

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

–
WRIT APPEAL NOS.233 to 235 OF 2011 & 1553 to 1555 of 2013 and WA CROSS-OBJECTIONS
(SR) No.112907 OF 2011

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JUDGMENT: (per the Hon'ble Sri Justice Dilip B.Bhosale)

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These writ appeals under Clause 15 of Letters Patent are directed against the common order dated 28-02-2011 passed in W.P.Nos.12563, 15138 and 24732 of 2010. By this order, the writ petitions were allowed, setting aside the selection and appointment of Dr.Sravanthy and Dr.Gowda Rajender, hereinafter referred to as 'Dr.Gowda', as Assistant Professors in Zoology in the second respondent-Kakatiya University, Warangal (for short 'the University').

2. W.P.Nos.12563 and 24732 of 2010 were filed by Dr.Vinatha Naini, hereinafter referred to as 'Dr.Vinatha', and Dr.Damayanthi respectively, challenging the selection and appointment of Dr.Sravanthy to one such post under Open Competition (Woman) category, while W.P.No.15138 of 2010 was filed by Dr.M.Radha Krishna, hereinafter referred to as 'Dr.R.Krishna', assailing the selection and appointment of Dr.Gowda to the other post reserved for Backward Classes – Group B category.

3. Dr.Vinatha in W.P.No.12563 of 2010 had challenged the selection and appointment of Dr.Sravanthy on the ground of bias. Dr.Damayanthi in W.P.No.24732 of 2010 sought declaration that the selection and appointment of Dr.Sravanthy is hit by personal bias and in the alternative challenged the constitution of selection committee being illegal and violative of Section 43 of the A.P. Universities Act, 1991 (for short 'the Act'). She also prayed for holding fresh interviews after constituting new selection committee in accordance with law. Dr.R.Krishna in W.P.No.15138 of 2010 sought declaration that the action of the University in convening 87th meeting of the Executive Council on 30-04-2010, for seeking approval of the selection of

Dr.Gowda, was illegal and contrary to Section 18(6) of the Act. He further prayed for setting aside the appointment of Dr.Gowda and an enquiry into the alleged irregularities committed by the University including the Executive Council appointing Dr.Sravanthy and Dr.Gowda and prayed for re-notifying the vacancies.

4. W.A.Nos.234 and 235 of 2011 are preferred by Dr.Sravanthy, while W.A.No.233 of 2011 is preferred by Dr.Gowda arising from the judgment, disposing of W.P.Nos.12563, 24732 of 2010 and W.P.No.15138 of 2010 respectively. W.A.Nos.1553 to 1555 of 2013, preferred by the University, are also against the very same judgment.

5. The University had issued the notification dated 31.12.2009 inviting applications from qualified candidates for appointment to various posts of Assistant Professors, Professors and Associate Professors in different faculties. In these appeals, we are concerned only with two posts of Assistant Professors in Zoology reserved for OC(W) and BC(B) categories. Initially, 25 aspirants had applied for these posts, out of which 22 were found eligible. The selection committee, duly constituted under the provisions of the Act, conducted interviews on 20-04-2010 of the eligible candidates. Out of the 22 eligible candidates, 5 failed to appear before the selection committee. The selection committee interviewed the remaining 17 candidates and finally recommended Dr.Sravanthy and Dr.Gowda for appointment to these posts.

5.1 Thereafter, Executive Council of the University in its meeting held on 30-04-2010 resolved to approve the recommendation, and accordingly appointment orders were issued by the University on 30-04-2010. Dr.Sravanthi and Dr.Gowda joined the duty as Assistant Professors in Zoology on 01-05-2010.

5.2 In this backdrop, Dr.Vinatha, Dr.R.Krishna and Dr.Damayanthi filed writ petitions under Article 226 of the Constitution of India challenging their selection and appointments. Though the grounds of challenge are virtually common in respect of both the candidates, the selection and appointment of Dr.Sravanthy was also challenged on the ground of bias, she being a daughter of Dr.Ch.Sammaiah, the

Chairman of the Board of Studies in Zoology Department and member of the Selection Committee, hereinafter referred to as 'Dr.Sammaiah'. In other words, Dr.Sammaiah allegedly misused his office to get her selected and appointed to the post of Assistant Professor.

6. The writ petitions were allowed by the common order dated 28.02.2011, finding illegalities in evaluation of comparative merit of the candidates by the selection committee/lack of transparency due to non-maintenance of record by selection committee, bias of the said committee in the process of selection of Dr.Sravanthy, and holding their appointments illegal owing to the lack of requisite quorum in the Executive Council meeting held on 30-04-2010.

7. We have heard learned counsel for the parties at great length and perused the entire materials placed before us including the relevant Ordinance, Regulations and provisions of the Act.

8. The questions that are raised and fall for our consideration in the appeals are as under:-

1. Whether the appointments of Dr.Sravanthy and Dr.Gowda as Assistant Professors in Zoology, made by the University, based on their selection by the selection committee, and approved by the Executive Council are bad in law for want of non-compliance of the due procedure contemplated by the relevant Ordinance II, and being irrational and arbitrary in nature?
2. Whether the selection and the appointment of Dr.Sravanthy as Assistant Professor in Zoology is liable to be set aside on the ground of bias and/or *mala fides*; and
3. Whether the appointments of Dr.Sravanthy and Dr.Gowda made, on the basis of approval of their selection, by the Executive Council in its meeting held on 30-04-2010 is illegal and deserves to be set aside for want of quorum?

9. Insofar as the first question is concerned, Sri C.V.Mohan Reddy, learned Senior Counsel appearing for Dr.Sravanthy and Dr.Gowda, at the outset, submitted that the procedure contemplated by the relevant regulations, was scrupulously followed by

the selection committee. He submitted that marks under various heads, like educational qualifications, teaching experience, publications and performance at the interview were awarded by the selection committee as a whole under these heads and merely because separate assessment sheets were not filled up by each of the members of the committee, and they signed consolidated assessment sheet the selection would not vitiate. According to Mr. Mohan Reddy, the learned Judge overlooked the practice being followed over a period of time by the selection committee for conducting interviews. He also invited our attention to the marks awarded to each of the candidates who were interviewed by the selection committee and submitted that the selection committee had discretion to award marks ranging from 1 to 5 for publications and not 5 marks as of right for each publication. Similarly, based on the pattern of allocation of marks printed on the assessment sheet, he submitted that it was printed only by way of guideline and it was left to the selection committee to award marks having regard to quality/merit of each candidate, his publications and teaching experience. He submitted that though the learned Judge accepted the pattern of marks to be awarded to the candidates, has not given any reason as to why such discretion is not vested with the selection committee for allocation of marks under the heads of teaching experience and publications, more so when the teaching experience would differ and depend upon whether a candidate taught to PG/UG students or worked as Contract Lecturer or regular Lecturer.

9.1 Sri C.V. Mohan Reddy then invited our attention to the Ordinance II of the University and submitted that the analysis thereof made by the learned Judge was erroneous. According to Sri Mohan Reddy, nowhere in the Ordinance II, it is mentioned or mandated that the each member of the selection committee has to express opinion about each candidate independently and record reasons for preferring one over the other. He, therefore, submitted that the composite assessment of the candidates was sufficient and ought to have been accepted by the learned Judge. He submitted that there is no practice of the Executive Council to award separate marks by every member of the selection committee. He then submitted that apart from the fact that there is no practice of maintaining separate assessment sheet by each member of the selection committee, it is not mandated under the said Ordinance that selection committee should maintain such record. He

submitted that even if it is assumed that such record is not there to support the decisions, that cannot be a ground for setting aside the selection, since such lapse would, at the most, amount to irregularity and not illegality. The University and the selection committee over the years have understood the Ordinance in this manner, and the same should be given due weightage and even if the Court finds the interpretation of the Ordinance placed by the University and the selection committee is incorrect, the High Court should not interfere with the selection process.

9.2 Sri C.V.Mohan Reddy also invited our attention to the averments made in the writ petition and submitted that the petitioners in the writ petitions did not allege *mala fides* against the member/s of the committee who interviewed the candidates and selected Dr.Sravanthy and Dr.Gowda, and in view thereof, the learned Judge ought not to have found fault or doubted the objectivity and impartiality of the selection committee in the absence of any such allegation or material in support thereof. We would make reference to the judgments relied upon by him, in support of his submissions, in the course of judgment at appropriate stages.

10. Sri Deepak Bhattacharjee, learned Standing Counsel for the University, adopted the submissions advanced by Sri C.V.Mohan Reddy and in addition thereto submitted that the selection committee was constituted as per the guidelines issued by the University Grants Commission(UGC) and as contemplated by Section 43 of the Act. He submitted that Dr.Sammaiah had recused himself to be a member of the selection committee as provided for by the first proviso to Sub-section (1) of Section 43 of the Act. According to Sri Bhattacharjee, the learned Judge was wrong in holding that Dr.Sammaiah influenced the committee for selection of his daughter-Dr.Sravanthy. He also invited our attention to the relevant averments in the counter filed by the University and submitted that the scope of judicial review to review the process of selection and award of marks etc., by the members of the selection committee is limited and can be exercised in rarest of rare cases where *mala fides* are attributed against its members in case of educational institutions. Lastly, in support of the averments advanced on behalf of Dr.Sravanthy, he submitted that the selection committee followed the practice which is prevalent over a period of time. He also placed reliance upon judgments of the Supreme Court in support of his contention to which we will make a reference little later.

