C. Regulations, as held by the

Apex Court, which we have extracted herein before. We may also indicate since necessary amendments have not been incorporated in the University statutes it cannot be held that the management of affiliated colleges are bound to follow the same. They are governed by the University Act and Statutes. In this connection we may also refer to the decision of the Division Bench of this Court in Joykutty v. State of Kerala, 2000 (3) KLT SN P. 32 wherein this court held that U.G.C. Scheme does not become applicable because of any statutory mandate making it obligatory for the Government and the University to follow the same. It is for the State Government and University Authorities to take steps to carry out necessary amendments in the University Act and Statutes and issue orders accordingly. Since the qualifications prescribed by the U.G.C. were not incorporated in the Statutes the Tribunal was not justified in holding that the selection conducted by the Management on the basis of the existing provisions of the University Act and Statutes is bad in law.

10. The selection and appointment of the second respondent as Principal in S.N. College, Alathur was the subject matter of W.A. 2042/98. Petitioner was not a party to the said judgment but management was a party. So long as that judgment stands management is bound by that judgment. On the basis of that

judgment University of Calicut vide its order dated 20.4.1999 has already approved the appointment of second respondent as Principal of S.N. College, Alathur with effect from 16.11.1992. The approval has not been challenged. This Court in this case is not justified in examining the validity or otherwise of those proceedings especially since the said order was passed in pursuance of the order of the Division Bench. Under the above mentioned circumstances we are inclined to allow both these Writ Petitions. We do so."

Another judgment relied upon is **George v. State of Kerala** [1992(1) KLT (SC) 793]. It is held that though UGC scheme indicated that the retirement age was 60 years, in so far as the State Government has not accepted the same, teachers cannot claim it as a matter of right. Paragraphs 4 and 5 of the said judgment are relevant which reads as under:

"4. We may clarify the scheme referred to UGC (University Grants Commission) Scheme of 1986 framed by the Government pursuant to the Malhotra Committee's Report. We may further point out that it is clear from paragraph 4 of the circular dated 17th June,

1987, addressed by the Ministry of Human Resources Development, Department of Education, to the Education Secretary of all States/UTs (Union territories) that the adoption of the scheme was voluntary, and the only result which might follow from the State Government not adopting the scheme might be that it may not get the benefit of the offer of reimbursement from the Government to the extent of 80 per cent of the additional expenditure involved in giving effect to the revision of pay scales as recommended by the Scheme.

5. We may further point out that the teachers in Universities are governed in respect of their conditions of service and the age of retirement by the separate statutes made by the Universities concerned. On the other hand the teachers in private colleges or affiliated colleges are governed in respect of their conditions of service by regulations or rules framed by the Government (separate state of statutes). In these circumstances, the two classes of Universities teachers and teachers in private colleges cannot be regarded as similar for purposes of conditions of service as to bring the case under Art. 14 of the Constitution.

Yet another judgment relied upon is **All Kerala Private College Teachers Association v. Nair Service Society**

[AIR 1995 SC 2407]. Relevant paragraphs reads as under:

"It is thus obvious from the various provisions of the Two Acts referred to above that the conditions of service of the private college - teachers are to be prescribed by the statutes. The power to frame and issue the statutes is vested in the Senate. The State Government has, however, a limited power to make and issue the "First Statutes" under Section 83 of the Two Acts.

4. THE State Government had already issued statutes in the year 1976, 1979 and 1988 regulating the conditions of service of the teachers. THE 1976 Statutes provide for pension etc. of the teachers of private colleges. THE 1979 Statutes are in respect of conditions of service other than pension etc. relating to the teaching and non-teaching staff of the private colleges. THE 1988 Statutes are in respect of transfer of teachers to other universities. All these three statutes have been termed as "First Statutes" by the State Government and have been framed under Section 83 of the Two Acts.

