

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.321 OF 2014

1. Archdiocesan Board of Education, a Society registered under the Societies Registration Act, 1908, with office at Institute Nossa Senhora de Piedade, D. B. Bandodkar Marg, Near State Bank of India, represented through its Assistant Secretary, Sr. Annie Paul, FHIC, daughter of late P.K. Paul, 62 years of age, Indian National, Catholic Nun, residing at Mary Immaculate Convent, Panaji, Tiswadi, Ilhas, Goa.

2. Diocesan Society of Education, a Society registered under the Societies Registration Act, 1908 with its registered office at Institute Nossa Senhora de Piedade, D.B. Bandodkar Marg, Near State Bank of India, Panaji, Goa, represented in this Act by its Secretary Fr. Zeferino D'Souza, son of late Staneslau D'Souza, 63 years of age, Indian National, ordained Roman Catholic Priest, residing at Archbishop House, Altinho, Panaji, Goa.

.... Petitioners.

Versus.

1. Goa University, a University under the Goa University Act, 1984 Through its Vice-Chancellor, with office at

Taleigao Plateau, Taleigao, Ilhas, Goa

2. University Grants Commission, a Commission constituted under the University Grants Commission Act, 1956, having its office at University Grants Commission, Bahadur Shah Zafar Marg, New Delhi 110 002.

3. State of Goa, through its Secretary Education, Secretariat, Alto Betim, Porvorim, Bardez, Goa Respondents.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Vledson Braganza and Mr. B. Fernandes, Advocates *for the Petitioners*.

Smt. A.A. Agni, Senior Advocate with Ms. Jay Sawaikar, Advocate for Respondent No.1.

Ms. Amira Razaq, Government Advocate *for Respondent No.3*.

**CORAM : M. S. SONAK &
R.N. LADDHA, JJ.**

**Reserved on : 27th April 2022
Pronounced on : 10th June 2022**

JUDGMENT: (M.S. Sonak, J.)

1. Heard learned Counsel for the parties.

2. The Petitioners who have established and administer several minority educational institutions affiliated with the Goa University have instituted this Petition to seek the following reliefs :

(i) For a declaration that the U.G.C. Regulations 2010 and U.G.C. Regulations 2018 concerning the appointments of teachers and other academic staff in affiliated institutions/ colleges established and administered by the religious minorities are either inapplicable to them or are ultra vires Article 30 of the Constitution of India, to the extent they are made applicable to them. (Prayer Clause (A) and (A1)).

(ii) For a similar declaration concerning the statutes framed by the Goa University under Notification No.2/155/13-Legal / Amendment - State(New)/2013/Vol.vi/1947 dated 02/08/2013 since it is the Petitioners' case that these statutes/amendments are in pursuance of the U.G.C. Regulations, 2010 (Prayer Clause (A)). (Prayer Clause (A)).

3. At the outset, we must note that though there is clarity about the U.G.C. Regulations, 2010 and 2018, there is a great deal of confusion about the various statutes/amendments framed by the Goa University concerning the manner and the mode of selection of the teachers and academic staff in the affiliated institutions/colleges. In most cases, new statutes have been framed to more or less align with the U.G.C. Regulations. However,

there is no corresponding amendment or deletions of the earlier statutes. As a result, it was quite challenging to appreciate the precise status and legal efficacy of the several statutes on the subject.

4. Mr. J. E. Colelho Pereira learned Senior Counsel for the Petitioners handed in a note on 06/04/2022. He first referred to Statutes SC 3 and SC 5 concerning the manner and mode of selection and appointment of teachers and academic staff in the affiliated colleges/institutions. Both these statutes contained a proviso, making inapplicable several such provisions to the colleges and institutions established and administered by minorities in deference to the constitutional protection under Article 30(1) of the Constitution. The note points out that even though Statutes SC 3 and SC 5 were amended on 31/12/2000, the proviso protecting the minority institutions/colleges was retained and continued.

5. The note then points out to Statutes 16 and 20 that entered force on 20/08/2013 to align with the U.G.C. Regulations of 2010 on the subject. Finally, the note points out that the amended statutes on the subject are set out in Annexure D to the Petition.

6. On 05/02/2013, the petitioners protested to the Vice-Chancellor of the Goa University about the amended statutes infringing the rights of the minorities to establish and administer their educational institutions. However, this representation was not considered by the Vice-Chancellor. Instead, by Circular dated 17/01/2014, the Managing Committees of all the affiliated colleges and institutions were informed that no person could be appointed to a teaching post without following the amendment/statutes now impugned in this Petition. Aggrieved by this, the Petitioners instituted this Petition on 03/06/2014, praying, among other things, for certain interim reliefs.

7. By an order dated 1/7/2014, this Court made the following operative interim order :

"4. By way of interim relief implementation of regulations no. 5.1.4, 5.1.5, 5.1.6, 6.3.3, 6.3.4, 6.3.5, 6.3.6, 6.5.0, 6.5.1 of respondent no. 2 and consequently implementation of Statute nos. 20(B)(4), 20(B)(5), and 20(B)(7) by respondent no.1 are stayed qua to the petitioner. Circular of the respondent no.1 dated 17.1.2014 issued by respondent no.1 to the extent of direction to the affiliated colleges to follow the manner and mode of selection in the above regulations and statute qua to the petitioner is stayed."

8. Pending the Petition, the U.G.C., by Notification dated 18/7/2018, introduced U.G.C. Regulations on minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and measures for the maintenance of standards in Higher Education, 2018. The Petitioners, therefore, amended the Petition on 23/10/2020, urging that there was no qualitative difference between the U.G.C. Regulations 2010 and the U.G.C. Regulations 2018. Based upon this, the Petitioners claimed that even the U.G.C. Regulations 2018, to the extent they applied to the institutions/educational institutions established by the Petitioners, ought to be stayed.

9. By an order dated 8th December 2020, the interim relief was granted again to restrain the Goa University from implementing the statutes amended by it based upon the U.G.C. Regulations, pending final disposal of this Petition.

