

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 25<sup>TH</sup> DAY OF AUGUST 2022 / 3RD BHADRA, 1944

WA NO. 236 OF 2021

AGAINST THE JUDGMENT DTD 18/12/2020 IN WP(C)15666/2020 OF HIGH COURT  
OF KERALA

APPELLANTS/RESPONDENTS 5 TO 8 AND 10 TO 13 AND 15 & 16:

- 1 MANAGER,  
MALANKARA SYRIAN CATHOLIC COLLEGES  
(MAJOR ARCHDIOCESE OF TRIVANDRUM)  
ST.MARY'S CATHEDRAL CAMPUS, PATTOM,  
THIRUVANANTHAPURAM-695 004.
- 2 PRINCIPAL,  
ST.JOHN'S COLLEGE, ANCHAL, KOLLAM-691 306.
- 3 CHAIRMAN,  
SELECTION COMMITTEE OR SELECTION TO  
THE POST OF ASSISTANT PROFESSOR IN  
ENVIRONMENTAL SCIENCE, ST. JOHN'S COLLEGE,  
ANCHAL, KOLLAM-691 306.
- 4 DR. BRILLIANT RAJAN,  
HoD AND ASSISTANT PROFESSOR,  
DEPARTMENT OF ENVIRONMENTAL SCIENCE,  
ST. JOHN'S COLLEGE, ANCHAL, KOLLAM-691 306.
- 5 REV.DR. M.G.MATHEW COR-EPISCOPE,  
CHAIRMAN & MANAGEMENT NOMINEE,  
RETIRED PRINCIPAL, MAR IVANIOS COLLEGE,  
TRIVANDRUM, AND VICAR GENERAL,  
MAJOR ARCHBISHOP'S HOUSE, PATTOM,  
TRIVANDRUM, AND MANAGER, M.S.C COLLEGE, PATTOM,  
THIRUVANANTHAPURAM-695 004.
- 6 DR. SABU JOSEPH,  
SUBJECT EXPERT (MANAGEMENT NOMINEE) ,  
PROFESSOR AND HEAD OF THE DEPARTMENT,  
DEPARTMENT OF ENVIRONMENTAL SCIENCES,  
UNIVERSITY OF KERALA, SENATE HOUSE CAMPUS, PALAYAM,  
THIRUVANANTHAPURAM-695 034.

## Writ Appeal Nos.236, 271 and 491 of 2021

- 7 DR. SHIVANANDAN ACHARI V,  
SUBJECT EXPERT, DIRECTOR AND  
ASSOCIATE PROFESSOR OF ENVIRONMENTAL  
MODELING AND ENVIRONMENTAL MANAGEMENT,  
SCHOOL OF ENVIRONMENTAL STUDIES,  
CUSAT, KOCHI
- 8 DR. SHIJO JOSEPH,  
SUBJECT EXPERT, FORMER SENIOR SCIENTIST,  
KFRI, PRESENTLY AS ASSISTANT PROFESSOR,  
REMOTE SENSING AND GIS DEPARTMENT,  
KERALA UNIVERSITY OF FISHERIES AND OCEAN STUDIES,  
PUDUVEYP, KOCHI.
- 9 REV. FR. JOHNSON G,  
PRINCIPAL NOMINEE, PRINCIPAL,  
ST. JOHNS COLLEGE, ANCHAL.
- 10 SELECTION COMMITTEE FOR THE  
SECTION OF ASSISTANT PROFESSOR OF  
ENVIRONMENTAL SCIENCE UNDER THE COLLEGES,  
MALANKARA SYRIAN CATHOLIC COLLEGES MANAGEMENT,  
PATTOM, TRIVANDRUM, REPRESENTED  
BY ITS CHAIRMAN, THE MALANKARA SYRIAN CATHOLIC  
COLLEGES (MAJOR ARCHDIOCESE OF TRIVANDRUM) ,  
SAMANNUYA PASTORAL CENTRE,  
ST. MARY'S CATHEDRAL CAMPUS, PATTOM,  
THIRUVANANTHAPURAM - 04.  
BY ADVS.SANTHOSH MATHEW  
SRI.ARUN THOMAS  
SRI.JENNIS STEPHEN  
SRI.VIJAY V. PAUL  
SMT.KARTHIKA MARIA  
SRI.ANIL SEBASTIAN PULICKEL  
SMT.DIVYA SARA GEORGE  
SMT.JAISY ELZA JOE  
SHRI.ABI BENNY AREECKAL  
SMT.LEAH RACHEL NINAN

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 4 & 9 & 14:

- 1 DR.RESHMI P.R.,  
AGED 32 YEARS  
W/O.NAVEEN SANKAR, KAIPPALLIL, THOTTUMUGHAM P.O.  
SOUTH MYNAGAPALLI, KOLLAM-699 519.
- 2 STATE OF KERALA,  
REPRESENTED BY SECRETARY TO GOVERNMENT,