What is meant by the expression "First Statutes" under Section 83 of the Two Acts is the crucial question to be determined. According to the appellant every time the State Government frames statutes in respect of a subject on which there are no statutes in existence, it

makes "First Statutes" under Section 83 of the Two Acts. The precise argument is that the expression "First Statutes" does not mean the one which is first in point of time but it means every statute framed in relation to a subject on which there are no statutes in existence. It was contended that on different subjects pertaining to conditions of service of teachers the State Government framed statutes in 1976, 1979 and 1988 and all the three statutes were the "First Statutes" because they were made to operate in different virgin fields.

Learned counsel for respondent 1 on the other hand contended that the Legislature has delegated the power to frame statutes to the Senate of the university. The Senate consists of elected as well as nominated members. The constitution of the Senate by holding elections and by making nominations from various sources is a time consuming process. The argument is that till the time the Senate, the Syndicate and other authorities of the university are constituted a 'one time' power has been given to the State Government under Section 83 of the Two Acts to make the "First Statutes" to regulate the process of bringing into existence the various university authorities and also for other necessary purposes. It is argued that once the Senate comes into existence, it is only the Senate which can frame the statutes and make

necessary amendments thereto.

5. WE have given our thoughtful consideration to the rival contentions raised by the parties. WE are inclined to agree with the contentions raised by the learned counsel for respondent 1. The universities were incorporated and brought into existence on the date the Two Acts were enforced, but the Senate and other bodies of the universities were yet to be constituted. The provisions of the Two Acts are not exhaustive. The fields which are left to be covered by the statutes have been enumerated under Section 34 of the Two Acts. The universities could not have started functioning unless there were statutes in existence immediately after the enforcement of the Two Acts providing for the constitution of the Senate other bodies of the universities and other regulatory provisions necessary for the functioning of the universities. To meet this eventuality, the legislature has given one time power to the State Government to frame the "First Statute" under Section 83 of the Two Acts. When the Senate is constituted and becomes functional then it is the only authority under the Two Acts to frame the statutes. WE fail to understand how the State Government can frame the statutes when the Senate is functioning. There cannot be two parallel authorities to make subordinate legislation on the same subject-matter. In view of the scheme of the Two Acts it is not possible to

contend that the Senate has no power to make statutes on a subject for the first time. WE do not agree with the learned counsel for the appellant that the State Government has the power to keep on making "First Statutes" till it exhausts all the subjects/topics on which statutes could be framed under the Two Acts. This argument goes contrary to the very object and purposes of the Two Acts.

6. WE, therefore, hold that the State Government has only one time power to frame "First Statutes" under Section 83 of the Two Acts. The statutes framed by the State Government may be in respect of one subject or various subjects but once the State Government has framed the statutes its power under Section 83 gets exhausted and it cannot frame the statutes for the second time. WE make it clear that the interpretation given by us to Section 83 of the Two Acts is prospective, except in relation to the impugned statutes, and will be operative from the date of this judgment.

In view of the interpretation given by us to the provisions of Section 83 of the Two Acts even the 1979 and the 1988 Statutes framed by the State Government would be invalid but we do not hold so because this judgment has been made to operate prospectively. The 1979 and 1988 Statutes would be, thus, considered to be valid and operative.

7. THE Mahtma Gandhi University (Amendment) Act, 1988 came into force on 17/02/1988., Section 100(1) reproduced above specifically provides that the First Statutes can be made by the Government in consultation with the University Grants Commission within a period of one year from 17/02/1988. THE simple language of the section makes it clear that the power to make the First Statutes is a one time power. THE time limit of one year has been prescribed because by that time the Syndicate of the university would have started functioning and would have taken up the matter of framing the statutes under the amended Act. THE learned single Judge fell into patent error in holding that the period of one year provided under Section 100(1) of the Gandhi Act was directory. THE Division Bench of the High Court rightly reversed the finding of the learned single Judge. For the reasons given by us while interpreting Section 83 of the Two Acts and also agreeing with the reasoning of the Division Bench of the High Court, we hold that the State Government could make the "First Statutes" only within a period of one year from 17/02/1988. In this case the First Statutes were issued on 25/09/1990 much beyond the period of one year. THE Statutes were on the face of it in violation of the mandatory provisions of Section 100(1) of the Gandhi Act and, as such, have been rightly quashed by the Division Bench

of the High Court. While upholding the judgment of the Division Bench of the High Court, we make it clear that the judgment of the Division Bench of the High Court shall be read in the light of the interpretation given by us to Section 83 of the Two acts."

