

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 15TH DAY OF FEBRUARY 2023 / 26TH MAGHA,

1944

WA NO. 29 OF 2023

AGAINST THE JUDGMENT IN WP(C) 22124/2021 OF HIGH COURT OF
KERALA

APPELLANT/1ST PETITIONER IN THE WRIT PETITION:

ALEYAMMA KURUVILA, AGED 54 YEARS
D/O. K. KURIAN, PRINCIPAL IN CHARGE,
ST. THOMAS COLLEGE, RANNY PAZHAVANGADI P.O,
RANNY, PATHANAMTHITTA -, PIN - 689673

BY ADVS.
K.B.GANGESH
SMITHA CHATHANARAMBATH
SMT.PARVATHI SANJAY, AMICUS CURIAE (B/O)

RESPONDENTS/RESPONDENT & 2ND PETITIONER IN THE WRIT
PETITION:

- 1 MAHATMA GANDHI UNIVERSITY,
PRIYADARSINI HILLS, KOTTAYAM - 686560
REP. BY ITS REGISTRAR.
- 2 THE MANAGER
ST. THOMAS COLLEGE, RANNY PAZHAVANGADI P.O,
RANNY, PATHANAMTHITTA - 689673.
- 3 ADDL.R3:UNIVERSITY GRANTS COMMISSION (UGC) ,
BAHADUR SHAH ZAFAR MARG, NEW DELHI-110 000,
REPRESENTED BY ITS CHAIRMAN.
IS IMPEADED SUO MOTU AS THE ADDITIONAL THIRD
RESPONDENT IN WA 29/23 AS PER ORDER DATED
17/01/2023.

4 ADDL.R4:STATE OF KERALA,
 REPRESENTED BY CHIEF SECRETARY,
 GOVERNMENT SECRETARIAT,
 THIRUVANANTHAPURAM-695 001.
 IS IMPEADED SUO MOTU AS THE ADDITIONAL FOURTH
 RESPONDENT AS PER ORDER DATED 23/1/23 IN WA
 29/2023.

 BY ADVS.
 SURIN GEORGE IPE, STANDING COUNSEL (B/O)
 S.KRISHNAMOORTHY
 SMT.PARVATHI SANJAY AMICUS CURIAE
 SR.GOVERNMENT PLEADER SMT.B.VINITHA

 THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
15.02.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.R.

P.B.SURESH KUMAR & SOPHY THOMAS, JJ.

Writ Appeal No.29 of 2023

Dated this the 15th day of February, 2023

JUDGMENT

P.B.Suresh Kumar, J.

The question that arises for consideration in this appeal is whether the Principal of an affiliated private college in the State could be appointed otherwise than in accordance with the Regulations issued by the University Grants Commission (the UGC) for maintenance of the standards in institutions for higher education.

2. The writ appeal is directed against the judgment dated 25.10.2022 in W.P.(C) No.22124 of 2021. The appellant is the first petitioner in the writ petition. The dispute pertains to the right of the appellant to be considered for appointment to the post of Principal of a private college affiliated to the Mahatma Gandhi University (the University) by

promotion. The second petitioner in the writ petition is the Manager of the College.

3. The appellant who is the senior most teacher of the College was appointed as Principal by promotion with effect from 01.04.2020. The proposal for approval of the appointment of the appellant as Principal was however not accepted by the University taking the stand that the Principal can be appointed only in accordance with the UGC 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 Regulations) and that the appointment of the appellant was not in accordance with the Regulations inasmuch as the same was made without conducting a selection as provided for in the Regulations. Ext.P4 is the communication issued by the University to the Manager of the College in this regard. The Manager of the College thereupon wrote Ext.P5 letter to the University seeking review of the decision communicated to him, pointing out that Section 59(2) of the Mahatma Gandhi University Act (the Act) provides for

appointment to the post of Principal by promotion as well, in addition to direct recruitment; that the Regulations though prescribe qualifications of candidates for appointment as Principal, it does not prohibit appointment to the post of Principal by promotion and that inasmuch as the appellant holds the qualifications prescribed in the Regulations, her appointment is in order. It was also pointed out by the Manager in Ext.P5 letter that the College being a minority institution, its management is free to appoint any teacher of its choice as the Principal. Ext.P6 is the communication issued by the University to the Manager in response to Ext.P5 letter. In Ext.P6, the University has reiterated its stand taken in Ext.P4 communication. Exts.P4 and P6 communications were under challenge in the writ petition. The appellant also sought a direction in the writ petition to the University to approve her appointment as the Principal of the College with effect from 01.04.2020.