Writ Appeal Nos.236, 271 and 491 of 2021

- DEPARTMENT OF HIGHER EDUCATION, SECRETARIAT,  
THIRUVANANTHAPURAAM-695 001.
- 3 DIRECTOR OF COLLEGIATE EDUCATION,  
DIRECTORATE OF COLLEGIATE EDUCATION,  
6TH FLOOR, VIKAS BHAVAN,  
THIRUVANANTHAPURAM-695 033.
- 4 UNIVERSITY OF KERALA,  
REPRESENTED BY ITS VICE CHANCELLOR,  
UNIVERSITY OF KERALA,  
SENATE HOUSE CAMPUS, PALAYAM,  
THIRUVANANTHAPURAM-695 034.
- 5 REGISTRAR,  
UNIVERSITY OF KERALA,  
SENATE HOUSE CAMPUS, PALAYAM,  
THIRUVANANTHAPURAM-695 034.
- 6 DR.T.ALEXANDER,  
ASSISTANT PROFESSOR IN  
ENVIRONMENTAL SCIENCE,  
(UNAPPROVED), ST.JOHN'S COLLEGE,  
ANCHAL, KOLLAM-691 306.
- 7 S.D.FEROLD XAVIER,  
(AGE AND NAME OF FATHER NOT KNOWN  
TO THE APPELLANT) ,  
GOVERNMENT NOMINEE, ADDITIONAL  
SECRETARY TO GOVERNMENT,  
FINANCE DEPARTMENT,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
- BY ADVS.SRI.KALEESWARAM RAJ (B/O)  
SRI.THOMAS ABRAHAM, SC, UNIVERSITY OF KERALA  
SRI.A.J.VARGHESE, SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON  
25.08.2022, ALONG WITH WA.271/2021 AND 491/2021, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:

Writ Appeal Nos.236, 271 and 491 of 2021

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 25<sup>TH</sup> DAY OF AUGUST 2022 / 3RD BHADRA, 1944

WA NO. 271 OF 2021

AGAINST THE JUDGMENT DTD 18/12/2020 IN WP(C)15666/2020 OF

HIGH COURT OF KERALA

APPELLANT/PETITIONER:

DR. RESHMI R.R.

AGED 32 YEARS

W/O. NAVEEN SANKAR, KAIPPALLIL,  
THOTTUMUGHAM P.O., SOUTH MYNAGAPALLI,  
KOLLAM - 690 519.

BY ADVS.KALEESWARAM RAJ

SRI.VARUN C.VIJAY

KUM.A.ARUNA

SMT.MAITREYI SACHIDANANDA HEGDE

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY SECRETARY TO GOVERNMENT,  
DEPARTMENT OF HIGHER EDUCATION,  
SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
- 2 DIRECTOR OF COLLEGIATE EDUCATION  
DIRECTORATE OF COLLEGIATE EDUCATION,  
6TH FLOOR, VIKAS BHAVAN,  
THIRUVANANTHAPURAM-695 033.
- 3 UNIVERSITY OF KERALA  
REPRESENTED BY ITS VICE CHANCELLOR,  
UNIVERSITY OF KERALA,  
SENATE HOUSE CAMPUS, PALAYAM,  
THIRUVANANTHAPURAM-695 034.

Writ Appeal Nos.236, 271 and 491 of 2021

- 4 REGISTRAR  
UNIVERSITY OF KERALA,  
SENATE HOUSE CAMPUS, PALAYAM,  
THIRUVANANTHAPURAM-695 034.
- 5 MANAGER  
MALANKARA SYRIAN CATHOLIC COLLEGES,  
(MAJOR ARCHDIOCESE OF TRIVANDRUM)  
ST.MARYS CATHEDRAL CAMPUS, PATTOM,  
THIRUVANANTHAPURAM-695 004.
- 6 PRINCIPAL  
ST.JOHNS COLLEGE, ANCHAL,  
KOLLAM-691 306.
- 7 CHAIRMAN  
SELECTION COMMITTEE OR SELECTION TO  
THE POST OF ASSISTANT PROFESSOR IN  
ENVIRONMENTAL SCIENCE, ST.JOHNS COLLEGE,  
ANCHAL, KOLLAM-691 306.
- 8 DR.BRILLIANT RAJAN  
HOD AND ASSISTANT PROFESSOR,  
DEPARTMENT OF ENVIRONMENTAL SCIENCE,  
ST.JOHNS COLLEGE, ANCHAL, KOLLAM-691 306.
- 9 DR. T. ALEXANDER  
ASSISTANT PROFESSOR IN ENVIRONMENTAL  
SCIENCE (UNAPPROVED),  
ST.JOHNS COLLEGE, ANCHAL, KOLLAM-691 306.
- 10 REV. DR.M.G.MATHEW COR-EPISCOPE  
(AGE AND NAME OF FATHER NOT KNOWN TO THE  
PETITIONER), CHAIRMAN AND MANAGEMENT NOMINEE,  
RETIRED PRINCIPAL,  
MAR IVANIOS COLLEGE, TRIVANDRUM)  
AND VICAR GENERAL, MAJOR ARCHBISHOP'S HOUSE,  
PATTOM, TRIVANDRUM AND MANAGER,  
M.S.C. COLLEGE, PATTOM,  
THIRUVANANTHAPURAM-695 004.
- 11 DR.SABU JOSEPH  
(AGE AND NAME OF FATHER NOT KNOWN TO  
THE PETITIONER) SUBJECT EXPERT  
(MANAGEMENT NOMINEE) PROFESSOR &  
HEAD OF THE DEPARTMENT, DEPARTMENT OF ENVIRONMENTAL  
SCIENCES, UNIVERSITY OF KERALA,  
SENATE HOUSE CAMPUS, PALAYAM,  
THIRUVANANTHAPURAM-695 034.
- 12 DR.SHIVANANDAN ACHARI V.

Writ Appeal Nos.236, 271 and 491 of 2021

(AGE AND NAME OF FATHER NOT KNOWN TO THE PETITIONER) SUBJECT EXPERT, DIRECTOR AND ASSOCIATE PROFESSOR OF ENVIRONMENTAL CHEMISTRY ENVIRONMENTAL MODELING & ENVIRONMENTAL MANAGEMENT, SCHOOL OF ENVIRONMENTAL STUDIES, CUSAT, KOCHI.