Nair Service Society v. State [1992 (2) KLT 134] is also relied upon wherein it is held that conditions of service of private college teachers has to be prescribed by statute and power of issuing statute is vested with the Senate. The power given to Government under Section 83 of the Kerala University Act, 1974 to issue the Statute is only to avoid a stalemate till the authorities of the Universities are constituted. It is held that the power of the Government to issue statute could be exercised only once and therefore it is contended that once the Statute does not contain any provision for reservation, it is for the University to decide whether the statute requires to be amended and the State Government has no power in the matter. Reference is made to paragraphs 11 and 20 which reads as under:

“11. The 1976 statutes (S.R.O. No. 377 of 1976) deal with pension, provident fund, gratuity, insurance and age of retirement of teachers of private colleges. The statutes of 1979, the Kerala University (Conditions of Service of Teachers and Members of Non-teaching Staff) First Statute, 1979 is in respect of the conditions of service “other than” pension, provident fund, gratuity, insurance and age of retirement of teachers and members of the non-teaching staff in private colleges. The 1988 statutes are in respect of transfer of teachers to other Universities. The first statutes issued in 1979 and 1988 are not under challenge before us. It can be seen that the power of the government to issue first statutes, conferred under S. 83 of the Act, has already been exercised thrice by the government in regard to the very same subject-condition of service. S. 13 of the Interpretation and General Clauses Act, 1125, which is applicable to Kerala (corresponding to S.14 of the General Clauses Act) states that where by any Act any power is conferred then, unless a different intention appears, the power may be exercised from time to time as occasion arises. In the present case, the provisions in S.83 of the University Act, in the light of the other provisions already referred to, certainly evinces an intention to the contrary that the power under S. 83 can be exercised only once and not from time to time.

That power having been already exercised by the Government in relation to conditions of service of private college teachers by issuing statutes in 1976 and 1979 got itself exhausted and cannot be utilised after a period of fifteen years from the date of its first exercise. We are supported, in the above view, by two decisions of the Supreme Court, reported in Nasiruddin v. State Transport Appellate Tribunal (AIR 1976 SC331) and Lachmi Narain v. Union of India and others (AIR 1976 SC 714)."

"20. We find it difficult to agree with this conclusion of the learned single Judge. Lachmi Narain's case (AIR 1976 SC 714), the Supreme Court has laid down the test to find out whether a section is mandatory or directory, in the following manner:

"The primary key to the problem whether a statutory provision is mandatory or directory is the intention of the lawmaker as expressed in the law itself. The reason behind the provision may be a further aid to the ascertainment of that intention".

We have already said, while construing the provisions in the Kerala and Calicut University Acts, that the object of the University Acts is to give autonomy to the Universities in academic and other educational matters. The same will hold good in respect of Mahatma Gandhi University also. The authorities like the Senate, Syndicate, etc. are to be constituted under

the Act and primarily the conditions of service of teachers have to be made by the Syndicate, by means of a statute. As stated earlier, it may take some time for the constitution of these bodies, which consist of ex-officio members, elected members and nominated members. It is only to avoid a stalemate during the interregnum that an enabling provision is made in S. 100(l) of the Mahatma Gandhi University Act, by which, authority is given to the Government to make first statutes in respect of matters which are to be provided for in the statutes. It is with that object in mind that a period of one year was provided for in S. 100(l) of the Act and it cannot be said to be only directory. It is not as if the University is powerless, even if the period of one year mentioned in S. 100(1) is over, for, the power is vested in the Syndicate to make statutes in regard to the conditions of service of teachers. That power is not at all affected in any way by the expiry of the period of one year and the authorities constituted under the Act will have the power to make statutes in regard to the conditions of service of teachers. Accordingly we hold that the power of the Government to issue first statutes conferred on them under S. 100(l) of the Act will cease to have operation on the expiry of the period of one year from the date of commencement of the Mahatma Gandhi University (Amendment) Act, 1988. In that

view of the matter, Ext. P3 statute issued by the Government in respect of private college teachers coming under the Mahatma Gandhi University Act is also equally without jurisdiction and is inoperative."

