

Kerala High Court Quashes KUFOS VC Dr Riji John's Appointment, Asks Chancellor To Form New Search Committee

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

S. MANIKUMAR; CJ., SHAJI P. CHALY; J.

14 November, 2022

WP(C) NO. 16457 OF 2021

DR. K.K. VIJAYAN versus THE CHANCELLOR

Petitioner/s: by Advs. George Poonthottam (Sr.) Nisha George

Respondent/s: by Advs. R1 by K. Jaju Babu (Sr.), Asok M. Cherian, Addl. Advocate General, R3 by. N. Satheesh, R4 by P.K. Suresh Kumar (Sr.), Santheep Ankarath, J. Ramkumar, C.K. Sherin, M.U. Vijayalakshmi, Counsel for the Chancellor of Universities in Kerala, R2 by T.B. Hood, Spl.G.P. to A.G., R2 by Gopalakrishna Kurup, Advocate General

WP(C) NO. 25932 OF 2021

DR. G. SADASIVAN NAIR versus STATE OF KERALA

Petitioner/s: by Advs. Millu Dandapani, S. Vishnu

Respondent/s: by Advs. Advocate General, R2 by K. Jaju Babu (Sr.), R3 by N. Satheesh, P.K. Suresh Kumar (Sr.), M.U. Vijayalakshmi, Counsel for the Chancellor of Universities in Kerala Santheep Ankarath, R2 by T.B. Hood, Spl.G.P. to A.G., R1 by Gopalakrishna Kurup, AG

J U D G M E N T

SHAJI P. CHALY, J.

The captioned writ petitions are filed by the applicants participated in the selection process to the post of Vice Chancellor in the Kerala University of Fisheries and Ocean Studies (KUFOS) consequent to Exhibit P5 notification issued by the State Government— 2nd respondent; challenging the appointment of Dr. K. Riji John as the Vice Chancellor of the said University on various grounds, which would be dealt with hitherto.

2. Since the subject matter in both the writ petitions and the contentions are substantially similar, on agreement, we heard them together and proposed to pass this common judgment.

3. W.P.(C) No. 16457 of 2021 is filed seeking a writ of certiorari to quash Exhibit P4 notification issued by the Principal Secretary to Governor/Chancellor, Governor's Secretariat, Kerala Raj Bhavan, appointing a Search Cum Selection Committee for recommending a panel of qualified applicants to the post of Vice Chancellor; Exhibit P7 minutes of the Selection Committee meeting for the appointment of Vice Chancellor of the University held on 20.11.2020; Exhibit P9 resolution of the Selection Committee held on 22.01.2021 recommending the name of Dr. K. Riji John, Dean (Fisheries) of the Kerala University of Fisheries and Ocean Studies, as the Vice Chancellor of the said University; and Exhibit P10 notification dated 23.01.2021 issued by the Governor's Secretariat/Chancellor appointing Dr. K. Riji John as the Vice Chancellor of the University for a period of 5 years from the date of assumption of office or till he attains the age of 65 years, whichever is earlier, as provided under Section 33(6) of the Kerala University of Fisheries and Ocean Studies Act, 2010 ('Act, 2010' for short) and as per the UGC Regulations as amended from time to time; and for a further declaration that Dr. K. Riji

John, respondent No.4, is not entitled to be appointed as the Vice Chancellor of the University— respondent No.3 or any other University in the State.

4. Further direction is also sought for the re-constitution of the Selection Committee and to complete the selection process in continuation of Exhibit P5 within a time frame fixed by this Court.

5. While the said writ petition was pending consideration before a learned single Judge, the pendency of the captioned connected writ petition seeking a writ of quo warranto before this Court was brought to the notice of the learned single Judge and accordingly, as per the order of the learned single Judge dated 13.12.2021, it is tagged on.

6. W.P.(C) No. 25932 of 2021 is filed seeking a writ of quowarranto against Dr. K. Riji John, respondent No.5 therein, who is alleged to be illegally occupying the post of Vice Chancellor of the University and a consequential writ in the nature of certiorari to quash Exhibit P6 Minutes of Selection Committee meeting held on 20.11.2020 for the appointment of the Vice Chancellor..

7. To dispose of the writ petitions, the pleadings, and documents available from W.P.(C) No. 16457 of 2021 are relied upon, and the findings rendered accordingly would decide the fate of the other writ petition also.

8. The paramount contention advanced by the writ petitioner is that the State Government has adopted the UGC Regulations with effect from 18.09.2010 and once the UGC Regulations are so adopted, they prevail over any State enactment or subordinate legislation made under it. It is further submitted that the UGC Regulations require persons in the Search Committee to be eminent in the sphere of higher education. However, the persons in the Selection Committee are not having the requisite qualifications as prescribed under Exhibit P1 Regulations, 2018 of the University Grants Commission.(UGC) It is also contended that the first member of the committee, Dr. J. Prabhash, was connected with higher education as he was a Professor and a Pro Vice Chancellor; but the post of Pro Vice Chancellor is below the Vice Chancellor; and therefore, the Chancellor was not justified in including such a person as an eminent person in a committee for selection of the Vice Chancellor.

9. It is also contended that the second member, Prof. Dr. V.K. Ramachandran, was the Vice Chairman of the Kerala State Planning Board, which does not have any feature of higher education, and even though he is stated to be a former Head of the Economic Analysis Unit, Indian Statistical Institute, Bangalore, he is not suggestive of his eminence in higher education.

10. It is further contended that the appointment of Dr. V.K.Ramachandran as the Chairman of the Selection Committee is purely political, as he is not a Government servant of Kerala. Further, the third member in the Selection Committee, Dr. J.K. Jena is the Deputy Director General (Fisheries Science) and a Government employee; but, by any standard, he cannot be said to be an eminent person in the field of higher education. It is also contended that the mandatory requirement of a representative of the U.G.C in the Selection Committee is shunned by the Chancellor. Therefore, the sum and substance of the contention advanced is that the constitution of the Search cum Selection Committee is not in tune with Exhibit P1 UGC Regulations, 2018.

11. Accordingly, it is contended that any recommendation made by them is an action without jurisdiction. Various other contentions are also raised with respect to the disqualification of the members of the Selection Committee.

12. It is also submitted that the Selection Committee cannot lay down any new norms for the selection, but can only adhere to those already in place. But the Selection Committee, as its first step, excluded all applicants having less than three years of service remaining as on 28.10.2020, and the refusal of consideration is not supported by any statutory provision.