11. On the other hand, Sri D.Prakash Reddy, the learned Senior Counsel for Dr.Vinatha and Dr.Damayanthi invited our attention to the observations made in the impugned judgment and submitted that the learned single Judge had scrupulously analyzed the irregularities/illegalities committed by the selection committee in the procedure that was adopted and has rightly set aside the selection and appointments of Dr.Sravanthy and Dr.Gowda holding that evaluation of comparative merits of the candidates by the selection committee was lacking transparency due to non-maintenance of records and also on the ground of personal bias. He invited our attention to the Ordinance II and submitted that it clearly provides for separate assessment by all members of the selection committee, in particular, the experts and that the candidate cannot be selected if in the opinion of the experts, he/she is below standard. The procedure contemplated by the Ordinance II, he submitted, mandates individual assessment by each member of the selection committee and since it was not done and/or there was no record to show such assessment, the learned Judge has rightly set aside the selection of Dr.Sravanthy and Dr.Gowda. He submitted that the procedure adopted and followed by the selection committee was far from being fair and transparent apart from the fact that it was not as contemplated by Ordinance II of the University. In support of this contention, he invited our attention to educational qualifications, teaching experience and number of publications of each of the candidates and tried to demonstrate as to how the allocation of marks by the selection committee under these heads was irrational and arbitrary. In other words, he submitted that the selection and appointment of Dr.Sravanthy and Dr.Gowda to the posts of Assistant Professor in Zoology was illegal being irrational and arbitrary and also suffers from procedural impropriety. After inviting our attention to the marking pattern that was adopted by the selection committee in respect of teaching experience, publications and interview performance, he lastly submitted that in the absence of the record, it cannot be stated that the selection committee followed the due procedure for allocation of marks to the candidates interviewed by them. In any case, he submitted, it cannot be stated that the procedure that was adopted and followed by the selection committee was as prescribed in the Ordinance II.

11.1 Sri G.Vidyasagar, the learned Senior Counsel for Dr.R.Krishna, submitted that

Dr.Gowda was not entitled to 6 marks under the head “U.G” as he passed the Degree in Compartment. Similarly, he submitted that he was also not entitled for 2 marks under the head ‘teaching experience’ since his teaching experience was during the period when he was pursuing Ph.D Course during 22-02-2001 to October-2006. He submitted that regular Ph.D candidate was not permitted to be in employment and, therefore, the selection committee ought not to have awarded him any mark under the head ‘teaching experience’ from June-2002 to 2007. Insofar as publications are concerned, Sri G.Vidyasagar submitted that the petitioner had placed 15 publications on record for which the selection committee ought to have awarded him 20 marks. Thus, he submitted that in view of arbitrary allotment of marks resulted in rejecting the candidature of Dr.R.Krishna who was more meritorious and deserving than Dr.Gowda.

12. Before dealing with the submissions advanced by learned counsel for the parties and addressing the first question, it would be relevant to make a reference to the judgments relied upon by them in support of their submissions and to the relevant provisions of the Act and Ordinance II to which our attention was specifically drawn.

12.1 In ***Madan Lal and Others Vs. State of J & K and others()*** the Supreme Court while dealing with the submission, as advanced in the present case that the selection committee ought to have assigned separate marks for the different faculties of the candidates concerned, namely, intelligence, general knowledge etc., as laid down in the Rule and since that was not done by the committee the entire *viva voce* test was vitiated, observed that the selection committee has to keep in view over all performance of the candidates at the oral interview and while doing so their intelligence, general knowledge, personality, aptitude and suitability have to be kept in the center. The Rule merely lays down the object of assessing such candidates in the *viva voce* examination. It is a general guideline given to the selection committee. Therefore, it is not possible to agree with the submission that the members of the selection committee must separately assess and give marks on different listed topics, faculty wise as per the said Rule. Then, the Supreme Court, while dealing with the submission that tape recording of the interview as required under Rule 19(1) (b) of the Jammu and Kashmir Civil Services (Judicial) Recruitment Rules,1967 ought to have been maintained and preserved by the selection committee, rejected

the contention that not maintaining and preserving the tape recording would vitiate the viva voce test. This judgment was also relied upon for the proposition that the candidate having participated in the selection process cannot turn around and challenge the selection contending that the procedure laid down was not followed.

12.2 In ***DR.M.C.Gupta Vs. Dr.Arun Kumar Gupta()*** the Supreme Court observed that when selection is made by the Commission, aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching/research experience in the technical subjects, the Courts should be slow to interfere with the opinion expressed by the experts unless there are allegations of *mala fides* against them. It was further observed that it would normally be prudent and safe for the courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the Courts generally can be. [also see *Basavaiah(Dr.) Vs. Dr.H.L.Ramesh-(2010) 8 SCC 372*; *University of Mysore Vs. C.D.Govinda Rao-AIR 1965 SC 491* and *Dalpat Abasaheb Solunke Vs. Dr.B.S.Mahajan-AIR 1990 SC 434*].

12.3 In ***Neelima Misra Vs. Harinder Kaur Paintal()*** the Supreme Court after referring to its judgment in ***University of Mysore Vs. C.D.Govinda Rao()*** observed that in the matter of appointment in the academic field, the Court generally does not interfere. It was further observed that High Court should show due regard to the opinion expressed by the experts constituting the selection committee and its recommendation on which the Chancellor had acted.

12.4 In ***Bhushan Uttam Khare Vs. Dean, B.J.Medical College and Others()*** the Supreme Court once again after referring to its judgment in ***University of Mysore(supra)*** observed that the Courts should be normally very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice.

12.5 In ***National Institute of Mental Health and Neuro Sciences Vs.***

Dr.K.Kalyana Raman and Others() the Supreme Court observed that in the first place it must be noted that the function of the selection committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the selection committee ought to have given some reasons for preferring Dr.Gowri Devi as against other candidates. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the selection committee to record reasons. In the absence of any such legal requirement, the selection made without recording reasons cannot be found fault with. [Also see *B.C.Mylarappa Vs. Dr.R.Venkatasubbaiah*—(2008) 14 SCC 306].

12.6 In ***Sajeesh Babu K Vs. N.K.Santhosh()*** the Supreme Court observed that in a matter of appointments/selection by an expert committee consisting of qualified persons in the particular field, normally the Courts should be slow to interfere with the opinion expressed by the experts unless there is any allegation of *mala fides* against experts who had constituted the selection committee.

12.7 In ***K.A.Nagamani Vs. Indian Airlines and Others()*** the Supreme Court observed that the appellant having participated in the selection process along with contesting respondents without any demur or protest cannot be allowed to turn around and question the very same process having failed to qualify for the promotion.

12.8 In ***State of Tamil Nadu Vs. K.Shyam Sunder()*** the Supreme Court observed that undoubtedly the Court lacks expertise especially in disputes relating to policies of pure academic educational matters. Therefore, generally it should abide by the opinion of the expert body. It was further observed that it would normally wise and safe for the Courts to leave such decisions to experts who are more familiar with the problems they face than the courts generally can be. [see also *Medical Council of India Vs. Sarang and others*-(2001) 8 SCC 427].

12.9 In ***The Chancellor Vs. Dr. Bijayananda Kar()*** the Supreme Court observed that the decision of the academic authorities should not ordinarily be interfered with by the Courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned committees which invariably consists of experts on the subjects relevant to selection.

12.10 In ***Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others()*** the Supreme Court observed that Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice.

12.11 In ***Lila Dhar Vs. State of Rajasthan and others()*** the Supreme Court while dealing with the challenge and selection for the post of Munsifs under Rajasthan Judicial Service Rules observed that it is for the interviewing body to choose the appropriate method of marking at the selection to each service. There cannot be any magic formulae in these matters and Courts cannot sit in judgment over the method of marking employed by interviewing bodies unless it is proven or obvious that the method of marking was chosen with oblique motive.

13. Thus, the law laid down by the Supreme Court in the above judgments could be

summarized as under:-

- i. The Courts should be slow in interfering with the opinion expressed by a selection committee consisting of experts in the field and leave the decisions of academic matters to its members, who are more familiar with the problems, they face than the Courts generally can be, unless there are allegations of *mala fides* against its member/s;
- ii. The selection committee has to keep in view over all performance of the candidates at the oral interview and while doing so their intelligence, general knowledge, personality aptitude and suitability have to be kept in the center. The Rule/Regulation/Ordinance laying down the procedure to be adopted for the selection process merely lay down the object of assessing the candidates and they are to be treated as Guidelines given to the selection committee;
- iii. The Courts should normally be very slow to pass orders in its extraordinary jurisdiction because matters falling within the jurisdiction of the educational authorities should be left to their decision and interfere with them only when it thinks that it must do so in the interest of justice;
- iv. The function of the selection committee is neither judicial nor adjudicatory and it is purely administrative in nature;
- v. Unless it is provided in the Rules/Regulations/ Ordinances to record reasons for preferring one candidate against the other, it is not mandatory for the selection committee to do so;
- vi. The Courts should not substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and departments controlling them;
- vii. There cannot be any magic formula in academic matters, in particular selection and appointments, and Courts cannot sit in judgment over the method of marking employed by selection committee unless it is proven or obvious that the method of marking was chosen with oblique motive; and
- viii. The decision of selection committee can be interfered with on limited grounds, such as, illegality or patent material irregularity in the constitution of committee or its procedure vitiating the selection or proved *mala fides* affecting the selection.