- 13 DR.SHIJO JOSEPH  
(AGE AND NAME OF FATHER NOT KNOWN TO THE PETITIONER) SUBJECT EXPERT, FORMER SENIOR SCIENTIST, KFRI, PRESENTLY AS ASSISTANT PROFESSOR, REMOTE SENSING AND GIS DEPARTMENT, KERALA UNIVERSITY OF FISHERIES AND OCEAN STUDIES, PUDUVEYP, KOCHI.
- 14 SRI.S.D.FEROLD XAVIER  
(AGE AND NAME OF FATHER NOT KNOWN TO THE PETITIONER), GOVERNMENT NOMINEE, ADDITIONAL SECRETARY TO GOVERNMENT, FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 15 REV.FR.JOHNSON G.  
(AGE AND NAME OF FATHER NOT KNOWN TO THE PETITIONER), PRINCIPAL NOMINEE, PRINCIPAL, ST.JOHN'S COLLEGE, ANCHAL.
- 16 SELECTION COMMITTEE FOR THE SELECTION OF ASSISTANT PROFESSOR OF ENVIRONMENTAL SCIENCE UNDER THE COLLEGES, MALANKARA SYRIAN CATHOLIC COLLEGES MANAGEMENT, PATTOM, TRIVANDRUM, REPRESENTED BY ITS CHAIRMAN, THE MALANKARA SYRIAN CATHOLIC COLLEGES, (MAJOR ARCHDIOCESE OF TRIVANDRUM) SAMANNUAYA PASTORAL CENTRE, ST.MARY'S CATHEDRAL CAMPUS, PATTOM, THIRUVANANTHAPURAM - 04.  
BY ADVS.SHRI.THOMAS ABRAHAM, SC, UNIVERSITY OF KERALA  
SRI.SANTHOSH MATHEW, R5 TO R8, R11-R13, R15, R16  
SRI.SHAFIK M.A., R9  
SRI.A.J.VARGHESE, SR.GOVERNMENT PLEADER, R1, R2 AND R14

**Writ Appeal Nos.236, 271 and 491 of 2021**

**THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON 25.08.2022, ALONG WITH WA.236/2021 AND 491/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Writ Appeal Nos.236, 271 and 491 of 2021

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 25<sup>TH</sup> DAY OF AUGUST 2022 / 3RD BHADRA, 1944

WA NO. 491 OF 2021

AGAINST THE JUDGMENT DTD 18/12/2020 IN WP(C)15666/2020 OF  
HIGH COURT OF KERALA

APPELLANT/9TH RESPONDENT:

DR. T ALEXANDER  
AGED 40 YEARS  
S/O.THOMAS K. ,  
WORKING AS ASSISTANT PROFESSOR IN  
ENVIRONMENTAL SCIENCE IN  
ST.JOHN'S COLLEGE,  
ANCHAL, KOLLAM-691 306.  
BY ADVS.SHAFIK M.A.  
SRI.M.ALFRED LIONEL WINSTON  
SHRI.RAMAKRISHNAN D.

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 8 AND 10 TO 16:

- 1 DR.RESHMI R.R  
AGED 32 YEARS,W/O.NAVEEN SANKAR,  
KAIPPALLIL,THOTTUMUGHAM P.O. ,  
SOUTH MYNAGAPALLI ,  
KOLLAM-699 519.
- 2 STATE OF KERALA,  
REPRESENTED BY SECRETARY TO GOVERNMENT,  
DEPARTMENT OF HIGHER EDUCATION,  
SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
- 3 DIRECTOR OF COLLEGIATE EDUCATION,  
DIRECTORATE OF COLLEGIATE EDUCATION,  
6TH FLOOR, VIKAS BHAVAN,



Writ Appeal Nos.236, 271 and 491 of 2021

THIRUVANANTHAPURAM-695 033.

- 4 UNIVERISTY OF KERALA.  
REPRESENTED BY ITS VICE CHANCELLOR,  
UNIVERSITY OF KERALA,  
SENATE HOUSE CAMPUS,  
PALAYAM, THIRUVANANTHAPURAM-695 034.
- 5 REGISTRAR,  
UNIVERSITY OF KERALA,  
SENATE HOUSE CAMPUS,  
PALAYAM, THIRUVANANTHAPURAM-695 034.
- 6 MANAGER, MALANKARA SYRIAN CATHOLIC COLLEGES,  
(MAJOR ARCHDIOCESE OF TRIVANDRUM) ,  
ST.MARY'S CATHEDRAL  
CAMPUS, PATTOM,  
THIRUVANANTHAPURAM-695 004.
- 7 PRINCIPAL.  
ST.JOHN'S COLLEGE,  
ANCHAL, KOLLAM-691 306.
- 8 CHAIRMAN,  
SELECTION COMMITTEE FOR SELECTION  
TO THE POST OF ASSISTANT PROFESSOR  
IN ENVIRONMENTAL SCIENCE,  
ST.JOHN'S COLLEGE,  
ANCHAL, KOLLAM-691 306.
- 9 DR.BRILLIANT RAJAN,  
HOD AND ASSISTANT PROFESSOR,  
DEPARTMENT OF ENVIRONMENTAL SCIENCE,  
ST.JOHN'S COLLEGE,  
ANCHAL, KOLLAM-691 306.
- 10 REV.DR.M.G.MATHEW COR-EPISCOPE,  
CHAIRMAN AND MANAGEMENT NOMINEE,  
RETIRED PRINCIPAL, MAR IVANIOS COLLEGE,  
TRIVANDRUM AND VICAR GENERAL,  
MAJOR ARCHBISHOP'S HOUSE,  
PATTOM,  
TRIVANDRUM AND MANAGER,  
M.S.C.COLLEGE,  
PATTOM,  
THIRUVANANTHAPURAM-695 004.
- 11 DR.SABU JOSEPH,  
SUBJECT EXPERT (MANAGEMENT NOMINEE) ,  
PROFESSOR AND HEAD OF THE DEPARTMENT,  
DEPARTMENT OF ENVIRONMENTAL SCIENCES,