13. It is further pointed out that the UGC Regulations do not contain any provisions with respect to the maximum age or tenure and therefore, the University Act has to be referred to, and the Act, in turn, permits a person to continue as Vice Chancellor till he attains the age of 65 or five years, whichever is earlier. Therefore, it is submitted that the Selection Committee had to adhere to the said procedure and thinking so, excluding the persons from the zone of consideration by the Selection Committee is only with the intention of appointing Dr. K. Riji John.

14. That apart, it is contended that the promotions of academic staff were governed by the UGC Regulations 1996 till the promulgation of UGC Regulations, 2006. It is the contention of the petitioner that a lecturer without Ph.D could be promoted as Lecturer (Senior Scale) only after 6 years as Lecturer. It then requires 5 years for a Senior Lecturer to be promoted as Associate Professor (Reader). It is only after 8 years of service as Associate Professor, a teacher could be promoted as Professor. Pointing out that Dr. K. Riji John in Exhibit P6 claims appointment as Assistant Professor on 08.01.1990, it is contended that he took leave to undergo Ph. D course during September, 1994 and acquired it on 15.12.1997 and consequently, the said period cannot be counted towards his tenure as Assistant Professor. The sum and substance of the contention advanced is that if Regulation 7.1. of the UGC Regulations, 1996 is taken into account, Dr. K. Riji John could be appointed in the senior scale only from 15.12.1997 when he acquired Ph.D; and as it takes 5 years for him to be promoted as Associate Professor, he could be promoted only on 15.12.2002. Therefore, it is pointed out that the claim made by Dr. K. Riji John in Exhibit P6 application that he was promoted as Associate Professor on 08.01.1999, is erroneous.

15. It is further pointed out that it takes 5 years for an Associate Professor to be promoted as Professor and thus, Dr. K. Riji John could be appointed as Professor only after 8 years from 15.12.2002 i.e., on 15.12.2010. However, Dr. K. Riji John claims experience as Professor from 08.01.2007.

16. The material contention advanced on the basis of the said averment is that Dr. K. Riji John does not have 10 years' of experience as Professor on the last date of Exhibit P5 notification for appointment as Vice Chancellor i.e., on 26.10.2020. Various other contentions are also raised on the basis of the same.

17. It is also pointed out that the Search Committee under the UGC Regulations, 2018 has to furnish a panel of names to the Chancellor for appointment, and the Chancellor, in turn, has to make an appointment from the panel recommended by the Search cum Selection Committee. But, in the instant case, the Search Committee, without assigning any reason or authority, recommended only the name of Dr. K. Riji John. Therefore,

according to the petitioner, the Chancellor, instead of having the liberty to choose from a panel, was constrained to appoint Dr. K. Riji John, in terms of UGC Regulations, 2018.

18. Accordingly, it is contended that, in that process, the Selection Committee became the appointing authority which is not the scheme of UGC Regulations; which provides for preparation of a panel for the appointment of a Vice-Chancellor and forwarded to the Chancellor for making the appointment. Further, the UGC Regulations, 2018 requires the Vice Chancellor to have a higher level of competence, integrity, morals, and institutional commitment. Other factual circumstances are also advanced to canvass an argument that Dr. K. Riji John does not have any academic integrity as required by the UGC, as 11 out of 15 publications since 2015 are less inferior journals which publish papers upon payment, and which has been disapproved by the UGC and discredited by the academic and research community not only in India, but also around the world.

19. For and on behalf of the Chancellor, a statement is filed, inter alia stating that as per Section 33(2) of the Act 2010, the Chancellor appointed a Search cum Selection committee on 16.09.2020 as per Ext.P4 notification to make recommendation for appointment of the Vice Chancellor of the University. It is further stated that the said appointment was done in terms of the provisions of the Act, 2010, and like the Act, 2010, the Acts of the Kerala Agricultural University and Kerala Veterinary and Animal Sciences University too provide to have the Director General of Indian Council of Agricultural Research or his representative as members in the Selection Committee for the appointment of new Vice Chancellor, and it was accordingly Dr K.K. Jena was nominated as the representative of the Indian Council of Agricultural Research (ICAR). Other submissions are also made with respect to the circumstances leading to the appointment of the Search cum Selection Committee and the appointment of the Vice Chancellor.

20. However, it is stated that the Selection Committee was constituted and the appointment of Vice Chancellor was made in conformity with the provisions of the Act, 2010, which stipulates that the Vice Chancellor shall be appointed by the Chancellor on the advice of the Selection Committee. It is also stated that the Chairman of the committee, as per letter dated 22.01.2021, informed that, the Selection Committee for the appointment of Vice Chancellor met on 22.01.2021, interacted with nine candidates shortlisted in the previous meeting of the Committee held on 20.11.2020, and after deliberations, the Committee unanimously recommended the 4th respondent to be appointed as the Vice Chancellor of the University as per Ext.P9 resolution dated 22.01.2021.

21. The State of Kerala, respondent No.2, has filed a detailed counter affidavit inter alia stating that as per Section 73 of the Act, 2010, the College of Fisheries, Panangad, which was under the Kerala Agricultural University, was disaffiliated from the said University and was brought under the third respondent University and consequently, the teaching and non-teaching posts of College of Fisheries, Panangad were shifted from Kerala Agricultural University to the 3rd respondent University.

22. It is also stated that the National Agricultural Accreditation Board (NAAB) under the Indian Council of Agricultural Research (ICAR) in October, 2016 decided to put on hold the grant of accreditation to the third respondent University till the University submits satisfactory compliance report regarding the remarks made by the Accreditation Board. The appointment of the Dean was one of the remarks made by the Accreditation Board and in the said circumstances, the University in June, 2017 decided to fill the vacant post

of the Dean already sanctioned by the Government and issued a notification inviting application for selection to the post. Therefore, it is submitted that it was after a selection process that the University has appointed Dr. K. Riji John as the Dean Fisheries.

23. It is also submitted that the appointment of Dr. K. Riji John as Dean was against the post shifted from the Kerala Agricultural University and sanctioned by the Government as per Exhibit R2(a) order dated 12.07.2012. Therefore, it is submitted that the post of Dean shifted from the Kerala Agricultural University is a regular salaried post, which was different from the Dean nominated under Section 36 of the Act, 2010 from among the members of the Faculty, who are academic members of the University and non-salaried Deans.

