

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM

THE HONOURABLE MR .JUSTICE M.M. SUNDRESH

W.P. Nos. 34516 & 34517 of 2015

&

M.P. Nos. 1,1,2 & 2 of 2015

W.P. NO. 34516 of 2015

Madras University Teachers Association (MUTA),
(Regd. No. 37/1977),
Rep. by its General Secretary,
Clock Tower Building,
Chepauk Campus,
Chennai 600 005.

... Petitioner

Vs.

1. University of Madras
Rep. by its Registrar,
Centenary Building,
Chepauk,
Chennai 600 005.

2. The Vice Chancellor,
University of Madras,
Centenary Building,
Chepauk, Chennai 600 005.

3. The University Grants Commission,
Rep. by its Secretary,
Bahadur Shah Zafar Marg,
New Delhi 110 002.

4. Thiru R. Surendra Prasad

... Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying for issue of a Writ of Certiorarified Mandamus to call
for the records of the 1st respondent herein relating to the
minutes of the Special Meeting of the Senate held on 15.10.2015
nominating the 4th respondent herein as the nominee of the Senate

to serve on the Search Committee for appointment to the Post of Vice Chancellor in the Madras University and quash the same and direct the respondent University herein to form a Search Committee in accordance with clause 7.3.0 of the University Grants Commission Regulations 2010.

W.P. NO. 34517 of 2015

Madras University Teachers Association (MUTA),
(REgd. No. 37/1977),
Rep. by its General Secretary,
Clock Tower Building,
Chepauk Campus,
Chennai 600 005.

... Petitioner

Vs.

1. University of Madras
Rep. by its Registrar,
Centenary Building,
Chepauk,
Chennai 600 005.
2. The Vice Chancellor,
University of Madras,
Centenary Building,
Chepauk, Chennai 600 005.
3. The University Grants Commission,
Rep. by its Secretary,
Bahadur Shah Zafar Marg,
New Delhi 110 002.
4. Dr.R. Balasubramanian

... Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent herein relating to the minutes of the Special Meeting of the Syndicate held on 16.10.2015 nominating the 4th respondent herein as the nominee of the Syndicate to serve on the Search Committee for appointment to the Post of Vice Chancellor in the Madras University and quash the same and direct the respondent University herein to form a Search Committee in accordance with clause 7.3.0 of the University Grants Commission Regulations 2010.

For Petitioner

In both WPs : Mr.AR.L.Sundaresan
Senior Counsel for
Mrs.A.L. Ganthimathi

For Respondents

In both WPs : Mr.A.L.Somayji,
Advocate General assisted by
Mrs. S. Narmada Sampath
for R1 & R2 in both WPs
Mr.P.R. Gopinathan
for R3 in both WPs
Mr.Rajnish Pathiyil for R4
In W.P. No.34516/2015
Mr.R. Thiagarajan,
Senior Counsel for
Mr.R. Sureshkumar for R4 in
W.P. No. 34517 of 2015

COMMON ORDER

As the issue involved in both the writ petitions are similar and the writ petitions have been filed by the same petitioner as against the very same official respondents, both the writ petitions are taken up together and disposed of by this common order.

2. Both the writ petitions have been filed by the same petitioner, which is an association representing the Teachers working under the respondent University. In W.P. No. 34516 of 2015, the challenge is to the nomination of the 4th respondent therein by the Senate to serve on the Search Committee for appointment to the post of Vice Chancellor. Similarly, in W.P. No. 34517 of 2015, the challenge is to the nomination of the 4th respondent therein by the Syndicate as a member of the Search Committee for appointment to the post of Vice Chancellor.

3. The background facts governing the writ petitions are:

The post of Vice Chancellor of the respondent University is due to fall vacant on 17.01.2016 and to fill up the said vacancy, a Search Committee came to be constituted, in which, out of three members, two members were nominated, one by the Senate and the other by the Syndicate. As far as W.P. No.

