

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22 - 02 - 2016

Pronounced on : 06 - 04 - 2016

CORAM

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA
Writ Petition Nos. 22565 and 22566 of 2015

Change India

Rep. by its Director A. Narayanan
No. 7C Daffodil, Ceebros Gardens
Arcot Road
Virugambakkam
Chennai - 92

.. Petitioner in W.P. 22565 of 2015

Dr. M. Anandakrishnan

.. Petitioner in W.P. 22566 of 2015

vs.

1. Government of Tamil Nadu
Rep. by the Chief Secretary
Secretariat
Chennai - 9

2. The Principal Secretary to
Government of Tamil Nadu
Higher Education Department
Fort St. George
Chennai - 9

3. University Grants Commission
Rep. by its Chairman
Bahadur Shah Zafar Marg
New Delhi - 110 002

4. Madurai Kamaraj University
Rep. by its Registrar
Palkalai Nagar
Madurai - 625 021

5. The Search Committee
Appointed for recommending the
"Vice Chancellor of Madurai Kamaraj university,
Madurai"
Through its Convenor .. Respondents in both W.Ps.
[R5 impleaded as per order
dated 18.8.2015]
made in WPs.22565 & 22566/15

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus by calling for the records of the fourth respondent pertaining to their advertisement in Ref. No. MKU/R17/VC/2015 dated 31.5.2015 and quash the same and also directing the second respondent to comply with the provisions of UGC Act, 1956 and its Regulations 2010 read in the light of their G.O. (Ms) No. 350 dated 09.09.2009 and G.O. Ms. No. 78 dated 23.4.2015 for appointing Vice Chancellor.

For Petitioner : Mr.P.R.Kovilan
in both W.Ps.

For R 1 : Mr. AL. Somayaji, Advocate General
Assisted by
Mr. S.T.S. Murthi,
Government Pleader
Mr. V. Shanmugasundar,
Government Advocate

For R 2 : Mr. AL. Somayaji, AG
Assisted by
Mr. D. Krishnakumar
Spl. Government Pleader
(Education)

For R 3 : Mr. G. Rajagopalan
Addl. Solicitor General of India
Assisted by
Mr. P.R. Gopinathan

For R 4 : Mr. V.R. Parthiban

For R 5 : M/s Issac Mohanlal &
Godson Swaminath

COMMON ORDER
सत्यमेव जयते

Change India, a trust, Centre for Advocacy and Research in promoting the cause of democratisation of Society, Equity, Rule of Law, Human rights, Accountable Governance, Sustainable Development and Alternative Developmental models, and one Dr.M.Anandakrishnan, claiming to be a social worker interested in producing top quality of imparting teaching and learning, have filed these Writ Petitions in public interest, seeking to quash the advertisement dated 31.5.2015 issued by the fourth respondent Registrar, Madurai Kamaraj University in Ref. No. MKU/R17/VC/2015 and to direct the second respondent Principal Secretary to Government of Tamil Nadu, Higher Education Department, to comply with the provisions of UGC Act, 1956 and its Regulations 2010, read in the light of their G.O. (Ms) No. 350 dated 09.09.2009 and G.O. Ms. No. 78 dated 23.4.2015 for appointing Vice Chancellor.

2. The allegation within the limited domain of the instant Public Interest Litigations is that the provisions of the University Grants Commission [for short, "UGC"] and its Regulations are said to be binding on all universities whether conventional or open or private university. The concern of the petitioners before this Court, is with respect to the appointment of Vice-Chancellor of the fourth respondent Madurai Kamaraj University.

3. A Vice-Chancellor of a University is a pivotal person, especially of a multi-discipline university. According to the petitioners, only distinguished academicians, who command high respect and regard on account of their past record, are only to be appointed Vice Chancellors to Universities through transparent process.