24. The significant contention advanced controverting the submissions made in the writ petition is that the agriculture, including agricultural education and research, is a matter covered by Entry 14 of List II in Schedule VII of the Constitution of India. Therefore, the Act, 2010 enacted by the State Legislature stipulates the method of selection and qualification for the post of Vice Chancellor, which is the law applicable for the appointment of the Vice - Chancellor.

25. Therefore, the paramount contention advanced is that the UGC Regulations have no role to play in the matter of appointment of Vice Chancellor of the third respondent University. According to the Government, Section 33 of the Act, 2010 deals with the appointment of Vice Chancellor, wherein the composition of the Selection Committee is different from the provisions in the other University Acts and UGC Regulations.

26. Therefore, it is stated that one of the members of the Selection Committee is the Director General of the ICAR or his representative. It is further submitted that Section 33(3) of the Act, 2010 mandates that the Vice Chancellor shall be a person of eminence and expert in the field of Fisheries and Ocean studies. Other contentions are also made with respect to the procedure for nomination to the Selection Committee on the basis of Statute 2 of Chapter III of the Kerala University of Fisheries and Ocean Studies First Statutes, 2013.

27. Therefore, according to the Government, the constitution of the Search cum Selection Committee by the Chancellor is in terms of the provisions of the Act, 2010, and therefore, by the law, fundamentally for the reason that the agriculture and agricultural research and education come under entry 14 of the List II of the Schedule VII of the Constitution of India. Various other contentions are also raised with respect to the high credentials of the members of the Search cum Selection Committee.

28. Therefore, it is the contention of the State that the constitution of the Search cum Selection Committee is as per the provisions of the Act, 2010 and no manner of interference is required to the appointment of the Search cum Selection Committee.

29. The Vice Chancellor, respondent No.4, has filed a detailed counter affidavit refuting all the allegations raised by the writ petition, including the aspect concerning the qualification required to be appointed as a Professor in terms of the provisions of the UGC Regulations, 1996. That apart, it is contended that the period of service of the 4th respondent in various posts and the reckoning of the period that he had spent in United Kingdom while he was pursuing his Ph.D for career advancement, are all on the basis of the Government Orders prevailing in the State of Tamil Nadu and has also invited our

attention to Exhibit R4(b) certificate dated 01.02.2020 issued by the Registrar, Dr. J. Jayalalithaa Fisheries University, Tamil Nadu, wherein the certificate particulars of Dr. K. Riji John is clearly specified, which shows that he was appointed as an Assistant Professor on 08.01.1990 and continued upto 07.01.1999. He has worked as Associate Professor from 08.01.1999 to 07.01.2007; Professor from 08.01.2007 to 30.09.2013; Professor and Head of the Department of Fish Pathology and Health Management from 01.10.2013 to 03.01.2016; Chair, of the School of Aquaculture from 04.01.2016 to 07.08.2017; and the Professor and Head, Department of Fish Pathology and Health Management from 08.08.2017 to 24.04.2019.

30. Therefore, according to the 4th respondent, the contentions advanced by the writ petitioner contrary to the same cannot be sustained under law. It is also submitted that the petitioner was appointed as the Dean Fisheries in terms of the provisions of the Act, 2010 and the statutes.

31. The University has also filed a counter affidavit basically supporting the contentions advanced by the State Government as well as the 4th respondent. The appointment of the petitioner as a Dean of the University is stated to be done in terms of the Act, 2010.

32. We have heard the learned Senior Counsel for the petitioner Sri. George Poonthottam assisted by Adv. Nisha George, Sri. Millu Dandapani for the writ petitioner in W.P.(C) No. 25932 of 2021, learned Advocate General Sri. K. Gopalakrishna Kurup, learned Senior Advocate Sri. Jaju Babu for the Chancellor assisted by Sri. Brijesh Mohan, and the learned Senior Advocate Sri. P.K. Suresh Kumar for Dr. K. Riji John—the Vice-Chancellor, and perused the pleadings and material on record.

33. The basic contention advanced by the petitioner is that as per UGC Regulations, 2018, a clear-cut procedure is prescribed in respect of the appointment of the Vice Chancellor at Regulations 7.3. The said provision reads thus:

“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.”

34. Relying upon the said provision, it is submitted that the selection to 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. It is also clear from the said provision that the members of the above Search 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. It is also clear that while preparing the panel, the Search Committee must give proper weightage to 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.

35. The important aspect available from clause 7.3.ii is that, one member of the Search Committee shall be nominated by the Chairman, University Grants Commission, for selection of Vice Chancellors of State, Private and Deemed to be Universities.

36. But, in the case on hand, Exhibit P4 notification dated 16.09.2020 issued by the Principal Secretary to Governor/Chancellor, Governor's Secretariat, establishes that Dr. J.K. Jena is a representative of the Indian Council of the Agricultural Research, New Delhi; which is quite contrary to the imperative condition contained in Regulation 7.3.ii of the UGC Regulations, 2018, because one member of the Search cum Selection Committee as per the UGC Regulations is to be nominated by the Chairman of the University Grants Commission.

37. That apart, as per Regulation 7.3.iii, the Visitor/Chancellor shall appoint the Vice Chancellor out of the panel of names recommended by the Search cum Selection Committee. But, in the instant case, the Search cum Selection Committee, after conducting selection, shortlisted nine persons by excluding the applicants who were having less than 3 years of service as on 28.10.2020 and all applicants whose disciplinary qualifications and publication do not cover fisheries at all. However, the Selection committee, as per Exhibit P9, has only forwarded the name of Dr. K. Riji John as the Vice Chancellor, and consequent to which the Chancellor has made the appointment, as per Exhibit P10, taking into account Section 33(6) of the Act, 2010 and the UGC Regulations as amended from time to time. Therefore, according to the learned Senior Counsel for the petitioner, there is a clear violation of Regulation 7.3 of the UGC Regulations, 2018, in the matter of appointing the selection committee, as well as in the case of submitting the panel of names of the candidates before the Chancellor for appointment of the Vice Chancellor.

38. On the other hand, learned, Advocate General for the State submitted that the agriculture, education and research are included in entry 14 of List II (State List) of Schedule VII of the Constitution of India; and therefore the State alone is vested with powers to make suitable legislation for the appointment of the Vice Chancellor in the university in question. Accordingly it is submitted that the provisions of the Act, 2010 would strictly apply in the matter of appointment of Search and Selection Committee as well the appointment of the Vice Chancellor.