Writ Appeal Nos.236, 271 and 491 of 2021

- UNIVERSITY OF KERALA,  
SENATE HOUSE CAMPUS,  
PALAYAM, THIRUVANANTHAPURAM-695 034.
- 12 DR.SHIVANANDAN ACCHARI V. ,  
SUBJECT EXPERT, DIRECTOR AND ASSOCIATE  
PROFESSOR OF ENVIRONMENTAL CHEMISTRY,  
ENVIRONMENTAL MODELING AND  
ENVIRONMENTAL MANAGEMENT,  
SCHOOL OF ENVIRONMENTAL STUDIES,  
CUSAT, KOCHI.
- 13 DR.SHIJO JOSEPH,  
SUBJECT EXPERT, FORMER SENIOR SCIENTIST,  
KFRI, PRESENTLY AS ASSISTANT PROFESSOR,  
REMOTE SENSING AND GIS DEPARTMENT.  
KERALA UNIVERSITY OF FISHERIES AND  
OCEAN STUDIES,  
PUDUVVYPU, KOCHI.
- 14 SR.S.D.FEROLD XAVIER,  
GOVERNMENT NOMINEE,  
ADDITIONAL SECRETARY TO GOVERNMENT FINANCE  
DEPARTMENT,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
- 15 REV.FR.JOHNSON G. ,  
PRINCIPAL NOMINEE, PRINCIPAL,  
ST.JOHN'S COLLEGE, ANCHAL.
- 16 SELECTION COMMITTEE FOR THE  
SELECTION OF ASSISTANT PROFESSOR  
OF ENVIRONMENTAL SCIENCE UNDER THE COLLEGES,  
MALANKARA SYRIAN CATHOLIC COLLEGES  
MANAGEMENT, PATTOM, TRIVANDRUM,  
REPRESENTED BY ITS CHAIRMAN,  
THE MALANKARA SYRIAN CATHOLIC  
COLLEGES (MAJOR ARCHDIOCESE OF TRIVANDRUM) ,  
SAMANNUAYA PASTORAL CENTRE,  
ST.MARY'S CATHEDRAL CAMPUS, PATTOM,  
THIRUVANANTHAPURAM-04.
- BY ADVS.SRI.KALEESWARAM RAJ (B/O)  
SRI.THOMAS ABRAHAM, SC, UNIVERSITY OF KERALA  
SRI.A.J.VARGHESE, SR.GOVERNMENT PLEADER, R2, R3 &  
R4  
SRI.SANTHOSH MATHEW, R6 TO R13, R15, R16

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON

**Writ Appeal Nos.236, 271 and 491 of 2021**

**25.08.2022, ALONG WITH WA.236/2021 AND WA.271/2021, THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:**

“C.R.”

**P.B.SURESH KUMAR & C.S.SUDHA, JJ.**

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**Writ Appeal Nos.236, 271 and 491 of 2021**

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**Dated this the 25<sup>th</sup> day of August, 2022****J U D G M E N T****C.S.Sudha, J.**

These writ appeals are against the judgment dated 18/12/2020 in W.P. (C)No.15666/2020. W.A.No.271/2021 has been filed by the petitioner; W.A.No.236/2021 by respondents 5 to 8, additional respondents 10 to 13, 15 and 16 and W.A.No.491/2021 by the 9<sup>th</sup> respondent in the writ petition. The parties and the documents will be referred to as described in the writ petition.

2. The writ petition has been filed by the unsuccessful candidate to the post of Assistant Professor, St.Johns College, Anchal, Kollam. The 9<sup>th</sup> respondent is the successful candidate. Respondents 5 and 6 are the Manager and the Principal respectively of the aforesaid college. The 7<sup>th</sup> respondent is the Chairman of the Selection Committee and the additional 8<sup>th</sup> respondent and additional respondents 10 to 15 are the members of the Selection Committee. According to the petitioner, the Selection Committee has not awarded the actual marks due to her. On the other hand, she was intentionally awarded quite low marks with the deliberate intention to achieve their object

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of appointing the 9<sup>th</sup> respondent. The selection process was vitiated by bias and favoritism. Exts.P6 and P7 documents evidence the close relation of the 9<sup>th</sup> respondent with a member of the Selection Committee, namely, the 8<sup>th</sup> respondent. Aggrieved by the denial of employment, the petitioner had preferred Ext.P5 representation to the Registrar, University of Kerala, i.e., the 4<sup>th</sup> respondent. As the selection process is vitiated by bias and favoritism, the writ petition seeking a declaration that the selection and appointment of the 9<sup>th</sup> respondent as Assistant Professor, Environmental Science pursuant to the notification issued on 06/07/2019, is unconstitutional, illegal and *non-est* in the eye of law. Hence for quashing his selection and appointment and for directing the respondents to award fair marks to the petitioner in the interview and also to appoint the petitioner to the post of Assistant Professor, Environmental Science in the college of respondents 5 and 6.

3. Respondents 5 to 8, additional respondents 10 to 13, additional respondents 15 and 16 as well as the 9<sup>th</sup> respondent have filed counter affidavits denying the allegation of bias and favoritism, the details of which will be referred to as and when the arguments and counter arguments of either side are considered.

4. The learned Single Judge on the basis of Exts.P7 to P9, found the

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allegation of the petitioner to be justified and held that the selection of the 9<sup>th</sup> respondent is vitiated in law and totally unconstitutional and so set aside the same. It was further held that the order would not give any preferential right to the petitioner to seek appointment. The respondents were given the liberty to advertise afresh for the post. It was also held that the respondents are not precluded from creating one more post in case they find the petitioner eligible, keeping in view the fact that the 9<sup>th</sup> respondent has crossed the age of 40.