10. Mr. Coelho Pereira, at the very outset, made it clear that the Petitioners were not objecting to the provisions that required the approval of the Goa University/Vice-Chancellor for the appointment of teachers/academic staff in the institutions/colleges established and administered by the Petitioners. He also

made it clear that the Petitioners were not opposed to having experts in the selection committees to select teachers/academic staff. However, he submitted that the choice of experts must be left to the management of the minority colleges/institutions. There should not be any interference or even say left with the Vice-Chancellor or the Goa University on this aspect. He submitted that if ultimately, there was any issue with the selection made by the managements of the minority colleges/institutions, the Vice-Chancellor/Goa University could always withhold the approval, consistent with the statutes' provisions petitioners did not even question.

11. Mr. Coelho Pereira submitted that the right to select and appoint teachers/academic staff was very much an integral facet of the right to administer educational institutions. He submitted that foisting of any external experts upon the minority managements amounts to making inroads on the rights guaranteed by Article 30 of the Constitution of India. Furthermore, he submitted that the provisions for reservations to SC/ST/OBC do not even apply to minority institutions/colleges. He, therefore, submitted that the provisions requiring an academicians representing such reserved communities to be on the

selection panel were unnecessary and, in any case, *ultra vires* Article 30 of the Constitution.

12. Mr. Coelho Pereira finally submitted that having a representative of the Higher Education, Government of Goa, was a requirement not even provided in the U.G.C. Regulations 2010 or the U.G.C. Regulations 2018. He submits that the statutes had not even defined the status of such a 'representative.' The statutes do not provide that such a representative should be a subject expert or otherwise should have the knowledge or competence to take an effective part in the selection of the teachers/academic staff of the affiliated College. Therefore, he submitted that such a requirement was liable to be declared inapplicable to the minority institutions or *ultra vires* Article 30 of the Constitution.

13. Mr. Coelho Pereira relied on a decision of the Division Bench of Madras High Court in *The Forum of Minority Institutions and Association vs. The State of Tamil Nadu*¹ to submit that the U.G.C. Regulations 2010, which are also the subject matter of challenge in this Petition, were held by the Madras High Court as either inapplicable to the minority institution or *ultra vires* Article 30 of the Constitution. He

1. 2011 (1) CTC 162

submitted that the U.G.C. did not challenge this decision of the Madras High Court before the Hon'ble Supreme Court. Therefore, relying on *Kusum Ingots & Alloy Ltd. vs. Union of India*², Mr. Coelho Pereira submitted that the declaration of voidness made by the Madras High Court ought to apply even in the State of Goa. Based on this contention, Mr. Coelho Pereira urged a declaration that the U.G.C. Regulation 2010 and the corresponding statutes framed by the Goa University were either inapplicable to minority institutions or void of *ultra vires* Article 30 of the Constitution.

14. Mr. Pereira relied on *State of Kerala etc. vs. Very Rev. Mother Provincial etc.*³; *D.A.V. College etc. etc. vs. State of Punjab and Ors.*⁴; *Brahmo Samaj Education Society and others vs. State of W.B. and others*⁵; *N. Ammad vs. Manager, Emjay High School, and ors.*⁶; *The Ahmedabad St. Xavier's College Society and anr. vs. State of Gujarat and another*⁷; *T.M.A. Pai Foundation vs. State of Karnataka*⁸; *P.A. Inamdar*

2. (2004) 6 SCC 254

3. 1970 (2) SCC 417.

4. 1971 (2) SCC 269.

5. (2004) 6 SCC 224

6. (1998) 6 SCC 674

7. (1974) 1 SCC 717

8. (2002) 8 SCC 481

*& ors. vs. State of Maharashtra & ors.*⁹; *Sindhi Education Society and anr. vs. Chief Secretary, Government of N.C.T. of Delhi and ors.*¹⁰ and *Chandana Das (Malakar) vs. State of West Bench and ors.*¹¹ to submit that the Rule made in this Petition ought to be made absolute by clarifying that the impugned regulations/statutes either do not apply to the minority institutions or that they are *ultra vires* Article 30 of the Constitution in application to admitted minority institutions.

15. Mr. Coelho Pereira also distinguished in advance the decision of the Division Bench of the Delhi High Court in *Jesus and Mary College, Delhi vs. University of Delhi and anr*¹² that has taken a view contrary to the view taken by the Madras High Court in *The Forum of Minority Institutions and Association* (supra). Finally, Mr. Coelho Pereira placed reliance on the order dated 24/4/2013 made by the coordinate Bench of this Court at Bombay in *Maharashtra Association of Minority Education Institutions and anr. vs. The State of Maharashtra & ors.*¹³ challenging the same U.G.C. Regulations 2010 by which

9. (2005) SCC 527

10. (2010) SCC 49

11. (2015) 12 SCC 140

12. Writ Petition (C) No.5652/2006 & CMA 4648/2006 (stay) dt. 30/11/2006.

13. Notice of Motion No.68 of 2013 in Writ Petition No.1515 of 2013

interim relief was granted restraining implementation qua the minority institutions.

16. Despite our orders, including our order dated 6/4/2022, the U.G.C. impleaded as Respondent No.2 in this Petition, neither filed any return nor appeared through any Counsel. Even after the arguments commenced, we inquired of Mr. Faldessai, Standing Counsel for the Central Government and Assistant Solicitor General of India, whether he would appear in this matter, having already appeared on some earlier occasions. This is recorded in our order dated 6/4/2022. On 18/4/2022, Mr. Faldessai appeared before us and reported that he had no instructions on behalf of the U.G.C. Therefore, we had no option but to proceed with the matter without any assistance from the U.G.C.

