

In the High Court of Judicature at Madras

Dated : 20.09.2017

Coram :

The Honourable Mr.Justice S.M.SUBRAMANIAM

W.P. No.25045 of 2017

D.Mohan

...Petitioner

Vs

The Director General of Police,
Office of The Director General of Police,
Mylapore, Chennai-4.

...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the impugned order dated 25.7.2015 passed by the 1st respondent in his proceedings No. Rc. No.120842/GBIII(1)/2015 and quash the same and thereby direct the respondents to consider the petitioner for the promotion to the post of Deputy Superintendent of Police (Armed Reserve) by considering his educational qualification of B.A.History as the sufficient qualification.

For Petitioner : Mr.Raja Senthoo Pandian,

For Respondent : Mr.K.Dhananjayan,
Special Government Pleader.

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ORDER

The claim of the writ petitioner for appointment to the post of Deputy Superintendent of Police (Armed Reserve) was rejected by the respondent in proceedings dated 25.07.2015, on the ground that the writ petitioner is not possessing the required qualification under the service rules.

2. The writ petitioner was initially appointed as Police Constable, Grade II, in the year 1971 and thereafter earned promotion step by step and reached the post of Inspector of Police. The learned counsel for the writ petitioner made a submission that the writ petitioner is now holding the post of Inspector of Police in the Armed Reserve.

3. It is the case of the writ petitioner that he has completed B.A. Degree in History stream and the Degree was obtained from the Tamil Nadu Open University, during January 2013. According to the writ petitioner, since he acquired the qualification from the Tamil Nadu Open University in January 2013, he is eligible to be promoted to the next higher post of Deputy Superintendent of Police (Armed Reserve).

4. Further, the case of the writ petitioner is that promotion to the post of Deputy Superintendent of Police (Armed Reserve) has been deferred by the respondent, on account of the fact that the Degree obtained by him was from Open University and such a Degree cannot be accepted as a valid one for the purpose of granting promotion to him in accordance with the Rules.

5. The order impugned states that the writ petitioner has failed in SSLC and +2 examinations and therefore, the same could not be taken as valid qualification, for the purpose of granting promotion to the post of Deputy Superintendent of Police (Armed Reserve).

6. The learned counsel is not disputing the fact that the writ petitioner has not passed SSLC and Higher Secondary course. In fact, the writ petitioner secured admission for the Under Graduate course directly.

7. Thus, it is an admitted fact that the writ petitioner, without passing the tenth standard and +2 Higher Secondary Course, got admission directly to the B.A. Degree course and accordingly, obtained Degree from Open University scheme.

8. The validity of the degree issued by the University under the Open University scheme was considered and decided by the Hon'ble Supreme Court of India in the case of Annamalai University Represented by Registrar Vs. Secretary to Government, Information and Tourism Department and others reported in (2009) 4 SCC 590, the relevant portion of which is extracted hereunder:

42. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. 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 the 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 are applicable and binding on all concerned. 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 Act](#) 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. Chhabra](#) [SCC pp.308-09, para8], this court held:

"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 v. Union of India](#) [(1970) 1 S.C.R. 479 at p.489]. [In State of Bihar v. Kameswar](#) [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 v. C.I.T.](#) [1955] 2 S.C.R. 129 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](#) [1959] S.C.R. 379 at p. 391. It has also been held by this Court in [The Check Post Officer and Ors. v. K.P. Abdulla Bros](#) [(1971) 2 S.C.R. 817] 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.](#) [1994 Suppl (3) SCC 516], this Court held:

"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 reach 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.* [(1995) 4 SCC 104], this Court laid down the law in the following terms:

"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.* [(2003) 9 SCC 564], this Court held:

"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:

"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. 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.

51. With respect, it is difficult to accept the submissions of learned Solicitor General that two Acts operate in different fields, namely, conventional university and Open University. UGC Act, indisputably, governs Open Universities also. In fact, it has been accepted by IGNOU itself. It has also been accepted by the appellants - Universities.

52. Reliance placed by Mr. K. Parasaran on Guru Nanak Dev University (supra), in our opinion, is not apposite. The question which arose for consideration therein was as to whether Guru Nanak Dev University was entitled not to treat the degrees awarded by IGNOU as it is not equivalent to three years degree course. Even therein it was noticed:

"12....It is true that normally a student cannot enroll for a Master's degree course unless he has a basic Bachelor's degree in the chosen subject..."