5. The petitioner aggrieved by the fact that prayer (iii) in the writ petition, namely, directing the respondents to award fair marks in the interview and to appoint her to the post, has not been allowed in spite of the appointment of the 9<sup>th</sup> respondent being set aside, has filed W.A.No.271/2021. The 9<sup>th</sup> respondent has filed W.A.No.491/2021 aggrieved by the impugned judgment setting aside his appointment. W.A.No.236/2021 has been filed by the aforesaid respondents aggrieved by the findings of the learned Single Judge that the appointment of the 9<sup>th</sup> respondent is vitiated in law and unconstitutional.

6. Heard the learned counsel for all the parties.

7. The petitioner challenges the selection process on two grounds, namely, (i) nepotism/favoritism on the part of the members of the Selection

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Committee and (ii) Ext.P7 recommendation letter from Father Samuel Varghese Paravila, Vicar, St. Thomas Malankara Catholic Church, Vayala, Anchal, to Major Archbishop of Thiruvananthapuram, that is, the Manager of St. Johns College, Anchal, Kollam, the 5<sup>th</sup> respondent. In the writ petition, the specific allegation is that the 9<sup>th</sup> respondent who is a far less meritorious candidate compared to the petitioner, has been illegally and wrongly awarded 19 marks with the ulterior motive of denying appointment to the petitioner, who in turn has only been awarded 8 marks for the interview. The members of the Selection Committee, especially the 8<sup>th</sup> respondent, is having close relation with the 9<sup>th</sup> respondent. In Ext.P6 application submitted by the 9<sup>th</sup> respondent for the post, the 8<sup>th</sup> respondent has been shown as one of the referees. The 8<sup>th</sup> respondent has influenced all the other members of the Selection Committee, due to which they have awarded 19 marks to the 9<sup>th</sup> respondent and awarded low marks to the petitioner. Further, Ext.P7, according to the petitioner, shows the clear bias involved in the selection process. Ext.P7 letter has been addressed to the Chairman of the Selection Committee recommending the appointment of the 9<sup>th</sup> respondent. Reference was also made to Statute 4(2) of Chapter 3 of the Kerala University First Statutes, 1977 (the Statutes) and the relevant clause in the UGC Regulation,

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2018, to point out the course to be followed or adopted in case any of the member(s) of the Selection Committee is/are acquainted or related to the candidate(s) appearing in the selection process.

8. Clause 5.1 of the UGC Regulations deal with the composition of the Selection Committee and sub-clause V with the committee for the post of Assistant Professor in colleges including Private and Constituent colleges. The composition of the Committee as per this clause and the Selection Committee constituted in this case are as follows -

<b><i>5.1.V. Assistant Professor in Colleges including Private and Constituent Colleges:</i></b>	<b><i>Selection Committee constituted in the case on hand</i></b>
<i>i) Chairperson of the Governing Body of the college or his/her nominee from amongst the members of the Governing body, who shall be the Chairperson of the Committee.</i>	Additional 10 <sup>th</sup> respondent
<i>ii) The Principal of the College</i>	6 <sup>th</sup> respondent/Additional 15 <sup>th</sup> respondent
<i>iii) Head of the Department/Teacher-in-charge of the subject concerned in the College.</i>	8 <sup>th</sup> respondent



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<p><i>iv) Two nominees of the Vice Chancellor of the affiliating university, of whom one should be a subject expert. In case of colleges notified/ declared as minority educational institution, two nominees of the Chairperson of the college from out of a panel of five names, preferably from the minority community, recommended by the Vice Chancellor of the affiliating university, from the list of experts suggested by the relevant statutory body of the college, of whom one should be a subject expert</i></p>	<p>Additional respondents 10 and 11</p>
<p><i>v) Two subject-experts not connected with the college shall be nominated by the Chairperson of the college governing body out of a panel of five names recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned.</i></p>	<p>Additional respondents 12 and 13</p>

**Writ Appeal Nos.236, 271 and 491 of 2021**

<p><i>In case of colleges notified/declared as minority educational Institutions, two subject experts not connected with the University nominated by the Chairperson of the Governing Body of the College out of the panel of five names, preferably from the minority communities, recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the College</i></p>	
<p><i>vi) An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates belonging to any of these categories is the applicant, to be nominated by the Vice Chancellor, if any of the above members of the selection committee does not belong to that category</i></p>	<p>Not Applicable</p>
<p><i>(b) Five members, including two outside subject experts, shall constitute the quorum.</i></p>	

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The composition of the Selection Committee is not disputed and the petitioner has no case that it is not in accordance with the aforesaid clause.

10. According to the petitioner, the 8<sup>th</sup> respondent, the HoD and Asst. Professor, Department of Environmental Science of the college is the person who has close relations with the selected candidate, namely, the 9<sup>th</sup> respondent and hence he should not have been part of the Committee. The argument advanced on behalf of respondents 5 to 8, 10 to 13, 15 and 16 (the Management) is that the 8<sup>th</sup> respondent has mandatorily to be part of the Selection Committee to make its composition in conformity with clause 5.1.V and therefore, he could not be avoided under any circumstance. *Per contra*, it is submitted on behalf of the petitioner that as the 8<sup>th</sup> respondent has close relations with the 9<sup>th</sup> respondent, he ought to have recused himself from the Committee. In support of this argument, reference was made to Statute 4(2) of the Statutes.