17. However, Ms. Agni learned Senior Counsel for Goa University defended the impugned provisions by submitting that the same were reasonable and regulatory. She submits that the provisions were made to create a conducive environment in the affiliated institutions and colleges to perform as an effective vehicle of education for minority communities. She submitted that the special provisions had been made for minority

institutions, given the constitutional mandate in Article 30, and the minority institutions have not been treated on par with non-minority institutions. She submitted that there was nothing unreasonable or objectionable in the Vice-Chancellor ensuring that the experts chosen by the minority institutions themselves were subject experts or otherwise competent to effectively participate in the selection process. She submitted that even the initial choice of presenting a list of experts was left with the minority institutions. Even after that, the Vice-Chancellor was only to approve the panel of 5 subject experts. The minority institutions were free to choose the experts for a particular selection. She submitted that all of these are regulatory measures aimed at achieving excellence for minority institutions. She presented that such provisions do not inroad the Constitution's rights guaranteed by Article 30.

18. Ms. Agni submitted that the issue of whether the provisions for reservation apply to minority institutions does not arise in this Petition. She offered that there is always a presumption of constitutionality, and there was no dispute about several other reservations like reservations to the differently-abled applying to the minority institutions. She submitted that there was nothing unreasonable in the requirement of the Vice-

Chancellor nominating an academician, not below the rank of Professor belonging to the reserved communities where any of the candidates belonging to these reserved categories is an applicant. She submits that this is a regulatory measure that does not suffer from any unreasonableness and, therefore, has to be declared as *ultra vires* Article 30 of the Constitution.

19. Ms. Agni referred to the provisions of Section 25A of the Goa University Act and the communication dated 5/3/2019 addressed by the Directorate of Higher Education to the Registrar of Goa University to submit that the requirement of having a representative of the Directorate of Higher Education, Government of Goa was introduced because of this provision/communication. She submits that making appointments, particularly to aided minority institutions, involves financial issues. She presents the Government of Goa provides that finances and, therefore, there was nothing wrong with requiring a representative of the Directorate of Higher Education in the selection committee. She submitted that such a requirement was not *ultra vires* Article 30 of the Constitution.

20. Ms. Agni further submitted that the regulations framed by the U.G.C. bind the Goa University. Therefore, Goa

University had no option but to amend its statutes to align with the U.G.C. Regulations 2010 and 2018. She submitted that there is no bar to the Goa University introducing any additional requirements over and above the minimum prescribed by the U.G.C. in its regulations. She relies on *University Grants Commission & Another Vs. Neha Anil Bobde (Gadekar)*¹⁴; *Praneeth K. & Others Vs. University Grants Commission (U.G.C.) & Others*¹⁵ in support of such contentions.

21. Ms. Agni also relied on *Secy. Malankara Syrian Catholic College Vs. T. Jose & Others*¹⁶; *Islamic Academy of Education & Another Vs. State of Karnataka & Others*¹⁷; *Modern Dental College and Research Centre & Others Vs. State of Madhya Pradesh & Others*¹⁸, *Andhra Kesari College of Education & Another Vs. State of Andhra Pradesh & Others*¹⁹; and *S.K. Mohd. Rafique Vs. Managing Committee, Contai Rahamania High Madrasah & Others*²⁰, amongst others, in support of her contentions.

14. Civil Appeal Nos. 8355 of 2013, 8356 of 2013 and 8357 of 2013 dated 19.09.2013

15. 2020 SCC OnLine SC 688

16. (2007) 1 SCC 386

17. (2003) 6 SCC 697

18. (2016) 7 SCC 353

19. (2019) 9 SCC 457

20. (2020) 6 SCC 689

22. Based on the above contentions, Ms. Agni submitted that this Petition may be dismissed and the interim orders made therein be vacated.

23. Ms. Razaq, learned Government Advocate adopted the submissions made by Ms. Agni, learned Senior Counsel for Goa University. She submitted that since the Government of Goa provides the funds to the added minority institutions, it is only appropriate that a representative of the Directorate of Higher Education should find a place in the selection committee for teachers and academic staff. She submits that there is nothing unreasonable or arbitrary in such a requirement. Such a requirement does not make any inroads on the rights of the minorities to either establish or administer educational institutions of their choice.

24. The rival contentions now fall for our determination.

25. The impugned provisions are contained in several clauses of the U.G.C. Regulations and the Goa University Statutes. They concern mainly the composition of selection committees for Assistant Professors, Associate Professors, College Principal, etc. The provisions are more or less similar, and the same have been transcribed in the body of the Petition by the petitioners.

Therefore, according to us, there is no necessity to burden this Judgment and Order by transcribing all such provisions found in various places in the U.G.C. Regulations and the Goa University Statutes. Instead, a reference would suffice to the provisions of Statute SC 16.5 that concern the composition of the selection committee for the selection of Assistant Professors in colleges.

26. The provisions of Statute SC 16.5 are quoted below for the convenience of reference:

"I. Assistant Professor in Colleges:

(a) The Selection Committee for the post of Assistant Professor in Colleges, including Aided, Private and constituent Colleges shall consist of the following persons:

i) Chairperson of the Governing Body of the College or his/her nominee from amongst the members of the Governing body, who shall be the Chairperson of the Committee.

ii) The Principal of the College.

iii) Head of the Department/Teacher-incharge of the subject concerned in the College.

iv) Two nominees of the Vice-Chancellor of the affiliating University, of whom one should be a subject-expert. In case of colleges notified/declared as a minority educational institution, two nominees of the Chairperson of the College from out of a

panel of five names, preferably from the minority community, recommended by the Vice-Chancellor of the affiliating University, from the list of experts suggested by the relevant statutory body of the College, of whom one should be a subject-expert.

v) Two subject-experts not connected with the College who shall be nominated by the Chairperson of the College governing body out of a panel of five names recommended by the Vice-Chancellor from the list of subject experts approved by the relevant statutory body of the University concerned. In case of colleges notified/declared as minority educational Institutions, two subject experts not connected with the University nominated by the Chairperson of the Governing Body of the College out of the panel of five names, preferably from the minority communities, recommended by the Vice-Chancellor from the list of subject experts approved by the relevant statutory body of the College.

vi) An academician representing SC/ST/OBC /Minority/Women/Differently-abled categories, if any of candidates belonging to any of these categories is the applicant, to be nominated by the Vice-Chancellor, if any of the above members of the selection committee does not belong to that category.

vii) Representative of the Directorate of Higher Education, Government of Goa.