14. We would also like to have a glance at the relevant provisions of the Act and the Ordinance to which our attention was drawn. Chapter IV in the Act provides for authorities of the University. Section 18 of the Act provides for constitution of Executive Council which was earlier known as Board of Management. The Executive Council under this provision consists of two categories of members. One, Class I-Ex-Officio Members, and two, Class II-members. Class I members of the Executive Council are as follows: i) the vice-Chancellor; ii) the Rector; iii) the Secretary to government in Education Department or an Officer in the Education Department nominated by the Government; iv) the Secretary to Government in the Finance and Planning (Finance Wing) Department or an officer in the Finance and Planning (Finance Wing) Department nominated by the Government; and v) the Director of Higher Education/the Commissioner of Collegiate Education. Class II members consists of nine members nominated by the Government of six different categories as provided for in Clauses (i) to (vi) of this Section. Sub-sections 2, 3, 4 and 5 of Section 18 may not be relevant for our purpose, hence we are not making any specific reference thereto. Sub-section (6) of Section 18 of the Act provides the quorum for meeting of the Executive Council, which shall be one-third of the total number of members or six persons, whichever is less. One of the functions/duties of the Executive Council under Section 19 of the Act is to consider recommendation made by the selection committee and make their appointments to the post for which they are selected.

14.1. Further, it is relevant to reproduce Section 43 of the Act which read thus:-

43. Constitution of Selection Committee:- (1) There shall be constituted a Selection Committee in regard to the appointment of professors, readers and lecturers which shall consist of the following, namely,

(i) the Vice-Chancellor;

(ii) three experts from outside the University to be nominated

by the Vice -Chancellor from out of panel prepared every

year by the Board of Studies and approved by the Board

of Management of whom at least two shall be present in

the selection committee;

iii. Chairman of the Board of Studies concerned;

iv. Head of the Department;

Provided that no person shall participate in the meetings of the selection committee for any appointment if he or his near relative is candidate for that appointment;

Provided further that no teacher holding a post lower in rank than the one to which appointment is to be made, shall be a member of selection committee,

2. The Registrar shall be the Secretary of the Selection Committee.

3. Provision shall be made in the Statutes in respect of such matters as may be considered necessary and not provided for in sub-sections (1) and (2) in order to ensure fair selections

(emphasis supplied)

14.2 In the present case, the University, as provided for under Section 43 of the Act had constituted the selection committee consisting of the following members:-

(a) Prof.N.Linga Murthy, Vice-Chancellor (Chairman)

(b) I. Subject Experts:-

i. Prof.M.K.Durga Prasad, Vice Chancellor,
Krishna University, Machilipatnam

ii. Prof.Ram Chander Mohan, Zoology Dept.,
Bangalore University, Bangalore, Karnataka.

iii. Prof.R.S.Kulkarni, Zoology Dept.,
Gulbarga University, Gulbarga, Karnataka.

(c) Prof.S.S.V.N.Sharma, Dean Science

(d) Prof.N.Vijay Kumar, Head of the Dept. Zoology

e. Prof.A.Sadanandam, Registrar, Kakatiya University (Secretary)

(f) Dr.Noor Sehan N.Ganihar, UGC Observer.

(g) Prof. S.Indrakanth, OU, Hyderabad – Chancellor's nominee

h. Prof.N.Vijaya, KU, Economics Dept.,
Women representation (Special Invitee)

i. Prof.Bannaiah Allaiah, KU, Telugu Dept,
SC & ST Representation (Special Invitee)

14.3 From bare look at the constitution of the committee, it is clear that three subject experts from three different Universities were nominated as members by the Vice-Chancellor, obviously from out of the panel prepared by the Board of Studies and approved by the Board of Management i.e. Executive Council.

15. In order to appreciate the submissions of the learned counsel for the parties in respect of the awarding of marks under different heads, such as, teaching experience, publications and interview performance and so also to appreciate whether the findings recorded by the learned Judge on the first question are sustainable, we would like to look into the procedure that was followed by the selection committee.

15.1 Section 57 of the Act, while repealing the Kakatiya University Act, 1976, the Statutes, Ordinances and Regulations framed thereunder were saved, so far as they are not inconsistent with the provisions of the Act. In other words such Statutes, Ordinances and Regulations, so far as they are consistent with the provisions of the Act, continue to be in force and be deemed to have been made under the provisions of the Act unless they were superseded or modified thereunder. In the present case, we are concerned with the Ordinance No.II framed by the Kakatiya University under

Section 29(1) of the Kakatiya University Act, 1976, which admittedly continues to be in force by virtue of Section 57(k) of the Act. This Ordinance deals with the procedure to be followed by the selection committee for teaching posts. Relevant clauses of the Ordinance, to which our attention was specifically drawn by learned counsel appearing for both sides, read thus:-

“7. All the members of the Selection Committee and the Heads of the Departments shall interview the candidates and express their opinions.

8 . The experts shall state their opinion on the qualifications, research experience and ability of the candidates. Keeping in view the opinions of the experts, the candidate shall be selected as per the opinion of the majority of the members of the Selection Committee; and in the case of the opinion being evenly divided, the opinion of the Vice-Chancellor be the deciding factor.

9. The candidate shall not be selected if in the opinion of the experts he or she is below standard.

10. The selection of a candidate by the Committee shall be recommendatory in character and shall not be final until selection is ratified or confirmed by the Syndicate, which shall have power to reject the selection made by the Committee.

11. The proceedings of the Selection Committee regarding each individual candidate shall be privileged and confidential and they shall be kept in the custody of the Registrar.”

(emphasis supplied)

15.2 A bare look at the relevant paragraphs in Ordinance II would show that all the members of the selection committee and the Heads of the Departments shall interview the candidates and express their opinion. It further provides that ‘experts’ shall state their opinion on the qualifications, research, experience and ability of the candidates and keeping in view the opinion of the experts, the candidates shall be selected as per the opinion of the majority of the members of the selection committee, and in case of the opinion being evenly divided, the opinion of the Vice-

Chancellor be the deciding factor. It further provides that a candidate shall not be selected if in the opinion of the experts he/she is below standard. The proceedings of the selection committee regarding each individual candidate shall be privileged and confidential and they shall be kept in the custody of the Registrar. Thus, apart from the opinion of the members of the selection committee, a weightage is given to the opinion of the experts with further rider that the candidate cannot be selected if in the opinion of the expert, he/she is below standard. The selection of any candidate, *de hors* the procedure contemplated by Ordinance II, therefore, would be illegal. It is true, the Ordinance, though requires its (selection committee) members/expert to express their opinion and prepare its proceedings does not contemplate recording of reasons for preferring one candidate against the other. The word “proceedings” in paragraph 11 of the Ordinance II, however, clearly means and would have to be read to mean the “record” of the interviews conducted by the selection committee or of the entire selection process. The record so created and maintained also requires to be preserved being privileged and confidential by the Registrar, the Secretary of the selection committee. Thus, the submission that the Ordinance does not contemplate maintenance of record deserves to be rejected outright. In our opinion, the consolidated assessment sheet signed by all members of the committee cannot be treated as “record” or proceedings. It would at the most amount to declaring or preparing final result of interviews by the selection committee.

15.3 The selection committee has a right to give its independent, unbiased and considered opinion in respect of each candidate appearing before it. The sanctity of the process of selection in any case needs to be maintained and that it would be a travesty of the selection process if the transparency in the selection process is not exhibited/seen from the record maintained by the selection committee. [See Dr. Bijayananda Kar (*supra*)]. Similarly, as observed by the Supreme Court in ***D.V.Bakshi Vs. Union of India()*** if the committee conducts oral test, a heavy responsibility is cast on the members of the committee to maintain proper record of the oral test in respect of each candidate and marks must preferably be assigned under each head considered to be relevant to evaluate the candidate.

16. The University claims that they produced the record (i.e. the consolidated assessment sheet) pertaining to the subject selection for perusal of the learned Judge in the course of hearing of the writ petitions. After perusing the same, the learned Judge recorded his impressions as under:-

“..... The file reflects that a single consolidated assessment sheet signed by all the members of the Selection Committee is the only record of the proceedings of the selection for both posts. Upon a query from the Court, the learned standing counsel submitted that there was no separate individual assessment by each of the six members of the Selection Committee. He further submitted that except for this consolidated assessment sheet, there was no other record of the deliberations of the Selection Committee during the process of selection. He stated that upon a group discussion, the members of the Committee decided upon the marks to be allotted to each candidate. No other record was maintained to indicate as to how much time was spent with each of the candidates and as to whether the allotment of marks was done at a single time or after each candidate was interviewed. The learned standing counsel stated that under the UGC Regulations of 2000 there was no necessity for the Selection Committee to maintain a record or give reasons during the process of selection.”

