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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8232/2021**

BHAWANA BISHT

.....Petitioner

Through: **Mr. Jitin Sahni, Mr. Mamta Saxena
and Mr. Rohit, Advs.**

versus

NETAJI SUBHAS UNIVERSITY OF TECHNOLOGY & ANR.

.....Respondents

Through: **Mr. Nitesh Kumar Singh, Ms.
Laavanya Kaushik, Ms. Aliza Alam
and Mr. Mohnish Sehrawat, Advs.for
R-1
Ms. Gauri Goburdhun, Adv. for Mr.
Apoorv Kurup, (CGSC) for R-2**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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11.11.2024

1. The petitioner in the instant writ petition has prayed for setting aside the order dated 06.07.2021, whereby, the request of the petitioner for refund of the fees amounting to Rs.84,000/- has been rejected by respondent no.1-University.

2. The factual matrix of the case would indicate that on 12.10.2020, the petitioner had deposited fees amounting to Rs 84000/- in pursuance of the admission granted in BBA programme of respondent no.1-University. Thereafter, on 10.11.2020, the father of the petitioner was diagnosed with COVID-19 and was consequently admitted to hospital. On the very same day i.e., 10.11.2020, the petitioner approached respondent no.1-University and sought for cancellation of her admission and refund of fees as she was



unable to pursue her studies and was in urgent need of funds. Thereafter, on 01.12.2020, the petitioner again sent a reminder, but respondent no.1-University did not pay any heed to the same.

3. On 17.12.2020, respondent no.2-University Grants Commission [UGC] issued a circular directing the Vice-Chancellors of all the universities for a full refund of fees in case of cancellation of admission upto 31.11.2020. Thereafter, on 24.12.2020, the petitioner again sent a reminder.

4. Subsequently, on 19.01.2021 the petitioner sent a letter to respondent no.2-UGC for non-compliance of the said circular by respondent no.1-University. The petitioner did not receive any reply from the respondent no.2-UGC *qua* said letter.

5. Consequently, on 18.06.2021, the petitioner filed an application under the Right to Information [RTI] Act, 2005 and pursuant thereto on 07.07.2021, she received a reply from respondent no.1-University, wherein, her entitlement for refund was rejected on the purported strength of revised withdrawal policy of respondent no.1-University, which prescribed the cut-off date as 02.11.2020 for refund. Aggrieved thereto, the petitioner has filed the present petition.

6. Learned counsel for the petitioner submits that keeping in view the unprecedented situation owing to COVID-19 pandemic, respondent no.2-UGC as a one-time measure came out with a circular dated 17.12.2020, wherein, all the universities for the academic session 2020-21 were directed to refund the fees in case of cancellation of admission, including all the charges in totality after deducting a sum of Rs.1,000/- as processing fee. Learned counsel for the petitioner further submits that since the admission in question was for the academic session 2020-21 and prevailing circumstances



at that time prevented the petitioner to continue further studies, therefore, in terms of the aforementioned circular, the fees of the petitioner ought to have been refunded.

7. After issuance of notice, the respondents have filed their replies. Learned counsel appearing for respondent no.2-UGC supports the case of the petitioner and she reiterates that respondent no.1-University, is bound by the policy guidelines or notification issued by the UGC from time to time. To support her contention, she has relied upon judgments of the Supreme Court in the cases of *Praneeth K. and Others v. University Grants Commission (UGC)*¹ and *Gambhirdan K. Gandhvi v. State of Gujarat*².

8. *Per contra*, learned counsel who appears for respondent no.1-University, vehemently opposes the submissions and submits that respondent no.1-University is not receiving any grant-in-aid from the UGC and therefore, the guidelines of UGC are not binding on respondent no.1. In addition, learned counsel further placed reliance on its own refund policy and according to the same, the cut-off date for seeking a refund was 02.11.2020. He then contends that in the instant case, an application was made on 10.11.2020. He has also placed reliance on the decisions of the Supreme Court in the cases of *State of Uttarakhand v. Sudhir Budakoti and Ors.*³ and *Kalyani Mathivanan v. K.V. Jeyaraj*⁴ to support his case.