11. Statute 4 in Chapter 3 of the Statutes deal with Selection Committee for appointment of teachers. Clause (2) of Statute 4 reads -

***“4. Selection Committee for appointment of Teachers. -***

*(1) xxx xxx*

*(2) No member of the Committee who is an applicant for the post or is related to or interested in any of the applicants for the post shall take part in the deliberations of the Committee, so far as that post is concerned.*

(Emphasis supplied)

Therefore, as per the aforesaid provision if only a member of the Committee is related to or interested in any of the applicant(s) for the post, he need keep away from the deliberations of the Selection Committee so far as that post is concerned. Now the question is, is the allegation of bias and nepotism raised against the 8<sup>th</sup> respondent true? Before we go into the facts and materials relied on by the petitioner in support of her allegation, we will consider the question as to what constitutes bias and the precedents on the same.

12. Massey in his treatise on Administrative Law has described the principle of bias in the following words: "*personal bias arises from a certain relationship equation between the deciding authority and the parties which incline him unfavourably or otherwise on the side of one of the parties before him. Such equation may develop out of varied forms of personal or professional hostility or friendship.*" (Administrative Law by I.P. Massey 3<sup>rd</sup> Edition - @ page 151)

13. A predisposition to decide for or against one party, without proper regard to the true merits of the dispute is bias. There must be reasonable apprehension of that predisposition, which apprehension must be based on cogent materials. The test for bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of

bias. (**Secretary of Government v. Munuswamy, 1989 KHC 236**)

14. There must be reasonable evidence to satisfy that there was a real likelihood of bias. Vague suspicions of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human conduct (**International Authority of India v. K. D. Bali (1988) 2 SCC 360**).

15. In **Madan Lal v. State of J. & K., 1995 KHC 839 SC**, the petitioners challenged the process of selection of Munsiffs' in the State of Jammu and Kashmir undertaken by the Jammu and Kashmir Public Service Commission. Their main contention was that the *viva voce* had been so manipulated that only preferred candidates, by inflating their marks in the *viva voce*, were permitted to get in the select list. The petitioners subjectively felt that as they had fared better in the written test and had got more marks therein as compared to the selected respondents, they should have been given more marks also at the oral interview. The Apex court held that the same is in the realm of assessment of relative merit of candidates concerned by the expert committee before whom the candidates appeared for the *viva voce* test. It remains in the exclusive domain of the expert committee to decide whether more marks should have been assigned to the petitioners or to the respondents.

The same cannot be the subject matter of an attack before the court as it is not sitting as a court of appeal over the assessment made by the committee so far as the candidates interviewed by them are concerned. Merely on the basis of the petitioners' apprehension or suspicion that they were deliberately given less marks at the oral interview as compared to the rival candidates, it could not be said that the process of assessment was vitiated.

16. In **Ranjit Thakur v. Union of India, AIR 1987 SC 2386**, the decision of a Court - Martial under the Army Act, 1950 was questioned as being biased. The appellant before the Apex Court had been punished for violating the norms for presenting representations to the higher officer. While serving the sentence he was again tried for disobeying a lawful command given by his superior officer. The Court - Martial consisted of the 4<sup>th</sup> respondent therein and two others. Against the 4<sup>th</sup> respondent, the appellant had sent representations complaining ill - treatment. The proceedings were challenged on the ground of bias on the part of the 4<sup>th</sup> respondent. The Apex Court applied the test of 'real likelihood of bias' to mean whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the authority concerned was likely to be disposed to decide the matter only in a particular way. It was observed that, what was

relevant was the reasonableness of apprehension in that regard in the mind of the party and pointed out that the proper approach for the Judge was not to look at his own mind and ask himself, however, honestly, "Am I biased?" but to look at the mind of the party before him. In considering whether there was a real likelihood of bias, the court does not look at the mind of the judge himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right minded persons would think that in the circumstances there was a real likelihood of bias on his part, then he should not sit. Thus tested, it was held that, the conclusion becomes inescapable that, having regard to the antecedent events the participation of the 4<sup>th</sup> in the Court Martial rendered the proceedings *coram non judice* and the judgment a nullity.

17. Coming to the case on hand, one reason for alleging close relations between the 9<sup>th</sup> respondent- the successful candidate, and the 8<sup>th</sup> respondent - a member of the Selection Committee, is Ext.P9 Facebook photographs, which show both of them standing together. It is less said the

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better about this 'piece of evidence' relied on by the petitioner. Photographs cannot be taken as the basis for concluding that the 8<sup>th</sup> respondent is 'related to or interested in' the 9<sup>th</sup> respondent as alleged by the petitioner.

18. It is true that the 9<sup>th</sup> respondent in his Ext.P6 application for the post, has referred to the name of the 8<sup>th</sup> respondent as one of the referees. According to the Management, the 8<sup>th</sup> respondent has mandatorily to be part of the Selection Committee if the composition of the Selection Committee is to be in conformity with clause 5.1.V of the UGC Regulation and therefore, he could not be avoided in any circumstance. In answer to this it was submitted on behalf of the petitioner that, it is anticipating such situations where it may not be possible for a member(s) of the Selection Committee to take part in the selection process due to their connection with a candidate(s), the rule making authority has provided for a quorum of five though as per the aforesaid clause, seven members constitute the Selection Committee. Hence it was pointed out that the argument that the 8<sup>th</sup> respondent being the HoD of the Department concerned could not be avoided, is incorrect. On behalf of the Management, it was pointed out that quorum has been fixed not to enable any member(s) to recuse, but to ensure that there should be a minimum of 5 members to constitute a Selection Committee. In our view, it is quite unnecessary to go



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into the intention of the rule making authority in fixing the quorum, as adjudication of the issues involved can be done even without going into the same.

19. Merely because the 8<sup>th</sup> respondent has been referred to in Ext.P6 application as a Referee is also no ground to hold close relations between the two. Clause 4(2) of the Statute would come into play only if a member of the Committee is 'related to or interested' in any of the candidates. Only then he needs to recuse himself from the deliberations of the Selection Committee. Here apart from Ext.P9 Facebook photographs and a mention of the 8<sup>th</sup> respondent in Ext.P6 application, there are no materials on record to hold close relations between the two.