34516 of 2015 is concerned, a special meeting of the Senate was held on 15.10.2015, after due notice to the members. The name of the 4th respondent in the said writ petition was proposed while the deponent of the affidavit filed in support of W.P. No. 34516 of 2015, filed nomination for one Dr. Nirmala Prasad. However, the 4th respondent, after contest, was nominated. Similar was the procedure followed for the special meeting held on 16.10.2015 for the Syndicate members. The 4th respondent in W.P. No. 34517 of 2105 was nominated unopposed though there were two nominations seeking to nominate the very same respondent. Challenging the nomination of the respective 4th respondent, the petitioner has come up with the present writ petitions.

4. Before delving into the issues involved, it would be appropriate to refer to the relevant provisions governing the case:

Sections 11(1) & 11(2) of the Madras University Act, 1923, prescribes the method by which a Vice Chancellor can be appointed and it is usefully extracted hereunder:

"Section 11: The Vice-Chancellor -(1)Every appointment of the Vice-Chancellor shall be made by the Chancellor from out of a panel of three names recommended by the Committee referred in sub-section; (2)Such panel shall not contain the name of any Member of the said Committee

Provided that if the Chancellor does not approve any of the persons in the panel so recommended by the Committee, he may take steps to constitute another committee, in accordance with sub-section (2), to give a fresh panel of three different names and shall appoint one of the persons named in the fresh panel as the Vice-Chancellor

(2) For the purpose of sub-section (1), the Committee shall consist of three persons of whom one shall be nominated by the Senate, one shall be nominated by Syndicate and one shall be nominated by the Chancellor.

Provided that the person so nominated shall not be a member of any of the authorities of the University..."

As per the aforesaid Section 11, the person so nominated shall not be a member of any of the authorities of the University and

Section 13 of the Madras University Act, 1923, defines as to what/who shall be the authorities of the University and the same is extracted hereunder:

"Section 13 - The following shall be the authorities of the University:-

- (1) The Senate
- (2) The Syndicate
- (3) The Academic Council
- (4) The Faculties
- (4-A) The Finance Committee

(5) The Boards of Studies and

(6) such other bodies as may be declared by the Statutes to be authorities of the University."

Under Section 41 of the said Act, in case of any grievance with regard to the election or nomination of a member to the Search Committee, the same can be challenged by way of an appeal to the Chancellor. It is apposite to reproduce the aforesaid section hereunder:

"Section 41: If any question arises whether any person has been duly elected or nominated as or is entitled to be a member of any authority (or other body) of the University, the question shall be referred to the Chancellor whose decision thereon shall be final".

Clause 7.3.0 of the University Grants Commission Regulations on Minimum Qualifications for appointment of teachers and other academic staff in Universities and Colleges and measures for the Maintenance of Standards in Higher Education, 2010 deals with the appointment of Vice Chancellor and the said clause is extracted hereunder for better appreciation of the issue involved:

"7.3.0 VICE CHANCELLOR

I. 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.

II. 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 of 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."

Under Clause 7.4.0 of the aforesaid Regulations, "the Universities/State Governments shall modify or amend the relevant Act/Statutes of the Universities concerned within 6 months of adoption of these Regulations. Clause 7.3.0 of University Grants Commission Regulations, 2010, extracted above, has been modified subsequently by a notification dated 13.06.2013 and the amended clause reads thus:

"7.3.0 VICE CHANCELLOR

I. 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.

II. 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 of 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. The constitution of the Search Committee could be as per the Act/Statutes of the concerned 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."

5. Learned Senior counsel appearing for the petitioner made the following two submissions:

(i) The first submission is that clause 7.3.0 of UGC Regulations, 2010, would govern both the cases qua the qualification prescribed for a member of the Search Committee meant to recommend the panel of persons to be considered for appointment to the post of Vice Chancellor. Therefore, the said Regulations, though a subordinate legislation, having got the

