

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

**Tuesday, the 13th day of December 2022 / 22nd Agrahayana, 1944
WA NO. 1847 OF 2022**

AGAINST JUDGMENT DATED 29.11.2022 IN WP(C) 35656/2022 OF THIS COURT

APPELLANT/PETITIONER IN THE WRIT PETITION (CIVIL):

**STATE OF KERALA, REPRESENTED BY THE ADDITIONAL SECRETARY TO THE
GOVERNMENT,
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.**

BY ADVOCATE GENERAL SRI.K.GOPALAKRISHNA KURUP

RESPONDENTS/RESPONDENTS IN THE WRIT PETITION (CIVIL):

- 1. THE CHANCELLOR, APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY, KERALA RAJ BHAVAN, THIRUVANATHAPURAM - 695099.**
- 2. APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY, REPRESENTED BY ITS REGISTRAR, CET CAMPUS, THIRUVANANTHAPURAM - 695016.**
- 3. PROF.(DR.)CIZA THOMAS, SENIOR JOINT DIRECTOR, DIRECTORATE OF TECHNICAL EDUCATION, GOVERNMENT OF KERALA, FORT P.O, THIRUVANANTHAPURAM-695023. NOW EXCERCISING THE POWERS AND PERFORMING THE DUTIES OF THE VICE CHANCELLOR OF THE APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY, CET CAMPUS, THIRUVANANTHAPURAM-695016, AND RESIDING AT KP 7/240A, ESWARAN THAMPI NAGAR, KALLAYAM P.O, THIRUVANANTHAPURAM - 695043.**
- 4. THE UNIVERSITY GRANTS COMMISSION (UGC), BAHADUR SHAH ZAFAR MARG ITO, METRO GATE NO.3, NEW DELHI- 110002. REPRESENTED BY ITS CHAIRMAN.**

**(THE FOURTH RESPONDENT UNIVERSITY GRANTS COMMISSION WAS NOT ORIGINALLY
A PARTY TO WRIT PETITION (CIVIL) NO.35656 AND WAS SUO MOTU IMPLEADED
AS THE ADDITIONAL FOURTH RESPONDENT AS PER ORDER DATED 08.11.2022).**

BY SENIOR ADVOCATE SRI.S.GOPAKUMARAN NAIR FOR R1

SENIOR ADVOCATE SRI.GEORGE POONTHOTTAM AND

ADV.SMT.NISHA GEORGE FOR R3

CENTRAL GOVERNMENT COUNSEL SRI.S.KRISHNAMOORTHY FOR R4

Prayer for interim reliefs in the Writ Appeal stating that in the

circumstances stated in the appeal memorandum, the High Court be pleased to:

i) stay the operation of Exhibit P7 notification and direct the first respondent to appoint the Pro-vice Chancellor of the APJ Abdul Kalam Technological University or the Vice-Chancellor of any other University in the State of Kerala or the Secretary to Government of Kerala, Higher Education Department as the Vice-Chancellor of the APJ Abdul Kalam Technological University, in accordance with Section 13 (7) of the APJ Abdul Kalam Technological University Act, 2015, and

ii) stay the operation of the judgment dated 29.11.2022 in W.P.(C) No.35656 of 2022, to the extent, it directs the University, the Chancellor and the UGC to immediately act in unison to have the Selection Committee constituted and to appoint a Vice-Chancellor at the earliest, but not later than two or, at the best, three months from the date of receipt of a copy of this judgment.

This Writ Appeal coming on for orders on 13/12/2022 upon perusing the appeal memorandum, the court on the same day passed the following:

P.T.O.



EXT.P7:A TRUE PHOTOCOPY OF ORDER NO.GS6-2838/2022

DATED 03.11.2022.



S. MANIKUMAR, C. J. & SHAJI P. CHALY, J.

=====

W. A. No. 1847 of 2022

=====

Dated this the 13th day of December, 2022

ORDER

S. Manikumar, C. J.

Before the writ court, the State of Kerala, represented by the Additional Secretary to the Government, Higher Education Department, Thiruvananthapuram, has sought for the following reliefs:-