39. Section 33 of the Act, 2010 is relied upon to address the said issue. Relevant portion of Section 33 reads thus:

33. The Vice Chancellor - (1) The Vice Chancellor shall be a fulltime Officer of the University.

(2) The Vice Chancellor shall be appointed by the Chancellor on the advice of the Selection Committee consisting of one person nominated by the Governing Council of the University, one person nominated by the Government, Director General of the Indian Agricultural Research or his representative;

Provided that the nominee of the University Governing Council shall not be from among the members of that Council or an employee of the University.

Provided further that the selection committee shall submit a panel of members not exceeding three to the Chancellor unanimously;

Provided also that if the advice rendered by the Selection Committee is not unanimous, the Chancellor may accept the opinion of the majority of its members.

(3) The Vice Chancellor shall be a person of eminent and expert in the field of Fisheries or Ocean Studies.

(4) The Selection Committee may formulate its own procedure for securing names of possible candidates for consideration and in consultation with such individuals or bodies as it considers appropriate.

(5) Notwithstanding anything contained in sub-section (2), the first Vice Chancellor shall be appointed by the Government for a period not exceeding five years on such terms and conditions.

(6) The term of the Vice Chancellor shall be five years or till he attains the age of sixty five years, whichever is earlier. Provided that he shall be eligible for reappointment."

40. Therefore, the learned Advocate General submitted that the Search cum Selection Committee was appointed absolutely in terms of the provisions of Section 33(2) of the Act, 2010. That apart, it is submitted that the second proviso to Section 33(2) makes it clear that the Selection Committee shall submit a panel of names not exceeding three to the Chancellor unanimously; which would clearly exemplify that the Selection Committee needs to submit only a panel of even one member.

41. Therefore, it is the case of the learned Advocate General that having sent a panel of one person by the Selection Committee to the Chancellor unanimously, the Chancellor was right in making the appointment of Dr. K. Riji John as the Vice Chancellor of the University.

42. Learned Senior Counsel appearing for the Vice Chancellor also advanced arguments in that line and submitted that being the absolute domain of the State Government as per entry 14 of the State List, there was no requirement at all to follow the procedure prescribed under the UGC Regulations, 2018.

43. Learned Senior Counsel has also submitted that the agriculture, education and research is carved out from entry 66 of the List I — Union List dealing with standard of education in the University in question and therefore, the contention advanced by the petitioner that the appointment made is in violation of entry 66 of List I, cannot be sustained under law. Learned counsel has also submitted that if all the arguments of the petitioner are taken into account in their entirety, the violation alleged is only the procedural aspects, which has nothing to do with the fixation of standards as per entry 66 of the Union List.

44. The learned Senior Counsel for the Chancellor submitted that the Chancellor has made appointment thinking that the law applicable in the matter of appointment of the Vice

Chancellor in the University in question is as per the provisions of the Act, 2010, and the other intrinsic aspects involved in the subject matter relating to entry 66 of List I, Union List, and entry 14 of the State List, were not subject matter of consideration while the Search cum Selection Committee was appointed, and the panel of name submitted for an appointment.

45. To answer the said issue, we are inclined to refer to entry 66 of Schedule VII constituted as per Article 246 of the Constitution of India. Entry 66 reads thus:

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

46. Therefore, it can be seen that entry 66 is not only dealing with the determination of the standards in institutions for higher education or research and scientific and technical institutions, but also its coordination. It is well settled in law that the entries contained in various lists of Schedule VII with respect to the legislative competence of the parliament or the State legislature are to be considered in a broader and purposive sense, and every word contained under each entry would have to be provided with a meaning. Insofar as the co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions is concerned, that is the sole domain of the Union Government by virtue of the powers conferred under Article 246 of the Constitution of India. This is more so since, Article 246 is eminently aided, with a non obstante clause that, “notwithstanding anything contained in clauses (2) and (3), Parliament has exclusive power to make laws with respect to the matters enumerated in List I of Schedule VII”. Clauses (2) and (3) deal with the concurrent list and the state list respectively, and they are modulated in such a manner so as not to have any interference with the exclusive power of the parliament to make legislations with respect to matters enumerated in the Union list.

47. However, as we have pointed out above, the paramount contention advanced by the State as well as the learned counsel for the Vice Chancellor is that the agriculture, including agricultural education and research, is dealt with under the List II of Schedule VII and therefore, whatever contained in entry 66 of the Union List is except entry 14 of the State List.

48. Therefore, our first endeavour is to identify as to whether which of the entries would apply in the instant case. Even though the learned Advocate General as well as the learned Senior Counsel for the Vice Chancellor advanced arguments to the effect that entry 66 deals only with the standards in institutions for higher education and not with any procedure of any selection, we are unable to agree with the same, for the basic reason that entry 66 of the Union List takes in co-ordination also. The phraseology ‘co-ordination’ employed in entry 66 of the Union list definitely has to be provided with a meaning in order to gather a meaning for the whole entry contained therein.

49. The term ‘co-ordination’ is defined under the Chambers Concise Dictionary, Deluxe edition to mean ‘ordered action together; balanced or skilful movement etc.’ Moreover, the said aspect was considered by a Six Member Constitution Bench of the Apex Court in **Gujarat University and another v. Shri Krishna Ranganath Mudhokar and others** [AIR 1963 SC 703], which dealt with entries 63 to 66 of List I. The fundamental finding rendered in the said decision by the Apex Court is that entries 63 to 66 of List I are carved out of the subject of education, and it was held that the power to legislate is vested

exclusively in Parliament. That apart, the expression 'co-ordination' used in entry 66 of the Union List is interpreted, and held that it does not merely mean evaluation.

50. Therefore, it can be seen that entry 66 includes action not only for removal of disparities in standards, but also for preventing the occurrence of such disparities. Which thus means, the phraseology 'co-ordination' employed in entry 66 of the Union List would take in the entire aspects with respect to the fixation of the standards, and all aspects leading to the appointments to be made in the higher educational system.