(b) Five members, including two outside subject experts, shall constitute the quorum."

27. Similar provisions have been made for the constitution of selection committees for selection to the posts of Associate Professors, College Principal, etc. The petitioners have challenged these provisions as well. But for reasons explained earlier, we have not quoted all these provisions in this Judgment and Order because they are more or less similar to what is set out in Statute SC 16.5 mentioned above.

28. Mr. Pereira was quite clear in stating that the petitioners do not challenge the provisions which require the Vice-Chancellor/Goa University to approve every appointment made by the managing committee of a minority institution. He pointed out that the Petitioners, in fact, relied upon such a provision to submit that given such a safeguard, the Goa University or the Vice-Chancellor cannot insist upon nominating subject experts or academicians to the selection committees when it comes to minority colleges/institutions. Mr. Pereira also clarified that the petitioners were not opposed to having any subject experts on the selection committees but maintained that the choice of such experts must be vested exclusively in the minority management and the Goa University or its Vice-Chancellor must have no say in the matter.

29. Based on the aforesaid, Mr. Coelho Pereira clarified that the Petitioners were not questioning the sub-clauses (i), (ii), and (iii) of SC-16.5.1 or similar provisions in the other statutes because the presence of the Chairperson of the Governing Body, the Principal of the College or the Head of the Department/Teacher Incharge of the subject concerned in the College on the selection committee, would not infringe the rights guaranteed to the minority colleges/institutions by Article 30 of the Constitution. He, however, submitted that the petitioners were opposed to the provisions in sub-clauses (iv), (v), (vi), and (vii) of SC-16.5.1 and similar provisions because such provisions made direct inroads upon the rights guaranteed to minority institutions/colleges under Article 30 of the Constitution of India.

30. Now, the opening portion of sub-clause (iv) to Statute SC-16.5.1 indeed provides for the nomination of two experts by the Vice-Chancellor. However, when it comes to the colleges notified/declared as minority educational institutions, sub-clause (iv) provides that the nomination of the experts has to be done by the Chairperson of the College. The Chairperson of the College or the Chairperson of the Governing Body of the College is obviously a person who is responsible for the overall

administration of the minority institution. They would be persons of the choice of the minority institution itself. Therefore, they have to nominate the experts and not the Vice-Chancellor when it comes to notified/declared minority institutions.

31. The provisions of sub-clause (iv) of SC-16.5.1 further contemplate that the statutory body of the minority institutions, in the first place, suggests a list of experts to the Vice-Chancellor of the affiliating University, *i.e.*, Goa University. From out of such a list, the Vice-Chancellor would recommend a panel of 5 names, preferably from the minority community. The Chairperson of the College or the Governing Body of the College is then given a choice to nominate two persons from out of the panel of 5 persons as above, of whom one should be a subject expert.

32. Thus, when it comes to non-minority institutions, the Vice-Chancellor is given full power to nominate two experts, out of whom one should be a subject expert. However, when it comes to minority institutions, the statutory body of the minority institution must first forward a list of experts of their choice to the Vice-Chancellor. There is no ceiling provided in the statute about the number of names that the statutory body of the minority institution can suggest. The Vice-Chancellor will then

choose five names and form a panel of five names, preferably from the minority community. In selecting these five names, the Vice-Chancellor will have to make his/her choice from out of the list of experts suggested by the statutory body of the College. After that, it is again left to the Chairperson of the College to choose two experts from out of the panel of five experts recommended or empanelled by the Vice-Chancellor.

33. Ms. Agni explained that the above provision was made not to make any inroads on the rights of the minorities but to regulate the selection procedure by ensuring that the genuine experts or the genuine subject experts form a part of the selection committee. She submitted that it would not have been in the interest of the minority institutions if the selections were to be made by the Committees lacking any experts bereft any expert advice. Furthermore, she submitted that the impugned provisions did not provide for any nomination by the Vice-Chancellor but only empowered the Vice-Chancellor to recommend a panel of five experts, again, from out of the list of experts suggested by the minority institutions themselves.

34. Considering the legal position that we would propose to discuss a little later, we think that sub-clause (iv) does not make

any inroads on the rights granted to the minority institutions to either establish or administer the educational institutions of their choice. There is a clear distinction made between the minority and non-minority institutions on the aspect of the nomination of experts. Unlike non-minority institutions, in the case of minority institutions, the Vice-Chancellor is not the nominating authority, but the Chairperson of the minority institution is the nominating authority. The Chairperson is only required to go by the panel of five experts recommended by the Vice-Chancellor. Again, the Vice-Chancellor can recommend a panel of 5 experts only from out of the list of experts suggested by the statutory body of the College, *i.e.*, the Managing Committee of the minority institution itself. Sub-clause (iv) is consistent with a similar provision in the U.G.C. Regulations 2010 and 2018.

35. The U.G.C. and the Goa University are the expert bodies for selecting teaching positions at the affiliated colleges or institutions. Ordinarily, their policies, as reflected in their regulations or the statutes, are not lightly interfered with by Courts unless they are inconsistent with any overriding statutory provisions or the Constitution itself. The Petitioners have not even urged or, in any case, failed to make out any case about the provisions being *ultra vires* the provisions of the U.G.C. Act or

the Goa University Act. The Petitioners only contend that the impugned provisions are *ultra vires* Article 30 of the Constitution of India.

36. Now, Article 30 of the Constitution, no doubt, prohibits the State, which, in the present case, would include U.G.C. and the Goa University, from encroaching upon or infringing the rights granted to the minority institutions to establish and administer educational institutions of their choice. As explained in *Ahmedabad St. Xavier's College Society* (supra), teaching staff selection is an essential part of administering an educational institution. But even this decision holds that checks and balances can always be prescribed to ensure the appointment of good teachers and their conditions of service. The Court held that the best administration would reveal no trace or colour of a minority. On the contrary, a minority institution should shine in exemplary eclecticism in the administration. The best compliment paid to a minority institution is that it does not rest on or proclaim its minority character. The regulations that will serve the students' interests and regulations that will serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline,

and fairness in administration are necessary for preserving harmony among affiliated institutions.