9. I have considered the submissions made by learned counsel for parties and perused the record.

10. The present petition frescoes a canvass, wherein, the petitioner's

¹ (2021) 14 SCC 241.

² (2022) 5 SCC 179.

³ (2022) 13 SCC 256.

⁴ (2015) 6 SCC 363.



request for refund of fees has been rejected solely on the pretext of 8 days delay in approaching respondent no.1-University.

11. The respondent no.1-University was established under the aegis of the Delhi Netaji Subhas University of Technology Act, 2017 (hereinafter “DNSUT Act, 2017”). In 2020, the petitioner was granted admission in the Bachelor of Business Administration (BBA) programme under the Economically Weaker Section (EWS) category. Thereafter, owing to the financial hardships, the petitioner realized that she may not be able to continue further studies and accordingly on 10.11.2020, a request was made for the cancellation of her admission and refund of the fees. Since there was no response from respondent no.1-University despite, repeated reminders, therefore, eventually an application under RTI Act was filed, which came to be answered by the impugned communication.

12. Before proceeding further, it is pertinent to peruse the circular dated 17.12.2020, which was issued by respondent no.2-UGC, directing the Vice-Chancellors of all the universities for a full refund of fees in case of cancellation of admission upto 31.11.2020. The relevant extracts of the said circular read as under:-

“Your kind attention is invited to the UGC Guidelines on Academic Calendar for the First Year of Under-Graduate and Post-Graduate Students of the Universities for the Session 2020-21 in view of COVID-19 Pandemic which provide that:

“In order to avoid financial hardship bring faced by the parents due to lockdown and related factors, full refund of fees be made on account of all cancellation of admissions/migration of students, up to 30.11.2020, for this very session as a special case. To be crystal clear, the entire fees including all charges be refunded in totality (Zero Cancellation charges) on account of cancellation/migration upto 30.11.2020. Thereafter, on cancellation/withdrawal of admissions up to 31.12.2020, the entire fee collected from a student be refunded in full after deduction of



not more than Rs.1000/- as processing fee.”

The guidelines are available on UGC website <https://www.ugc.ac.in/pdfnews/1019576 Guideline.pdf>.

The Commission has been receiving several references in the form of RTI applications/ complaints/public grievances/ court cases in respect of non refund of fee by the universities/ institution in violation of the UGC Guidelines. The Commission has taken a very serious view of such complaints. Most of these complaints have come from the students who have taken admission in private or self financing universities and deemed to be universities and later opted out for one or the other reasons.

It is reiterated that the UGC guidelines are to be followed mandatorily by all the universities in letter and spirit. Any institution/ university found to be violating the guidelines and refusing to refund the fee by giving its own interpretation of the guidelines shall be liable for punitive actions as notified in clause 5 of the UGC notification refund of fees and non-retention of original certificate issued in October 2018 (<https://www.ugc.ac.in/pdfnews/5437737 UGC-Notice-reg-Fees-refund-Eng.pdf>.)

You are once again requested to ensure the compliance of the UGC directions in respect of refund of fee in accordance with the UGC Guidelines on Academic Calendar for the First Year of Under-Graduate and Post-Graduate Students of the Universities for the Session 2020-21 in view of the COVID-19 Pandemic.”

13. A bare perusal of the said circular would indicate that the respondent no.2-UGC has introduced this circular as a special one-time measure considering, the then prevalent COVID-19 situation.

14. Admittedly, respondent no.1-University is set up under the aegis of the DNSUT Act, 2017. The Section 22 of the University Grants Commission Act, 1956 [UGC Act, 1956] stipulates *inter alia* that the right to confer degrees shall be exercised by the University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Furthermore, the said Section stipulates that “degree” means any such degree as may, with



the previous approval of the Central Government, be specified in this behalf by the UGC by notification in the official Gazette.