(emphasis supplied)

16.1 It is not in dispute that UGC Regulations 2009 provide for maintaining a record or give reasons for preferring one candidate against the other. Whether UGC Regulations 2009, would apply to the subject selection, is the question raised by Dr.Damayanthi, which we will deal with little later. At this stage, suffice it to say that the learned single Judge held that UGC Regulations 2009 would apply only for qualifications prescribed therein, and that UGC Regulations 2000 would prevail insofar as subject selections are concerned.

16.2 Then, the learned Judge after considering the judgments of the Supreme Court in **Dr.Bijayananda Kar** and **Dr.D.V.Bhakshi (supra)** and after considering the Ordinance II proceeded to observe thus:-

“Thus, a written record was a must for discharging the heavy responsibility resting upon the Selection Committee when it based its selection on its deliberations at the interview. There is however no record as to how the Selection Committee went about awarding marks under the heads where it exercised discretion such as ‘publications’ and ‘teaching experience’.

..... This aspect becomes all the more relevant as candidates with more teaching experience were awarded lower marks as compared to those lesser teaching experience. Further, teaching experience garnered during pursuit of Ph.D. course was also considered by the Committee, which as per the UGC Regulations of 2009 could not have been taken into account. This aspect is mentioned under Clause 3.9.0 of the UGC Regulations of 2009 and being included in the Part dealing with qualifications, it would be a 'condition' which would have applicability as per the Information Brochure appended to the Notification dated 31.12.2009. In the absence of the written record of the selection proceedings in proof of objective and impartial assessment of the comparative merits of competing candidates, **this Court must necessarily hold that the procedure adopted was not only in violation of the prescribed binding norms contained in Ordinance No.II but was also far from being fair and transparent.**

.....

In any event, this Court is not equipped to deal with the issue as to which of the publications of these contesting candidates warranted better marks. This Court would then be sitting in appeal and as stated *supra*, such exercise is not within its province while undertaking judicial review under Article 226 of the Constitution.

..... **There is however no indication that there was any prior evaluation of such articles before the interviews were conducted on 20.04.2010 by the Selection Committee. The call letters issued to the candidates reflect that they were required to produce reprints of publications and books for verification before the interview. This indicates that no prior exercise was undertaken on the basis of the copies supplied by candidates along with the application forms.** In this situation, when the Selection Committee, as per the counter of the University, undertook an evaluation of the published articles of each of the candidates during the interview itself on the basis of various parameters, **it was incumbent upon the Committee to maintain a written record of such evaluation so as to obviate any scope for arbitrary exercise of such discretion. There is, as stated supra, surprisingly no record whatsoever.** Further, it is difficult to believe that the Selection Committee would have had sufficient time to undertake such an exercise during the interview as the records placed before this Court show that some of the candidates produced voluminous publications which could not have been assessed during the brief time available to the Selection Committee while interviewing such candidates.

.....

..... There is no dispute that the Selection Committee was bound to follow the marks allocation provided in the assessment sheet in so far as the head 'educational qualifications' was concerned. The assessment sheet reads to the effect that 10, 8, 6 and 4 marks respectively were to be awarded for Distinction, I Division, II Division and Pass (UG only). Dr.Gowda Rajender, as is evident from the consolidated memorandum of marks issued by the Kakatiya University, Warangal,

in respect of his under graduate course in B.Sc. was given a 'pass division' owing to his having passed through supplemental examinations. Once the marks memorandum itself indicated that he was given a 'pass division', the Selection Committee clearly ought not to have awarded him 6 marks treating him as having passed B.Sc. in II Division. **This is yet another instance to indicate the lack of 'fair play in action' occasioned by the procedure adopted by the Selection Committee in the present case.**

(emphasis supplied)

17. In order to appreciate and consider whether the selection/ appointments of Dr.Sravanthy and Dr.Gowda are illegal being irrational and arbitrary, and whether the procedure adopted & followed for their selection was fair, transparent and credible, we have carefully perused the final assessment sheet, application forms of all 5 candidates and averments made on affidavits in respect of the experience and the publications of each candidate. We find ourselves in agreement with the observations made in the impugned order by the learned Judge, in particular, as quoted in Paragraphs 16 and 16.2 of this judgment, insofar as fair play, transparency and procedural impropriety are concerned, holding that the subject appointments are irrational and arbitrary.

18. The selection committee was furnished with an assessment sheet by the University dividing the marks under various heads, like educational qualifications, teaching experience, publications and performance at the interview. 40 marks are awarded for educational qualifications, 10 marks for teaching experience, 20 marks for publications and 30 marks for performance, totaling to 100 marks. From perusal of the assessment sheet, it appears that at the bottom, they provided the marks allocation in the square/block under different heads. It states a candidate with distinction would be entitled for 10 marks, I Division- 8 marks, II Division-6 marks, Pass -4 marks and 1 mark for each year of experience and 5 marks for each publication. According to the University, the allocation of marks as provided with the assessment sheet was only by way of guideline, which is being used by the Selection Committee all these years in respect of all selections made by them. The marks to be awarded under various heads as provided for at the bottom of the assessment sheet are not statutory in nature and, therefore, the selection committee in its wisdom has a discretion of awarding more or less marks under every head

mentioned therein. It is their case that the selection committee, in respect of the subject selection, had discretion to award marks ranging from 1 to 5 for publications and more or less marks for each year of experience depending upon the nature of experience, such as whether it was contractual or regular etc.,

19. While criticizing the allocation of marks to Dr.Sravanthy and Dr.Gowda, the focus of learned counsel for Dr.Vinatha, Dr.Damayanthi and Dr.R.Krishna was more on the marks allocation provided with the assessment sheet. Based on that, it was submitted that allocation of marks was irrational and arbitrary. The allocation of marks, for instance, would show “5” marks for each publication and the maximum marks under this head provided were “20”. There was no restriction on the number of publications to be placed on record with the application form or at the time of interview. It is true that the interpretation placed by the learned counsel for Dr.Vinatha, Dr.Damayanthi and Dr.R.Krishna on the marks allocation provided in the assessment sheet is not sustainable for more than one reason. Firstly, it is not the quantity but the quality of publication is relevant. Secondly, merely because more number of publications were placed on record, it cannot be stated that the candidate was entitled for all 20 marks. It is for the experts in the field to decide how much marks they were entitled for and it would be wrong to state that 5 marks for each publication ought to have been allotted. In other words, 20 marks ought to have been allotted to all the petitioners in the present case. These submissions deserve to be rejected outright and if we do not do so that would amount to sitting in appeal over the marks awarded by the selection committee. We would not like to venture into that exercise.

20. However, we cannot turn our blind eye to other side of the arguments. For instance, we would like to make reference to the publications placed by Dr.Sravanthy and Dr.Damayanthi on record for consideration of the selection committee to understand the arguments and to know whether allocation of marks under this head was fair, transparent and credible, or it was arbitrary and irrational. Dr.Damayanthi placed her publications on record at the time of interview. Undoubtedly, she had failed to attach the publications to her application though it

was necessary as mentioned in the information brochure dated 31-12-2009. Still her publications/articles were taken on record. All other candidates, it appears, had attached publications along with their application forms. There is no indication that there was any prior evaluation of the Articles before the interviews were conducted on 20.04.2010 by the selection committee, in particular by the experts. If the committee had maintained a record of such evaluation so as to obviate any scope for arbitrary exercise of such discretion that would have certainly helped to understand and to know what were the considerations for awarding marks under this head. However, there is absolutely no record what-so-ever in respect thereof.

20.1 Dr.Damayanthi placed about 10 publications on record. Out of which 6 were authored by her and in the remaining she was co-author. Dr.Damayanthi was awarded 8 out of 20 marks for publications. Similarly, Dr.Sravanthy placed 3 publications on record, all written by her along with 3-4 others including her father Dr.Sammaiah. None of the Article/Paper was written by Dr.Sravanthy as a principal author or sole author. She was, however, given 15 out of 20 marks for her three publications by the selection committee. That apart, there is absolutely nothing on record to indicate as to when the publications/papers were assessed by the members of the interview committee? Whether the publications were circulated to the members before the meetings? How long the selection committee interviewed each of the candidates? Whether the committee had sufficient time to assess the publications during the meetings? All these questions assume importance in view of the fact that the Selection Committee had only one meeting on 20-04-2010.

20.2 In this connection, it would be relevant to notice as to how the Supreme Court in ***Ashok Kumar Yadav and others Vs. State of Haryana and others()*** dealt with the similar situation. In this case, the Supreme Court was dealing with the ground of challenge that in comparison to the marks allocated to the written examination, the proportion of the marks allocated to the *viva voce* test was excessively high and that introduced an irredeemable element of arbitrariness in the selection process so as to offend Article 14 and 16 of the Constitution. In order to appreciate this contention and to adjudicate its validity, the Supreme Court considered the relative weight attached by the relevant Rules to the written examination and the *viva voce* test and then proceeded to consider merits of grounds of challenge.