12. Learned counsel also relied upon the Division Bench judgment dated 12/08/2014 in W.A.No.191/2014 wherein the issues involved was whether State Government could issue any direction to relax the age for appointment to the post of Lab Assistant in the College affiliated to Calicut University. Though the learned Single Judge upheld the claim of the writ petitioner, in appeal, the Division Bench observed that in so far as the non-teaching staff of Calicut University are governed by the Calicut University Act and the Statute, Government cannot issue any order relaxing the said statutory provisions. It was held that the order giving such relaxation is ultra vires the University Act and Statute and accordingly the Writ Appeal was allowed setting aside the judgment of the learned Single Judge.

11. The learned counsel appearing for the petitioner in

W.P.C.No.9140/2013 further contends that as per Section 19 of the Guruvayoor Devaswom Act, 1978, 10% of the posts in each grade of the Officers and other employees shall be reserved for SC and ST candidates, of which 1/5th shall be reserved for ST candidates. It is argued that when such a statutory provision exists, the colleges managed by Guruvayoor Devaswom should also follow the same criteria.

12. Before proceeding further, it would be useful to refer to the statutory provisions. In the Kerala University Act, 1974, appointment of teachers in Private Colleges are dealt with in Section 57. Section 57(1) and (1A) reads as under:

"57(1) Appointments to the posts eligible to receive salary from the Government shall be made only against the posts sanctioned by the Government or by such officers as may be authorised by the Government.

1A) Appointments to the lowest grade of teachers in each department of a private college shall be made by the educational agency by direct recruitment on the basis of merit."

In regard to appointment of teachers in University Rule 3 in Chapter III of the Kerala University 1st statute 1977 makes

provision which reads as under:

“3. Appointment of Teachers.- Teachers of the University shall be appointed by the Syndicate after advertisement inviting applications. In making appointments by direct recruitment to posts in any class or category in each department under the University, the University shall observe the provisions of clauses (a), (b) and (c) of rules 15, 16 and 17 of the Kerala State and Subordinate Service Rules, 1958 as amended from time to time. It shall however be competent for the Syndicate to appoint in exceptional cases Professors and Associate Professors and Readers without advertisement, if it is satisfied that persons already in the service are suitable for the post.”

In regard to appointment of non-teaching staff of Kerala University, the provision applicable is Rule 2 of Part I Chapter IV of the 1977 Statute which reads as under:

“2. Applicability of the Kerala Service Rules etc., to the non-teaching staff.-

(1) Subject to the provisions of the Act and the Statutes issued thereunder, the Kerala State and Subordinate Services Rules, 1958, the Kerala Services Rules, 1959 and the Government Servants Conduct

Rules 1960 as amended from time to time in so far as may be applicable and except to the extent expressly provided for in these Statutes shall apply in the matter of all the service conditions of the University employees in the University service:

Provided that the said rules shall, in their application to the members of the University service, be construed as if the employer were the Kerala University instead of the Kerala State Government."

The Kerala University (Conditions of Service of Teachers and members of Non Teaching Staff) First Statutes, 1979 (hereinafter referred to as 'First Statutes 1979') prescribes the service conditions of teachers and members of non-teaching staff of Private Colleges. Rule 39 (1&2) reads as under:

"39. Application of the Kerala Service Rules to the teachers.-

(1) Subject to the provisions of the Kerala University Act, 1974 and the Statutes issued thereunder, the rules contained in Parts I and II of the Kerala Service Rules for the time being in force, except those mentioned below, shall, so far as may be, apply to the teachers of private colleges.

(2) All orders, Government decisions, rulings and notifications issued by the Government with reference to any provision in Parts I and II of the Kerala Service Rules which are applicable to the teachers of private colleges, shall also so far as may be, apply to them, subject to such modification as the context may require."

