

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 22ND DAY OF MARCH 2024 / 2ND CHAITHRA, 1946

WA NO. 446 OF 2024

AGAINST THE ORDER DATED 21.03.2024 IN WP(C) NO.10667 OF 2024 OF
HIGH COURT OF KERALA

APPELLANT/PETITIONER:

DR. M.V.NARAYANAN
AGED 61 YEARS
VICE CHANCELLOR, SREE SANKARACHARYA UNIVERSITY OF
SANSKRIT, KALADY, KALADY P.O., ERNAKULAM DISTRICT,
KERALA, PIN - 683574

BY ADVS.
SRI.A.MUHAMMED MUSTHAFA
SRI.M.P.SREEKRISHNAN

RESPONDENTS/RESPONDENT NO.1 AND 3-10:

- 1 CHANCELLOR, SREE SANKARACHARYA UNIVERSITY OF SANSKRIT
KALADY, KALADY P.O., ERNAKULAM DISTRICT,
KERALA, PIN - 683574
- 2 STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001
- 3 DEPARTMENT OF HIGHER EDUCATION
REPRESENTED BY ITS SECRETARY TO GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, ANNEXE - 2, 4TH FLOOR,
THIRUVANANTHAPURAM, PIN - 695001
- 4 SREE SANKARACHARYA UNIVERSITY OF SANSKRIT
KALADY, REPRESENTED BY ITS REGISTRAR, KALADY P.O.,
ERNAKULAM DISTRICT, KERALA, PIN - 683574
- 5 UNIVERSITY GRANTS COMMISSION
REPRESENTED BY ITS CHAIRMAN, BAHADUR SHA ZAFAR MARG,

NEW DELHI, NEW DELHI, PIN - 110002

- 6 UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO DEPARTMENT OF HIGHER
EDUCATION, 127-C, SHASTHRI BHAWAN, NEW DELHI, PIN -
110001
- 7 PROF. V. K. RAMACHANDRAN
VICE-CHAIRPERSON KERALA STATE PLANNING BOARD
GOVERNMENT OF KERALA, PATTOM, THIRUVANANTHAPURAM, PIN
- 695004
- 8 PROF. RAJAN GURUKKAL
VICE-CHAIRPERSON THE KERALA STATE HIGHER EDUCATION
COUNCIL SCIENCE AND TECHNOLOGY MUSEUM CAMPUS VIKAS
BHAVAN P.O., THIRUVANANTHAPURAM, PIN - 695033
- 9 PROF. SREENIVASA VARAKHEDI
VICE-CHANCELLOR CENTRAL SANSKRIT UNIVERSITY 56-57,
INSTITUTIONAL AREA, JANAKPURI, NEW DELHI, PIN - 110058

BY ADVS.

SRI.S.PRASANTH, SC
SRI.DINESH MATHEW J MURICKEN, SC
SRI.S.KRISHNAMOORTHY, SC
SRI. JAISHANKAR V.NAIR, CGC
SRI.V K SHAMSUDHEEN, SR GOVT. PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
22.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

This Writ Appeal is preferred against the interim order dated 21.03.2024 of a learned Single Judge in WP(C).No.10667 of 2024. Briefly stated, the challenge in the Writ Petition, which was filed by the Vice Chancellor of the Sree Sankaracharya University of Sanskrit was against Ext.P11 order, by which his appointment as Vice Chancellor was found to be *void ab initio* on the ground that it had been made in contravention of Regulation 7.3 of the 2018 UGC Regulations. By the said order, the Chancellor of the University directed the appellant herein to vacate the office of the Vice Chancellor. It is clear from a reading of the order of the Chancellor impugned in the Writ Petition that it was based on the judgment of the Supreme Court in **Professor (Dr.) Sreejith P.S v. Dr. Rajasree M.S & Ors. [2022 SCC Online SC 1473]**, where the Supreme Court found that in as much as the UGC Regulations contemplated that the Search Committee had to send a panel of not less than three suitable persons from amongst eminent persons in the subject concerned to be placed before the Chancellor for the latter to select one among them as the Vice Chancellor, the action of the Search Committee in the case of sending only one name was contrary to the Regulations and illegal. On the facts of the instant case

also, the learned Single Judge found that the Search Committee had sent only one name for consideration by the Chancellor for appointment as Vice Chancellor of the University, and hence the initial appointment of the appellant as Vice Chancellor itself was illegal as void. The learned Single Judge, therefore, refused to grant a stay of the operation of the impugned order of the Chancellor pending final disposal of the Writ Petition.

2. Before us, the contention of Sri.M.P.Sreekrishnan, the learned counsel for the appellant is twofold. He would submit that the judgment of the Supreme Court in **Professor (Dr.) Sreejith P.S (Supra)** is distinguishable on facts inasmuch as there is material available with the appellant to show that the Chancellor had effectively waived the requirement of sending a panel of names, and had instructed the Search Committee to send only one name for consideration. Secondly, he points out that Regulation 7.3 of the 2018 UGC Regulations is itself *ultra vires* the provisions of Section 26 of the UGC Act, and hence the Chancellor could not have relied on the said regulation for the purposes of finding the appointment of the appellant *void ab initio*.

3. On a consideration of the submission of the learned counsel for the appellant, as also after hearing Sri.S. Sreekumar, the learned senior counsel instructed by Adv. Sri.S. Prasanth on behalf of the Chancellor,

Sri. Krishnamoorthy the learned Standing counsel for the 5th respondent UGC, the learned Government Pleader appearing for the State, Sri. Dinesh Mathew J Murikken, the learned Standing counsel on behalf of the University and Sri.Jaishankar V. Nair, the learned Central Government counsel for the Union of India, We are of the view that the impugned order of the learned Single Judge insofar as it is adverse to the appellant herein does not warrant any interference.

4. The contention of the learned counsel for the appellant that Regulation 7.3 of the 2018 UGC Regulations is *ultra vires* the parent Statute is one that can be agitated before the learned Single Judge at the time of adjudication of the Writ Petition. Even assuming that the said argument succeeds before the learned Single Judge, we are of the view that the action of the Chancellor impugned in these proceedings will nevertheless be saved by the *de facto doctrine* that will apply to protect the actions taken by various authorities under the extant Regulations till such time as they are declared as *ultra vires* and void. As regards the further contention of the learned counsel for the appellant that the Chancellor of the University did not have the jurisdiction to nullify his own earlier order in terms of the University Statute, we are of the view that even this argument would not come to the aid of the appellant at this stage of the proceedings since it is trite that even if the order impugned in the Writ Petition is one that is passed

without jurisdiction, the court exercising judicial review under Article 226 of the Constitution of India is not required to interfere with the impugned order if it is of the view that in the ultimate analysis, justice has been done between the parties. As already noticed, the defect in the appointment of the appellant viz. that the selection and appointment were contrary to the provisions of Regulation 7.3 of the 2018 UGC Regulations is one that has been settled by the decision of the Supreme in **Professor (Dr.) Sreejith P.S (Supra)**. We, therefore, cannot find fault with the impugned order of the learned Single Judge to the extent it relied on the said judgment to deny an order of stay of operation of the order impugned in the Writ Petition, pending disposal of the Writ petition.

We, therefore, dismiss this Writ Appeal without prejudice to the right of the appellant to agitate all contentions on merits before the learned Single Judge at the time of hearing the Writ Petition.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

DR. KAUSER EDAPPAGATH
JUDGE