

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14660 of 2014

and

mp.no.1 of 2014

C.Kullammal

... Petitioner

Vs

1.Tamil Nadu Public Service Commission,
Represented by its Secretary,
Chennai - 600 003.

2.Government of Tamil Nadu,
Rep. by Secretary to Government,
Personnel and Administrative Reforms
Department,
Chennai - 600 009.

... Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Memo No.3590/OTD.A2/293 dated -5-2013, to quash the same and to issue consequential directions to the first respondent to select her to any one of the posts included in the combined Subordinate Service, Group II. Assistant for the years 2011-2013.

For Petitioner : Mr.J.Muthukumaran

For Respondents : Mr.M.Loganathan (For R1)

Mr.A.Rajaperumal

Additional Government Pleader (For R2)

O R D E R

The order of rejection passed by the respondent in May, 2013, rejecting the application submitted by the writ petitioner for recruitment is under challenge in this writ petition.

2.The order of rejection impugned in this writ petition passed on the ground that the writ petitioner has not acquired the qualifications in accordance with the Educational Pattern prescribed under UGC (Under Graduation Course) regulations. To say that, the writ petitioner had not completed the educational pattern of 10+2+3 as per the prescriptions in the

UGC (Under Graduation Course) regulations in this regard. It is relevant to state that the writ petitioner has passed the SSLC examination in March, 1986, and the +2 examination in September, 1992. However, after completing the +2 course, the writ petitioner had directly passed M.A. (Degree in Tamil) (in Open University) in May, 2004, and thereafter, he acquired M.Phil (Tamil) (in Correspondent Course) in March, 2009, and B.Ed. Degree (Correspondent Course) in April, 2009, and B.Lit Degree in 'Tamil (Correspondent Course) in May, 2012, and further, the writ petitioner has also passed Typewriting English (Senior Grade) and Type writing Tamil (Junior Grade). The claim of the writ petitioner is that subsequently, in the year 2012, he has completed the Under Graduation Course. However, the fact remains that the writ petitioner has not completed the Under Graduation Course after the +2 course and directly obtained the M.A. degree through Annamalai Open University. In respect of the open university, the very same Annamalai University case was adjudicated both before the High Court of Madras and before the Hon'ble Supreme Court of India.

3.The appeal preferred by the Annamalai University was considered in the case of Annamalai University Vs. Secretary to Government, Information & Tourism Department reported in 2009 4 SCC page No.590. The Hon'ble Supreme Court of India discussed the validity of the M.A. Degree through the open university obtained from the Annamalai University itself. The relevant paragraphs are extracted here under:

"40. The UGC Act was enacted by the Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

41.Was the alternative system envisaged under the Open University Act in substitution of the formal system, is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and an informal system is in the mode and manner in which education is

imparted. The UGC Act was enacted for effectuating co-ordination and determination of standards in Universities. The purport and object for which it was enacted must be given full effect.

42. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-Section (1) of Section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the co-ordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12A and clauses (a) and (c) of sub-section (2) thereof.

43. Indisputably, as has been contended by the learned counsel for the appellant as also the learned Solicitor General that Open University Act was enacted to achieve a specific object. It opens new vistas for imparting education in a novel manner. Students do not have to attend classes regularly. They have wide options with regard to the choice of subjects but the same, in our opinion, would not mean that despite a Parliamentary Act having been enacted to give effect to the constitutional mandate contained in Entry 66 of List I of the Seventh Schedule to the Constitution of India, activities and functions of the private universities and open universities would be wholly unregulated.

44. It has not been denied or disputed before us that in the matter of laying down qualification of the teachers, running of the University and the matters provided for under the UGC Act (sic the Regulations) are applicable and binding on all concerned. The Regulations framed, as noticed hereinbefore, clearly aimed at the Open Universities. When

the Regulations are part of the statute, it is difficult to comprehend as to how the same which operate in a different field would be ultra vires the Parliamentary Act. IGNOU has not made any regulation; it has not made any ordinance. It is guided by the Regulations framed by the UGC. The validity of the provisions of the Regulations has not been questioned either by IGNOU or by the appellant - University. From a letter dated 5.5.2004 issued by Mr. H.P. Dikshit, who was not only the Vice-Chancellor but also the Chairman of the DEC of IGNOU it is evident that the appellant - University has violated the mandatory provisions of the Regulations.

45. The amplitude of the provisions of the UGC Act vis-a-vis the Universities constituted under the State Universities Acts which would include within its purview a University made by the Parliament also is now no longer a res integra.

46. In Prem Chand Jain Anr. vs. R.K. Chhabra² this Court held: (SCC pp. 308-09, para 8)

"8. ... The legal position is well-settled that the entries incorporated in the lists covered by Schedule VII are not powers of legislation but 'fields' of legislation. (Harakchand Ratanchand Banthia v. Union of India³ SCR at p.489.) In State of Bihar v. Kameshwar Singh⁴ [1952 S.C.R. 889] this Court has indicated that such entries are mere legislative heads and are of an enabling character. This Court, has clearly ruled that the language of the entries should be given the widest scope or amplitude. Navinchandra Mafatlal v. C.I.T.⁵ SCR at p.836.) Each general word has been asked to be extended to all ancillary or subsidiary matters which can fairly and reasonably be comprehended. [See State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.⁶ SCR at p. 391.] It has also been held by this Court in The Check Post Officer and Ors. v. K.P. Abdulla and Bros⁷ that an entry confers power upon the legislature to legislate for matters ancillary or incidental, including provision for avoiding the law. As long as the legislation is within the permissible field in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which

though germane for the purpose for which competent legislation is made it covers an aspect beyond it. In a series of decisions this Court has opined that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature enacting it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature."