“i) Issue writ of certiorari or any other writ or order or direction calling for the records leading to Exhibit P7 notification issued by the first respondent and quash the same;

ii) Declare that Exhibit P7 notification issued by the first respondent ordering the third respondent to exercise the powers and functions of the Vice Chancellor of the second respondent University, is arbitrary, illegal and contrary to the statutory mandate of Section 13(7) of the APJ Abdul Kalam Technological University Act, 2015;

iii) Issue a writ in the nature of quo warranto calling upon the third respondent to explain under what authority the third respondent is exercising the powers and functions of the Vice Chancellor of the second respondent University;

iv) Issue a writ of mandamus or any other appropriate writ or order or direction commanding the first respondent to appoint the Pro-Vice Chancellor of the APJ Abdul Kalam Technological University or the Vice- Chancellor of any other University in the State of Kerala or the Secretary to Government of Kerala, Higher Education Department as the Vice-Chancellor of the APJ Abdul Kalam Technological University, in accordance with Section 13(7) of the APJ Abdul Kalam Technological University Act, 2015.”

2. Short facts leading to the filing of the writ petition are as hereunder:-

2.1. According to the petitioner, by virtue of Section 13(7) of the Act, in the event of arising of vacancy of the Vice Chancellor in the University, only the Vice Chancellor of any other University or the Pro Vice Chancellor of the University, or the Secretary to the Government, Higher Education Department, as recommended by the Government, can be appointed as the Vice Chancellor, to hold office, till a regular Vice Chancellor is selected and appointed, in accordance with law. The Prof. (Dr.) Ciza Thomas, the 3rd respondent, is neither the Vice Chancellor of any other University, nor the Pro Vice Chancellor of the University. The 3rd respondent is also not the Secretary to the

Government, Higher Education Department. Ext. P7 notification dated 03.11.2022 issued by the Chancellor, APJ Abdul Kalam Technological University, the 1st respondent, ordering the 3rd respondent to exercise the powers and functions of the Vice Chancellor of the University, ignoring the recommendation of the Government and overlooking the statutory mandate providing for specific persons/officers to be entrusted with such powers, is void ab initio, and per se illegal.

2.2. Petitioner has submitted that the provisions of the Act do not bestow any unfettered power or discretion on the 1st respondent to appoint any person of his choice, to exercise the powers and functions of the Vice Chancellor of the University, pending appointment of a regular Vice Chancellor. The powers of the 1st respondent in this regard are circumscribed by Section 13 (7) of the Act. Moreover, the 1st respondent can act under Section 13 (7) of the Act, only on the recommendation of the Government. The act of the 1st respondent in appointing the 3rd respondent, solely according to his choice, and not based on the recommendation of the Government, that too beyond the zone of choice statutorily prescribed, is arbitrary and illegal.

2.3. Petitioner has further submitted that insofar as the 3rd respondent has been appointed to exercise the powers and functions of the Vice Chancellor of the University, in violation of statutory provision regarding the same, the said appointment is void ab initio and per se illegal, and the 3rd respondent is an usurper to the Office of the Vice Chancellor of the University. It is trite and settled law that a writ of quo warranto can be issued in the case of appointment of like nature which is contrary to the statute.

2.4. Petitioner has also submitted that the appointment in terms of Section 13 (7) of the Act can only for a period not exceeding six months. In so far as Ext. P7 notification dated 03.11.2022 permits the 3rd respondent to exercise the powers and functions of the Vice Chancellor of the University, until further orders, the same is unsustainable in law.

2.5. That apart, it is submitted that the present Pro Vice Chancellor of the University, Dr. S. Ayoob, was appointed with effect from 28.06.2019, and he continues to hold office. The 1st respondent Chancellor, if for any reasons, had concluded that the Principal

Secretary, Higher Education Department, was not to be appointed under Section 13(7) of the Act, could have, going by the mandate of the said Section, ordered that the Pro Vice Chancellor of the University would exercise the powers and functions of the Vice Chancellor of the University, pending appointment of a regular Vice Chancellor.

3. Adverting to the rival submissions and taking note of University Grants Commission Regulations 2018, pertaining to the selection of the Vice Chancellor of the Universities, and Section 13 of the APJ Abdul Kalam Technological University Act, 2015, writ court, by judgment dated 29.11.2022 in W. P. (C) No. 35656 of 2022, has ordered thus:-

“144. I can only, therefore, beseech the stakeholders to understand this and attempt to appoint a Vice Chancellor on regular basis without any delay; and this is certainly possible because, going by the ratio of the various judgments of the Hon'ble Supreme Court, a Selection Committee has to be constituted with nominees of the UGC; of the Chancellor and the Syndicate of the University, which can be done quickly. If this is so, then the State should also be happy, because the tenure of the 3rd respondent as the Vice Chancellor could be confined to the smallest possible period.