assent of the Parliament, has got the trappings of a Central Enactment and hence, will have primacy over the Madras University Act, 1923. Considering the academic excellence required, the minimum qualification prescribed for a member of the Search Committee cannot be diluted. The decision of the Honourable Apex Court reported in 2015 (2) CTC 192 (Kalyani Mathivanan V. K.V. Jeyaraj and Ors.) has to be seen in the context in which it has been rendered. It has not disapproved the ratio laid down in the judgment rendered in State of Tamil Nadu and another v. Adhiyaman Education and Research Institute and others reported in 1995 (4) SCC 104 and the judgment rendered in Dr. Preeti Srivastava and another V. State of M.P. and others, reported in 1999 (7) SCC 120. The learned Senior Counsel also relied on the judgments rendered in Jagdish Prasad Sharma and Others V. State of Bihar and Others reported in (2013) 8 SCC 633 and State of A.P. V. K. Purushotham Reddy and Others reported in (2003) 9 SCC 564. Further, according to the learned Senior Counsel, the scope of Section 14 of University Grants Commission Act, 1956 has to be seen with reference to clause 3 of UGC Regulations, 2010, which speaks about the consequences of failure of Universities to comply with the recommendations of the Commission.

(ii) The second submission of the learned Senior Counsel is that the procedure contemplated has not been followed in the selection process adopted. Everything has been done in a hasty manner on the very same day. Therefore, according to the learned Senior Counsel, on the above two grounds, the writ petitions will have to be allowed.

6. The submission made by the learned Senior Counsel for the petitioner with reference to the first issue is sought to be supported by the counsel appearing for the University Grants Commission. To add to it, it is submitted by the learned counsel for the Commission that having been a recipient of the funds allotted by the Commission, the respondent University cannot dilute the standard fixed while nominating a member to the Search Committee.

7. Learned counsel for respondents 2 and 4, headed by the learned Advocate General, has raised the following three preliminary objections:

(i) Page No.1 of the typed set of papers filed by the petitioner shows that the registration has not been renewed by making the prescribed fee for the past 38 years by the petitioner;

(ii) The deponent of the affidavit, being a member of the Senate, took part in the special meeting conducted on 15.10.2015 and supported another candidate, by name, Dr.Nirmala Prasad and therefore, it is not open to him to file an affidavit on behalf of the petitioner association. Hence, the writ petitions are liable to be dismissed on the ground of estoppel and person interested;

(iii) There is a statutory remedy by way of an appeal provided under Section 41 of the Madras University Act, 1923. Thus, the same being effective and efficacious, the discretionary remedy under Article 226 of the Constitution of India should not have been invoked.

8. Heard the submissions on either side.

9. As this Court would like deal with the merits of the case, the preliminary objections raised on behalf of respondents 1 and 2 are not gone into, though there is some substance in them.

10. Coming to the merits of the case, it is clear that the allegations qua qualification of the private respondents are not true. The qualification of the 4th respondent in W.P. No. 34516 of 2015, as could be seen from the counter affidavit, filed on behalf of 1st and 2nd respondents is that he is a full time non-stipendiary Ph.D research scholar, who is not getting any monetary benefits from the University. Likewise, the qualification of the 4th respondent, in W.P. No. 34517 of 2015, as seen from the counter affidavit filed on behalf of respondents 1 and 2, who was nominated unopposed, is as follows:

"14. I submit that the 4th respondent did his B.A.(Political Science) during 1964-67 and M.A. (Politics & Public Administration) during 1967-69 at Presidency College, Chennai. Thereafter, he joined the Department of Politics and Public Administration, University of Madras in 1969 as a Research Scholar to pursue his research and he had completed in M.Litt Degree in 1975 and earned Ph.D in 1975 from the University of Madras.

15. I submit that he became an Assistant Professor of Political Science in 1972 in the Presidency College and a Reader since 1980 in the Department of Politics and Public Administration in the University of Madras, where he got his

elevation to the position of the Professor and Head of the Department in 1988. He is also a visiting faculty of the Cleveland State University.

16. I submit that he has put 35 years of teaching experience, which include 33 years of teaching at postgraduate level and more than 30 years of research experience in guiding M.Phil and Ph.D Scholars. Thirty five scholars earned their M.Phil degrees and twenty five scholars obtained Ph.D Degree and one for M.Lit. He has evaluated more than 100 Ph.D dissertations of various Universities.

17. I submit that he had been the Member of Board of Studies in Annamalai University, Andhra University, Nagarjuna University, Madurai Kamaraj University, Manonmanian Sundaranar University, Bharathiar University, Kakatiya University and Mysore University. He was also the Chairman of the Board of Examiners in Madurai Kamaraj University and Annamalai University. He was a member of UGC Quinquennial Commission and Curriculum Development Committee, University of Madras among others. Moreover, he was a Member of UGC Committees and academic panels. He was a Member of the Citizen's Commission for National Issues, New Delhi.