51. The issue with respect to entry 66 of the Union List and entry 11 of List II dealing with education as it stood then was considered by the Apex Court in **Gujarat University** (supra), wherein the basic question considered was, whether prior to the Forty Second Amendment, when entry 11 of the List II was in existence, and items 63 to 66 of List I are carved out of the subject of education, whether the power to legislate on those items is vested exclusively in the Parliament, and held as follows:

26. There is nothing in the entry which indicates that the power to legislate on coordination of standards in institutions of higher education, does not include the power to legislate for preventing the occurrence of or for removal of disparities in standards. This power is not conditioned to be exercised merely upon the existence of a condition of disparity nor is it a power merely to evaluate standards but not to take steps to rectify or to prevent disparity. By express pronouncement of the Constitution makers, it is a power to co-ordinate, and of necessity, implied therein is the power to prevent what would make co-ordination impossible or difficult. The power is absolute and unconditional, and in the absence of any controlling reasons it must be given full effect according to its plain and expressed intention. It is true that "medium of instruction" is not an item in the legislative list. It falls within item No. 11 as a necessary incident of the power to legislate on education: it also falls within items 63 to 66. In so far as it is a necessary incident of the powers under item 66 List I it must be deemed to be included in that item and therefore excluded from item 11 List II. How far State legislation relating to medium of instruction in institutions has impact upon co-ordination of higher education is a matter which is not susceptible, in the absence of any concrete challenge to a specific statute, of a categorical answer. Manifestly, in imparting instructions in certain subjects, medium may have subordinate importance and little bearing on standards of education while in certain other its importance will be vital. Normally, in imparting scientific or technical instructions or in training students for professional courses like law, engineering, medicine and the like existence of adequate text books at a given time, the existence of journals and other literature availability of competent instructors and the capacity of students to understand instructions imparted through the medium in which it is imparted are matters which have an important bearing on the effectiveness of instruction and resultant standards achieved there by. If adequate textbooks are not available or competent instructors in the medium, through which instruction is directed to be imparted are not available, or the students are not able to receive or imbibe instructions through the medium in which it is imparted, standards must of necessity fall, and legislation for co-ordination of standards in such matters would include legislation relating to medium of instruction."

52. The Constitution Bench in **Gujarat University** (supra) had also considered the validity of the State legislation on University education and as regards the education in technical and scientific institutions not falling within entry 66 of List I and held as follows at paragraph 24 thus:

"24. The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and

the medium selected do not impair standards of education or render the co-ordination of such standards either on an All India or other basis impossible or even difficult. Thus, though the powers of the Union and of the State are in the Exclusive Lists, a degree of overlapping is inevitable. It is not possible to lay down any general test which would afford a solution for every question which might arise on this head. On the one hand, it is certainly within the province of the State Legislature to prescribe syllabi and courses of study and, of course, to indicate the medium or media of instruction. On the other hand, it is also within the power of the Union to legislate in respect of media of instruction so as to ensure co-ordination and determination of standards, that is to ensure maintenance or improvement of standards. The fact that the Union has not legislated, or refrained from legislating to the full extent of its powers does not invest the State with the power to legislate in respect of a matter assigned by the Constitution to the Union. It does not, however, follow that even within the permitted relative fields there might not be legislative provisions in enactments made each in pursuance of separate exclusive and distinct powers which may conflict. Then would arise the question of repugnancy and paramountcy which may have to be resolved on the application of the "doctrine of pith and substance" of the impugned enactment. The validity of the State legislation on University education and as regards the education in technical and scientific institutions not falling within Entry 64 of List I would have to be judged having regard to whether it impinges on the field reserved for the Union under Entry 66. In other words, the validity of State legislation would depend upon whether it prejudicially affects co-ordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Art. 254(1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid."

53. The dictum laid down in *Gujarat University* (supra) makes it clear that the State Legislation would depend upon whether it prejudicially affects co-ordination and determination of standards but not upon the existence of some definite union legislation directed to achieve that purpose. It is also clear that if there is Union Legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Article 254(1) of the Constitution of India.

54. Article 254 deals with the inconsistency between laws made by the Parliament and the laws made by the Legislatures of States. Clause (1) thereto reads thus:

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause(2), the law made by Parliament, whether passed before or after the law made by the

Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void."

55. In our considered opinion, clause (1) has two limbs: the first limb deals with any provision of a law made by the legislature of a State being repugnant to any provision of a law made by Parliament which it is competent to enact. This is exactly the legal position laid down by the Constitution Bench of the Apex Court in *Gujarat University* (supra).

56. Therefore, taking into account the specific entry 66 of the Union list in respect of co-ordination and determination of standards in institutions of higher education, we are of the

view that it is an occupied field of the Union. Therefore, the State Legislature has no power under entry 14 of List II to legislate on the entry 66 of the Union list. The power of the State Government to enact a law by virtue of entry 14 of the State List could be anything other than the specific entry contained under entry 66 of the Union List dealing with co-ordination and determination of standards in institutions for higher education etc. In other words, there is no overlapping or encroachment by and between the said entries and they are governing the respective fields guided by Article 246 of the Constitution of India.

57. It was also held in ***State of T.N. v. Adhyan Educational & Research Institute*** [(1995) 4 SCC 104] that the strict and settled view of the Apex Court is that in spite of incorporation of Universities as a legislative head being in the State list, the whole gamut of the University which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of a specific entry on co-ordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which Parliament alone is competent. It was also held therein the responsibility of the Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained.

58. It is also relevant and important to note that, though entry 25 in the concurrent list deals with education including technical education, medical education and universities, it is made subject to entry 63 to 66 of List I. Therefore, taking into account the above aspects, we are of the undoubted opinion that the requirements of UGC Regulations, 2018 are not followed in the matter of selection of Vice Chancellor, which falls clearly in entry 66 of the Union List. Which thus means, the UGC Regulations, 2018 would apply in the case of appointment of Search cum Selection Committee and also selection out of the panel of names; however, the Chancellor has exercised the power in terms of Section 33 of the Act 2010 which is running contrary to regulation 7.3 of the U.G.C Regulations, 2018.

59. Regulation 7.3 extracted above would make it clear that there is a clear procedure thereunder in the matter of appointment of Search cum Selection Committee; the manner in which a panel of names to be provided to the Chancellor; and the appointment to be made by the Chancellor out of the panel of names recommended by the Search-cum-Selection Committee. But, the said procedures are substantially violated.

60. Given our finding that the procedure under the UGC Regulations, 2018 is to adhere to entry 66 of the Union List, the arguments advanced by the learned Advocate General and the learned Senior Counsel appearing for the Vice Chancellor thrusting upon the provisions of Act 2010 do not have any force at all. Moreover, even in the second proviso to Section 33(2) of the Act, 2010, what is contemplated is the submission of a panel of names not exceeding three to the Chancellor unanimously by the Selection Committee.