20. Now coming to Ext.P7, which according to the petitioner is proof of the blatant move made by the 9<sup>th</sup> respondent to influence the Selection Committee, which in turn has acted upon the same, which is evident by the abysmally low marks of 8 awarded to the petitioner. According to the petitioner she has an excellent academic record and hence the reason why she was awarded 85 out of 100 marks for her academic record, research performance and teaching experience, whereas the 9<sup>th</sup> respondent was able to score only 75 out of 100 marks under this head. Therefore, it was to get over

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this and to ensure that the 9<sup>th</sup> respondent succeed to the post he has been given 19 out of 20 marks for the interview, which according to the petitioner is arbitrary, illegal and wrong.

21. Admittedly there were only two candidates competing for the post in question, that is, the petitioner and the 9<sup>th</sup> respondent. The fact that the Management was bound to follow the stipulations in the UGC Regulation in the selection process is also not in dispute. Clause 4.0 of the UGC Regulations, 2018 deals with Direct Recruitment and Clause 4.1.I deals with the eligibility conditions of Assistant Professor in the disciplines of Arts, Commerce, Humanities, Education, Law, Social Sciences, Sciences, Languages, Library Science, Physical Education, and Journalism & Mass Communication. Nobody has a case that the candidates did not satisfy the said eligibility conditions and hence we are not specifically referring to the eligibility conditions referred to in the Regulation. However, the Note to the aforesaid Clause is relevant, which reads: “*The Academic score as specified in Appendix II (Table 3A) for Universities, and Appendix II (Table 3B) for Colleges, shall be considered for short-listing of the candidates for interview only, and the selections shall be based only on the performance in the interview*”. This Note is not challenged by the petitioner. Therefore, the

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selection could only be based on the performance of the candidates in the interview and the academic score used for shortlisting cannot be taken into consideration for assessing the performance of the candidate for the interview. Realizing this, the argument advanced is that the petitioner is not asking this court to sit in appeal or re-assess the marks awarded by the Committee, but to look into the question whether there was a reasonable likelihood of bias in the selection process. According to the petitioner, Ext. P7 letter, the award of 8 marks coupled with Ext.P9 Facebook photos are ample proof of the 'reasonable likelihood of bias' in the selection process. In support of this argument reference has been made to the decision in **A.K.Kraipak v. Union of India, 1969 (2) SCC 262** wherein it has been held that, what is to be looked into is whether there is reasonable ground for believing that there was 'reasonable likelihood of bias'. Reference was also made to the decision in **Crawford Bayley & Co v. Union of India, (2006) 6 SCC 25**, wherein the Apex Court explained the doctrine of "no man can be a Judge in his own cause".

22. On the other hand, the Management referred to the following two decisions - In **Ashok Kumar Yadav v. State of Haryana, AIR 1987 SC 454**, the Apex Court held that the court cannot sit in judgment over the marks

awarded by interviewing bodies unless it is proved or obvious that the marking is plainly and indubitably arbitrary or affected by oblique motives. It is only if the assessment is patently arbitrary or the risk of arbitrariness is so high that a reasonable person would regard arbitrariness as inevitable, that the assessment of marks at the *viva voce* test may be regarded as suffering from the vice of arbitrariness. Sometimes, a suspicion may be created in one's mind that some element of arbitrariness might have entered in the assessment in the *viva voce* examination. However, suspicion cannot take the place of proof and the court cannot strike down the selections made on the ground that the evaluation of the merits of the candidates in the *viva voce* examination might be arbitrary.

23. In **Ashok Kumar v. State of Bihar, (2017) 4 SCC 357**, the Apex Court has laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. It is also well settled that those candidates who had

taken part in the selection process, knowing fully well the procedure laid down therein are not entitled to question the same upon being declared to be unsuccessful.

24. Therefore, referring to the aforesaid decisions, the argument advanced on behalf of the Management is that the petitioner, having participated in the selection process without a demur, turns out unsuccessful, cannot after the results have come out, turn around and challenge the selection process.

25. It is no doubt true that the principle of estoppel which prevents a candidate from challenging the selection process after having failed in it, has been reiterated in a plethora of judgments by the Apex Court. However, as held in **Dr. (Major) Meeta Sahai v. State of Bihar, MANU/SC/1752/2019**, the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have the locus to assail the incurable illegality or derogation of the provisions of the

Constitution, unless he/she participates in the selection process. Therefore, the question again is, has the petitioner succeeded in proving any illegality in the selection process?

26. **Kraipak** (*Supra*) was a case in which the Acting Chief Conservator of Forest, Jammu and Kashmir was a member of the Selection Board, which had been set up to select the officers for the Indian Forest Service from those serving in the Forest Department of Jammu & Kashmir. The said person who was a member of the Selection Board was also one of the candidates for selection to the Indian Forest Service. He did not sit on the Selection Board at the time when his name was considered for selection. But he did sit on the Selection Board and participated in the deliberations when the names of his rival officers were considered for selection and took part in the deliberations of the Selection Board while preparing the list of the selected candidates in order of preference. The Apex Court held that the presence of the said person vitiated the selection on the ground that there was reasonable likelihood of bias affecting the process of selection. The argument of the aforesaid person that he had not taken part in the deliberations of the Selection Board when his name was considered, was rejected. It has been held that when the very fact that he was a member of the Selection Board must have

had its own impact on the decision of the Selection Board. Admittedly, he did participate in the deliberations of the Selection Board when the claim of his rivals had been considered. He was also party to the preparation of the list of selected candidates in the order of preference. At every stage of his participation in the deliberations of the Selection Board, there was a conflict between his interest and duty. It was in the said background, it was held that the real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore, what has to be looked into is whether there is reasonable ground for believing that there was likelihood of the member to have been biased. There must be a reasonable likelihood of bias. In deciding the question of bias, the court will have to take into consideration human probabilities and ordinary course of human conduct. It was emphasized that it was not necessary to establish bias but it is sufficient to invalidate the selection process, if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as hostility to one person or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close the degree of relationship or in other words, is the nearness of

relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.