4. It is in the aforesaid context, the petitioners submit that the new advertisement notification was released by Search Committee. Pointing out the Notification issued by Annamalai University Search Committee for short-listing candidates for the post of Vice Chancellor, learned counsel for the petitioner submitted that the same methodology can be followed by the Search Committee of the fourth respondent. According to him, in the said notification by Annamalai University, it has been clearly mentioned that the applicant should be a distinguished academician with minimum ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and / or academic or administrative organization. The Notification further sought for a declaration from the candidate that no criminal case is pending against him / her while submitting the application for the post of Vice Chancellor. Quoting the same, the petitioners allege that the two clauses highlighted by them have not been incorporated in the impugned notification and surprisingly, both these clauses have been diluted/eliminated in the advertisement with regard to fourth respondent University. In such circumstance, the petitioners have filed the instant writ petitions in order to prevent detention of standards and selection of Vice Chancellor without the mandatory qualification and criteria prescribed by the UGC.

5. The respondents 1 and 2, who are the State authorities filed counter contending that under Section 11 of the Madurai Kamaraj University Act, 1965 (Tamil Nadu Act 33 of 1965), the search committee was constituted by the Chancellor and thereafter notified by the Government. It is further stated that the Search Committee, being an independent and autonomous body, can prescribe the eligibility criteria for the post of Vice Chancellor. According to the State Government, UGC Regulations, 2010 are mandatory for Central Universities, Colleges and other educational institutions under the purview of State Legislation, as the matter has been left to the State Government to adopt and implement the scheme and that the UGC Regulations, 2010 have not been adopted by State of Tamil Nadu.

6. The third respondent UGC which was enacted to make provisions for the co-ordination and determination of standards in universities, filed counter affidavit stating that in order to determine and maintain standards of teaching, examination and research in universities, the Commission has been vested with the power to recommend to any university, the measures necessary for the improvement of university education and advise the universities upon the action to be taken for the purpose of implementation of such recommendation. It is further stated that the fifth respondent Search Committee has got no powers to fix the new qualification lower than the UGC norms and hence, according to the third respondent, the action of the Search Committee is without jurisdiction.

7. The fourth respondent Madurai Kamaraj University, represented by its Registrar has filed counter affidavit to the effect that the Search Committee, which was constituted by the State Government consisting of three persons possessing exceptionally good academic credentials and vast experience in the field of higher education, has published the Notification, which is impugned in the instant petitions, and it is now in the process of short listing candidates for the preparation of the Panel and sought for dismissal of the Writ Petitions.

8. The fifth respondent Search Committee appointed for recommending the Vice Chancellor of Madurai Kamaraj University, represented by its counsel Mr. Isaac Mohanlal, contended that Madurai Kamaraj University has been established under the Madurai Kamaraj University Act, 1965, whereas UGC Regulations came into force on 18.09.2010 for the first time prescribing qualification for appointment of Vice Chancellors under para 7.3.0. It is stated that as the UGC Regulations are not yet adopted by the State Government, Madurai Kamaraj University Act has not amended its provisions in line with the same. As such, according to the learned counsel, only the State Act will govern the appointment of Vice Chancellors. It is also specifically pointed out that University Syndicate, in its meeting dated 09.01.2015, adopted the said UGC Regulations insofar as 'the selection and appointment of Teachers and Principals of all Colleges affiliated to the University' only (and not in respect of Vice Chancellors). It is stated further that the posts of Professors are available only in the Universities and if designated 'Professors' only are considered for appointment of Vice Chancellor, the large segment of the faculty members, who happen to serve in colleges with the same or better qualification, will have to be excluded from the zone of consideration.

9. Heard the learned counsel for the petitioner and the respective respondents and perused the records.

10. Universities are autonomous and the Vice Chancellor is the leader of the higher educational institution. As per the

norms, a Vice Chancellor should be an eminent academician, excellent administrator and also some one, who has the highest level of competence, integrity, moral stature and though the process and procedure adopted for appointment of Vice Chancellor in Universities and the relationship between the Government and Universities in such process are interesting issues, the same has now become a challenge before this Court. As Head of a University, the Vice Chancellor is expected to function as a bridge between the executive and academic wings of the University. Perhaps, this is the reason why the Universities are always in search of persons with moral value, personality, characteristic and integrity in addition to academic excellence and administrative experience. The expectations of the petitioners herein, as a representative of the society and social worker, are no doubt high and at times, it is difficult to find persons coming up with these expectations. In the interest of University as well as in the interest of nation building, it is important to find a right person to fit into the position as thousands of students accept the leadership as a guiding force and as somebody, who contributed to their future.