20.3 The observations made by the Supreme Court in ***Dr.J.P.Kulshrestha v. Chancellor, Allahabad University()*** are also relevant. The Supreme Court in this case observed that “the functional freedom allowed to academic bodies in such matters would be subject to the basics of natural justice, fair play in action, reasonableness in collecting decisional materials and avoidance of arbitrariness and extraneous consideration and otherwise keeping within the leading strings of the law”. In our opinion, if the selection committee, contravened Ordinance II or does not follow the procedure laid down therein scrupulously, which is binding upon it in making selection and recommending selectees for appointment, this Court in exercise of its extraordinary jurisdiction can interfere.

21. Thus, what is necessary for a selection committee, such as one in the present case, is to ensure that the process of selection in every case is fair, transparent and credible. The Court while examining, whether the Committee exercised fair play in action, reasonableness in collecting decisional materials and avoidance of arbitrariness, should not sit in appeal over the decision of the Selection Committee and to venture into an examination of the marks awarded and the correctness thereof, unless the Committee commits illegality in its procedure vitiating the selection or *mala fides* are proved affecting the selection.

22. In the present case, having regard to the Ordinance II, UGC Regulations-2000, the details furnished by each of the candidates and the settled proposition of law, we are satisfied that the selection committee did not follow the procedure, in selecting Dr.Sravanthy and Dr.Gowda scrupulously. The UGC Regulations of 2000, after specifying the details of the selection committee under clauses 3.1.0 to 3.4.0, postulates that it may be ensured that the process of selection in every case is fair, transparent and credible and should involve assessment of aptitude for teaching and research, ability to communicate clearly and effectively, and ability to analyze and discuss. These clauses of UGC Regulations read with Ordinance II framed by the University under Section 29(1) of the Act, in our opinion, mandate to maintain a record in respect of each of the candidates interviewed by the selection committee. If the Ordinance II and the Regulations of UGC are read to mean that maintenance of

the record by the selection committee is not necessary, perhaps that will amount to giving go-by to the established procedure to maintain transparency and fair play in the selection process. For conducting an oral test, a heavy responsibility is cast on the members of the selection committee, in particular the experts, in order to ensure fair play and transparency in the selection process. Members of the selection committee are expected to maintain separate assessment, in particular the experts, on whom more responsibility is cast by Ordinance II. It is true that normally the Courts should be slow to interfere with the opinions expressed by the experts and that it would normally be wise and safe for the Courts to leave the decision of the academic matters to the experts, but in the present case we do not find any indication from the record that the experts were given separate assessment sheets to be filled up at the time of interview reflecting their opinion on the qualifications, research, experience and suitability of the candidates. In our opinion, the decision of the selection committee, in the present case, deserves to be interfered with being discriminatory, irrational, arbitrary and violative of the rules/Ordinance framed by the University. It also deserves to be interfered with for not following the due procedure and non maintenance of record.

23. Next we would now like to consider the second ground of challenge, whether selection of Dr.Sravanthy is hit by personal bias. At the relevant time, Dr.Sammaiah, the father of Dr.Sravanthy, was Chairman of the Board of Studies and by virtue thereof, an Ex-Officio member of the selection committee. Dr.Sammaiah, therefore, as provided for in the first proviso to Sub-section(1) of Section 43 did not participate in the meetings of the selection committee which interviewed the candidates including his daughter-Dr.Sravanthy for the two posts of Asst. Professors in Zoology.

24. Learned Judge after considering the submissions of learned counsel for the parties on this question and after having perused the records and judgments of the Supreme Court in *Madhya Pradesh Special Police Establishment v. State of Madhya Pradesh* (AIR 2005 SC 325; *Dr.S.A.Hakeem vs. The NTR University of Health Sciences* (AIR 2001 AP 57); and *Rattan Lal Sharma vs. Managing Committee, Dr.Hari Ram (Co-Education) Higher Secondary School* (1993) 4 SCC 10 and *State of West Bengal vs. Shivananda Pathak* [(1998) 5 SCC 513] observed

thus:

“The material placed before this Court by Dr.Vinatha Naini along with her reply affidavit reveals that Dr.Ch.Sammaiah was a member of the Selection Committee which undertook interviews for effecting promotions under the ‘Career Advancement Scheme’ in Zoology during the forenoon of 20.04.2010. **Significantly, all the members of the Selection Committee which interviewed his daughter in the afternoon session were his colleagues in the said Section Committee. The possibility of influence being wielded by Dr.Ch.Sammaiah upon the said members during his interaction with them as a member of the Selection Committee in the morning cannot therefore be ruled out. The principle underlying the first proviso to Section 43(1) of the Act of 1991 is that an employee of the University who is interested in one of the candidates should not have any exposure to the members of the Selection Committee.** That principle was obviously given a go-by in the present case as Dr.Ch.Sammaiah had more than ample opportunity to interact with and influence the members of the Selection Committee which interviewed his daughter for the post. As pointed out by the Supreme Court, mere likelihood of bias beyond a reasonable doubt would be sufficient to taint the process and set it at naught”.

(emphasis supplied)

25. In this backdrop, Sri C.V.Mohan Reddy, learned senior counsel, submitted that Dr.Vinatha, Dr.Damayanthi and Dr.R.Krishna after having participated in the interviews without any demur to the constitution of the selection committee and having failed in their attempts, cannot turn around and challenge the selection and appointment of Dr.Sravanthy on the ground of bias. He further submitted that the learned Judge while eschewing the allegation of *mala fides*, examined the allegation of bias, attaching importance to the participation of Dr.Sammaiah, the father of Dr.Sravanthy, in the selection process and observed that such a member should not have any exposure to the other members of the selection committee. As a matter of fact, he submitted, Dr.Sammaiah had recused himself from being a member of the selection committee, and he did not participate in its meetings for selection of candidates. Merely because he was appointed by the Vice-Chancellor along with two other members to scrutinize the application, that cannot be the ground to hold that he participated in the selection process as such. He then submitted, it was wrong to hold that there was possibility of influence being wielded by Dr.Sammaiah upon its members during interaction with them in the morning

session when he sat as a member of Selection Committee for some other selections. In support, he placed reliance upon several judgments of the Supreme Court to which we will make reference little later. Sri Deepak Battacharjee, learned counsel for the University, adopted the submissions made by Sri Mohan Reddy.

26. Mr.D.Prakash Reddy, learned senior counsel, on the other hand submitted that the learned Judge has rightly set aside the selection and appointments on the ground of bias. He, however, fairly submitted that no case for *mala fides* is either alleged in the writ petitions or made out against the members of the selection committee. In short, he conceded that no *mala fides* are alleged against the members of the selection committee, which ultimately interviewed the candidates. He submitted that having regard to the relationship of Dr.Sammaiah and Dr.Sravanthy, he should have kept himself away from the selection process completely and his participation even for scrutiny of the application forms of all candidates was wrong. He submitted, in such a situation even likelihood of bias beyond a reasonable doubt would be sufficient to taint the process of selection.

27. In this connection, we would like to look into the following judgments of the Supreme Court relied upon by learned counsel for the parties in support of their case:

27.1 In ***Ashok Kumar Yadav (supra)*** the Supreme Court observed that there can be no doubt if a selection committee is constituted for the purpose of selecting candidates on merits and one of the members of the selection committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask the authorities to nominate another member in his place on the selection committee, because otherwise all selections made would be vitiated on account of reasonable likelihood of bias affecting the process of selection.

27.2 In ***Jaswant Singh Nerwal Vs. State of Punjab and others()*** the Supreme Court held that it is not unusual for candidates related to members of the Service Commission and selection committees to seek employment. In such a situation, the practice generally in vogue is for the member concerned to excuse himself when the particular candidate is interviewed and such a selection is beyond challenge, unless, of course, *mala fide*. [also see *S.N.Nagarajan Vs. State of Mysore-AIR 1966 SC 1942*].

27.3 In ***Pankaj Sarma Vs. State of J&K()*** the Supreme Court while dealing with the allegation of bias, upheld the view of the High Court that the question of disability could arise only in case of participation at the stage of selection where the merit of a candidate was to be adjudged. This observation was made in the backdrop of the contentions advanced that a particular member of the selection committee ought to have recused himself from participating in the selection process.

27.4 In ***Javid Rasool Bhat Vs. State of J&K()*** the Supreme Court observed that in the absence of *mala fide*, it would not be a right to set aside selection merely because one of the candidates happened to be related to a member of the selection committee who had abstained from participating in the interview of the candidate.

27.5 In ***Abraham Kuruvila Vs. S.C.T.Institute of Medical Sciences and Technology and others ()*** the Supreme Court while dealing with the allegation of bias against some of the members of the selection committee observed that it is now well settled principle of law that bias which would mean and imply “spite or ill will” must be proved by raising requisite plea in this behalf and by adducing cogent and sufficient evidence in support thereof. In fact, bias is a state of mind and it shows predisposition. Thus, general statements would not meet the requirements of law.