4. A statement was filed on behalf of the University in the writ petition reiterating the stand taken in Exts.P4 and P6 communications.

5. The learned Single Judge upheld the stand of the University and dismissed the writ petition holding that the Regulations will prevail over Section 59(2) of the Act. It is aggrieved by the said decision of the learned Single Judge that the appellant has come with this appeal.

6. Heard the learned counsel for the appellant, the learned Standing Counsel for the University as also the learned *amicus curiae* appointed in the matter.

7. The learned counsel for the appellant reiterated the stand taken by the Manager in Ext.P5 letter that though the Regulations prescribe qualifications for appointment to the post of Principal and provide that appointment shall be made by direct recruitment, it does not prohibit appointment to the post of Principal by promotion. It was argued by the learned counsel that inasmuch as Section 59(2) of the Act enables appointment to the post of Principal by promotion on the principle of seniority-cum-fitness, in the absence of any provision in the Regulations prohibiting appointment by promotion, it cannot be said that the appointment of the appellant as Principal by promotion is

contrary to the Regulations. It was also argued by the learned counsel that at any rate, insofar as the College is a minority institution, it has the freedom to choose a qualified teacher of its choice as the Principal and the said right which is protected under Article 30(1) of the Constitution of India cannot be taken away by the Regulations prescribed under the University Grants Commission Act. The learned counsel relied on the decision of the Apex Court in **Secretary, Malankara Syrian Catholic College v. T. Jose and Others**, 2007 KHC 5043, in support of the said proposition.

8. Per contra, the learned Standing Counsel for the University contended that Teachers and Principals of affiliated colleges in the State covered by the Direct Payment Scheme of the State Government are being disbursed pay and allowances and other benefits as provided for in the Regulations adopted by the State Government, and the appointments to such posts can, therefore, be made only in accordance with the Regulations. It was argued by the learned Standing Counsel that the Regulations do not provide for appointment to the post of Principal by promotion, it provides

for appointment to the post of Principal only by direct recruitment and the appointment cannot, therefore, be made by promotion. The learned Standing Counsel has relied on the decisions of the Apex Court in **Gambhirdan K. Gadhvi v. State of Gujarat**, (2022) 5 SCC 179 and **Professor (Dr.) Sreejith P.S. v. Dr. Rajasree M.S.**, 2022 SCC OnLine SC 1473, in support of the submissions made by him. The learned Standing Counsel for the University has also contended that insofar as the College is an aided institution, it cannot be heard to contend that it is not bound by the Regulations, merely for the reason that it is a minority institution. The learned Standing Counsel relied on the decision of the Apex Court in **State of Uttar Pradesh v. Principal, Abhay Nandan Inter College**, 2021 SCC OnLine SC 807, in support of the said proposition.

9. The learned *amicus curiae* has made elaborate submissions on the question whether the College, being a minority institution, could appoint a teacher of its choice as its Principal otherwise than in accordance with the Regulations, in exercise of the protection guaranteed to it under Article 30(1) of the Constitution.

10. We have bestowed our anxious consideration to the the arguments advanced by the learned counsel for the parties.

11. The University Grants Commission Act, 1956, (the UGC Act), as evident from its preamble, is a statute enacted to make provision for the co-ordination and determination of standards in universities. It is a statute that falls under Entry 66 of List I of the Seventh Schedule to the Constitution. Entry 66 reads thus:

“66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions”.

The Act, on the other hand, as evident from its preamble, is one enacted to establish a new teaching and affiliating University in the State to provide for the urgent development of higher education in the areas comprised in the Kottayam, Ernakulam and Idukki revenue districts, the Kuttanad taluk of the Alleppey revenue district and the Kozhencherry, Mallappally, Thiruvalla and Ranni taluks of the Pathanamthitta revenue district of the State. It is a statute that falls under Entry 25 of List III of the Seventh Schedule to the Constitution.

Entry 25 reads thus;

“25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

In light of the expression “subject to the provisions of Entries 63, 64, 65 and 66 of List I” in Entry 25, there cannot be any dispute to the fact that the power of the State Government to legislate in the field of education under that Entry is subject to the power of the Union Government to legislate on co-ordination and determination of standards in institutions for higher education under Entry 66 of List I. This aspect has been clarified by the Apex Court in **State of T.N. v. Adhiyaman Educational & Research Institute**, (1995) 4 SCC 104.