Unfortunately, attention of this Court was not drawn to the Regulations which are imperative in character. The question, as noticed hereinbefore, before this Court therein was the question of equivalence.

53. It has been noticed that the appellants - Universities did not wish to treat correspondence courses and distance education courses as being the same. It was stated to be a matter of policy. Observations which have been made for holding the degrees granted by appellants - Universities as valid must be considered keeping in view the question involved therein, namely, equivalence of degree and not any other question. The questions which have been posed before us did not fall for its consideration. The mandatory regulations were also not brought to its notice. We, therefore, are of the opinion that Guru Nanak Dev University (supra) has no application to the facts of the present case.

54. This Court in *Osmania University Teachers Association vs. State of Andhra Pradesh & Anr.* [(1987) 4 SCC 671], held as under:

"14. Entry 25 List III relating to education including technical education, medical

education and Universities has been made subject to the power of Parliament to legislate under Entries 63 to 66 of List I. Entry 66 List I and Entry 25 List III should, therefore, be read together. Entry 66 gives power to Union to see that a required standard of higher education in the country is maintained. The standard of Higher Education including scientific and technical should not be lowered at the hands of any particular State or States. Secondly, it is the exclusive responsibility of the Central Government to co-ordinate and determine the standards for higher education. That power includes the power to evaluate, harmonise and secure proper relationship to any project of national importance. It is needless to state that such a coordinate action in higher education with proper standards, is of paramount importance to national progress. It is in this national interest, the legislative field in regard to 'education' has been distributed between List I and List III of the Seventh Schedule.

15. The Parliament has exclusive power to legislate with respect to matters included in List I. The State has no power at all in regard to such matters. If the State legislates on the subject falling within List I that will be void, inoperative and unenforceable."

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30. The Constitution of India vests Parliament with exclusive authority in regard to co-ordination and determination of standards in institutions for higher education. The Parliament has enacted the U.G.C. Act for that purpose. The University Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the Universities. Democracy depends for its very life on a high standards of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must

be maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the Nation and play an increasing role bring about the needed transformation in the academic life of the Universities."

55. The submission of Mr. K. Parasaran that as in compliance of the provisions contained in Regulation 7, UGC had been provided with information in regard to instructions through non-formal/distance education relating to the observance thereof by itself, in our opinion, would not satisfy the legal requirement. It is one thing to say that informations have been furnished but only because no action had been taken by UGC in that behalf, the same would not mean that an illegality has been cured. The power of relaxation is a statutory power. It can be exercised in a case of this nature.

56. Grant of relaxation cannot be presumed by necessary implication only because UGC did not perform its duties. Regulation 2 of the 1985 Regulations being imperative in character, non compliance thereof would entail its consequences. The power of relaxation conferred on UGC being in regard the date of implementation or for admission to the first or second degree courses or to give exemption for a specified period in regard to other clauses in the regulation on the merit of each case do not lead to a conclusion that such relaxation can be granted automatically. The fact that exemption is required to be considered on the merit of each case is itself a pointer to show that grant of relaxation by necessary implication cannot be inferred. If mandatory provisions of the statute have not been complied with, the law will take its own course. The consequences will ensue.

57. Relaxation, in our opinion, furthermore cannot be granted in regard to the basic things necessary for conferment of a degree. When a mandatory provision of a statute has not been complied with by an Administrative Authority, it would be void. Such a void order cannot be validated by inaction.

58. The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant - University of programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 5.5.2004 that the appellant - University had no jurisdiction to confer such degrees,

in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of UGC ACT. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect.

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. The Regulations were framed almost at the same time after passing of the Open University Act. The 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.

The Hon'ble Supreme Court has categorically held that the Degree obtained through Open University scheme without satisfying the provisions of the University Grants Commission Regulations cannot be admitted as a valid degree. This being the legal principles settled by the Hon'ble Supreme Court of India, the degree obtained by the writ petitioner in the present writ petition cannot be considered as a valid degree for the purpose of granting promotion in accordance with service rules.

S.M.SUBRAMANIAM, J.

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9. Thus, no further consideration is required with regard

to other grounds raised in the writ petition, since, the very qualification relating to the degree is invalid. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Director General of Police,
Office of The Director General of Police,
Mylapore, Chennai-4.

+1cc to Mr.N.Rajasentoor pandian, Advocate SR.No.69935

+1cc to Governmet Pleader SR.No.69810

SDR 28.10.2017

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