28. There cannot be any doubt or debate that a son/daughter has every right to participate in the selection process even if the father of such a candidate is a member of the selection committee. What is required is that such member of the Section Committee should not participate or excuse himself when his son/daughter

is interviewed and keep himself away from the selection process. We may not agree with the observations made by the learned Judge while dealing with the allegations of bias/*mala fides* that “the possibility of influence being wielded by Dr.Sammaiah, the father of Dr.Sravanthy, upon the said members during his interaction with them as a member of the selection committee in the morning session cannot, therefore, be ruled out”. Admittedly, Dr.Sammaiah did not participate in the meetings of the selection committee for the subject appointments when it interviewed the candidates. Merely because he was one of the scrutinizers along with two other members on the Committee nominated by the Vice Chancellor for scrutiny of all the applications for the two posts in question and the Committee certified that three of the candidates were not eligible at the preliminary stage it cannot be stated that he participated or played any role in actual selection process, though it would have been better, had he kept himself away even from the scrutiny of the applications.

29. The first proviso to Section 43(1) of the Act mandates that such a member should not participate in the meetings of the Selection Committee for any appointment if he or his near relative is a candidate for that appointment. In the present case, admittedly, Dr.Sammaiah recused himself from being a member of the selection committee, which was to conduct interview for the subject selection. In other words, he did not participate in the selection of his daughter Dr.Sravanthy. Moreover, there are no allegations of *mala fides* against the members of the committee, who actually interviewed the candidates for the subject posts. In this backdrop, the submission of Sri D.Prakash Reddy, the learned Senior Counsel that what is necessary to be seen is whether there was a real likelihood of a bias or at least there was substantial possibility of bias, in our opinion, deserves to be rejected outright. If such view is taken that would only mean that Dr.Sravanthy should not have participated in the selection process at all.

29.1 It is not unusual for the candidates related to members of selection committees to seek appointments. In such a situation, as observed by the Supreme Court in ***Jaswant Singh Nerwal (supra)*** the practice generally in vogue is for the member concerned to excuse himself when his near relative is interviewed and selection of such relative is beyond challenge, unless, of course, *mala fide*. While dealing with allegations of bias, in our opinion, it would not be proper to set aside the selection

merely because one of the candidates happened to be related to the members of the selection committee, who admittedly abstained from participating in the interview of such candidates. Mere allegation of bias against a member of the selection committee is not sufficient. It must be proved by raising the requisite plea in this behalf and by adducing cogent and sufficient materials in support thereof. In the present case, except allegations, we do not find any such materials on record in support of the allegation of bias. We do not agree with the submission that Dr.Sammaiah being a member of the selection committee held meetings with the members of the selection committee in connection with other selection in the morning on the same day and, therefore, there was a possibility of the influence being wielded on the other members of the Committee for selecting his daughter Dr.Sravanthy. In the circumstances, we answer the second question in the negative.

30. Insofar as the 3rd question is concerned, the basic contention urged was that the Executive Council in its 87th meeting held on 30-04-2010 lacked the requisite quorum as provided under Sub-section (6) of Section 18 of the Act and, therefore, approval of the recommendations made by the Executive Council leading to the impugned appointment was illegal and vitiated on this count.

31. Sri C.V.Mohan Reddy, the learned Senior Counsel for the appellants submitted that the learned Judge while referring to Sub-section (6) of Section 18 of the Act and in the light of removal/termination of Class II members of the Executive Council vide G.O.Ms.No.30, dated 09-04-2010 (for short "GO-30") overlooked the fact that by the very same GO-30 the University was permitted to function with Ex-Officio Class I members till reconstitution of the Executive Council. He submitted that it was open for the Executive Council to function with its Class I members in view of the GO-30 issued in exercise of its powers under Section 56 of the Act, which empowers the State Government to issue appropriate orders to "remove the difficulties", if any. He then submitted that the findings recorded by the learned Judge in the impugned order to the effect that approval of the selection by the Executive Council is not valid on the ground of lack of quorum are based on misinterpretation of statutory provisions. He submitted that even if there was no quorum as contemplated under Sub-section (6) of Section 18 of

the Act, Section 32 of the Act states that no act or proceedings of any authority or other body of the University shall be deemed invalid by reason only of some defect in the constitution of the Authority or body or by reason of the existence of a vacancy or vacancies among members. He submitted that the provisions of Section 32 were completely overlooked by the learned Judge while dealing with the question of quorum.

32. Learned counsel for the University adopted the submissions made by Sri C.V.Mohan Reddy, learned Senior Counsel for the appellants and in addition thereto, submitted that not only the recommendations to the posts of Assistant Professors in Zoology were approved by the Executive Council, but several other recommendations were approved by the very same Executive Council, and that if after 4-5 years of their appointments, the challenge as raised in the instant petitions, in respect of 2 candidates i.e. Dr.Sravanthy and Dr.Gowda, is upheld, that may cause grave hardship and irreparable loss to several other appointees, who are not party to these proceedings.

33. Sri D.Prakash Reddy, the learned Senior Counsel for Dr.Damayanthi and Dr.Vinatha, on the other hand, invited our attention to Section 56 of the Act and submitted that no notification or GO-30 was issued under this provision and, therefore, it cannot be stated that the Government in exercise of its powers under this provision allowed the Executive Council to function with the strength of 4 members of the Executive Council, when the required quorum is either $\frac{1}{3}$ rd of total number of members or 6 members, whichever is less. He submitted that under any circumstances having regard to the constitution of the Executive Council, $\frac{1}{3}$ rd of the total number of members would never be less than 5 and since only 4 members were available at the relevant time, they had no authority in law to conduct the meetings. He submitted that even if it is assumed that GO-30 was issued under the provisions of Section 56 of the Act, it does not empower the Government to give go-by to the provisions of law, in particular, Sub-section (6) of Section 18 of the Act, allowing the Executive Council to hold meetings and take all decisions without quorum. He submitted that it was not difficult for the Government to make

appointments of either all or some of the Class II members or of the Rector to complete the quorum and then allowed the Executive Council to hold its meetings and take appropriate decisions. In short, he submitted that Section 56 of the Act does not empower the Government under the guise of removal of difficulties to allow the Executive Council to hold meetings and take decisions without quorum under Sub-section(6) of Section 18 of the Act.

33.1 Sri G.Vidyasagar, the learned Senior Counsel submitted that the appointment of Dr.Gowda also deserves to be set aside on the ground that it was approved in the meeting of the Executive Council held on 30-04-2010 without quorum. In other words, he submitted that there were only 4 Ex-Officio members present in the meeting and, therefore, the decision of the Executive council without quorum was in violation of Section 18(6) of the Act. Rest, he adopted the submissions made by Sri D.Prakash Reddy, the learned Senior Counsel for Dr.Damayanthi and Dr.Vinatha.

34. Sub-section (6) of Section 18 of the Act, as we have seen earlier, provides for the quorum for a meeting of the Executive Council. Under this provision, the quorum shall be $\frac{1}{3}^{\text{rd}}$ of the total number of members or 6 persons, whichever is less. As per Sub-section(1) of Section 18 of the Act, the total number of members as observed earlier under Class I and II put together would be 14. Minimum quorum taking this figure into account would be 4.66, being $\frac{1}{3}^{\text{rd}}$ of 14, and would necessarily have to be rounded off as "5". Thus, in any case, unless 5 members of the Executive Council are present in every meeting, the meeting of the Executive Council cannot be stated to be legal. In other words, the Executive Committee cannot hold its meeting if its five members are not present. It has come on record that 8 members nominated by the Government under Class II category were removed/terminated under GO-30, and thereby the Executive Council of the University was reduced to the members specified under Class I alone. It is not in dispute that at the relevant time the post of Rector, an Ex-Officio member of the Executive Council as contemplated by Sub-section (1)(ii) of Section 18 of the Act, was vacant and, therefore, there were only 4 Class I members in the Executive Council after 09-04-2010. As observed earlier, it is mandatory to have minimum quorum of $\frac{1}{3}^{\text{rd}}$ of total number of persons or 6, whichever is less, as contemplated by Sub-section (6) of Section 18 of the Act. As

far as this factual matrix is concerned, none of the learned counsel appearing for the parties raised any dispute. In other words, admittedly the meeting of the Executive Council, which approved the recommendations of the selection committee and appointed Dr.Sravanthy and Dr.Gowda, was attended by only 4 members.

35. In this backdrop, it would be relevant to reproduce GO-30 for better appreciation of the contentions urged on the basis thereof. The relevant portion of the GO-30 dated 09.04.2010 reads thus:-

“In the G.O. read above, Government have nominated certain members to the Executive Council of the Kakatiya University, Warangal under Class-II in Section 18 (1) of the Andhra Pradesh Universities Act, 1991 (A.P.Act 4 of 1991)

2. The Government, after careful examination of the matter, have decided to terminate the Executive Council Members of the Kakatiya University, Warangal who were nominated under Class-II in the Section 18 (1) of the Andhra Pradesh Universities Act, 1991.

3. During the intervening period, the Executive Council of Kakatiya University, Warangal may function with the Ex-officio Members as mentioned under Class-I in Section 18 (1) of the Andhra Pradesh Universities Act, 1991 till the reconstitution of the Executive Council.