37. In *Ahmedabad St. Xavier's College Society* (supra), KHANNA, J., in his concurring opinion, explained that the idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give the minorities a sense of security and a feeling of confidence. The special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and guaranteeing the minorities' autonomy in the administration of their educational institutions. The learned Judge explained that while the right conferred by Article 30(1) is in absolute terms, the same does not prevent making reasonable regulations in the institution's interest as a minority institution. The regulations have to be designed to make the institution an effective vehicle for imparting education. The right to administer educational institutions can plainly not include the right to maladminister. Therefore, regulations to ensure the appointment of qualified teachers are permissible and such regulations are no restrictions on the substance of the right guaranteed, and rather, they secure the proper functioning of the institution in matters of education.

The learned Judge, however, held that such regulations must satisfy a dual test – the test of reasonableness and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.

38. In *S.K. Mohd. Rafique* (supra), the Hon'ble Supreme Court, considered and analyzed most of the decisions referred to and relied upon by Mr. Coelho Pereira, including the decision in *T.M.A. Pai Foundation* (supra). As a result, the Court held that the rights under Article 30(1) of the Constitution could be examined in the context of two categories of institutions; one is imparting education that is directly aimed at or dealing with the preservation and protection of the heritage, culture, script, and special characteristics of a religious or a linguistic minority; while the second category of institutions could be those which are imparting what is commonly known as secular education. In the context of the second category of the institutions imparting secular education in subjects like Arithmetic, Algebra, Physics, Chemistry, or Geography, the intent must be to impart education availing the best possible teachers. Therefore, the governing criteria must be to see that the most conducive atmosphere is put

in place where the institution achieves excellence and imparts the best possible education.

39. In *S.K. Mohd. Rafique* (supra), the Court held that regulations that will serve the teachers' interest are of paramount importance in good administration. The regulations in the interest of efficiency of teachers are necessary for preserving harmony amongst the institutions, and the appointment of teachers is an essential part of such educational institutions. The Court held that it would be quite natural that qualitatively better teachers will ensure imparting education of the highest standard and help to achieve excellence. The Court referred to its earlier decision in *Frank Anthony Public School vs. Union of India*, (1986) 4 SCC 707, in which it was held that the excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff and would, in turn, depend on the quality of teachers.

40. The Court, therefore, held that if the intent is to achieve excellence in education, it would not be enough if the educational institution concerned were to employ teachers with minimum requisite qualifications in the name of exercise of the right under Article 30 of the Constitution. In contrast, better-qualified

teachers are available to impart education, particularly in the institutions imparting secular education in subjects like Arithmetic, Algebra, Physics, Chemistry, or Geography. The Court proceeded to give an example where the qualifying percentage index for a teacher to be appointed in an educational institution, considering his educational qualifications, experience, and research, was fixed at 50. If the teacher possessing qualifications far greater and higher than this basic index were available, the Court held that it would not be in the institution's interest to choose the less qualified over the better-qualified teacher.

41. The Court held that if the right is taken to be absolute and unqualified, only then the choice of the institution to appoint such qualified candidates will have to be recognized and accepted. But, the Court held that if the right has not been taken to be absolute and unqualified and the national interest must always permeate and apply, the excellence and merit must be the governing criteria. Any departure from the concept of merit and excellence would not make a minority educational institution an effective vehicle to achieve what has been contemplated in various decisions of the Supreme Court. Further, if the merit is not the

sole governing criteria, the minority institutions may lag behind the non-minority institutions rather than keep in step with them.

42. The Court finally upheld the provisions of the West Bengal Madrasah Service Commission Act, 2008 by noting that the regime introduced by the said Act ensured that the commission comprising of experts in the field would screen the talent all across the State and adopt a fair selection procedure and select the best available talent, purely on merit basis. The Court also noted that the regime also contemplated giving due weightage to the interest of the minority institutions. Based on all this, the Court ruled that the statutory provisions of the West Bengal Madrasah Service Commission Act, 2008, were only regulatory and contributed to the excellence of the minority educational institutions. Therefore, the Court held that the impugned Act which sought to achieve excellence in education and also promote the interest of the minority institutions, thereby fulfilling the test set out in *T.M.A. Pai Foundation* (supra) could not be struck down as *ultra vires* Articles 30 of the Constitution.

43. The Court distinguished its earlier decisions in *Brahmo Samaj Education Society* (supra) and *Chandana Das* (supra), on which Mr. Coelho Pereira placed reliance in this matter. The

Court noted that in *Brahmo Samaj Education Society* (supra), the issue as to whether the Rules were valid or not was not specifically dealt with, and the matter was left to the authorities to bring the rules and regulations in conformity with the principles in *T.M.A. Pai Foundation* (supra). On the other hand, the Court held that in *Chandana Das* (supra), the primary issue was whether the institution concerned was a minority institution or not. Besides, the Court noted that in *Chandana Das* (supra), the statutory regimes did not have any special features or matters concerning teachers' compatibility, which could be required going by the special characteristics of the minority educational institutions.

44. Considering the legal position explained in the above decisions, we think that no case has been made to strike down Clause (iv) of Statute SC-16.5.1 or other similar provisions either in the U.G.C. Regulations or in other similar provisions of the Goa University Statutes. The provisions are regulatory, and the regulation ensures the excellence of the teaching staff that is proposed to be selected. Special provisions have been made for minority institutions to ensure that their autonomy and rights to administer educational institutions are hardly affected. The regime and the mechanism of the selection of teachers are

basically to achieve excellence in the minority institutions. The regime and the mechanism do not dent the minority character of the institutions or make any undue inroads upon the rights of the minorities to establish and administer the educational institutions of their own choice.