61. The phraseology 'panel' employed in the said proviso also is relevant to the context. This we say because, the learned Advocate General as well as the learned Senior Counsel for the Vice Chancellor have a case that the said proviso only states that submitting a panel of members not exceeding three would mean that it can be a panel of one member.

62. The term 'panel' is defined under Black's Law Dictionary, Ninth Edition, to mean "a list of persons summoned as potential jurors; a group of persons selected to serve on a

jury; a set of Judges selected from a complete court to decide a specific case; esp. a group of three judges designated to sit for an appellate court etc.”

63. Therefore, we would say that even the State law would have to be read down to mean, a panel of three names submitted to the Chancellor unanimously by the Selection Committee, if not, at least exceeding a panel of names more than one.

64. The learned Senior Counsel for the petitioner has also relied upon Exhibit P17 Government Order dated 29.09.2019 produced along with I.A. No. 3 of 2022, wherein it is stated that the Government, as per order dated 29.06.2019, have issued orders for implementing Seventh UGC Pay Revision to teachers in Universities, affiliated colleges, teachers in Law Colleges and Engineering Colleges and Kerala Agricultural University, Kerala Veterinary and Animal Sciences University, Kerala University of Fisheries and Ocean Studies and teachers in Physical Education and qualified Librarians etc.

65. It also shows that the Government has examined the matter in detail and decided to approve and implement the Regulations, 2018 which has come into force on and with effect from 18.07.2018 as such. In the said Government Order, it is also made clear that all the Universities are directed to ensure incorporation of the UGC Regulations in their statutes and Regulations within one month from the date of the order. It is also specified thereunder that the Government will initiate steps to amend the Acts of the University if required to implement the regulations, and also to amend the special rules to give effect to the stipulations of the UGC Regulations.

66. So also, in Exhibit P18 Minutes of the 65th University Governing Council meeting held on 08.08.2019 of the Kerala University of Fisheries and Ocean Studies, Agenda No.1319/2019 clearly specifies that the Vice Chancellor, as per note dated 25.07.2019, ordered that the matter of implementing the Government Order dated 29.06.2019 regarding revision of scale of pay of teachers in the Universities under Higher Education, affiliated colleges, teachers in law colleges, Engineering Colleges, Kerala Agricultural University, Kerala Veterinary and Animal Science University Kerala University of Fisheries and Ocean Studies may be placed in the next Governing Council for consideration.

67. Accordingly, in the meeting held on 08.08.2019, it was resolved to implement the revision of scale of pay under UGC scheme with effect from 01.01.2016 and ordered that the revised pay along with arrears with effect from 01.04.2019 shall be disbursed along with the salary for August, 2019.

68. Exhibit P19 is a communication issued by the University Grants Commission dated 14.07.2021 to the Registrar, Kerala University of Fisheries and Ocean Studies with respect to the proposal for 12-B status. It states that the University has submitted a proposal for 12-B status, and the subsequent visit of the UGC Expert Committee on 15th and 16th January, 2021 to consider the proposal. The report of the Expert Committee along with the compliance report submitted by the University was placed before the Standing Committee of UGC members for consideration, and the committee recommended various aspects, including that the faculty sanctioned and in position should be as per concerned statutory council(s)/UGC norms in all the Departments. The recommendations of the Committee were considered by the UGC and it was decided to include the University in question in the list of Universities under Section 12(B) of the University Grants Commission Act, 1956.

69. The said aspects stated by us would be more meaningful in a reference to the definition of the term 'University', in the University Grants Commission Act, 1956. It means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in that behalf under the Act. Therefore, it can be seen that a State University once recognised by the UGC is obligated under law to follow its requirements. This we say because, the UGC Act, 1956 is an Act made to make provision for the co-ordination and determination of standards in Universities.

70. Section 12 dealing with 'the functions of the Commission' specifies that, it shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions, the Commission may discharge the functions enumerated thereunder, including any general or specified purpose and perform such other functions as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the functions prescribed.

71. It is also significant to note that it is on the basis of the power conferred under Section 26 of the UGC Act, 1956, the regulations are made which includes a power to make a regulation for regulating the maintenance of standards and the co-ordination of work or facilities in Universities. These aspects would give a clear insight into the relevance of entry 66 of the Union List.

72. Additional documents are produced by the 4th respondent along with I.A. No. 1 of 2022 in order to impress upon us that the University in question is functioning as per the guidance issued by the Indian Council for Agricultural Research. Annexure R4(H) is a policy paper issued by the Indian Council of Agricultural Research, Agricultural Education Division, for quality assurance in higher Education through Accreditation by National Agricultural Educational Accreditation Board.

73. From the perusal of the said policy paper, we could gather that the said policy paper deals with accreditation in respect of various matters, including the Education Panel, Standing Committee on Agricultural Education, Norms and Accreditation Committee; Accreditation Board, National Agricultural Education Accreditation Board and its Regional Centres. In our view, that has nothing to do with the co-ordination and determination of the standards in institutions for higher education as contained under entry 66 of the Union List.

74. Moreover, in the National Agricultural Education Accreditation Board, the Secretary of the UGC is an ex-officio member. It also shows that National Agricultural Education Accreditation Board is constituted to advise the Council in evolving the norms and standards for accreditation of institutions and programmes of Agricultural Education, including Veterinary Sciences and Agricultural Engineering; (ii) to assist the Council for the matters pertaining to approval, recognition, inspection and funding of institutions of Agricultural Education; (iii) evaluate the academic programme and the institutional set up in which these programmes are conducted; (iv) to periodically assess the curricula of various degree programmes offered by the State Agricultural Universities and other

approved institutions and suggest modifications, if required; (v) to decide the equivalence of qualifications; (vi) to lay down Norms and Standards of courses, curricula, instructional facilities, teaching staff qualifications, requirements of admission etc. and if warranted de-recognize degree/institution; and (vii) to provide guidance on University governance, personnel and financial policies etc.