15. It is to be noted that the Supreme Court in the case of **Gambhirdan K. Gandhvi**, in terms of paragraph no. 50 has held as under:-

“50. It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Section 26(1)(e) and 26(1)(g) of the UGC Act, 1956. Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before each House of Parliament. Therefore, being a subordinate legislation, UGC Regulations becomes part of the Act. In case of any conflict between the State legislation and the Central legislation, Central legislation shall prevail by applying in rule/principle of repugnancy as enunciated in Article 254 of the Constitution as the subject “education” is in the Concurrent List (List III) of the Seventh Schedule to the Constitution. Therefore, any appointment as a Vice-Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions, warranting a writ of quo warranto.”

16. In the case of **Praneeth K. and Others**, the Supreme Court has held that the subjects referred to in Section 12 of the UGC Act, 1956 may include the issuance of guidelines, directions, circulars etc. The guidelines, thus, issued under Section 12 of the UGC Act, 1956 were treated to have been issued in the exercise of statutory powers vested in the UGC. The guidelines issued in the exercise of statutory powers, thus, were treated to be statutory guidelines. Paragraph no. 86 of the said judgment reads as under:-

“86. Now, coming to the first part of the issue that the guidelines are non-statutory and advisory only, it is the case of both the parties that the Guidelines have been issued by UGC in exercise of power under Section 12, Section 12 of the Act provides that it shall be general duty of the Commission to take all such steps as it may think fit for the promotion and coordination of university education and for the determination and maintenance of standards of teaching, examination and research in universities. The words “all such steps” are of wide import. The steps referred to in Section 12 may include issuance of guidelines, directions, circulars, etc. The guidelines issued in exercise of statutory powers vested in the Commission under Section 12. Guidelines issued in the exercise of statutory powers, thus, cannot be



said to be non-statutory.”

17. At this juncture, it is pertinent to peruse the findings of the Supreme Court in the case of ***Sreejith P.S. v. Rajasree M.S.***⁵, wherein, the Supreme Court after analysing the catena of judgments regarding the tussle between the UGC regulations and State legislation/State Act, ultimately held that the UGC regulations shall prevail over the State legislation/State Act. It was further observed that the State Act, if not on par with the UGC Regulations, must be amended to bring it on a par with the applicable UGC Regulations and until then it is the applicable, UGC Regulations that shall prevail. It is apropos to note that the Supreme Court in the said case also noted the decision of ***Kalyanji Mathivanan***, which has been heavily relied upon by respondent no.1-University in the present case as well. The relevant observations of the Supreme Court reads as under:-

“20. Identical question came to be considered by this Court in the case of Gambhirdan K. Gadhvi (supra) and Kalyani Mathivanan (supra). Now, the issue whether the UGC Regulations shall prevail vis-à-vis the State legislation/State Act, identical question came to be considered by this Court in the recent decision of this Court in the case of Gambhirdan K. Gadhvi (supra). While considering the appointment of the Vice Chancellor in the Sardar Patel University, Gujarat, it is specifically observed and held by this Court that the appointment of Vice Chancellor cannot be made dehors the applicable UGC Regulations, even if the State Act concerned prescribes diluted eligibility criteria, vis-à-vis the criteria prescribed in the applicable UGC Regulations. It is further observed and held by this Court in the aforesaid decision that the State Act if not on a par with the UGC Regulations, must be amended to bring it on a par with the applicable UGC Regulations and until then it is the applicable UGC Regulations that shall prevail. It is further observed and held that being a subordinate legislation, UGC Regulations become part of the Act. It is further observed and held that in case of any conflict between the State legislation and the Central legislation, the Central legislation, i.e., the applicable UGC Regulations shall prevail by applying the principle of repugnancy under Article 254 of the Constitution as the subject

⁵ 2022 SCC OnLine SC 1473.



“education” is contained in the Concurrent List of Schedule VII of the Constitution.

21. That thereafter and having found that the appointment of the Vice Chancellor in the Sardar Patel University was contrary to the UGC Regulations, 2010, this Court issued the writ of quo warranto. It is required to be noted that the decision of this Court in the case of Kalyani Mathivanan (supra) was also pointed out by this Court.

22. Even in the case of Kalyani Mathivanan (supra), it is observed in paragraph 53 that to the extent the State legislation is in conflict with the Central legislation including subordinate legislation made by the Central legislation under Entry 25 of the Concurrent List, the same shall be repugnant to the Central legislation and would be inoperative. It is also required to be noted that in the case of Kalyani Mathivanan (supra), this Court was considering the UGC Regulations, 2010, which were silent in regard to the post of Vice Chancellor.

