

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

Thursday, the 21st day of March 2024 / 1st Chaithra, 1946
WP(C) NO. 10520 OF 2024(L)

PETITIONER:

DR.M.K. JAYARAJ AGED 63 YEARS S/O KUNJUKUTTAN EZHUTHACHAN, RESIDING
AT VAISAKHAM, JUDGIMUKKU, THRIKKAKARA, ERNAKULAM. VICE CHANCELLOR,
UNIVERSITY OF CALICUT, MALAPPURAM DISTRICT, PIN - 673635

RESPONDENTS:

1. THE CHANCELLOR, UNIVERSITY OF CALICUT, KERALA RAJ BHAVAN,
THIRUVANANTHAPURAM DISTRICT, PIN - 695099

AND 4 OTHERS

Writ petition (civil) praying inter alia that in the circumstances
stated in the affidavit filed along with the WP(C) the High Court be
pleased to stay Exhibit P5, pending disposal of this petition.

This petition again coming on for orders upon perusing the petition
and the affidavit filed in support of WP(C) and upon hearing the arguments
of M/S V.M.KRISHNAKUMAR, P.R.REENA Advocates for the petitioner, SRI.
S.PRASANTH, Advocate for the respondents 1 and 5, SPECIAL GOVERNMENT
PLEADER for the 2nd respondent, SRI.P.C.SASIDHARAN, STANDING COUNSEL for
the 3rd respondent and of SRI. S.KRISHNAMOORTHY, STANDING COUNSEL for the
4th respondent, the court passed the following:

EXHIBIT P5: TRUE COPY OF THE ORDER ISSUED BY THE CHANCELLOR DATED
07.03.2024



MOHAMMED NIAS C.P., J.

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Dated this the 21st day of March, 2024

ORDER

WP(C)No.10520/2024

Admit.

Sri.S. Prasanth appears for respondents 1 and 5. Learned Special Government Pleader appears for the second respondent. Sri.P.C.Sasidharan, learned standing counsel, appears for the third respondent. Sri. S. Krishnamoorthy, the learned Standing Counsel, appears for the fourth respondent. Respondents are directed to complete their pleadings in three weeks. Post after the pleadings are complete.

WP(C)No.10667/2024

Admit.

Sri.S. Prasanth appears for the first respondent. The second respondent is deleted from the party array in furtherance of the order of this Court dated 14.3.2024. Learned Special Government Pleader appears for respondents 3 and 4. Sri. Dinesh Mathew J Muricken, learned standing counsel, appears for the fifth respondent. Sri. S. Krishnamoorthy, learned Standing Counsel

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appears for the sixth respondent. Learned DSGI appears for the seventh respondent. Notice by speed post to respondents 8 to 10. Respondents are directed to complete their pleadings in three weeks. Post after the pleadings are complete.

WP(C)No.10520/2024 is filed challenging Ext.P5 order passed by the Chancellor following the directions of this Court in WP(C)No.35005/2022 and connected cases dated 25.2.2024. By the impugned order, the Vice Chancellor found that the constitution of the Search Committee was not in terms of the UGC Regulations 2018, thus vitiating the selection and held that the appointment of the Vice Chancellor of Dr M.K.Jayaraj is void ab initio, and directed him to vacate the office forthwith. The Chancellor based his conclusion on the fact that the Search Committee had the then Chief Secretary as a member and, further, the nominee of the Senate, Dr V.K.Ramachandran had nothing to do with the field of Higher Education at the relevant time, and since the constitution of the Search Committee was contrary to the UGC Regulations, the appointments effected under such a recommendation is void.

2. WP(C)No.10667/2024 is filed by the Vice Chancellor of the Sree Sankaracharya University of Sanskrit challenging Ext.P11 order, which found that the appointment of Dr.M.V.Narayanan as the Vice Chancellor as

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void ab initio and directed vacating the office. The Chancellor found that only one name was suggested by the Search Committee, and the same is in violation of the UGC Regulations concerned.