18. I submit that he has participated and presented papers in several regional, national, international seminar, Workshops and Conferences including the following:

- * XV World Congress of International Political Science Association Conference held at Buenos Aires, Argentina in 1991.
- * XXII International Conference of Administrative Science at Berlin in 1994.
- * XVII World Congress, Department of Political Science, Yonsei University, Seoul, South Korea, 17-21 August, 1997.

His Field of specialization includes Public Enterprises, Comparative Administration and Financial Administration. He has published more than 30 research papers and four books. He has published article and conference papers covering areas such as Trade Unions, Indian Ocean Politics,

Regional Parties, Industrial Relations, Federal Relations, Handloom Industry, Job Reservation, Castes and Voting behavior, Nationalisation and Privatization, Inter-state relations, Environment and Development, Urbanisation and its impact on local bodies, Tourism Development, Drip Irrigation, Distributive justices, Development of Higher Education, etc.

19. I further submit that he was instrumental in organizing several National and International Seminars. Some of them are given below;

He had been the Course Director of the Training Programme sponsored by the Ministry of Home Affairs in 1981.

He has organized seminar on Centre-State Relations in India financed by the Government of Tamil Nadu in 1984.

As Organizing Secretary, he hosted several National Conference of Indian Political Science Association and Indian Public Administration Association.

He also organized a number of State Level Conferences of Tamil Nadu Academy of Political Science.

He served as Organizing Committee Member in 'South Zone Inter-University Cultural Festival' (Unifest-90) February 2-5, 1990

Other important conferences organized by him include:

Indo-Soviet Scientific Conference at Chennai in 1989.

International Round Table on Democracy and Social Tensions in Third World Countries at Chennai in 1992.

Seminar on 'Electoral Reforms' at University of Madras, Chennai, held in the month of January, 2001.

One day Workshop on 'Financial Crisis in Tamil Nadu: Reasons and Remedies at University of Madras, Chennai held in the month of May, 2002.

Seminar on 'Electoral Politics and Nation Building in South Indian States' held in the month of April, 2003.

20. I further submit that during his academic career, he became a Life Member of various

professional bodies and some of them are:

Indian Political Science Association
Indian Society of Criminology
Indian Society of Social Sciences
Tamil Nadu Academy of Political Science
Secretary of International Political Science
Association Study Group (SG2): Privatization and
Public Enterprise.

General Secretary, Indian Public
Administration Association

President, Indian Public Administration
Association

Vice-President, Indian Political Science
Association

Vice-President, Indian Society of Victimology

21. I submit that presently he is working as a Director, Faculty of Science and Humanities at SRM University, Chennai, since 2005. He played a major role for various achievements by the said SRM University including getting accreditation by NAAC, and he was instrumental in getting various MOUs signed with National and Multinational institutions of higher learning and research. During his academic career, liaising for more than 3 decades, he has visited several countries for attending International Conferences, Seminars and Academic programmes to countries such as UK (3 times), USA (7 times), France, Switzerland, Italy, Argentina, Yugoslavia, Singapore, Hong Kong, South Korea, Malaysia and West Germany (3 times)".

The only bar for a member of the Search Committee is that he or she should not be a member of any of the authorities of the University. Admittedly, the 4th respondent in the respective writ petitions did not have the disqualification of being a member of any of the authorities of the University, as described under Section 13 of the Madras University Act, 1923. As there is no dispute with regard to their qualification, both academic as well as administrative, it is not open to the petitioner to challenge their nomination without any contra material.

