

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 16TH DAY OF FEBRUARY 2023 / 27TH MAGHA, 1944

WA NO. 1847 OF 2022

AGAINST THE ORDER/JUDGMENTWP (C) 35656/2022 OF HIGH COURT
OF KERALA

APPELLANT/S:

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

BY ADVS.
GOVERNMENT PLEADER
ADVOCATE GENERAL (AG-1)
SHRI.V.MANU, SENIOR G.P. (GP-46)

RESPONDENT/S:

- 1 THE CHANCELLOR
APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY, KERALA
RAJ BHAVAN, THIRUVANANTHAPURAM, PIN - 695099
- 2 APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY
REPRESENTED BY ITS REGISTRAR
CET CAMPUS, THIRUVANANTHAPURAM, PIN - 695016
- 3 PROF. (DR.) CIZA THOMAS
SENIOR JOINT DIRECTOR, DIRECTORATE OF TECHNICAL
EDUCATION, GOVERNMENT OF KERALA, FORT P.O,
THIRUVANANTHAPURAM-695023 NOW EXERCISING 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, PIN - 695043

4 THE UNIVERSITY GRANTS COMMISSION (UGC)
REPRESENTED BY ITS CHAIRMAN
BAHADUR SHAH ZAFAR MARG ITO, METRO GATE NO.3,
NEW DELHI, PIN - 110002

BY ADVS.
S.GOPAKUMARAN NAIR (SR.)
ELVIN PETER P.J.
GEORGE POONTHOTTAM (SR.)
SRI.S.KRISHNAMOORTHY, CGC
NISHA GEORGE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
16.02.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

A. MUHAMED MUSTAQUE, J.

This appeal is filed by the State Government.

2. The matter relates to an appointment to the post of Vice-Chancellor in terms of Section 13(7) of the A.P.J. Abdul Kalam Technological University Act, 2015 (for short, "the Act"). The incumbent Vice-Chancellor, viz., Dr.Rajasree M.S., consequent upon the upholding of a challenge by the apex court, vacated the office on 21.10.2022. Section 13(7) of the Act permits the appointment of a Vice-Chancellor for a period not exceeding six months in the aggregate till the regular Vice-Chancellor assumes office. The Chancellor, APJ Abdul Kalam Technological University (for short, "the University"), who is the Governor of the State, appointed Prof. (Dr.) Ciza Thomas (3rd respondent) without there being a recommendation of the State

Government as contemplated under Section 13(7) of the Act. Challenging her appointment as above for the interregnum, the State Government has come up before this Court with the writ petition for the reliefs of *quo warranto*, writ of certiorari, mandamus etc. The learned Single Judge, who heard the matter, refused to issue *quo warranto*. Other reliefs sought by the State Government were also not allowed. The learned Single Judge also issued certain directions, which we will advert to, at a later stage of the judgment. Aggrieved by the judgment of the learned Single Judge, the State has come up in appeal.

3. We have heard Sri.K.Gopalakrishna Kurup, the learned Advocate General of the State, assisted by Adv. Sri.V.Manu, learned Senior Government Pleader; Dr.S.Gopakumaran Nair, the learned senior counsel for respondents 1 and 2; Sri.George Poonthottam, learned senior counsel appearing for the 3rd respondent; and

Sri.R.Sakaranarayanan, learned Additional Solicitor General for the 4th respondent, assisted by Sri. S. Krishnamoorthy, learned Central Government Counsel.

4. The issue we have to decide falls within the statutory provisions of the Act. At the outset, we must note that there is no UGC Regulation governing the appointment of the Vice-Chancellor temporarily till a regular appointment is made. It is profitable to refer to Section 13(7) of the Act, which reads thus;

“(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-Vice-Chancellor of this University or the Secretary to Government, Higher Education Department, recommended by the Government, to be the Vice-Chancellor for a period of 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) ;

(iii) where the vacancy in the office of the Vice-Chancellor arises temporarily because of

leave, illness or of any 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,"

5. Section 13(7) of the Act has three parts. The first part refers to the recommendation, the authority of the Government to recommend names; the second part refers to the nature of the persons, who can be recommended for appointment as a Vice-Chancellor by virtue of their office; the third part refers to the power of the Chancellor to appoint the Vice-Chancellor. The power of the State Government, as referred to under the statutory provisions to recommend names, cannot be doubted inasmuch as that the State has legislative competence under Entry 25 of Concurrent List III of the Constitution of India. The phrase "recommendation" in this context means the authority to initiate the process to make an

appointment and choose the candidate. This being a temporary appointment, the field of choice is limited with reference to a certain category of officials.