11. An university cannot be generally in favour of appointing a person, who had retired from other fields as Vice Chancellor, as, normally, a Vice Chancellor should be a distinguished educationist or eminent scholar in any of the discipline or profession having high standing with adequate administrative experience. Perhaps, there may be an exception only in the case of an outstanding person and should not be made an excuse for accommodating or rewarding individual, who does not fulfill the conditions lay down. A Vice Chancellor is not only an administrative functionary but also should create a right atmosphere among teachers and students to do their work effectively and in the right spirit. As a principal executive of the University, the Vice Chancellor has general supervision and control over the affairs of the University and give effect to all its authority. It shall be the duty of the Vice Chancellor to see that the provisions of Acts, Statutes, Rules and Regulations are fully observed and he should have the necessary power for discharge of his duty. Now, the question is whether such Vice Chancellor is selected in the instant case by following the Acts, Statutes, Rules and Regulations.

12. The future development of a University is vested with the administration of the Vice Chancellor. However, a well-equipped and well-staffed institution having the quality and status of an institution, will loose its chance with the poor leadership. In the light of the above, identification of right persons to the key position like Vice Chancellor depends on several factors in which the Search Committee plays a crucial role. The selection of Vice Chancellor varies from University to University and such variation depends on the degree to which the Government involvement is present in the selection process. The involvement of State Government in the appointment of Vice

Chancellor has been in practice in India. However, if the Government thinks fit that selection of Vice Chancellor is too important, the issue is to be left to the decision of the academicians alone. If the Government is involved in the selection of the Vice Chancellor, it is made directly by the Head of the State or the Chancellor without consultation with the Governing body of the University. If the University Council is given an opportunity, the Government has got no role in the process.

13. In the case before this Court, the search committee for the fourth respondent constituted under the Madurai Kamaraj University Act, has issued the impugned advertisement inviting the candidates for appointment of Vice Chancellor to the same University. The advertisement also calls for applications from Professors and Associate Professors. It is submitted that Search Committee is involved in a talent search and that the members of the Search Committee may or may not be familiar with the actual situation in the University concerned and the qualities the individuals should possess in order to deal with it successfully. On the other hand, according to the learned counsel, the function of the Search Committee is only to recommend the panel of names. Therefore, it is not possible for the Committee to consult directly any of the individuals included in the panel. The Search Committee may comprise of persons of eminence in the sphere of education and shall not be attached in any manner with the University or the College. An analysis of the Act reveals that the Vice Chancellor is appointed by the Chancellor from the panel of 3 to 5 names recommended by the duly constituted Search Committee. In the event of the Chancellor is not satisfied with the given panel, he is also empowered to call for a set of fresh names. But the procedure adopted by the different universities are concerned, it varies.

14. For better appreciation of the case, it would be worthwhile to have a glance over the relevant provisions of the enactments and the decisions in this regard.

15. The third respondent UGC has been enacted by the Parliament under Entry 66 List I of VII Schedule of the Constitution of India. Section 12 of the UGC Act, 1956 deals with powers and functions of the Commission with regard to determination and maintenance of standards of teaching, examination and research in Universities. The Provisions of the UGC Act would show that it applies to all Universities, which include a State University.

16. As regards the appointment of Vice Chancellor of a University, the UGC Notification dated 13.06.2013 stipulates the criteria and selection process and the relevant clause 7.3.0 is usefully re-produced hereunder:

"(i) Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice Chancellors. The

Vice-Chancellor to be appointed should be a distinguished academician with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organisation.

- ii) The selection of Vice Chancellor should be through proper identification of a panel of 3-5 names by a Search Committee through a public notification or nomination or a talent search process or in combination. The members of the above search Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with the university concerned or its colleges. While preparing the panel, the search committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance to be given in writing along with the panel to be submitted to the Visitor/Chancellor. The constitution of the search committee could be as per the Act/Statutes of the concerned university.
- (iii) The Visitor/Chancellor shall appoint the Vice Chancellor out of the panel of names recommended by the search committee.
- (iv) The conditions of services of the Vice Chancellor shall be as prescribed in the Act/Statutes of the university concerned in conformity with the Principal Regulations.
- v) The term of office of the Vice Chancellor shall form part of the service period of the incumbent concerned making him/her eligible for all service related benefits."