23. The decision of this Court in the case of Gambhirdan K. Gadhvi (supra) has been subsequently followed by this Court in the recent decision of this Court in the case of Anindya Sundar Das (supra) while considering the appointment of the Vice Chancellor of Calcutta University. In the said decision, it is also observed and held in paragraph 56 that in view of the decision in the case of Gambhirdan K Gadhvi (supra), even if the provisions of the State Act allowed the appointment of the Vice Chancellor by the State government, it would have to be as per the UGC Regulations and any appointment of Vice Chancellor in violation of the UGC Regulations shall be void ab initio. It is further observed that the UGC Regulations shall become part of the statute framed by Parliament and, therefore, shall prevail.

24. In view of the above two binding decisions of this Court, any appointment as a Vice Chancellor made on the recommendation of the Search Committee, which is constituted contrary to the provisions of the UGC Regulations shall be void ab initio. If there is any conflict between the State legislation and the Union legislation, the Union law shall prevail even as per Article 254 of the Constitution of India to the extent the provision of the State legislation is repugnant. Therefore, the submission on behalf of the State that unless the UGC Regulations are specifically adopted by the State, the UGC Regulations shall not be applicable and the State legislation shall prevail unless UGC Regulations are specifically adopted by the State cannot be accepted.”

18. Thus, on the conspectus of the judicial precedents as enlisted above, it



becomes crystal clear that the controversy revolving around the tussle between the applicable UGC regulations and the State Act was put to rest by the categorical findings of the Supreme Court as noted above.

19. This Court has also gleaned through the DNSUT Act, 2017, wherein, it has been noted that said Act was given assent to by the President of India on 1st August, 2018 and the same was notified *vide* gazette notification dated 23rd August, 2018. However, the sole factum of grant of assent of State Act by the President of India does not *ipso facto* leads to an indefeasible conclusion that the State Act shall prevail over the provisions of the Central Act on the same subject matter. To throw light on this position of law, reliance can be placed on the decision of the Supreme Court in the case of ***Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.***⁶, wherein, the contours of Article 254(2) of the Constitution of India were delineated. The relevant extracts of the said decision reads as under:-

“20. It is true that President's assent as notified in the Act nowhere mentions that assent was obtained qua repugnancy between the State legislation and specified certain law or laws of the Parliament. But from this, it also cannot be inferred that as the President has given assent, all earlier law/ laws on the subject would not prevail in the State. As discussed above before grant of the assent, consideration of the reasons for having such law is necessary and the consideration would mean consideration of the proposal made by the State for the law enacted despite it being repugnant to the earlier law made by the Parliament on the same subject. If the proposal made by the State is limited qua the repugnancy of the State law or laws specified in the said proposal, then it cannot be said that the assent was granted qua the repugnancy between the State law and other laws for which no assent was sought for. Take for illustration -- that a particular provision, 'A' made by Parliament; other provision namely Section 4 is repugnant to some provisions of enactment 'B' made by Parliament and Sections 5 and 6 are repugnant to some provisions of enactment 'C' and the State submits proposal seeking assent mentioning repugnancy between State law and provisions of enactments

⁶ (2002) 8 SCC 182.



*'A' and 'B' without mentioning anything with regard to enactment 'C'. In this set of circumstances, if the assent of the President is obtained, the State law with regard to enactments 'A' and 'B' would prevail but with regard to 'C' there is no proposal and hence there is no 'consideration' or 'assent'. **Proposal by the State pointing out repugnancy between the State law and of the law enacted by the Parliament is sine qua non for 'consideration and assent'. If there is no proposal no question of 'consideration' or 'assent' arises. For finding out whether 'assent' given by the President is restricted or unrestricted, the letter or the proposal made by the State Government for obtaining 'assent' is required to be looked into.***