45. As noted earlier, the impugned provision does not require the Vice-Chancellor to nominate an expert to the Selection Committee regarding minority institutions. The power to nominate the experts continues to be vested with the Chairperson of the College, which means the management of the institutions. The regime and the mechanism only provide that the minority institutions should first forward a list of experts of their choice to the Vice-Chancellor. There is no ceiling provided about the number of names that the minority institutions can suggest or propose to the Vice-Chancellor. The Vice-Chancellor can choose five names from out of the list proposed by the minority institutions themselves and prepare a panel of five names, preferably from the minority communities.

46. The regime and the mechanism contemplate that the Chairperson of the College can then choose two experts from out of the panel of five experts recommended by the Vice-Chancellor.

Broadly, therefore, the choice of experts remains substantially with the minority institutions themselves. A slight regulation of this choice can hardly be described as a provision making inroads upon the rights guaranteed to the minority institutions by Article 30 of the Constitution. On the other hand, the mechanism prescribed is quite reasonable and regulatory. Regulation ensures that the persons nominated by the Chairperson of the College are indeed experts and not some persons masquerading as experts. This minimal control is in the interest of ensuring the selection of the best-qualified teachers who, in turn, will ensure the excellence of the institution itself. Therefore, we think that no case is made to strike down Clause (iv) of Statute SC-16.5.1 or the similar provision in the U.G.C. Regulations or other statutes of the Goa University.

47. The provisions of Clause (v) of Statute SC-16.5.1 are similar to the provisions of Clause (iv) of Statute SC-16.5.1. Clause (iv) deals with the presence of two members in the Selection Committee, out of which one member should be a subject expert. Clause (iv) does not even prescribe that the two members must not be connected with the College. Clause (v) is concerned with the persons of two subject experts on the Selection Committee. In case of the colleges notified/declared as

minority educational institutions, the two subject experts not connected with the University have to be nominated by the Chairperson of the Governing Body of the College itself. Such nomination has to be out of the panel of five names, preferably from the minority communities recommended by the Vice-Chancellor from the list of subject experts approved by the relevant statutory body of the College itself. Since there is no much qualitative difference between the clauses (iv) and (v), at least on the aspect of protection of the rights of the minorities, for the reasons discussed in the context of Clause (iv), no case is made out to strike down the provisions in Clause (v) of Statute SC-16.5.1 or for that matter, the similar provision in the U.G.C. Regulations or the Goa University Statutes.

48. Clause (vi) of Statute SC-16.5.1 speaks of an academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of the candidates belonging to any of these categories is the applicant, to be nominated by the Vice-Chancellor if any of the above members of the Selection Committee do not belong to that category. Now, the reservation issue applying to the minority institutions does not directly arise in this Petition. Therefore, we resist making any observations on that issue. Moreover, Clause (vi) only provides that if the

candidates belonging to the above-specified categories are being considered by the selection committee, then an academician representing such categories should also be one of the selection committee members. Unlike the provisions contained in clauses (iv) and (v) of Statute SC-16.5.1, the management of the minority institutions is given no role in the choice of this academician.

49. Nevertheless, we think that *prima facie*, even this provision is quite reasonable and regulatory. To a certain extent, this provision enables the minority institutions to make a proper choice of the candidates belonging to the special categories, assuming that the State insists on applying the reservation policy to the minority institutions. Possibly, this provision might operate in the context of reservations for the differently-abled categories. There, an academician who is himself a differently-abled might be in a position to assess the differently-abled candidates better. Since there is no clarity about the circumstances in which Clause (vi) of Statute SC-16.5.1 will operate, we do not think it would be appropriate to strike down this provision in the absence of some concrete instances. Therefore, though we believe that the provision in Clause (vi) of Statute SC-16.5.1 is, *prima facie*, reasonable and regulatory, we leave the question of its validity

open for examination in an appropriate case, should such an occasion arise.

50. Clause (vii) of Statute SC-16.5.1 requires a representative of the Directorate of Higher Education, Government of Goa, to be a member of the selection committee for selection to the posts of Associate Professor, Professor, Principal, etc. Ms. Agni, learned Senior Advocate for the Goa University and Ms. Razaq, learned Government Advocate appearing for the State of Goa defended the validity of this Clause by relying upon the provisions of Section 25A of the Goa University Act and the communication dated 5th March 2019 addressed by the Directorate of Higher Education to the Registrar of the Goa University. Admittedly, a clause similar to Clause (vii) of Statute SC-16.5.1 finds no place in the U.G.C. Regulations 2010 and 2018.

51. Section 25A of the Goa University Act, 1984, reads as follows :

"25A. Prior approval of the Government on certain proposals of the University. - (1) Notwithstanding anything contained in any other provisions of this Act, the University shall, from time to time, obtain approvals of the Government on such proposals of the University each one of which exceeds the amount Prescribed by the Government for this purpose and are to be executed by charging on the grants sanctioned by the Government to the University.

(2) The Government may call upon the University to furnish details, and records of expenditure incurred or proposed to be incurred by it out of the grants granted by the Government and the University shall thereupon submit the said details and records to the Government within the time specified thereof,

(3) In order to regulate and control the expenses made out of the amounts sanctioned by the Government, the Government may approve or reject the proposals submitted by the University in terms of subsection (1) above, or give such directions thereon to the University, as it may deem fit. The University shall follow such directions within the time, if any, specified thereof, by the Government.

(4) For the purpose of this section the Government may prescribe the procedure to be followed and terms and conditions for appointment of a Government officer, if any, to look after these matters, as it may deem fit"

52. Provisions of Section 25A of the Goa University Act were possibly enacted to impose some fiscal control on the expenses incurred or to be incurred by Goa University. This is perhaps because the Government of Goa finances the functioning of Goa University. However, in the present case, we are not concerned with the fiscal aspects like creating any additional posts, revision of pay scales, etc. We are mainly concerned with the issue of the selection of teachers and the composition of the selection committees for the selection of teachers and other academic staff

at the colleges and the institutions affiliated with Goa University. Therefore, there is nothing in Section 25A of the Goa University Act that justifies or requires the presence of a representative of the Directorate of Higher Education, Government of Goa, on the selection committees for the selection of Associate Professors, Professors, Principals, etc. at the minority institutions affiliated to the Goa University. Therefore, Section 25A of the Goa University Act can offer no justification for the insistence of such a representative, particularly when it comes to selecting the teachers or other academic staff at the minority institutions affiliated with Goa University.