Appointment of teachers are to be made in terms of Rule 3 Chapter II of the First Statutes, 1979 which reads as under:

"Appointment of teachers by direct recruitment - for making appointment to the post of teachers by direct recruitment, the post shall be advertised in two English and two Malayalam daily newspapers approved by the University for a minimum period of 30 days for the aspirant to apply".

Rule 10 (1A) of Chapter II of the First Statutes,1979 reads as under:

"1A: The educational agency shall have the option to have all the members of the teaching staff selected purely on the basis of merit from candidates of all communities or reserve every alternate vacancy of 50% of the vacancies for being filled up on the basis of merit from among candidates of any particular community to be specified by the educational agency."

Chapter 3 of the First Statute, 1979 deals with conditions of service of members of non-teaching staff. Rule 68 reads as under:

“68. Application of the Kerala Service Rules to the non-teaching staff:- Subject to the provisions of the Kerala University Act, 1974 and the Statutes issued thereunder, the Rules contained in Part I and II of the Kerala Service Rules, for the time being in force, except those mentioned below, shall so far as may be, apply to the members of the non-teaching staff of private colleges. All orders, Government decisions, rulings and notifications issued by the Government with reference to any provision in Parts I and II of the Kerala Service Rules which are applicable to the members of non-teaching staff of private colleges shall also, so far as may be, apply to them, subject to such modification, as the context may require.”

The Mahatma Gandhi University Act, 1985 and First Statutes as well as the Calicut University Act, 1975 and its First Statutes also contain similar provisions.

13. Therefore, it cannot be doubted that reservation for SC/ST has not been made applicable in respect of

appointment of teachers in aided non-minority institutions which are affiliated to various Universities in the State of Kerala. The only restriction imposed is that they have to reserve every alternate vacancy or 50% of the vacancies for being filled up on the basis of merit from among candidates of any particular community which should be specified by the educational agency. It is therefore argued on behalf of the respondents that in so far as the educational agency is giving reservation to members of a particular community as specified by the educational agency and in the absence of any other statutory provision in the Act or the Statutes, indicating that reservation in terms of KS & SSR has to be given to SC/ST candidates, no mandamus can be issued as prayed for.

14. On the other hand, it is argued by the learned counsel appearing on behalf of the petitioners that as per the constitutional scheme which has been upheld by the Supreme Court in **Indra Sawhney v. Union of India** [1992

(suppl) (3) SCC 217], even in the absence of a statutory provision the University is bound to follow the UGC guidelines and if necessary, appropriate amendments are to be made in the University Statutes to ensure that reservation is provided to SC/ST candidates. It is argued that it is a constitutional requirement that no citizen shall be excluded from being considered on the basis of merit in any public employment but an exception has been drawn with reference to reservation to be made in favour of backward classes of citizens. Relevant paragraphs in **Indra Sawhney** (supra) are quoted as follows:

“284. Article 16 deals with equality of opportunity in matters of public employment. The kind of backwardness which is required to attract the special provisions protecting the backward classes of citizens under Article 16 in respect of public employment is identical to the social and educational backwardness mentioned in Article 15(4). *M.R. Balaji v. State of Mysore*; *Janki Prasad Parimoo v. State of J & K*. These two articles are facets of equality specially guaranteed to citizens, while Article 14 prohibits the State from denying to any person equality before the law or the equal protection of the laws. *State of Kerala v. N.M. Thomas*. Clause (1) of Article 16 guarantees equality of opportunity for all citizens in matters of employment or appointment to any office under the State. The very concept of equality implies recourse to valid

classification for preferences in favour of the disadvantaged classes of citizens to improve their conditions so as to enable them to raise themselves to positions of equality with the more fortunate classes of citizens. Clause (2) prohibits discrimination against any citizen in respect of any public employment 'on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them'. Article 16 thus guarantees equality of opportunity and prohibits discrimination of any kind solely on any one or more of the grounds mentioned in clause (2). Nevertheless, clause (4) of this article provides that it is open to the State to make 'any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State'. It is an enabling provision conferring a discretionary power on the State; an ameliorative harmonisation of conflicting norms to stretch to the utmost extent the frontiers of equality; an emphatic assertion of equality between equals and inequality between unequals so as to achieve the maximum degree of qualitative and relative equality by means of affirmative action even to the point of reservation. It is in the nature of an exception or a proviso to the general rule of equalityxxxxx