17. Section 12 of the University Grants Commission Act, 1956 deals with the powers and functions of the Commission with regard to the determination and maintenance of standards of teaching, examination and research in Universities. Section 26(6) of the Act deals with the power to make regulations.

18. In *Bharathi Vidyapeeth Vs. State of Maharashtra* [(2004) 11 SCC 755], the Honourable Supreme Court while holding that the power of UGC is not merely for Funding, observed that the provisions of enactments would show that the maintenance of standards in the Institutions and for Co-ordinating the teaching in Universities is a higher purpose than merely giving grants and with that object, the enactment is made.

19. Section 14 of the University Grants Commission Act, 1956 clearly provides for consequences of violation of the Regulations and Rules by the Universities. Rule 7.4.0 reads as follows:

"The Universities/State Governments shall modify or amend the relevant Act/Statutes of the Universities concerned within 6 months of adoption of these regulations."

20. From the above, it is clear that the word 'shall' indicates that the provision is mandatory and binding on all the State Governments as well as the Universities. Admittedly, the said provision is not challenged either by the State or the University. When the issue relating to reimbursement of financial assistance to State Government, after revision of pay scale for teachers in Universities and Colleges, came up for consideration, it was accepted by the State Government that the UGC Regulations were adopted, however, only with respect to pay scale.

21. Learned counsel representing the University submitted that UGC Regulation has not been adopted by the State of Tamil Nadu and hence, Madurai Kamaraj University Act, 1965, is not yet amended in line with the same. As such, according to the learned counsel, the State Act will continue to govern the appointment of Vice Chancellors.

22. The issue raised in the present writ petitions as to whether UGC has the authority to appoint a Vice Chancellor in Madurai Kamaraj University was considered by the Hon'ble Apex Court in Kalyani Madhivanan Vs. K.V.Jeyaraj [(2015) 6 SCC 363] wherein in Paragraph Nos. 20, 35, 56 and 62, it has been held as under:-

Para 18 : "We have heard the learned counsel for the parties and the issues that arise for our consideration are:

- (i) Whether UGC Regulations, 2010 is mandatory in nature; and
- (ii) Whether in the event of conflict between the University Act, Regulations framed thereunder and the UGC Regulations, 2010, the provisions of the UGC Regulations, 2010 would prevail or not; and
- (iii) Whether the post of Vice-Chancellor of a University is to be considered as part of teaching staff.

Para 35 : From paragraph 8(p)(i) and (v) of Appendix-I dated 31.12.2008 read with Regulation 7.4.0 we find that the Scheme of regulation is applicable to teaching staffs of all Central Universities and Colleges thereunder and the institutions deemed to be Universities whose maintenance expenditure is

met by the UGC. However, the Scheme under UGC Regulations, 2010 is not applicable to the teaching staffs of the Universities, Colleges and other higher educational institutions coming under the purview of the State Legislature, unless State Government wish to adopt and implement the Scheme subject to terms and conditions mentioned therein.

Para 56 : We have noticed and held that UGC Regulations, 2010 are not applicable to the Universities, Colleges and other higher educational institutions coming under the purview of the State Legislature unless State Government wish to adopt and implement the Scheme subject to the terms and conditions therein. In this connection, one may refer paragraph 8(p)(v) of Appendix-I dated 31.12.2008 and Regulation 7.4.0 of UGC Regulations, 2010.

Para 62.5 : The UGC Regulations, 2010 having not been adopted by the State Tamil Nadu, the question of conflict between State Legislation and the Statutes framed under Central Legislation does not arise. Once it is adopted by the State Government, the State Legislation to be amended appropriately. In such case also there shall be no conflict between the State Legislation and the Central Legislation."