53. Ms. Agni relied upon the communication dated 5th March 2019 addressed by the Additional Director (Higher Education) to the Registrar of the Goa University in the context of the changes to be carried out in the Goa University Statutes based on the U.G.C. Regulations 2018. In the precise context of the Constitution of the DPC/DSC for various appointments, paragraph 4 of the communication dated 5th March 2019 had required the requirement of the Goa University to take into account relevant judgments/orders of various High Courts and the Supreme Court concerning Article 30(1) of the Constitution of India.

54. Paragraph 4 of the communication dated 5th March 2019, addressed by the Additional Director (Higher Education) to the Registrar, Goa University, reads as follows :

"4. As regards the constitution of DPC/DSC, for various aspects, direct recruitment and for C.A.S./promotion, the extant provisions; and relevant judgments/order of various High/Supreme Courts, in relation to Act 30 (1) of Constitution in respect of minority established Institution, may be considered from time to time."

55. Thus, even the Additional Director (Higher Education) had required the Goa University to consider the scope of Article 30(1) of the Constitution, as explained by various Judgments of the Hon'ble Supreme Court and High Courts, and only after that to consider the recommendation about including a representative of the Directorate of Higher Education, Government of Goa in the selection committees for selection of teachers and academic staff in the minority institutions.

56. Thus, neither Section 25A of the Goa University Act, nor the communication dated 5th March 2019 addressed by the Additional Director (Higher Education) to the Registrar of Goa University, offers any justification for the presence of a representative of the Directorate of Higher Education, Government of Goa in the selection committees for selection of

teachers/academic staff in the minority institutions as provided in Clause (vii) of Statute SC-16.5.1.

57. Clause (vii) of Statute SC-16.5.1 simply refers to **"Representative of the Directorate of Higher Education"** without specifying the status or qualifications of such a representative. This means that the Directorate of Higher Education would be in a position to depute any person as its representative regardless of the qualifications possessed by such person or his competence when it comes to making any contribution to the selection of teachers and academic staff in the minority institutions affiliated to the Goa University. Regardless of their qualifications or competence, such a person will have a say in selecting teachers/academic staff in the minority institutions affiliated with Goa University. Such a provision, according to us, is neither reasonable nor can it be styled as some regulatory measure to secure the excellence of the minority institutions.

58. In *Ahmedabad St. Xavier's College Society* (supra), one of the challenges was to Section 33A (1)(a) of the Gujarat University Act, 1949, which stated that every College should be under the management of a governing body that shall include

amongst its members, a representative of the University nominated by the Vice-Chancellor. The Court held that the provision had not even prescribed any qualifications for the vice-chancellor's representative, and imposing such a representative would amount to making inroads on the rights of the management of the minority institutions to establish and administer their institutions. The Court held that situations might be conceived when they might have a preponderating voice. That would also affect the autonomy in administration. The calm waters of an institution will not only be disturbed but also mixed. Based on such reasoning, the Court held that Section 33A(1)(a) would not apply to minority institutions.

59. Similarly, the Court also struck down the provisions of Section 51A of the Gujarat University Act that empowered the Vice-Chancellor or any other officer of the University authorized by him to veto the penalty imposed upon a member of the teaching academic and non-teaching staff of minority institutions. The Court held that no guidelines were found in the provisions, *inter alia*, on the aspect of the officer of the University to be authorized by the Vice-Chancellor. Also, there were no guidelines to guide the unfettered discretion of the Vice-Chancellor or any other officer of the University authorized by

him when it comes to the exercise of such veto. The Court, accordingly, held that such a provision could not apply to minority institutions.

60. In the present case as well, the insistence of a representative of the Directorate of Higher Education cannot be justified by reference to the provisions of Section 25A of the Goa University Act or the communication dated 5th March 2022, addressed by the Additional Director (Higher Education) to the Registrar of Goa University. The provision does not contain any guidelines about the qualifications or competence of the Directorate of Higher Education's representative. As observed by the Hon'ble Supreme Court, such a representative may, in a given case, have a preponderating voice in the selection process, even though such a representative may have neither qualifications nor competence to participate in the selection of teaching staff in the minority institutions affiliated to the Goa University.

61. Clauses (iv) and (v) of Statutes SC-16.5.1 refer mainly to subject experts. Clause (vii), however, refers only to a representative of the Directorate of Higher Education who may or may not be a person having qualifications or competence to even participate in the selection of Associate Professors or Professors in

minority institutions affiliated to the Goa University. Therefore, the provision in question can hardly be described as either reasonable or regulatory. Therefore, such a provision will have to be declared as *ultra vires* Article 30(1) of the Constitution.

62. There is an apparent conflict between the decisions of the Madras High Court in *The Forum of Minority Institutions and Association* (supra) and the Delhi High Court in *Jesus and Mary College, Delhi* (supra). The Madras High Court has struck down the provisions of the U.G.C. Regulations to the extent the same were to be made applicable to the minority institutions. The Delhi High Court has, however, upheld the regulations. Having regard to this apparent conflict, we do not think that the principle in *Kusum Ingots & Alloy Ltd.* (supra) will apply.

63. The Delhi High Court, upon considering the most of the decisions now relied upon by Mr. Coelho Pereira, has held that *T.M.A. Pai Foundation* (supra) permits regulatory measures, provided the regulations are reasonable and regulative to the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. The Delhi

High Court also held that the State could not regulate a minority institution to the extent that it completely takes away the institution's right to choose its teachers to appoint a key person like the Principal or administrator of the institution. However, the burden is on the Minority Institution to show that the degree of control or regulation that is sought to be imposed on it is such that it all together takes away the right of the minority institution to administer it in the manner of its choosing.