21. We would also make it clear that in all the decisions relied upon, wherein such question was raised, **this Court has referred to the correspondence made by the State Government for obtaining the assent of the President to find out whether the assent was with regard to repugnancy between the State legislature and particular enactment of the Parliament.** For this purpose, we would straightaway refer to the decision in Gram Panchayat's case (supra), wherein the Court considered the alleged repugnancy between the Administration of Evacuee Property Act of 1950 and the Punjab Common Lands (Regulation) Act of 1953. The controversy was between the right of Gram Panchayats (eight petitioner-panchayats) of the Shamlat-deh lands situated in those villages which fell within their jurisdiction and the right of Rehabilitation Department of the Central Government to allot lands of that description to the extent of evacuee interest therein to person who migrated from Pakistan to India after partition of the country. Under the provisions of the Punjab Act, the land on the specified day vested in the Panchayat having jurisdiction over the village. Under Section 8(2) of the Central Act, namely, Administration of Evacuee Property Act, 1950, evacuee property is deemed to have been vested in the custodian. The Court thereafter considered Article 254 and observed that Punjab Act was reserved for consideration of the President and received his assent on December 26, 1953. Prima facie, by reason of the assent of the President, the Punjab Act would prevail in the State of Punjab over the Act of the Parliament and the Panchayats would be at liberty to deal with the Shamlat-deh lands according to the relevant Rules or bye-laws governing the matter, including the evacuee interest therein. In that case also the High Court of Punjab had adjourned the matter to enable the State Government to place material before the Court showing the purpose for which the Punjab Act of 1953 was forwarded to the President for his assent. As per the record of that case, the Act was not reserved for the assent of the President on the ground that it was repugnant to the earlier Act passed by the Parliament namely Central Act of 1950. The Court thereafter pertinently held thus:--

"....The record shows, and it was not disputed either before us or



in the High Court, that the Act was not reserved for the assent of the President on the ground that it was repugnant to an earlier Act passed by the Parliament, namely, the Central Act of 1950. In these circumstance, we agree with the High Court that the Punjab Act of 1953 cannot be said to have been reserved for the assent of the President within the meaning of Clause (2) of Article 254 of the Constitution in so far as its repugnancy with the Central Act of 1950 is concerned. The assent of the President under Article 254(2) of the Constitution is not a matter of ideal formality. The President has, at least , to be apprised of the reason for doing so If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise. But if, a as in the instant case, the assent of the President is sought to the Law for a specific purpose, the efficacy of the absent would be limited to that purpose and cannot be extended beyond it. Not only was the President not apprised in the instant case that his assent was sought because of the repugnancy between the State Act and the pre-existing Central Act on the vesting of evacuee properties but, his assent was sought for a different, specific purpose altogether. Therefore, that assent cannot avail the State Government for the purpose of according precedence to the law made by the State Legislature, namely, the Punjab Act of 1953, over the law made by the Parliament, even within the jurisdiction of the State."

31. Finally, *we would observe that the challenge of this nature could be avoided if at the commencement of the Act, it is stated that the Act has received the assent with regard to the repugnancy between the State Law and specified Central law or laws.*

20. Therefore, on the fulcrum of the aforementioned decision, it is safely discernible that in order to ascertain whether the State Act will prevail over the Central Act *qua* the same subject matter, the relevant communication between the concerned State Government and President of India seeking assent thereto needs to be looked into so as to ascertain *qua* which Central Acts or specific provisions of Central Acts, the assent of President of India was asked, in order to cure repugnancy.



21. Under the facts and circumstances of the present case, no such communication was placed before this Court, therefore, it may not be countenanced that the provisions of the DNSUT Act, 2017 shall prevail over the UGC Act, 1956. At this juncture, it is apropos to lend credence from the observations of the Supreme Court in the case of *Rajakamal Transport v. Employees' State Insurance Corpn.*⁷, wherein, the application of State Act as opposed to Central legislation was contended on the ground that the State Act received assent from the President of India. The Supreme Court while rejecting the said contention held that since no material was placed before Court *qua* such assertion therefore, the Court ought not to adjudicate on the same. The relevant extracts of the said decision reads as under:-