145. As I have said above, the UGC makes their stand clear that they are willing to offer their nominee to the Selection Committee within a period of two weeks; and it is also similarly stated by the Chancellor. However, Sri.Elvin Peter P.J., learned Standing Counsel appearing for the University, says that he has no instructions in this regard and I do not blame him, because this Court had never asked him about this.

I, therefore, conclude with the afore observations; and resultantly close this writ petition without acceding to any of its prayers; however, directing the University, the Chancellor and the UGC to immediately act in unison to have the Selection Committee constituted and to appoint a Vice Chancellor at the earliest, but not later than two or, at the best, three months from the date of receipt of a copy of this judgment.

As said above, this would also be in the interests of the State, because once a validly selected Vice Chancellor is appointed, the 3rd respondent's term would automatically end.

I fervently hope, the stakeholders remember that appointment of the 3rd respondent is for a very short period, which is not even worth a legal dispute, as long as she is qualified and having the requisite experience. I can, of course, only comment, but cannot command.”

4. Being aggrieved by the impugned judgment, instant writ appeal is filed.

5. Inviting the attention of this Court to Regulation 7.3 of the UGC Regulations 2018, as well as Section 13 of the APJ Abdul Kalam Technological University Act, 2015, Mr. K. Gopalakrishna Kurup, learned Advocate General, submitted that in the absence of any statutory provision / Regulation, direction of the writ court to constitute a Search-cum-Selection Committee, with the nominee of the Chancellor of APJ Abdul Kalam Technological University, is erroneous, and therefore, such Selection Committee, if any to be constituted, cannot be allowed to act, as per the directions contained in paragraph Nos. 144 and 145 of the impugned judgment.

6. Learned Advocate General further submitted that so far as constitution of the Selection Committee is concerned, it is for the State Government to act, in accordance with Section 13(2) of APJ Abdul Kalam Technological University Act, 2015. At any rate, it is the submission of the learned Advocate General that there is no provision for inclusion of nominee of the Chancellor in the Selection Committee.

7. Per contra, Mr. George Poonthottam, learned Senior Counsel appearing for Prof. (Dr.) Ciza Thomas, the 3rd respondent, submitted

that in the light of the recent pronouncement of the Hon'ble Supreme Court in the matter of appointment of Vice Chancellors of Universities, Section 13 of APJ Abdul Kalam Technological University Act, 2015, can no longer be applied.

8. Mr. S. Krishnamoorthy, learned counsel appearing for the University Grants Commission, the 4th respondent, submitted that Regulation 7.3 of the University Grants Commission Regulations, 2018, has to followed. According to him, there should be one member in the Search-cum-Selection-Committee nominated by the Chairman of the University Grants Commission.

9. Mr. S. Gopakumaran Nair, learned Senior Counsel appearing for the Chancellor, APJ Abdul Kalam Technological University, the 1st respondent, submitted that the Chancellor, being the head of the higher educational institutions, and in the interest of the student community, the Chancellor should have a say in the matter of constitution of the Selection Committee, and in such circumstances, directions issued by the writ court, is justified.

10. Heard learned counsel for the parties and perused the

material on record.

11. Section 13 (2) and (7) of the APJ Abdul Kalam Technological University Act, 2015, reads thus:-

“13. The Vice-Chancellor.-

(2) The first Vice-Chancellor shall be appointed by the Chancellor on the recommendation of the Government and thereafter the Vice-Chancellor shall be appointed by the Chancellor from among a panel of names recommended by a Search Committee consisting of the following members, namely:-

(i) one member elected by the Board of Governors;

(ii) one member nominated by the AICTE;

(iii) the Chief Secretary of the State, who shall be the Convenor of the Committee.

(7) Where the vacancy of Vice-Chancellor arises in any of the following circumstances, the Chancellor may appoint the Vice-Chancellor of any other University or the Pro-Chancellor of this University or the Secretary to Government, Higher Education Department, recommended by the Government, to be the Vice-Chancellor for a period not exceeding six months in the aggregate, namely:-

(i) where the committee appointed under sub-section (1)

is unable to recommend any name within the time-limit specified by the Chancellor;

(ii) where vacancy occurs in the office of the Vice-Chancellor because of death, resignation or otherwise and it cannot be filled up conveniently and expeditiously in accordance with the provisions of sub-sections (1) to (5);

(ii) where the vacancy in the office of the Vice-Chancellor arises temporarily because of leave, illness or of other causes;

(iv) where the term of office of the Vice-Chancellor expires; or

(v) where there is any other emergency;

Provided that the person so appointed shall cease to hold such office on the date on which the Vice-Chancellor resumes office.”