75. On evaluation of the role of ICAR, we are of the undoubted opinion that it has nothing to do with the power of the Union Government to legislate on the basis of entry 66 of the Union List. That apart, paragraph 6 of the said policy document deals with the impact of accreditation. Sub clause (5) thereto makes it clear that mandatory UGC guidelines were implemented because of the weightage given to them in the accreditation process. Therefore, the contention advanced by the learned Advocate General as well as the learned Senior Counsel for the Vice Chancellor that the University is absolutely guided by the policy of the Indian Council of Agricultural Research, cannot be sustained. We are also of the opinion that the policy guidelines issued by the ICAR have not at all encroached into the domain of the Union Government to co-ordinate and determine the standards in institutions for higher education; rather it is issued for the purpose of fixing standards for accreditation of the Universities etc.

76. Learned Advocate General has invited our attention to the decision of the Five Member Constitution Bench of the Apex Court in ***Dr. Preeti Srivastava and another v. State of M.P and others*** [(1999) 7 SCC 120] to canvass a proposition that the legislative competence of Parliament and the legislature of the State to make laws under Article 246 is regulated by the Seventh Schedule of the Constitution of India in the light of entry 11 of List II as it existed then, which gave exclusive power to the State to legislate on education including University, subject to the provisions of the entries 63 to 66 of List I and entry 25 of List III. Anyhow, entry 11 of List II was deleted and entry 25 was included in List III with effect from 03.01.1977 as a result of the Forty Second Amendment Act of 1976.

77. The contention advanced by the learned Advocate General is that entry 25 of the List III—Concurrent List, and other entries make it clear that those entries are made subject to the provisions of the entries 63 to 66 of List I and in absentia of the phraseology ‘subject to’ in entry 14 of the List II –State List, dealing with agriculture, agricultural education and research, it is clear that the State is vested with absolute power to legislate in agriculture, agriculture education and research of the University in question.

78. However, we are unable to agree with the same for the basic reason that it is clearly held in ***Dr. Preeti Srivastava*** (supra) that when there is a conflict by and between any provision of law made by the legislature of a State, and the law made by Parliament, which it is competent to enact, then the provisions of law made by the Parliament would have precedence over the law made by the State enactment.

79. So also, merely because certain restrictive phraseologies are employed in the entries, such as “subject to”, that would not disable a writ court to identify the pith and substance of the entry contained in Schedule VII. That is to say, the court considering a question with respect to the applicable entries in Schedule VII would have to make an endeavour to identify the purpose of entry contained in each of the list so as to arrive at a safe conclusion, with the intention of the Parliament or the State Legislature.

80. In ***Union of India v. Shah Goverdhan L. Kabra Teachers' College, (2002) 8 SCC 228***], the Apex Court, while considering a question with respect to entry 66 vis-a-vis

Section 17(4) of the National Council for Teacher Education Act, 1993, it was held as follows:

“6. In view of the rival submissions at the Bar, the question that arises for consideration is whether the impugned legislation can be held to be a law dealing with coordinated development of education system within Entry 66 of List I of the Seventh Schedule or it is a law dealing with the service conditions of an employee under the State Government. The power to legislate is engrafted under Article 246 of the Constitution and the various entries for the three lists of the Seventh Schedule are the “fields of legislation”. The different entries being legislative heads are all of enabling character and are designed to define and delimit the respective areas of legislative competence of the Union and the State Legislatures. They neither impose any restrictions on the legislative powers nor prescribe any duty for exercise of the legislative power in any particular manner. It has been a cardinal principle of construction that the language of the entries should be given the widest scope of which their meaning is fairly capable and while interpreting an entry of any list it would not be reasonable to import any limitation therein. The rule of widest construction, however, would not enable the legislature to make a law relating to a matter which has no rational connection with the subject-matter of an entry. When the vires of enactment is challenged, the court primarily presumes the constitutionality of the statute by putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude and the substance of the legislation will have to be looked into. The court sometimes is duty-bound to guard against extending the meaning of the words beyond their reasonable connotation in anxiety to preserve the power of the legislature.

7. It is further a well-settled principle that entries in the different lists should be read together without giving a narrow meaning to any of them. Power of Parliament as well as the State Legislature are expressed in precise and definite terms. While an entry is to be given its widest meaning but it cannot be so interpreted as to override another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them. When it appears to the court that there is apparent overlapping between the two entries the doctrine of “pith and substance” has to be applied to find out the true nature of a legislation and the entry within which it would fall. In case of conflict between entries in List I and List II, the same has to be decided by application of the principle of “pith and substance”. The doctrine of “pith and substance” means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature. When a law is impugned as being ultra vires of the legislative competence, what is required to be ascertained is the true character of the legislation. If on such an examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. In order to examine the true character of the enactment, the entire Act, its object, scope and effect, is required to be gone into. The question of invasion into the territory of another legislature is to be determined not by degree but by substance. The doctrine of “pith and substance” has to be applied not only in cases of conflict between the powers of two legislatures but in any case where the question arises whether a legislation is covered by particular legislative power in exercise of which it is purported to be made.

8. Bearing in mind the aforesaid principles of rule of construction, if the provisions of the impugned statute, namely, the National Council for Teacher Education Act, 1993 are examined and more particularly Section 17(4) thereof which we have already extracted, the conclusion is irresistible that the statute is one squarely dealing with coordination and determination of standards in institutions for higher education within the meaning of Entry 66 of List I of the Seventh Schedule. Both Entries 65 and 66 of List I empower the Central Legislature to secure the standards of research and the standards of higher education, the object behind them being that

the same standards are not lowered at the hands of the particular State or States to the detriment of the national progress and the power of the State Legislature must be so exercised as not to directly encroach upon power of the Union under Entry 66. The power to coordinate does not mean merely the power to evaluate but it means to harmonise or secure relationship for concerted action. A legislation made for the purpose of coordination of standards of higher education is essentially a legislation by the Central Legislature in exercise of its competence under Entry 66 of List I of the Seventh Schedule and sub-section (4) of Section 17 merely provides the consequences if an institution offers a course or training in teacher education in contravention of the Act though the ultimate consequences under sub-section (4) of Section 17 may be that an unqualified teacher will not be entitled to get an employment under the State or Central Government or in a university or in a college. But by no stretch of imagination can the said provision be construed to mean a law dealing with employment as has been held by the High Court in the impugned judgment.”

81. It was held by the Apex Court in ***Union of India & others v. Tata Tea Company Limited and another*** [(2017) 10 SCC 764], that in the event of any overlapping found in two entries of the Seventh Schedule or two legislations, it is the duty of the court to find out its true intent and purpose and to examine the particular legislation in its pith and substance, in order to determine whether it fits in one or other of the lists.