*“Shri C. Sitaramiah next contended that the Andhra Pradesh Muttah Jattu and Other Manual Workers (Regulation of Employment & Welfare) Act, 1976 applied to the scheduled establishment in item 6 of the Schedule and that, therefore, the Act has no application. Since the State Act has received the assent of the President on December 27, 1976 in relation to its application to the State of Andhra Pradesh, the Act stands repealed and, therefore, the appellants are not liable to make the contribution under the Act. **Though this argument appears to have been raised in the High Court, the High Court has not rightly gone into that question as no material was placed before the High Court not any material has been placed before us in that behalf, hence, it is not necessary for us to go into the question of the applicability of the local Act.**”*

22. Be that as it may, at this juncture, it is appropriate to reappraise the facts of the present case, whereby, it would clearly indicate that on 10.11.2020, the petitioner approached respondent no.1-University and the last date to make such a request was 02.11.2020, therefore, there was a mere delay of only 8 days even as per the extant policy.

23. Moreover, it is also not disputed that the petitioner had made this

⁷ (1996) 9 SCC 644.



request due to the financial hardships faced by her as well as her family bearing in mind that the fact that her father was diagnosed with COVID-19.

24. Thus, the entire rationale of respondent no.1-University to not adhere to the petitioner's request rests on the sole fulcrum that since the petitioner made the late request for cancellation of her admission, therefore, respondent no.1-University repudiated the request made by the petitioner.

25. If the facts of the present case are perused in the right perspective, it is palpably evident that there is not even an iota of averment made by respondent no.1-University that due to the cancellation of admission of the petitioner, respondent no.1-University has suffered any pecuniary loss. Moreover, it is also not the case of respondent no.1-University that before the cut-off date, admission could have been granted to any of the students and thus, due to the cancellation of the admission after cut-off date of the petitioner any deserving candidate's future was spoiled.

26. Moreover, it is also fundamental to bear in mind that, when the dispute emerged, the world itself seemed to freeze in place, as if time had been put on pause by the unrelenting grip of the pandemic. Put otherwise, it seemed like the wheels of time were forced to stop. Furthermore, one cannot lose the sight of the fact that the petitioner's father was suffering from COVID-19 and in those peculiar circumstances, the petitioner made a request for cancellation of admission and refund of fees. Moreover, there does not appear to be any infirmity in the petitioner's application rather the sole factum of mere 8 days delay was made the inevitable rationale for rejecting the application. Due to these 8 days delay in approaching the respondent no.1-University during pandemic, the petitioner was made to run from pillar to post, filing representations after representations, time and



again, before respondent no.1-University and UGC to get her fees refunded. It is noteworthy that despite these multiple requests, respondent no.1-University failed to respond and it was only after the RTI response, the petitioner eventually got to know about the rationale for rejection of her request.

27. Under these dismal circumstances, the petitioner has knocked on the doors of this Court. The respondent no.1-University before being fixated on the mere technicalities of the policy could have considered the underlying circumstances of the petitioner before rejecting her request. If her request was gleaned through the lens of empathy considering the then prevailing situation which warranted unprecedented measures, the Court has no doubt that respondent no.1-University would itself have acceded to the petitioner's request and condoned the delay of mere 8 days.

28. Therefore, balancing the scales of equity as well on the fulcrum of the *bonafide* and genuine reason tendered by the petitioner, this Court does not find any cogent reason for respondent no.1-University to withhold the fees of the petitioner on account of mere 8 days delay. Moreover, even applying the circular dated 17.12.2020 as well in present case, there was no delay in the refund of fees application as it was submitted within the prescribed cut-off date of 31.11.2020 as mentioned in the said UGC circular.

29. Thus, having considered the overall facts and circumstances of the case and after perusal of the decisions of the Supreme Court as expounded above, the Court finds that the petitioner deserves the refund of fees amounting to Rs.84,000/- after a deduction of Rs.1,000/-. The petitioner is also entitled for 6% interest from the date of submission of application for refund of fees i.e., 10.11.2020 till the amount is finally received.



30. Let the necessary steps for refund be taken within four weeks from the date of receipt of the copy of the present order.
31. Accordingly, the instant writ petition stands disposed of alongwith the pending applications.

PURUSHAINDRA KUMAR KAURAV, J
NOVEMBER 11, 2024/DPA