64. The Delhi High Court held that the nomination of two members by the Vice-Chancellor out of a total of seven, mainly when one of the members nominated is a subject expert, can, by no means, be said to be detrimental to the interests of the minorities or their institutions.

65. Mr. Coelho Pereira, however, submitted that a coordinate Bench of this Court at the stage of granting interim reliefs preferred the view taken by the Madras High Court over the view taken by the Delhi High Court. Even though Mr. Coelho Pereira's submission is correct, the order dated 24th April 2013, relied upon by Mr. Coelho Pereira, is only an interim order. At that stage, the coordinate Bench and the Madras High Court did not have the benefit of the later decision of the Hon'ble Supreme

Court in *S.K. Mohd. Rafique* (supra).

66. In *T.M.A. Pai Foundation* (supra), KIRPAL, CJ. observed in paragraph 155 that it will be wrong to presume that the Government or the legislature will act against the Constitution or contrary to the public or national interest at all times. Viewing every Government's action with skepticism and the belief that it must be invalid unless proved otherwise goes against the democratic form of Government. It is no doubt true that the Court has the power and the function to see that no one, including the Government, acts contrary to the law, but the cardinal principle of our jurisprudence is that it is for the person who alleges that the law has been violated to prove it to be so. In such an event, the action of the Government or the authority may have to be carefully examined, but it is improper to proceed on the assumption that merely because an allegation is made, the action impugned or taken must be bad in law. Such being the position, when the Government frames rules and regulations or lays down norms, especially concerning education, one must assume that unless shown otherwise, the action taken is in accordance with the law. Therefore, it will not be in order to so interpret a Constitution, and Articles 29 and 30 in particular, on the presumption that the State will normally not act in the

interest of the general public or in the interests of the sections concerned society.

67. For all the above reasons, we reject the Petitioners' challenge to the provisions in Clauses (iv) and (v) of Statute SC-16.5.1, as also similar provisions in the U.G.C. Regulations and the Statutes of the Goa University. However, we keep open the Petitioners' challenge to Clause (vi) of Statute SC-16.5.1 and similar provisions in U.G.C. Regulations and the Statutes of the Goa University for examination in a concrete case where the issue of application of such a clause actually arises. In the context of Clause (vi), the observations made by us are only *prima facie* and not final.

68. Regarding Clause (vii) of State SC-16.5.1 and similar clauses in the Statutes of the Goa University, we hold that such provisions are *ultra vires* Article 30 of the Constitution to the extent they are sought to be made applicable to the minority institutions. This means that Clause (vi) of Statute SC-16.5.1 and a similar provision in the other Statutes of the Goa University will not apply to the Colleges notified/declared as minority educational institutions.

69. By orders dated 1st July 2014 and 8th December 2020, we had granted interim reliefs in this matter. Suppose any minority institutions have already made appointments based on such interim reliefs. In that case, we think that such appointments ought not to be disturbed simply because we may not have accepted the Petitioners' challenge at least partially. This is because we have noticed a lot of confusion in the Goa University Statutes concerning the provisions dealing with the appointment of teachers and other academic staff in the colleges affiliated with Goa University.

70. To align with the U.G.C. Regulations issued from time to time, the Goa University went on enacting Statutes without assessing the impact of such new statutes on the existing statutes. Moreover, to date, Goa University does not appear to have carried out deleting or weeding out the earlier statutes. As a result, there is confusion about the precise regime to be adopted by the affiliated colleges. In such circumstances, if any appointments have already been made and approved based on the interim reliefs granted by us, it would not be appropriate to disturb such appointments at this stage merely because the Petitioners' challenges have partly failed.

71. Accordingly, we dispose of this Petition by making the following order :

(A) The Petitioners' challenge to the U.G.C. Regulations 2010 and U.G.C. Regulations 2018 hereby fails and is rejected;

(B) The Petitioners' challenge to clauses (iv) and (v) of Statute SC-16.5.1 and the similar provisions in other Statutes of the Goa University fails and is hereby rejected;

(C) The Petitioners' challenge to Clause (vi) of Statute SC-16.5.1 and the similar provisions in other Statutes of the Goa University is kept open for decision in an appropriate case. The observations on the validity or otherwise of this Clause made in this Judgment and Order are only *prima facie*;

(D) The Petitioners' challenge to Clause (vii) of Statute SC-16.5.1 and the similar provisions in the Goa University Statutes is upheld. Accordingly, we declare Clause (vii) of Statute SC-16.5.1 and similar provisions in other Goa University Statutes as *ultra vires* Article 30(1) of the Constitution to the extent such provisions are sought to be made applicable to the colleges notified/declared as minority educational institutions. This means that the provisions of Clause (vii) of Statute SC-16.5.1 and similar provisions in other Goa University Statutes will not apply

to the colleges notified/declared as minority educational institutions;

(E) If any appointments have been made and approved relying upon the interim orders granted in this Petition, the Respondents will not disturb the same merely because some of the Petitioners' challenges in this Petition have failed. However, this will not prevent Goa University or its Vice-Chancellor, as the case may be, from deciding the issue of approvals on their own merits. The approvals to appointments made on the strength of the interim orders will, however, not be denied only on the ground that the composition of the selection committee was not in accord with the Statutes. Accordingly, subject to this rider, the interim orders are hereby vacated.

72. The Rule is made partly absolute in the terms mentioned above. Therefore, there shall be no order for costs.

R.N. LADDHA, J.

M. S. SONAK, J.

73. At this stage, Mr. Braganza seeks continuation of the interim relief for a further period of eight weeks. As noted in paragraph 71(E) of our Judgment and Order, we have already protected the the appointments made on the basis of our interim orders. Any continuation of these interim orders would mean that the Petitioners will make fresh appointments by ignoring the Statutes, validity of which we have now upheld.

74. In these circumstances, we do not think it would be appropriate to extend the interim relief any further. The request is, therefore, denied.

R.N. LADDHA, J.

M. S. SONAK, J.