6. The second part is the most important aspect in this case in relation to the category of officers, who can be suggested for appointment. It is to be noted that the Regulations of the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other measures for the Maintenance of Standards in Higher Education) Regulations, 2010, has been replaced by the Regulations of the University Grants Commission, 2018, viz., UGC Regulations "On Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education, 2018" (for short, "UGC

Regulations”), which prescribes the qualifications and eligibility to be appointed as a Vice-Chancellor. The power of UGC is traceable under Entry 66 of List I of the Constitution of India. If the UGC has prescribed any qualification to be appointed as a Vice-Chancellor, any legislation or regulation made by the State would be subject to such UGC Regulation. Therefore, the State Government can only recommend such officers, who possess the necessary qualifications as prescribed by the UGC. The UGC prescription of qualification would be deemed to have been incorporated as part of Section 13(7) of the Act. Thus, while the Government recommends any name for appointment as Vice-Chancellor, the Government can only recommend the names of candidates, who possess the necessary qualifications as prescribed by UGC. If any of the categories of the officers, as referred to under Section 13(7) of the Act, is not met,

their names cannot be recommended to be appointed as the Vice-Chancellor.

7. The second part of Section 13(7) of the Act, as referred to above, has to be understood in light of the prescription of the qualification by the UGC as the same is deemed to have been incorporated as part of legislation being occupied by the UGC Regulation. If the category of persons referred to under 13(7) of the Act is not available for want of qualifications, the statutory provision will not become otiose. The statutory provision, conferring authority on the Government, will survive to appoint any person, who are having prescribed qualifications under UGC, as the UGC Regulations in regard to qualified persons have to be read as part of Section 13(7) of the Act.

8. The third part is related to the authority of the Chancellor to make appointments. Undoubtedly, the Chancellor has been conferred

with the power to appoint the persons, who possess the necessary qualifications as prescribed by the UGC, as Vice-Chancellor. The Chancellor, in that process, cannot overlook the authority of the State Government to recommend any qualified name for appointment as Vice-Chancellor. When a statute prescribes a particular mode, be it directory or mandatory, that has to be followed for such an appointment and cannot be disregarded while making such an appointment. We, therefore, are of the view that the procedure that has to be followed must be in accordance with the statutory provisions as referred to under Section 13(7) of the Act.

9. Coming to the question related to the issuance of *quo warranto*, it is preeminently based on public interest and related to the public office. That is the reason the rule relating to *locus standi* is dispensed with, in respect to the remedy to invoke *quo warranto*. There

cannot be any doubt as to the right of the State Government to approach this Court for invoking *quo warranto* jurisdiction. The *quo warranto*, being preeminently a relief sought in public interest, it must be shown that occupying a public office is against public interest. The two theoretical aspects that needed to be considered while considering the relief as to *quo warranto* are; one is based on the doctrine of necessity as rightly pointed out by Sri.R.Sankaranarayanan, learned Additional Solicitor General, and the other is the theory of consequentialism. These theories justify the means to an end. There may be laches or breach in adhering to the procedure, which does not necessarily result in issuing a *quo warranto* if the means could be justified in particular circumstances. It is only in total disregard to the procedure established under law, a public office is usurped by an incumbent that the court would be compelled to

issue a writ of *quo warranto*. Therefore, the court will have to analyze the particular circumstances, under which a public office is occupied by a person.