285. The twin conditions to warrant reservation under Article 16(4) are: backwardness of the chosen classes of citizens and their inadequate representation in the public services. The backwardness of the classes of citizens mentioned in Article 16(4) is, as stated earlier, of the same degree and kind of social and educational backwardness as postulated in Article 15(4). Article 16 (4) is meant for the protection of the Scheduled Castes and the Scheduled Tribes and other comparably backward classes of citizens who are the unfortunate victims of continuing ill-effects of identified prior discrimination.

(emphasis supplied)

289. Articles 15(4) and 16(4) refer to the same classes of backward citizens. But they do not refer to identical remedies. While Article 15(4) speaks of special provisions for the advancement of backward classes, Article 16(4) expressly permits the State to make reservation of appointments or posts in public services in favour of such classes. It is true that both are enabling provisions allowing the State to adopt such affirmative action programmes as are necessary including reservation of seats or posts. But, unlike Article 16(4), Article 15(4) is not so worded as to suggest that it is exclusionary in character. The 'special provision' contemplated in Article 15(4) is an emphatic reference to the affirmative action which the State may adopt to improve the conditions of the disadvantaged members of the backward classes of citizens. Significantly, Article 15(4) does not specifically speak of reservation, but it has been generally understood to include that power. *M.R. Balaji v. State of Mysore*. While the State may adopt all such affirmative action programmes as it deems necessary for all disadvantaged persons, any special provision amounting to reservation and consequent exclusion from consideration of all the others in respect of the reserved quota in matters falling outside Article 16(4) must be subjected to even greater scrutiny than in the case of those falling under it.

290. The concept of equality is not inconsistent with reservation in public services because the Constitution specially says so, but, in view of its exclusion of others irrespective of merits, it can be resorted to only where warranted by compelling State interests postulated in Article 16. The State must be satisfied that in order to achieve equality in given cases, reservation is unavoidable by reason of the nature and degree of backwardness. Reservation must be narrowly tailored to that end, and subjected to strict scrutiny."

"295. The object of the special protection guaranteed by Articles 15(4) and 16(4) is promotion of the backward classes. Only those classes of citizens who

are incapable of uplifting themselves in order to join the mainstream of upward mobility in society are intended to be protected. The wealthy and the powerful, however socially and educationally backward they may be by reason of their ignorance, do not require to be protected, for they have the necessary strength to lift themselves out of backwardness. The rich and the powerful are not the special favourites of the Constitution. Backward they may be socially and educationally, but that is a shame which they have the steam to remove and the Constitution does not extend to them the special protection of reservation. It is not sufficient that the persons meant to be protected are backward merely by reason of illiteracy, ignorance social backwardness. If they have, in spite of such handicaps, the necessary financial strength to raise themselves, the Constitution does not extend to them the protection of reservation. The chosen classes of persons for whom reservation is meant are those who are totally unable to join the mainstream of upward mobility because of their utter helplessness arising from social and educational backwardness and aggravated by economic disability."

"302. Article 335 requires that "in the making of appointments to services and posts in connection with the affairs of the Union or of a State" the claims of the members of the Scheduled Castes and the Scheduled Tribes must be considered 'consistently with the maintenance of efficiency of administration'. If that is the constitutional mandate with regard to the Scheduled Castes and the Scheduled Tribes, the same principle must necessarily hold good in respect of all backward classes of citizens. The requirement of efficiency is an overriding mandate of the Constitution. An inefficient administration betrays the present as well as the future of the nation.

303. 'Reservation of appointments or posts' mentioned in Article 16(4) is with reference to appointments 'in

favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State'. The condition precedent to making any such reservation is the satisfaction of the State as to the inadequate representation of any backward class of citizens in the services under the State. In respect of any such class, it is open to the State to make 'any provision for the reservation of appointments or posts'."