23. Mr. G. Rajagopal, learned Additional Solicitor of India representing the UGC / third respondent, contended that though Section 12 of the Madurai Kamaraj University Act, 1965 was referred, it is on the footing that the post of Vice Chancellor under the University Act, 1965 is a post of an officer. It is his further submission that Section 14 of the UGC Act clearly provides for consequences of violation by the Universities. It is also his submission that admittedly, the fourth respondent Madurai Kamaraj University is partly funded by the Central Government and that the provisions of Madurai Kamaraj University Act, 1965 and the Statutes framed under do not provide for qualification of Vice Chancellor. In the absence of the same, according to the learned Additional Solicitor General, the fourth respondent University has to resort only to UGC Regulations.

24. Per contra, the learned counsel appearing for the writ petitioners contended that the observation of the Honourable Apex Court in the case mentioned supra to the effect that holding the post of Vice Chancellor by the petitioner therein would be sustainable and the UGC Regulations 2010 is directory, in the context of non-adoption of the scheme as contained in Ministry of Human Resources Development (Department of Higher Education) vide circular No.1-32/2006-UII/U.1(i) dated 31.12.2008 may not be strictly applicable to the present case, in the changed fundamentals. It is the consistent case of the petitioners

that an Associate Professor also should be included to the post of Vice Chancellor would result in disastrous situation leading to anomaly with the risk of any one without required qualification whatsoever, could as well be appointed in the system of higher education. Hence, it was specifically pointed out that the advertisement per se is unacceptable.

25. In response, the learned counsel for UGC besides stating that it is the duty of the University to comply with the provisions of the UGC Act and the Search Committee has no jurisdiction to fix the qualifications of the Vice Chancellor, contended that the action of the search committee is ultra vires of the Act and without jurisdiction.

26. The learned counsel appearing for the University submitted that some of the colleges are bigger than University itself and they have been conferred with the status of 'Colleges of Excellence' and 'Colleges with Potential for Excellence'. If the designated Professors only are to be considered for the post of Vice Chancellor, according to the learned counsel, the large segment of faculty members with better qualification may not have an opportunity to compete in the process and as the search committee involved in a talent search, it has to be allowed to continue the object.

27. In a nutshell, the petitioner and the third respondent contended that the Search Committee has got no jurisdiction to fix the norms or deviate from the norms fixed by the UGC while selecting the Vice Chancellor.

28. It is obvious to note that in matters like university, selection of a Vice Chancellor is to be made by fairly an elaborate procedure. The eminent persons nominated by the Chancellor or the UGC or the Executive Council or the Senate or the Syndicate and the Government are involved in the preparation of panel of names. Not all universities are able to adopt appointment procedure with little or no Government involvement. No doubt, certain facts about the appointment of Vice Chancellor shall be given consideration.

29. Appointment of Vice Chancellor on the basis of political influence often means that he or she is found in general or more accountable to the Government or University. It also further leads to a conflict between the academicians and students on the one hand and the University administration on the other. Appointment on the basis of only academic merit, at least, ensures that the selected Vice Chancellor has some credibility in the eyes of academic staff and the students of the University.

30. Insofar as the process and procedure of the selection committee is concerned, there are no procedure for the committee to work. They can produce a panel of 3 or more names in one sitting or can follow more details about the invited suggestions from various sources as per their choice and thereafter,

shortlist the names for final selection from the panel, like the petitioner herein. It has been observed by many that the process of selection of Vice Chancellor was earlier credible and so an objective exercise. With the regional, State and communal pressures for control and management of the process, with the increase in number of Universities, it has become more and more difficult to establish credibility of selection. So to say, the very process of selection of Vice Chancellors not only fallen victim to such pressures but also to the pressures of caste, religion and gender etc., The choice of adoption of UGC Rules and Regulations left to the Universities has caused greater anxiety in the minds of those like the petitioner herein.

31. Though the Search Committee plays a significant role in the selection of Vice Chancellors, it is the performance of the person selected speaks about the Universities. The members of the Search Committee, who are given the privilege and honour of selecting and suggesting the names of the Vice Chancellor are directly or indirectly responsible for the achievement of the University. The objectives of the Universities and the commitment to colleges are the deciding factors in selecting the right person.