11. Moreover, the main issue sought to be raised on the application of the University Grants Commission Regulations, 2010, as against the provisions contained under the Madras University Act, 1923, is no longer res integra and it has

already been considered in the judgment rendered in Kalyani Mathivanan V. K.V. Jeyaraj and Ors reported in 2015 (2) CTC 192. In the said judgment, the Honourable Apex Court, was pleased to hold that clause 7.3.0 of University Grants Commission Regulations, 2010, cannot be pressed into service when the University is under the purview of the State Legislation. As the State Government has not adopted the Regulations, there is no question of repugnancy between the Regulations of University Grants Commission on the one hand and the Enactment of the University on the other. It was also held that the post of Vice Chancellor is that of an officer. Suffice it to place on record, the following conclusions arrived at by the Honourable Apex Court, in the judgment referred to supra:

"44. In view of the discussion as made above, we hold:

(i) To the extent the State Legislation is in conflict with Central Legislation including Subordinate Legislation made by the Central Legislation under Entry 25 of the Concurrent List shall be repugnant to the Central Legislation and would be inoperative.

(ii) The UGC Regulations being passed by both the Houses of Parliament, though a Subordinate Legislation has binding effect on the Universities to which it applies.

(iii) UGC Regulations, 2010 are mandatory to 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.

(iv) UGC Regulations, 2010 is 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. Thus, UGC Regulations, 2010 is partly mandatory and is partly directory.

(v) UGC Regulations, 2010 having not adopted by the State of Tamil Nadu, the question of conflict between State Legislation and Statutes framed under Central Legislation does not arise. Once it is adopted by the State Government, the State Legislation to be amended appropriately. In such case also, there shall be no conflict between the State Legislation and the Central Legislation."

Therefore, the issue with regard to application of UGC Regulations, 2010 as against the provisions contained in the Madras University Act, 1923, has to be held against the petitioner. Resultantly, this Court does not find any violation of Section 11 of the Madras University Act, 1923. The private respondents are qualified and there is no disqualification from which they suffer. Further, they are also not members of any of the authorities of the University. In this context, it would be useful to quote the judgment of the Division Bench of the Allahabad High Court, in Syed Abrar Ahmed V. University Grants Commission and Others (MANU/UP/1572/2015), wherein, the judgment of the Honourable Apex Court in Kalyani Mathivanan's case, referred to supra, has been taken note of and it has been held as follows:

42. We have, therefore, no difficulty in holding that in the absence of any adoption by the University of clause 7.3.0 of the UGC Regulations and in the absence of any amendment having been made in the University Act or the Statutes to give effect to the provisions of clause 7.3.0 of the UGC Regulations, the qualifications as prescribed for under clause 7.3.0 of the UGC Regulations in relation to the appointment of the Vice-Chancellor of the University would not be applicable to the University and the appointment of the Vice-Chancellor of the University would continue to be governed by the provisions of Statute 2(1) of the Statutes of the University."

Thus, the first contention raised by the learned counsel for the petitioner has to be rejected and it is accordingly rejected.

12. Coming to the second contention raised by the learned Senior Counsel for the petitioner that the procedure contemplated has not been adhered to, in the selection process, such a grievance sought to be canvassed cannot be accepted. None of the members of either the Syndicate or the Senate raised such an issue. The meetings held were special meetings and they were attended by the members of the Senate/Syndicate, as the case may be. It is not the case of the petitioner that no proper notice was given prior to the meetings. As submitted by the learned counsel for respondents 2 and 4, the deponent had taken part in the special meeting conducted for the members of the Senate. Thus, in the absence of any procedural violation or lapse, having been established, leading to substantial injury, the contention made is liable to be rejected.

13. For the foregoing reasons, there is no ground made out to entertain the writ petitions and they are, therefore, dismissed. No costs. Connected M.Ps are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Registrar,
University of Madras,
Centenary Building,
Chepauk,
Chennai 600 005.
2. The Vice Chancellor,
University of Madras,
Centenary Building,
Chepauk, Chennai 600 005.
3. The Secretary,
University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi 110 002.

+1cc to Mr.R.Suresh Kumar, Advocate, S.R.No.68590
+2cc's to Mr.P.R.Gopinathan, Advocate, S.R.No.68877
+1cc to M/s.Narmadha Sampath, Advocate, S.R.No.69038
+1cc to Mr.Rajnish Pathiyil, Advocate, S.R.No.68686
+2cc's to Mrs.A.L. Ganthimathi, Advocate, S.R.No.68874 & 68873

W.P. Nos. 34516 & 34517 of 2015

SV(CO)
CA(22/12/2015)

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