4. Accordingly, the following notification will be published in the Andhra Pradesh Gazette:-

NOTIFICATION

In exercise of the powers conferred under sub-section (2) of section 18 of the Andhra Pradesh Universities Act, 1991 (Andhra Pradesh Act 4 of 1991), the Governor of Andhra Pradesh hereby terminate the appointments of Members of the Executive Council of the Kakatiya University, Warangal, who were nominated under Class.II of Section 18 (1) of the said Act.”

36. Insofar as the submission that Section 32 of the Act provides that no proceedings of any authority or other body of the University shall be deemed invalid by reason only of some defect in the constitution of the Authority or by reason of the existence of a vacancy or vacancies among members deserves to be rejected outright. Based on this provision, it was further submitted that merely because there was no quorum as provided for under Sub-section (6) of Section 18 of the Act for a meeting of the Executive Council, the decision taken by the Executive council in such a meeting

would not render invalid or illegal. A careful look at this provision would show that it does not even indirectly speak of the quorum, but it provides for validating the decisions taken by the Authorities of the University even if there is some defect in the constitution of the Authority or if there is existence of vacancy or vacancies among members. The submission that in view of this provision, the authority such as Executive Council can go ahead and hold a meeting even if there is no quorum and carry out functions as contemplated by

Section 19 of the Act, in our opinion, must be rejected.

37. The submissions of learned counsel for the parties were centered around Section 56 of the Act for quite sometime. It would be advantageous to reproduce this Section for better appreciation of the contentions urged. Section 56 reads thus:

Section 56. Power to remove difficulties:- If any difficulty arises as to the constitution or reconstitution or appointment of any Authority or officer of the University or otherwise in first giving effect to the provisions of this Act, or at the time of establishing a new University, the Government, as occasion may require, may, by order, do anything which appears to them necessary for the purpose of removing the difficulty.

38. The Supreme Court in ***Madava Upendra Sinai and Others Vs. Union of India and Others()*** had an occasion to deal with the words “any difficulty arise” or “removing the difficulty”. In Paragraph 40 of the report, it was observed thus:-

“40. Now let us turn to clause (7) of the Regulation. **It will be seen that the power given by it is not uncontrolled or unfettered. It is strictly circumscribed, and its use is conditioned and restricted. The existence or arising of a “difficulty” is the *sine qua non* for the exercise of the power.** If this condition precedent is not satisfied as an objective fact, the power under this clause cannot be invoked at all. Again, **the “difficulty” contemplated by the clause must be a difficulty arising in giving effect to the provisions of the Act and not a difficulty arising *aliunde*, or an extraneous difficulty.** Further, the Central Government can exercise the power under the clause only to the extent it is necessary for applying or giving effect to the Act, etc., and no further. It may slightly tinker with the Act to round off angularities, and smoothen the joints or remove minor obscurities to make it workable, **but it cannot change, disfigure or do violence to the basic structure and primary features of the Act.** In no case, can it, under the guise of removing a difficulty, change the scheme and essential provisions of the Act”.

(emphasis supplied)

39. The similar phrase was dealt by the Supreme Court in ***Straw Products Ltd., Vs. Income-tax Officer()***. The Supreme Court in this judgment while was dealing with the contention urged on behalf of the assessee that Section 6 of Act 67 of 1949 makes the “arising of difficulty” a condition of the exercise of power to issue an order contemplated thereby and since no difficulty in fact is proved to have arisen, the Central Government had no power to issue the impugned order, in paragraph 19 thereof observed thus:-

“19.To sum up: the power conferred by Section 6 of Act 67 of 1949 is a power to remove a difficulty which arises in the application of the Income-tax Act to the merged States: **it can be exercised in the manner consistent with the scheme and essential provisions of the Act and for the purpose for which it is conferred.** The impugned Order which seeks in purported exercise of the power, to remove a difficulty which had not arisen was, therefore, unauthorized.”

(emphasis supplied)

40. A Full Bench of the High Court of Allahabad in ***Kumari Radha Raizada Vs. Committee of Management, Vidyawati Darbari Girls Inter College()*** while dealing with Section 32 of U.P. Secondary Education Services Commission and Selection Board Act, 1981 in paragraph 14 observed thus:-

“14. The analysis of the aforesaid decisions would show that the provision like Section 33 of the Act, which provides that the State Government for the purposes of removing any difficulty, by a notified order, direct the provisions of the Act shall have effect subject to such adaptation whether by modification, addition or omission as it may deem necessary or expedient, is not uncontrolled or unfettered power. **In fact such power conferred upon the Government is restricted and has, to be exercised in consonance with the essential feature of the Act. It may be emphasized that such an order is not permitted to violate the basic structure of the provisions of the Act and further it could be only issued when there is real difficulty arises in giving effect to the provisions of the Act.**”

(emphasis supplied)

41. We would not like to enter into a controversy whether GO-30 was issued under Section 56 of the Act. We would like to examine the contentions urged by learned counsel for the parties on the assumption that GO-30

was issued under Section 56 of the Act. Para-3 of GO-3 states that the Executive Council of the University may function with the Ex-Officio Members as mentioned under Clause (i) in Section 18(1) of the Act till the reconstitution of the Executive Council. However, a close look at the GO-30 would show that a notification was issued in exercise of the powers conferred under Sub-section (1) of Section 18 of the Act by the Governor of erstwhile State of Andhra Pradesh, thereby terminating the Class-II members of the Executive Council of the University. We have already seen the provisions contained in Section 18 of the Act. Members of the Executive Council are divided into two categories of members. One, Class-I Ex-Officio members and two, Class-II categories of members. Class-I category members are only “5” and, therefore, even if all Class-II members are terminated, the Executive Council would have “5” members, who can still hold meetings and take decisions since they form quorum as contemplated by Section 18(6) of the Act.

41.1 We would also not like to enter into a controversy whether the Government was conscious of the fact that the post of Rector was vacant, who was one of the Ex-Officio member of the Executive Council, and hence there were only 4 members available when the G.O was issued. We would like to consider the question whether the Government, in exercise of its powers under Section 56 of the Act which empowers the Government to remove “difficulties”, can, under the guise of removing difficulties, go to the extent of allowing Executive Council to hold its meetings with 4 members and take decisions such as the one, impugned in these petitions.

41.2 Section 56 of the Act undoubtedly empowers the Government to remove “difficulties” in respect of the constitution or reconstitution or appointment of any Authority or Officer of the University or otherwise in first giving effect to the provisions of the Act or at the time of establishing a new University. The Government under this provision may, by order, do anything which appears to them necessary for the purpose of “removing the difficulty”.

41.3 We would also not like to dissect this provision and to make any comments as to whether the powers conferred under this provision can be exercised only in first giving effect to the provisions of the Act or at the time of establishing new University.

We would like to examine whether the Government under the guise of removing “difficulties” can allow the Executive Council to function without quorum.

41.4 At the outset, in our opinion, under any circumstances, the Government cannot issue any notification or order inconsistent with the scheme and essential provisions of the Act. It is well settled that the power, such as the power conferred under Section 56 of the Act, cannot be stated to be uncontrolled or unfettered. If the power is held to be so, that would amount to do violation to the provisions of the Act, such as sub-section (6) of Section 18. The power can be exercised in the manner consistent with the essential provisions of the Act. For exercising the power conferred under Section 56 of the Act, the existence or arising of a “difficulty” is a *sine qua non* for the exercise of power. In other words, unless there exists a “difficulty”, the power under this Clause cannot be invoked. The language employed in this Section itself would show that under the guise of removing “difficulty” the power cannot be exercised in the manner inconsistent with the scheme or provisions of the Act. It can be exercised only to the extent it is necessary for applying or giving effect to the Act and to make it workable. Under any circumstances, for making the Act workable, the Government cannot change, disfigure or violates the basic structure and primary feature of the Act. In short, in no case, the Government can, under the guise of removing “difficulty”, change the essential provisions of any Act, such as

sub-section (6) of Section 18 of the Act. In other words, by issuing notification or order under Section 56, the Government cannot be permitted to violate the basic structure of any particular provision of the Act. The powers under Section 56 can be exercised only when there is a real difficulty arising in giving effect to the provisions of the Act. In the context of the present case, in our opinion, removal of real difficulty would not mean allowing the Executive Council to hold its meetings without quorum. The submission of the learned Senior Counsel for the appellants that the Government has power under Section 56 of the Act to allow the Executive Council to hold its meetings and take decisions in the absence of quorum, therefore, deserves to be rejected. Thus, we answer the third question in the affirmative.

42. That takes us to consider one more question raised by Dr.Damayanthi in her Cross-objections in W.A.No.234 of 2011 and W.A.No.1553 of 2013. It was submitted

by Mr.Ghanshyamdas Mandhani, learned Advocate on record, for Dr.Damayanthi that the learned Judge, based on clause (3) of the Information Brochure appended to the Notification No.2/2009, dated 31.12.2009, was wrong in holding that “the UGC (Minimum Qualifications for Appointments of Teachers and other Academic Staff in University and Colleges and Measures for Maintenance of Standards in Higher Education) Regulation-2009” (for short “Regulation-2009”) are applicable only to the extent of qualifications prescribed therein. He submitted that Regulations- 2009 were adopted by the University in anticipation of their enforcement in future and it was made so clear in the notification No.2/2009. Similarly, even the State Government vide G.O.Ms.No.14 dated 20.02.2010 (for short ‘GO-14’) had adopted the said Regulations and, therefore, the procedure followed by the selection committee in selecting Dr.Sravanthy and Dr.Gowda as provided for under the UGC Regulations-2000 was wrong and illegal and deserves to be set aside on this ground.