"306. The object of reservation is to maintain numerical and qualitative or relative equality by ensuring sufficient representation for all classes of citizens. In whichever service a backward class of citizens is inadequately represented, it is open to the State to create sufficient number of posts for direct appointments. No matter whether the appointment is made to a cadre post or an ex-cadre post, the State action is beyond reproach so long as the constitutional objective of numerical and qualitative equality of opportunity is maintained by making direct appointments at the appropriate levels whenever inadequate representation of any backward class in the services is noticed by the State."

"311. Reservation is the extreme limit to which the doctrine of affirmative action can be extended. Beyond the strict confines of clause (4) of Article 16, reservation in public employment has no warrant in the law for it then becomes the very antithesis of equality. While reservation is impermissible for appointment to higher posts by promotion from lower posts, any other legitimate affirmative action in favour of disadvantaged classes of citizens by means of valid classification is perfectly in accordance with the mandate of Article 16(1). It is within the discretion of the State to extend to all disadvantaged groups, including any backward class of candidates, preferences or concessions such as longer period of

minimum time to pass qualifying tests etc. (see *N.M. Thomas*).

“319. Reservation should be avoided except in extreme cases of acute backwardness resulting from prior discrimination as in the case of the Scheduled Castes and the Scheduled Tribes and other classes of persons in comparable positions. In all other cases, preferential treatment short of reservation can be adopted. Any such action, though in some respects discriminatory, is permissible on the basis of a legitimate classification rationally related to the attainment of equality in all its aspects.”

15. It is true that and as rightly argued by the learned counsel appearing on behalf of the respondents that this Court cannot issue a mandamus to provide reservation to SC/ST candidates, in the absence of any specific statutory provision. As already held by the Supreme Court, in **George's** case (*supra*), in the absence of any amendment to the University Statute, non-implementation of UGC guidelines by itself cannot give any right to the persons to claim reservation on the basis of Ext.P1. The University Act or the Statutes may have to be suitably amended for that purpose. In fact, reservation in favour of a particular

community to the choice of the educational agency has already been taken care of in the Statute. But the constitutional scheme for granting the benefit of reservation to SC and ST candidates is not reflected in the Statute. This is a matter which requires to be addressed by the University especially since UGC had issued such guidelines in terms of Ext.P1. The fact that reservation is being granted to 50% of a particular community by itself will not suffice to hold that SC and ST candidates are being given reservation in terms of the constitutional scheme.

16. It is apparent from the various University Acts itself that posts are being sanctioned by the Government. As far as Government colleges are concerned, Rule 14 and 17 of KS & SSR are made applicable. In fact, there is a conscious departaton when it comes to the question of appointment of teachers and non-teaching staff in private colleges are concerned. Probably it is to give some leverage to private colleges to give appointment to members of the

community which run such colleges. But, still the question would be why should SC/ST candidates be kept out of reservation when in all other Government employments, such reservation is permissible or is granted. No specific reason has been stated to exclude reservation to ST/SC candidates in aided non minority private colleges. The private colleges also functions with the fund allocated by the Government and are grant-in-aid institutions. In such circumstances, they are also bound by the reservation policy as envisaged in the Constitution. Therefore, though not late, it is for the Universities through its appropriate agencies to make suitable amendments to the Statute or frame Statutes to take appropriate measures to ensure reservation to SC/ST candidates as well.

17. Having regard to the aforesaid factual and legal consideration, I am of the view that these writ petitions can be disposed of as under:

i) All the Universities of the State of Kerala shall make necessary amendments in the Statute or frame Statutes to ensure that appropriate reservation is made to SC/ST candidates for appointment to the posts of teachers as well as non-teaching staff in aided non-minority institutions. Necessary amendments in this regard shall be made by the Universities within a period of six months from the date of receipt of a copy of this judgment.

ii) Appointments to the posts of teaching/non-teaching staff after the period aforesaid shall be made only after making provision for reservation as stated above.

(A.M.SHAFFIQUE, JUDGE)

jsr