3. Learned Senior counsel Sri. Ranjit Thampan, instructed by Sri.V.M.Krishnakumar submitted that out of the three nominees in the Search Committee, the first person, Dr.V.K.Ramachandran was a former Professor in the Indian Statistical Institute, the second nominee was of the Chairman of the UGC and the third nominee was the Chief Secretary, the nominee of Chancellor himself, who functioned as the Vice Chancellor of the Calicut University between 26.5.2011 and 12.8.2012 and such no illegality can be found in the constitution of the Search Committee in terms of the UGC Regulations. All of them were persons of eminence in the sphere of Higher Education and the Regulations do not speak of a member in service at the time of selection. The test is only if the persons included in the Search Committee are persons of eminence in the sphere of Higher Education and nothing more, and the findings in the order impugned are clearly wrong. It is also his argument that the conclusion that the appointment is *ab initio void* cannot be made by the Chancellor. The determination of the illegality of the appointment cannot be made by any administrative authority, and it was in the peculiar facts of **Professor (Dr) Sreejith P.S. v. Dr Rajasree M.S. and others** (2022 SCC Online SC 1473) that the Hon'ble Supreme Court found that the appointment was

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void ab initio. It is also his submission that there was no case for the Chancellor that the persons included in the Search Committee are not persons of eminence from the sphere of Higher Education. He also argued that there was no power to remove the Vice-chancellor except in terms of Section 10(9) of the Calicut University Act, and in the face of express provisions in the Act, no reliance could have been placed on Section 16 of the General Clause Act, 1897. Thus, the very premise on which the order of removal of the Vice Chancellor is passed is illegal, and the impugned order cannot be sustained.

4. The learned counsel for the Vice Chancellor of the Sankaracharya University of Sanskrit, Sri.M.P.Sreekrishnan submits that going by the relevant University Act, the Vice Chancellor can be removed only by way of the procedure under Section 8(3) of the Act and that not having been done, no order could have been passed directing the removal of the Vice Chancellor. Section 16 of the General Clauses Act, for the same reason, has no application. It is also argued that it was the Chancellor who made the appointment from the list, where seven persons were considered for selection, and therefore, he cannot *approbate and reprobate* and has no power to adjudicate being a party to the appointment process more so when the Chancellor did not insist on a panel of three names. Under such circumstances, he cannot decide the dispute, much less allege illegality in the process of selection. Thus, it is argued that Exts.P9 and P11 are

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without jurisdiction. It is also argued that the judgment in **Dr. A.V. George v. Chancellor, Mahatma Gandhi University (WA NO.1432 of 2014)** has no application as fraud was alleged in that case.

5. Learned senior counsel Sri.P. Sreekumar, appearing for the Chancellor, submits that the Constitution of the Search Committee in the instant cases was flawed, being in violation of UGC Regulations,2018. The inclusion of the Chief Secretary, who is the Principal Officer of the Government vitiates the constitution of the Search Committee as the Government has an active role in the composition of the Senate, Syndicate and also in the nominations. Under such circumstances, the inclusion of the Chief Secretary in his official capacity vitiates the constitution of the search Committee. Even if one member is included in the Search Committee, in violation of the UGC Regulations 2018, the composition is vitiated, and the panel submitted by them is in breach of the 2018 Regulations. He also relied on the paragraphs in the judgment in **A.V. George's** case, which held that the appointing authority had the power to recall the appointment. It is his further submission that the Chief Secretary cannot be said to be a person of eminence in the sphere of Higher Education, though he may be so in the discharge of his administrative duties.

6. Learned counsel Sri. S. Krishnamoorthy, appearing on behalf of the

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UGC, submits that even the notification that started the selection process for appointing the Vice Chancellor of Calicut University was illegal as it was not in accordance with the 2018 UGC regulations. He also argues that the inclusion of the Chief Secretary was bad and that the issue is squarely covered by the judgment in **Rajasree's** case, which held that the appointment can only be in terms of 2018 UGC Regulations and that the State Legislations, which are in conflict with the UGC Regulations, are to be ignored.

7. Learned counsel Sri.P.C.Sasidharan appearing for Calicut University, submits that it is not the case of the Chancellor that either Dr V.K.Ramachandran or the Chief Secretary are not persons of eminence in the sphere of Higher Education and in the absence of such a finding, no assumption could have been drawn that the composition of the search committee is bad. He says that connection with the University or its colleges had to be at or around the time of selection and that the Chief secretary who was in the search committee was a former Vice Chancellor of Calicut University. It is also argued that it was the Chancellor who nominated the Chief Secretary, and therefore, he cannot object to the same at a later point in time. It was the Chancellor who selected the current Vice Chancellor from among the panel of names, and therefore, the Chancellor now cannot be permitted to sit in decision on the correctness of the selection process.

8. Learned Special Government Pleader, Sri.T.B.Hood submits that the Chief Secretary was also one of the longest serving Principal Secretaries of the Higher Education department, and therefore, he must be considered as a person of eminence in the sphere of Higher Education.