42.1 Insofar as the Notification dated 31.12.2009, with which the subject selection process commenced, is concerned it was made clear that UGC Regulations-2009 were adopted only for a limited purpose, as reflected in clause (3) of the Information Brochure i.e. for the qualifications prescribed therein. Similarly, the GO-14 was issued on 20.02.2010 took note of the recommendatory UGC Regulations-2009. Though the Universities were directed to implement the same (GO-14) within three months from the date of its issuance duly amending their Statutes, Ordinances, etc., the direction was issued after the subject selection process under Notification No.2 dated 31.12.2009 had commenced. In view thereof, the submissions of Mr.Mandhani that the University and the Government had adopted the Regulations-2009 by issuing Notification dated 03.12.2009 and the GO-14 must be rejected.

42.2 That apart, the UGC vide its letter dated 19.02.2010, addressed to the University, had clarified that it may proceed with the subject recruitment as per its Regulations-2000, as amended from time to time, and that the New Regulations would be required to be followed upon its publication/Notification in the Gazette of India. The new Regulations-2009, in fact, were Gazetted only on 28.06.2010 as “the University Grants Commission (Minimum Qualifications for Appointments of Teachers and other Academic Staff in Universities and Colleges and other

Measures for the Maintenance of Standards in Higher Education) Regulations, 2010". Thus, it is clear that the new Regulations were Gazetted (28.06.2010) after the appointments of Dr.Sravanthy and Dr.Gowda, who were appointed on 30.04.2010. In the result, the cross objections deserve to be dismissed. We make it clear that we have not examined whether the cross objections were maintainable.

43. We are informed that the selection committee has made appointments of several persons on the basis of the recommendations made by the Executive Council and all those persons who were appointed by the very same Executive Council are working since last about 3 to 4 years and if we hold that the appointments of Dr.Sravanthy and Dr.Gowda are illegal for want of quorum that would seriously jeopardize the interest of all such appointments which were made by the Executive Council with its four members. We, therefore, observe that it would be open to the University, if they so desire and advised, and if the circumstances so demand, to place all such recommendations of the selection committee before the Executive Council afresh, duly constituted as per the provisions of Section 18 of the Act, and seek approval and confirmation of their appointments with effect from the date on which they were appointed.

Per A.Ramalingeswara Rao, J

44. I have had the advantage of going through the draft judgment circulated to me by my learned and experienced brother, Sri Justice Dilip B. Bhosale. The judgement is in tune with our discussions and this separate opinion of mine is unnecessary but for the reasons given hereunder.

45. In spite of concurrence of opinions, the liberty given to me by my learned brother encouraged me to comment on the usual refrain of the Counsel for the appellants in these cases that this Court should lay off its hands in 'academic matters' and also supplement my views to that of my learned brother on the faulty selection process.

46. At the outset, I feel that the University ought not to have filed the appeals as a private litigant. The learned single judge, as per the record, heard the arguments of the Counsel at length and delivered a detailed and intelligible judgment. The University should have accepted the same. If the private parties carried the matter in appeal, it should have played a neutral role assisting the Court. But, alas, it chose to file the appeals like a private litigant. One can understand, a private party filing appeals out of ego satisfaction or vindicating his/her stand. But Institutions should take a conscientious stand after going through the judgement of the courts and try to reduce unnecessary litigation. In fact, the Government, vide G.O.Rt.No.82 dated 11-2-2011 constituted a committee to look into the irregularities committed by the University and the Committee submitted its report on 23-6-2011. Accordingly, the State Government issued orders for setting aside the selections and taking up the process afresh. However, it is submitted that the selected candidates in Botany department challenged the said Government orders and got stay of the same but there is no stay so far as Zoology department is concerned.

47. Nowadays, many specialists including Scientists, Academicians and Judicial Officers are holding administrative positions, which require them to take decisions on administrative side. Many of them may not be exposed to such exercise, but their positions make them imperative to take decisions. Hence, in the process, they should have rudimentary knowledge of administrative principles governing such decisions. If they follow the procedure, litigation can be curtailed to a large extent. The action of the University brought the teachers who ought to have held the books in the class rooms, to hold them in court rooms to assist their Counsel.

48. The facts in the instant case cannot be brought under the ambit of 'academic matters' as urged by the Counsel of appellants. We are concerned with the selection of Assistant Professors in Zoology. That process is purely administrative and is based on the provisions of the Andhra Pradesh Universities Act and Ordinances framed by the University. In the matter of selection of teaching and non-teaching staff, merely because the decisions are taken by Academicians, it cannot be called as 'academic matter'. It is a total misconception of law. I am supported in my view by

the Division Bench of Punjab and Haryana High Court in **Pratibha Gupta v. State of Punjab()**, wherein it was held as follows:

“...Before deciding whether or not the petitioners are entitled to any relief, we deem it necessary to reiterate the well established principle that the Courts should give due respect to the opinion expressed by the academicians and the decisions of the academic bodies on matters relating to admissions, examinations and discipline in educational institutions. However, this does not mean that the Courts should worship such opinions and decisions blind folded and refuse to discharge its constitutional obligations to protect the fundamental, constitutional and legal rights of the citizens. In the scheme of our Constitution the argument that the decisions of academic bodies and educational institutions should remain immune from the power of judicial review vested in the Courts cannot be accepted. What to say of such decisions, the power exercisable by the President under Article 72 to grant or not to grant pardon and the power exercised by the Government to impose emergency under Article 356 do not enjoy immunity from judicial review. In **Kehar Singh V/s. Union of India**, (1989) 1 SCC 204 : (AIR 1989 SC 653) and **S. R. Bommai V/s. Union of India**, (1994) 3 SCC 1 : (AIR 1994 SC 1918), the Apex Court has recognised the Courts power of judicial review even in these matters though the grounds on which the orders passed in such matters can be subjected to judicial scrutiny are extremely limited and it is always desirable not to interfere with the same unless it becomes imperative. It cannot also be ignored that the decisions of educational institutions and academic bodies, which are required to be taken in accordance with the relevant statutes, at times affect the students, teachers and employees and they are always subject to constitutional limitations contained in Articles 14, 15, 16, 20 etc. Therefore, if the Court finds that such decisions are violative of the statutory or constitutional provisions, then it is the constitutional duty of the Court to intervene and protect the rights of citizens.”

49. It is vehemently urged by the learned Standing Counsel for the University that the procedure of giving consolidated marks of the candidates in a tabulated sheet in respect of each candidate is in vogue for several years, not only in the University in issue, but in all Universities in the State. The said sheet was signed by all the Selection Committee members and that is the only record made available to the court. This court is handicapped from looking into the marks awarded by the experts, in the absence of record. This is not what was laid down in Ordinance II of the University and we have no doubt about it. But I have my own reservations about the discretionary power of the members of the Selection Committee in awarding marks

for teaching experience and publications in the absence of any criteria. The notification does not indicate the required number of years of teaching experience or publications required for making one eligible nor the methodology for awarding marks under each head. This gave rise to arbitrariness in awarding marks under the said heads. In the absence of criteria, one has to take quantitative data into consideration than indulging in qualitative exercise (which does not appear to have been done by the Selection Committee in this case in view of paucity of time).

50. We are also told that the appointees joined their posts on 1-5-2010, Dr.Damayanti retired from service in December, 2012 and Dr.R.Krishna was appointed in Osmania University on 6-9-2013 and hence their Writ Petitions should be dismissed. It is admitted that Dr.Vinatha Naini is still in service. These Writ Appeals were filed in 2011 and we are concerned with selection process of the Selection Committee. When the process is vitiated, the selections should be made afresh. In this connection, the observations of the Supreme Court in **Gurdeep Singh v. State of J & K()**, are apposite. In the said case, when the appellant before the Supreme Court was denied admission to the course leading to a Medical Degree for the year 1991-92 in the State of Jammu & Kashmir under sports category, reversing the judgment of the High Court, the Supreme Court commented as follows:

“...We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped...”

51. The Writ Appeals as well as Cross-Objections are accordingly dismissed. However, there shall be no order as to costs.

DILIP B. BHOSALE, J

A.RAMALINGESWARA RAO, J

52. At this stage, Mr. N.Jayasurya, learned counsel for the appellants in W.A.Nos.234 and 235 of 2011, prays for stay of this judgment for a period of four weeks.

53. In view of the prayer, we asked Mr.Deepak Bhattacharjee, learned counsel for the University as to how long they would take to implement the impugned judgment, he states atleast

4-6 weeks. In view thereof, stay as prayed for need not be granted.

DILIP B. BHOSALE, J

A.RAMALINGESWARA RAO, J

19-03- 2015

LR COPY TO BE MARKED: YES/NO

TSNR