Paragraph 12 of the said judgment reads thus:

“12. The subject “coordination and determination of standards in institutions for higher education or research and scientific and technical institutions” has always remained the special preserve of Parliament. This was so even before the Forty-second Amendment, since Entry 11 of List II even then was subject, among others, to Entry 66 of List I. After the said Amendment, the constitutional position on that score has not undergone any change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it contended before us, that the legislation with

regard to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions has always been the preserve of Parliament. What was contended before us on behalf of the State was that Entry 66 enables Parliament to lay down the minimum standards but does not deprive the State legislature from laying down standards above the said minimum standards. We will deal with this argument at its proper place.”

(Underline Supplied)

There cannot be any doubt to the fact that prescriptions as regards minimum qualifications and method of appointment of teachers and Principals of institutions of higher education, are prescriptions that could be made only in a legislation under Entry 66 of List I. The argument that the method of appointment to teaching posts in institutions of higher education has nothing to do with the determination of standards of such institutions cannot be accepted, for otherwise, the UGC Regulations would not have prescribed the method of appointment to various teaching posts, including the post of Principal. The pointed question is whether, in a situation of this nature, Section 59(2) of the Act which enables appointment to the post of Principal of affiliated colleges by promotion could be said to be valid and enforceable.

12. It is settled that if a law is made by a State

Legislature in respect of matters in its allotted sphere under any of the Entries in List II or List III of the Seventh Schedule, the same cannot overlap or conflict with the laws made by the Parliament, and if the same overlaps or conflicts with the laws made by the Parliament, the laws made by the Parliament will prevail over the State laws. This is the principle of federal supremacy which Article 246 of the Constitution embodies. However, the principle of federal supremacy can be resorted to only when there exists an irreconcilable conflict so that the coexistence of the two laws is not feasible [See **Offshore Holdings (P) Ltd. v. Bangalore Development Authority**, (2011) 3 SCC 139]. It is now trite that inconsistencies in the competing statutes should be of such nature so as to bring the two enactments into direct collision with each other and a situation should be reached where it is impossible to obey one without disobeying the other. Insofar as the UGC Regulations prescribe direct recruitment as the only method of appointment to the post of Principal of affiliated colleges, if a candidate is appointed as Principal by promotion, the said appointment can be construed to be only as one made

disobeying the UGC Regulations.

13. It is settled that the purpose of the Lists in the Seventh Schedule to the Constitution is not to confer power on the respective legislatures, but only to demarcate the fields of legislation and as such, merely for the reason that a State legislation in one field encroaches incidentally upon a Parliamentary legislation in another field, the same cannot be said to be void for want of legislative competence. In such cases, the law is that, to the extent possible, the State Legislation is to be protected by applying the doctrine of incidental encroachment. The purpose of the said doctrine is to see whether the overlapping provision of the State legislation is incidental to the main object of the State legislation and if it is incidental to the main object of the State legislation, the overlapping provision needs to be construed harmoniously. But, if the provision in a State Legislation which encroaches upon the field covered by a Central Legislation, which is the dominant legislation in that field, and if such encroachment cannot be said to be incidental to the main object of the State Legislation, the Parliamentary legislation would prevail and the

State Legislation will have to give way to the same, notwithstanding the fact that the State Legislation is within its demarcated field. In the case on hand, the dispute being one pertaining to the determination of standards in institutions for higher education and the UGC Act being the dominant legislation, the provision in Section 59(2) of the Act enabling appointment to the post of Principal by promotion cannot be said to be incidental to the object of the Act, which is a State legislation and the same will not therefore prevail over the UGC Regulations, which are to be treated as part of the UGC Act. In other words, on the introduction of the UGC Regulations, Section 59(2) of the Act which enables appointment to the post of Principal in an affiliated college by promotion, had become inoperative.

14. As indicated, the writ petition was one instituted by the appellant along with the Manager of the College. Even though the Manager of the College impugned the decision of the University declining approval of the appointment of the appellant as Principal of the College, the contention that the College being a minority institution has the

freedom to choose a qualified teacher of its choice as the Principal in terms of Article 30(1) of the Constitution is not seen urged before the learned Single Judge for reasons best known to them. That apart, by not joining with the appellant in the appeal, the College has accepted the decision of the learned Single Judge. In the circumstances, according to us, it is unnecessary for us to examine the sustainability or otherwise of the contention raised by the appellant based on Article 30(1) of the Constitution, as the same is a contention that could be urged only by the institution, viz, the College.

In the circumstances, we do not find any merit in the appeal and the same is, accordingly, dismissed.

Sd/-
P.B.SURESH KUMAR, JUDGE.

Sd/-
SOPHY THOMAS, JUDGE.