27. In **Crawford Bayley** (*Supra*) it has been held that the doctrine “no man can be a Judge in his own cause” can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. For the doctrine to come into play, it must be shown that the person concerned has a personal bias or connection or a personal interest or has personally acted in the matter concerned and/or has already taken a decision in one way or the other which he may be interested in supporting. For the aforesaid doctrine to apply certain parameters have to be observed, i.e., a personal bias to the person concerned or personal interest of the person acted in the matter concerned and has already taken a decision which he may be interested in supporting. These parameters have to be observed before coming to the conclusion that “no man can be a Judge in his own cause”. It was also held that this is a matter of factual inquiry.

28. In the case on hand, the Management contends that Ext.P7 is only a letter written by ‘his Beatitude Moran Mor Baselios Cardinal Cleemis Catholicos Major Archbishop of Trivandrum’ to the Manager of the College



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and that it is quite usual or normal for a Vicar to write letters of such nature on behalf of a member of his Church and that there is nothing unusual about it. Ext.P7, as pointed out, is not a letter written to the Chairman of the Selection Committee as alleged by the petitioner. On the other hand, the same is addressed to the Manager of St. John's College, namely, the 5<sup>th</sup> respondent, who admittedly was not a member of the Selection Committee. It is true that nominees of the Management were also Members of the Selection Committee. But that cannot also automatically lead to a conclusion of bias. The person who received the letter may or may not have been influenced by the same and so unless other materials come on record, it cannot be concluded on the basis of Ext.P7 alone that there was in fact bias in the selection process.

29. Further, on behalf of the Management, our attention has also been drawn to Exts.R11(a) to R11(c). These communications have been issued by the 3<sup>rd</sup> respondent- University of Kerala, to additional respondents 11, 12 and 13 nominating them as subject experts in the Selection Committee. They were instructed to attend the interview on the request of the Management and to forward the confidential report, the proforma of which was enclosed in the communication, to the University when the selection process was over. Ext.R11(d) is a similar communication sent by the University of Kerala to the

additional 10<sup>th</sup> respondent, a nominee of the Management. But there is no proforma attached to Ext.R11(d) as is seen in Exts.R11(a) to R11(c). Therefore, as pointed out on behalf of the Management, marks in the interview seems to have been awarded by additional respondents 11 to 13, that is, the subject experts only, and not by the other members constituting the Selection Committee. This would also rule out the possibility of the 8<sup>th</sup> respondent's alleged influence over the other members of the Committee.

30. In the case on hand, merely on the basis of Ext.P9 Facebook photographs or the fact that the 8<sup>th</sup> respondent is the HoD of the Department in which the 9<sup>th</sup> respondent was working as a Guest Lecturer, would not automatically lead to the conclusion that there was personal friendship between the two. As held in **Kraipak** (*Supra*), the question to be looked into is, how close is the degree of relationship between the 8<sup>th</sup> and 9<sup>th</sup> respondents or whether the nearness of relationship between the two is so great as to give rise to a reasonable apprehension of bias on the part of the 8<sup>th</sup> respondent, a member of the Selection Committee in making the selection. In our view the materials on record, that is the Facebook photos or the relationship of HoD and guest lecturer in the same Department are not sufficient to conclude that the two are very close or that there was personal friendship between the two.

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Therefore, the decisions cited on behalf of the petitioner are not applicable to facts of the case on hand.

31. Now coming to Writ Appeal No.271/2021 filed by the petitioner. The petitioner is aggrieved by the fact that though the appointment of the 9<sup>th</sup> respondent has been set aside, her prayer for directing the Selection Committee to award proper marks to her and to select her to the aforesaid post, has not been considered by the learned Single Judge. The grounds on which the selection of the 9<sup>th</sup> respondent is challenged, if accepted, is applicable to the petitioner herein also. Admittedly, the additional 11<sup>th</sup> respondent, Dr. Sabu Joseph, Professor and Head, Department of Environmental Sciences, University of Kerala, Karyavattom, Thiruvananthapuram, one among the three subject experts who had evaluated the performance of the petitioner and the 8<sup>th</sup> respondent in the interview and awarded marks, has issued Exts.R7(a) and R7(b), the Conduct and Experience Certificates respectively to the petitioner. The petitioner has no case that apart from the 8<sup>th</sup> respondent, the other members of the Selection Committee had any interest adverse to her. Of course, she does allege that all the other members were influenced by the 8<sup>th</sup> respondent, for which also there is no material before us. A person who challenges the selection process on the

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ground that one of the members of the Selection Committee is closely associated with the successful candidate, has no qualms when it comes to her own case when it is pointed out that one of the members of the Selection Committee, i.e., the additional 11<sup>th</sup> respondent is known to her and has issued her character certificate as well as the certificate of experience. Had the petitioner been successful, probably the 9<sup>th</sup> respondent would have also raised a similar contention of bias and favoritism. The materials on record do not make out a case of bias or much less a likelihood of bias. Hence, we hold that the petitioner is not entitled to the reliefs prayed for in the writ petition.

In the result, W.A.No.271 of 2021 is dismissed. W.A.Nos.236 and 491 of 2021 are allowed and the impugned judgment is set aside.

Interlocutory applications, if any pending, shall stand closed.

Sd/-

**P.B. SURESH KUMAR**  
**JUDGE**

Sd/-

**C.S. SUDHA**  
**JUDGE**

ami/jms