10. Here, in this case, the Chancellor did not disregard the authority of the State Government in appointing a qualified person. The State Government suggested the name of Dr. Saji Gopinath as the name of the Vice-Chancellor of the Kerala University of Digital Sciences, Innovation and Technology (Digital University Kerala). Since the Chancellor apparently was not satisfied with the qualification of Dr. Saji Gopinath, returned his name with an opinion that the appointment itself as Digital University Vice-Chancellor was under a cloud. Thereafter, the Additional Secretary to the Government, again, sent the name of the Secretary of the Higher Education Department. The Chancellor did not respond to the request, apparently for the

reason that he is only a bureaucrat without any academic qualification. The Chancellor, then taking note of the situation prevailing in the University and to break the stalemate, appointed the 3rd respondent, Prof.(Dr.)Ciza Thomas, who possessed qualifications as per the UGC Regulations. The question is whether *quo warranto* needs to be issued in such circumstances. We are of the firm view that when the Chancellor is holding an office of high dignity, there is always a presumption that any act done by such office is done in *bona fide*. [See **Municipal Corporation of Delhi v. Qimat Rai Gupta** (2007) 7 SCC 309 at paragraph 17]

11.The Chancellor, in particular circumstances, noting that delay would frustrate the administration of the University and also to avoid chaos due to the vacuum in the office of the Vice-chancellor, being the appointing authority and the head of the University, to

end the stalemate, stepped in and appointed a qualified person as per the UGC Regulations. Mere procedural lapse, if any, cannot result in the issuance of *quo warranto*. As we have noted, *quo warranto* is related to the public interest and it is only when such an appointment is adverse to the larger public interest that the court needs to issue *quo warranto*.

12. The apex court in **B.R. Kapur v. State of T.N. & Another** [(2001) 7 SCC 231], succinctly referred to the principles related to *quo warranto*. It was held that the Constitution is a document having a special legal sanctity, which sets out the framework and the principal functions of the organs of the government within the State and declares the principles, by which those organs must operate. The Constitution refers to the whole system of the governance of a country and the collection of rules, which establish and regulate or govern

the government. It is further held that the constitutional limits bind both the federal and state organs of the Government, and are enforceable as a matter of law and many important rules of constitutional behaviour, which are observed by the Prime Minister and Ministers, Members of the Legislature, Judges and Civil servants, are contained neither in Acts nor in judicial decisions.

13. The principles emanating from the above judgment also would show that *quo warranto* cannot be issued for mere procedural lapse or error, but can be issued only when the usurper is found to have no semblance of right to remain in the public office. The particular circumstances, in which the Chancellor acted, according to us, warrant no relief of *quo warranto*.

14. The appointment, as referable under Section 13(7) of the Act, is for a maximum period aggregating to six months. That does not mean

that a right is conferred on an appointee to continue until the expiration of the period of six months as a matter of right. In the case of appointment to a fortuitous post, without there being a selection, based on a choice of the appointing authority as a stop-gap arrangement, the appointee cannot claim any right to continue for a fixed term or till regular hand is replaced. The appointment being a stop-gap arrangement, it is always open for the recommending authority to recommend any other name to replace such an appointee. It is in the domain of the recommending authority to decide whether such appointee is to be replaced or not. As noted above, there is no legal right for an appointee to continue for a fixed period. The appointment being a fortuitous post, we are of the view that it is for the State Government to decide whether any other name is to be recommended to replace her or not. It is

purely within the realm of the Government to adopt such a course. It is appropriate for the State Government, while recommending such names, to follow the procedure of sending a panel of a minimum of three names, in light of the UGC Regulation as far as the regular appointment is concerned. Though it is not related to temporary appointments, the very objective of the UGC Regulations is to eschew arbitrariness and to ensure fair play while recommending such names. Therefore, we are of the view that the Government is free to suggest a panel of a minimum of three other names to the Chancellor to replace the 3rd respondent.

15. We note that the learned Single Judge had issued certain other directions in the matter for the selection of a regular Vice-Chancellor. This writ petition was filed only challenging the appointment of the 3rd respondent and the authority of the Chancellor

in making such an appointment, disregarding the authority of the Government to make recommendations as provided under section 13(7) of the Act. All other directions, according to us, are unwarranted in this case and we set aside the same.

The writ appeal is disposed of, as above.

Sd/-

A. MUHAMED MUSTAQUE

JUDGE

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-