9. Learned Senior counsel Sri. George Poonthottam, appearing for the petitioner seeking quo warranto, submits that the very notification that led to the selection of the Vice Chancellor in Calicut University was not under the UGC 2018 Regulations, and illegality commenced from that stage. Secondly, he argues that the Chief Secretary, with his administrative capacity, cannot be termed as a person of eminence in the sphere of Higher Education. It is his further argument that the case is squarely covered by the Supreme Court in **Rajasree (Supra), Gambhirdan K.Gadhvi v. State of Gujarat and others** [(2022) 5 SCC 179], **State of West Bengal v. Anindya Sundar Das and others** (AIR 2022 SC 4902) and also in **Dr.Premachandran Keezhoth and another v. The Chancellor of Kannur University and ors.** (MANU/SC/1279/2023). Even if the Chancellor committed any wrong, the appointment, if it is against the terms of the UGC Regulations 2018, the same is illegal and void. Admittedly, in the case of the Vice Chancellor of the Sree Sankaracharya University of Sanskrit, only one name was forwarded, which is the same as in **Rajasree's** case.

10. Learned Counsel Sri Dinesh Mathew J Muricken, the learned Standing Counsel appearing for the Sree Sankaracharya University of Sanskrit, tried to sustain the appointment of the Vice Chancellor by stating that the provisions of the Sree Sankaracharya University of Sanskrit Act, 1994, in particular, Section 24 thereof has to be construed harmoniously along with the UGC Regulations 2018 and in such a situation the appointment of the Vice Chancellor cannot be faulted.

11. Having considered the rival submissions and perusing the records, it must be noticed that this Court, by Ext.P10 judgment, had clearly held that the appointment of the Vice Chancellors of the Universities must be in terms of the UGC regulations 2018, all that was relegated was to consider on the legality of the show cause notices and also on the merits of the alleged violation of the UNGC Regulations 2018 in terms of the law laid down in **Rajasree's** case. With regard to WP(C)No.10667/2024, admittedly, only one name was forwarded by the Selection Committee to the Chancellor, which is in total violation of 7.3 of UGC Regulations,2018 and the ratio in **Rajasree's** case applies on all fours. Though there is a prayer in the writ petition to declare that Regulation 7.3. is void, the continuance of the petitioner as Vice Chancellor consequent to a selection that is totally contrary to the statutory provision referred above and falling in the teeth of the judgments

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of the Supreme Court, cannot be permitted. Accordingly, I am not inclined to grant a stay of operation of Ext.P11 in WP(C)No. 10667/2024, as regards Dr.M.V.Narayanan, the Vice Chancellor of Sree Sankaracharya University of Sanskrit, and the request for an interim order stay of operation, is hereby rejected.

12. As regards the contention in WP(C)No.10520/2024 that the Chief Secretary cannot be said to be a person of eminence from the sphere of Higher education, it is pertinent to note that he was the previous Vice Chancellor of the University between 26.5.2011 and 12.8.2012, and had also served as the Principal Secretary of the Higher Education Department for a considerably long time. In light of the above facts, whether he can be treated as a person of eminence in the sphere of Higher Education requires consideration in the writ petition, more so when the Chancellor himself had nominated him. It is also pertinent to note that Regulations 7.3 (i) speak of academicians, whereas the same is absent in 7.3(ii). All academicians may be from the sphere of Higher Education, but all in the sphere of Higher Education need not necessarily be academicians. True, the Chief Secretary was included in the Committee in his capacity as Chief Secretary, but if he is even otherwise a person of eminence in the sphere of Higher Education, then prima facie, his inclusion cannot be seen as violative of the relevant UGC regulation.

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13. The inclusion of Dr V.K.Ramachandran, who was a Professor at the Indian Statistical Institute, cannot be treated as illegal in any manner as he fits in as a person of eminence in the sphere of higher education though he was not holding any academic position at the time of selection in question. A person of eminence does not shed his stature or cease to be a person of eminence solely on account of his retirement or change of position, as all that the UGC Regulations require is to be a person of eminence in the sphere of Higher Education and not necessarily an officer serving in any particular position at the time of inclusion in the Search Committee. The finding in this regard by the Chancellor that Dr V.K. Ramachandran was working as the Vice Chairman of the Kerala State Planning Board, and his occupation at the relevant time had nothing to do with the field of Higher Education, appears to be unsustainable.

14. The further question as to whether the Chancellor can declare the appointment of the Vice Chancellor made by him as void ab initio also requires to be adjudicated in the writ petition.

For these reasons, the operation of the order Ext.P5 in WP(C)No.10520/2024 as regards Dr.M.K.Jayaraj, the Vice Chancellor of the Calicut University is stayed until further orders.

Sd/- **MOHAMMED NIAS C.P.**

JUDGE

dlk/16-21.3.2024