32. In the light of the above, it is obvious that selection of Vice Chancellor does not only depend upon the norms laid down in the State and Universities Act and the UGC guidelines but also other contextual factors, as has been mentioned above. In these circumstances, if the challenge is with respect to selecting a right person through a right process, then, the question of what should be the role of UGC, State Government or the University, are the issues which are directly linked with the selection process of Vice Chancellor.

33. A development which is crucial in the given facts of the case is that one of the Members of the Selection Committee subsequently withdrew from the Selection Committee. Thus, the selection process would have to begin de novo. We could have left the matter at that, but then it was felt that the issue is of such a nature that it would again arise for consideration, as it is a question of a principle.

34. In our view, the pre-eminence of the UGC in maintaining standards in institutions and for co-ordinating the teaching in universities is of utmost importance and ought not to be restricted only to an aspect of funding (Bharathi Vidyapeeth's case supra). It is in the context of performing this role that the UGC had issued the Notification dated 13.6.2013 stipulating the criteria and selection process, reproduced in paragraph 16 aforesaid.

35. Section 14 of the UGC Act, 1956 provides for consequences of violations by Universities. The University/State Governments were required to modify or amend the relevant Acts and Statutes of the Universities concerned within six months of

the adoption of the (UGC) Regulations. The fact, however, remains that this has not been so done in respect of the Madurai Kamaraj Act, 1965, despite the assurances held out earlier.

36. The question thus arises is that, if the amendments have so not been done, what would be the effect of the same. The legal position in this behalf has been enunciated by the Apex Court in Kalyani Madhivanan's case (supra) while framing the questions to be decided as set out in paragraph 18 of that judgment. The Supreme Court came to the conclusion that the UGC Regulations, 2010 having not been adopted by the State of Tamil Nadu, the question of conflict between the State Legislation and the Statutes framed by the Central Government does not arise, but once adopted by the State Government, the State Legislation would be amended appropriately.

37. We have, thus necessarily, to come to the conclusion that the UGC Regulations in this behalf would not apply on account of the recalcitrant stand of the State Government not to amend the University Statutes so as to bring them in conformity with the Regulations, even though assurances were held out while availing of the financial aid.

38. A plea of estoppel cannot be really raised as sought to be canvassed by the UGC as it is a matter of statutory amendment. On our query, learned counsel for the UGC was of the view that they being now quite awake to the violations by the State Government qua the UGC Regulations would be entitled to and would take necessary steps as permitted under the UGC Act and the Regulations framed therein consequent to the approach of the State Government in not amending the statutes which may include stopping of aid in future. This is a matter for the University Grants Commission.

39. The State Government should also now be quite aware of the consequences which will flow to them on their inaction or refusal to amend the provisions of the Statutes in pursuant to the Regulations and should be ready to face them. This may entail difficulty in the functioning of the State Universities on account of the lack of support and fund flow from the UGC.

40. We are, thus, of the view that no positive direction is required in the present case in the aforesaid given facts and circumstances and also considering the fact that this is a Public Interest Litigation. The respective parties are quite aware of the consequences which flow. It would, no doubt, be advisable and desirable for the State Government to amend the Acts in terms of the Regulations in view of the pre-eminent role of the UGC so that both are in conformity. This is not only for the purpose of financial aid for the future or on account of the assurances held out in the past, but also on account of the desirability of doing so.

We, thus, close the proceedings in terms aforesaid.
However, in the circumstances of the case, there shall be no
order as to costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Chief Secretary
Government of Tamil Nadu
Secretariat
Chennai - 9
2. The Principal Secretary to
Government of Tamil Nadu
Higher Education Department
Fort St. George
Chennai - 9
3. Chairman
University Grants Commission
Bahadur Shah Zafar Marg
New Delhi - 110 002
4. Registrar
Madurai Kamaraj University
Palkalai Nagar
Madurai - 625 021

1 cc to Mr.V. Parthiban, Advocate, Sr. 22057

+ 2 ccs to Mr.P.R.Kovilan, Advocate Sr 22071 (27/4/16)

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