82. Therefore, considering the principles of law evolved by the Apex Court and the facts and circumstances, we are of the clear opinion that the larger purpose of entry 66 of List I of Schedule VII is for co-ordination and determination of standards in higher education or research in national level, and therefore, entry 14 of List II of the Seventh Schedule dealing with ‘agriculture, including agricultural education and research’, would have to concede to the broader intention of the Parliament contained under entry 66 in the Union List.

83. Be that as it may, the Apex Court recently had occasion to consider the appointment of the Vice Chancellor of the APJ Abdul Kalam Technological University, Thiruvananthapuram, in ***Professor (Dr.) Sreejith P.S v. Dr. Rajasree M.S & Ors.*** [judgment dated 21.10.2022 in Civil Appeal Nos. 7634-7635 of 2022@ SLP@ Nos. 21108-21109 of 2021] and held that the proposition of law laid down by the Apex Court in ***Gambhirdan K. Gaxhvi v. State of Gujarat and Ors.*** [(2022) 5 SCC 179] and the judgment of the Apex Court in ***State of West Bengal v. Anindya Sundar Das & Ors.,*** Civil Appeal No. 6706 of 2022, would strictly apply to the matter and the said University had to follow the UGC Regulations in the matter of the appointment of Search cum Selection Committee as well as recommendation of the panel of names for appointment of the Vice Chancellor.

84. However, a distinction was attempted to be drawn by the learned Advocate General as well as the learned Senior Counsel for the Vice Chancellor that as per Section 13 of the APJ Abdul Kalam Technological University Act, 2015, the committee shall recommend unanimously a panel of not less than three suitable persons from among the eminent persons in the field of Engineering Science and therefore, there should be a panel of not less than three suitable persons; and the judgment rendered by the Apex Court in the matter of appointment of ***Prof. (Dr.) Sreejith P.S*** may not strictly apply to the facts of this case.

85. But, we are unable to agree with the same for the basic reason that in the said judgment, the Apex Court had clearly stated that as per the UGC Regulations, the

visitor/Chancellor shall appoint the Vice Chancellor out of the panel of names recommended by the Search Committee; that when only one name was recommended and the panel of names was not recommended, the Chancellor had no option to consider the names of other candidates; therefore, the appointment of the Vice Chancellor therein can only be said to be de hors and/or contrary to the provisions of the UGC Regulations; and when, only one name was recommended in spite of panel of suitable candidates, the appointment of respondent No. 1 therein can be said to be illegal and void ab initio, and, it was thereupon that the writ of quo warranto was issued.

86. The learned Senior Counsel for the petitioner in that regard relied upon the judgment of the Apex Court in **Gambhirdan** (supra) and has invited our attention to paragraphs 50 and 53 of the said judgment, which reads thus:

“50. It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Sections 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 the 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.

53. It is to be noted that the post of Vice-Chancellor of the university is a very important post so far as the university is concerned. Being a leader and head of the institution, the Vice-Chancellor of the university has to play very important role. While academic qualifications, administrative experience, research credentials and track record could be considered as basic eligibility requirements, the greater qualities of a Vice-Chancellor would be one who is a true leader and a passionate visionary. A Vice-Chancellor needs to be one who understands and handles the affairs of the university as ethical business and maintains a pellucidity in his conduct towards the betterment of the university as well as the students therein. A Vice-Chancellor should be one who can inspire students and guarantee entry of high quality teachers into the university system. A Vice-Chancellor functions as a bridge between the executive and academic wings of a university as he is the head of both a “teacher” and an “administrator”.”

87. Taking into consideration the law accordingly, we have no hesitation to hold that the selection of Dr. K. Riji John as the Vice Chancellor of the Kerala University of Fisheries and Ocean Studies, overlooking the UGC Regulations, 2018, cannot be sustained under law. We are also of the view that the Search cum Selection Committee constituted is also in violation of the UGC Regulations, 2018. Even though learned Senior Counsel for the Vice Chancellor Sri. P.K. Suresh Kumar relied upon the judgments of the Apex Court in **Jayant Verma and others v. Union of India and others** [(2018) 4 SCC 743] and **Uco Bank and another v. Dipak Debbarma and others** [(2017) 2 SCC 585) with respect to the inconsistency between the Central and State Acts, we are of the definite opinion that the law laid down by the Apex Court in the said judgments would not strictly apply to the facts and circumstances of this case.

88. To put it otherwise, the provisions of the UGC Regulations, 2018 in the matter of appointment of Vice Chancellor and the constitution of the Search cum Selection Committee have supremacy and paramountcy over the provisions of the Act, 2010.

89. It is an admitted fact that the appointment of the Search cum Selection Committee and the Vice Chancellor was made by the Chancellor in terms of the provisions of the Act, 2010, though not fully; and therefore, we have no hesitation to hold that the constitution of the Selection Committee and the appointment of the Vice Chancellor admittedly done on the basis of Section 33 of the Act, 2010 cannot be sustained under law.

90. Therefore, Exhibit P4 notification dated 16.09.2020 issued by the Chancellor, respondent No.1, appointing the Selection Committee without the nominee of the University Grants Commission; Exhibit P9 resolution of the Selection Committee dated 22.01.2021 recommending only one name, and Exhibit P10 order dated 23.01.2021 of the Chancellor appointing Dr. K. Riji John for a period of 5 years from the date of assumption of the office or till he attains the age of 65 years, whichever is earlier, as provided under Section 33(6) of the Act, 2010 are quashed. Consequently, there will be a direction to the Chancellor to constitute a Search cum Selection Committee for recommendation of a panel of names to the Chancellor in accordance with regulation 7.3 of the UGC Regulations, 2018, at the earliest possible time and accordingly.

91. Before we part with the judgment, we make it clear that the contentions raised by the writ petitioner with respect to the disqualification of Dr. K. Riji John for want of 10 years of service as professor for the appointment as Vice Chancellor, is not legally sustainable, especially in view of the fact that the certificate issued by the Tamil Nadu, Dr. J. Jayalalithaa Fisheries University would make it clear that he had sufficient qualification as a Professor.

Upshot of the discussion is that W.P.(C) No. 16457 of 2021 is allowed. W.P.(C) No. 25932 of 2021 seeking a writ of quo warranto will also stand allowed in terms of the findings rendered by us in W.P.(C) No. 16457 of 2021.

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