47. In *University of Delhi vs. Raj Singh & ors.* this Court held: (SCC pp. 526-27, para 13)

"13. ... By reason of entry 66, Parliament was invested with the power to legislate on "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions." Item 25 of List III conferred power upon Parliament and the State legislatures to enact legislation with respect to "vocational and technical training on labour". A six-Judge bench of this Court observed that the validity of State legislation on the subjects of University education and education in technical and scientific institutions falling outside Entry 64 of List I as it then read (that is to say, institutions for scientific or technical education other than those financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance) had to be judged having regard to whether it impinged on the field reserved for the Union under Entry 66. In other words, the validity of the State legislation depended upon whether it prejudicially affected the coordination and determination of standards. It did not depend upon the actual existence of union legislation in respect of coordination and determination of standards which had, in any event, paramount importance by virtue of the first part of Article 254(1)."

48. In *State of T.N. & Anr. vs. Adhiyaman Educational & Research Institute & ors.* this Court laid down the law in the following terms: (SCC pp.134-35, para 41)

"41. What emerges from the above discussion is as follows:

(i) The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not

merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the center under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the center under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the center or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may

be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the central authority, the State authorities act illegally."

49. In State of A.P. vs. K. Purushotham Reddy & ors. this Court held: (SCC p.572, para 19)

"19. The conflict in legislative competence of the Parliament and the State Legislatures having regard to Article 246 of the Constitution of India must be viewed in the light of the decisions of this Court which in no uncertain terms state that each Entry has to be interpreted in a broad manner. Both the parliamentary legislation as also the State legislation must be considered in such a manner so as to uphold both of them and only in a case where it is found that both cannot co-exist, the State Act may be declared ultra vires. Clause I of Article 246 of the Constitution of India does not provide for the competence of the Parliament or the State Legislatures as is ordinarily understood but merely provide for the respective legislative fields. Furthermore, the Courts should proceed to construe a statute with a view to uphold its constitutionality." It was observed: (Purushotham Reddy case¹⁰, SCC p. 573, para 20)

"20. Entry 66 of List I provides for coordination and determination of standards inter alia for higher education. Entry 25 of List III deals with broader subject, namely, education. On a conjoint reading of both the entries there cannot be any doubt whatsoever that although the State has a wide legislative field to cover the same is subject to entry 63, 64, 65 and 66 of List I. Once, thus, it is found that any State Legislation does not entrench upon the legislative field set apart by Entry 66, List I of the VII Schedule of the Constitution of India, the State Act cannot be invalidated."

50. The UGC Act, thus, having been enacted by the Parliament in terms of Entry 66 of List I of the Seventh Schedule to the Constitution

of India would prevail over the Open University Act.

59. The provisions of UGC Act are not in conflict with the provisions of Open University Act. It is beyond any cavil of doubt that UGC Act shall prevail over Open University Act. It has, however, been argued that Open University Act is a later Act. But we have noticed hereinbefore that the nodal ministry knew of the provisions of both the acts. Regulations were framed almost at the same time after passing of the Open University Act. Regulations were framed at a later point of time. Indisputably, the regulations embrace within its fold the matters covered under Open University Act also.

60. Submission of Mr. K. Parasaran that in terms of sub-section (2) of Section 5 of the Open University Act a non obstante clause has been created and, thus, would prevail over the earlier Act cannot also be accepted. Apart from the fact that in this case repugnancy of two Acts is not in question (in fact cannot be in question having been enacted by the Parliament and a State in terms of the provisions of the concurrent list) the non obstante clause contained in the Open University Act will be attracted provided the statutes operate in the same field. UGC Act, as noticed hereinbefore, operates in different field. It was enacted so as to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission. Its directions being binding on IGNOU, sub-section (2) of Section 5 of the Open University Act would not make the legal position otherwise."

4. The Hon'ble Supreme Court of India categorically held that the Degree granted by the Annamalai University under Open University system is not in accordance with the Under Graduation Course Regulations and the said Degree granted by the Annamalai University are held invalid and therefore, the candidates possessing the M.A. Degree via. Open University System issued by the Annamalai University are ineligible for public employment, by virtue of the Degree granted by the Annamalai University. In view of the legal principles settled by the Hon'ble Supreme Court of India, in this regard, the order of rejection passed by the respondents are in accordance with the law and there is no infirmity.

taken on merits. Accordingly, the Writ Petition stands dismissed. However, there is no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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TO

1.The Secretary to Government,
Personnel and Administrative Reforms
Department, Secretariat, Fort St.George,
Chennai - 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 600 003.

+1cc to Mr.M.Loganathan, Advocate SR.No.73305

+1cc to Mr.J.Muthukumaran, Advocate SR.No.73193

+1cc to Government Pleader SR.No.77182

W.P.No.14660 of 2014

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