12. University Grants Commission, the 4th respondent, has issued a notification dated 18.07.2018, inter alia in the matter of describing the minimum qualification for appointment of teachers and inter alia, Regulation 7.0 deals with Selection of Pro Vice Chancellor / Vice Chancellor of Universities. Regulation 7.3 deals with appointment of the Vice Chancellor and the same is reproduced:-

“7.3. VICE CHANCELLOR:

“i. A person possessing the highest level of competence, integrity, morals and institutional commitment is to be appointed as Vice-Chancellor. The person to be appointed as a Vice-Chancellor should be a distinguished academician, with a minimum of ten years’ of experience as Professor in a University or ten years’ of experience in a reputed research and / or academic administrative organisation with proof of having demonstrated academic leadership.

ii. The selection for the post of Vice-Chancellor should be through proper identification by a Panel of 3-5 persons by a Search-cum-Selection-Committee, through a public notification or nomination or a talent search process or a combination thereof. The members of such Search-cum-Selection Committee shall be persons’ of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the Search cum-Selection Committee shall give proper weightage to the academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance, to be given in writing along with the panel to be submitted to the Visitor/Chancellor. One member of the Search cum Selection Committee shall be nominated by the Chairman,

University Grants Commission, for selection of Vice Chancellors of State, Private and Deemed to be Universities.

iii. The Visitor/Chancellor shall appoint the Vice Chancellor out of the Panel of names recommended by the Search-cum-Selection Committee.

iv. The term of office of the Vice-Chancellor shall form part of the service period of the incumbent making him/her eligible for all service related benefits. “

13. Though applicability of Section 13, to the case on hand is one of the issues raised, but the same can be addressed only at the time of final hearing of the writ appeal. However, as regards the directions contained in paragraph Nos. 144 and 145 of the impugned judgment, at this juncture, we are of the view that, taking it for granted that Section 13 of the APJ Abdul Kalam Technological University Act, 2015, cannot be made applicable for selection and appointment to the office of Vice Chancellor in any University, consequently, the University Grants Commission Regulations can only be applied. In which case, the selection to the post of Vice Chancellor should be made through identification by a panel of 3-5 persons by a Search-cum-Selection-Committee, through a public notification or nomination or a talent

search process or a combination thereof. The members of such Search-cum-Selection-Committee shall be persons' of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the Search-cum-Selection Committee shall give proper weightage to the academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance, to be given in writing along with the panel to be submitted to the Visitor/Chancellor. One member of the Search-cum-Selection Committee shall be nominated by the Chairman, University Grants Commission, for selection of Vice Chancellors of State, Private and Deemed to be Universities.

14. Reading of the above prima facie shows that Vice Chancellor is not empowered to constitute a Search-cum-Selection-Committee nor nominate a person of his choice in the said Committee.

15. Indisputably by the learned counsel appearing for all parties, Search-cum-Selection-Committee of the UGC is constituted only by the State Government through a public notification, and the said

Committee, after considering the factors / parameters, submit a panel to the Visitor / Chancellor. Thereafter, Visitor / Chancellor shall appoint the Vice Chancellor, out of the panel of names recommended by the Search-cum-Selection-Committee.

16. Prima facie, statutory regulations does not contemplate or empower nomination by the Chancellor in the Search-cum-Selection Committee for any University.

17. In the light of the above discussion, we are of the view that the directions issued in paragraph Nos. 144 and 145 of the impugned judgment requires to be stayed, and accordingly, stayed.

18. The above issue inter alia requires consideration.

19. Mr. S. Gopakumaran Nair, learned Senior Counsel, appears for the Chancellor, APJ Abdul Kalam Technological University, Thiruvananthapuram, the 1st respondent.

20. Ms. Nisha George, learned counsel, takes notice for Prof. (Dr.) Ciza Thomas, the 3rd respondent.

Mr. S. Krishnamoorthy, learned Central Government Counsel,

takes notice for the University Grants Commission, represented by its
Chairman, New Delhi, the 4th respondent.

Post on 09.01.2023.

**Sd/-
S. MANIKUMAR
CHIEF JUSTICE**



**Sd/-
SHAJI P. CHALY
JUDGE**

Eb