

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

2024:IO:KER:36

**PRESENT****THE HONOURABLE THE ACTING CHIEF JUSTICE MR. A.MUHAMED MUSTAQUE****&****THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN****&****THE HONOURABLE MR. JUSTICE S.MANU****Thursday, the 12<sup>th</sup> day of September 2024 / 21st Bhadra, 1946****OP(KAT) NO. 152 OF 2021****AGAINST THE ORDER DATED 09.12.2019 OA 1578/2019 OF KERALA ADMINISTRATIVE  
TRIBUNAL, THIRUVANANTHAPURAM.****PETITIONERS/REVIEW APPLICANTS IN RA :**

1. AJAL RAMAKRISHNAN, AGED 28 YEARS, S/O.RAMAKRISHNAN, WORKSHOP INSTRUCTOR, TECHNICAL HIGH SCHOOL, VANNAPURAM, IDUKKI - 685 607, RESIDING AT CHENNATTU HOUSE, VANNAPURAM P.O., IDUKKI - 685 607.
2. GILEESH V.V., AGED 43 YEARS, S/O.VALSAN V.S., WORKSHOP INSTRUCTOR, G.H.S.S.CHERANALLOOR, KOOVAPPADY, PERUMBAVOOR, ERNAKULAM - 683 544 RESIDING AT VADASSERY HOUSE, V.P.THURUTH, CHENDAMANGALAM P.O., N.PARAVOOR, ERNAKULAM - 683 512.
3. MANEESH C.C., AGED 32 YEARS, S/O.K.K.CHANDRASEKHARAN, WORKSHOP INSTRUCTOR, G.H.S.S.NEDUVELI, KONCHIRA P.O., VEMBAYAM, THIRUVANANTHAPURAM - 695 615.
4. ALI AKBAR E.T., AGED 35 YEARS, S/O.MUSTHAFI, INSTRUCTOR GRADE II, DEPARTMENT OF CHEMICAL ENGINEERING, GOVERNMENT ENGINEERING COLLEGE, WEST HILL, KOZHIKODE - 673 005, RESIDING AT VEERAKULATH HOUSE, THURAKKAL P.O., KONDOTTY, MALAPPURAM - 673 638.
5. SHEFY YOOSEF, AGED 31 YEARS, S/O.YOOSEF SULAIMAN DEMONSTRATOR IN ELECTRONICS, GOVERNMENT POLYTECHNIC COLLEGE, VECHOOCHIRA, PATHANAMTHITTA - 686 511 RESIDING AT OMANNIL HOUSE, CHATHANTHARA P.O., PATHANAMTHITTA - 686 510.

**RESPONDENTS/RESPONDENTS IN RA:**

1. ATHIRA I.C, D/O.CHANDRASEKHARAN NAIR, AGED 31 YEARS, RANK HOLDER NO.54 IN RANK LIST NO.603/18/SSVII DATED 17/08/2018, RESIDING AT INDEEVARAM, PADINJATTIL, KEEZHTHONNAKKAL, PUTHENCODE, THIRUVANANTHAPURAM - 695 584.
2. JITHIN J.S., S/O.JAYAN, AGED 26 YEARS, RANK HOLDER NO.1 IN SUPPLEMENTARY RANK LIST (HINDU NADAR) IN RANK LIST NO.603/18/SSVII DATED 17/08/2018 RESIDING AT 59/930, SREE BHAVAN, KUTHIRAVATTOM, VENGANNOOR P.O., THIRUVANANTHAPURAM - 695 523.
3. LIJU RAJ T., S/O.RAJU J., AGED 33 YEARS, RANK HOLDER NO.1 IN SUPPLEMENTARY RANK LIST (LATIN CATHOLIC/ANGLO INDIAN) IN RANK LIST NO.104/19/SSVII DATED 08/02/2019 RESIDING AT THEKKE NAGANEZHATH, ERAMALLOOR P.O., EZHUPUNNA, ALAPPUZHA - 688 537.
4. UNNIKUTTAN C., S/O.CHIDAMABARAN, AGED 28 YEARS, RANK HOLDER NO.77 IN RANK LIST NO.104/19/SSVII DATED 08/02/2019 RESIDING AT LALITHALAYAM, VARANAD P.O., CHERTHALA, ALAPPUZHA - 688 539.
5. VEENA MARY, D/O.YESUDAS, AGED 31 YEARS, RANK HOLDER NO.3 IN



SUPPLEMENTARY RANK LIST (LATIN CATHOLIC/ANGLO INDIAN) IN RANK LIST NO.1154/17/SIV DATED 13/12/2017 RESIDING AT LOORDU VILASAM, MARTHA P.O., KARAVALOOR, PUNALUR - 691 333.

6. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
7. HIGHER EDUCATION DEPARTMENT, GOVERNMENT OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY TO HIGHER EDUCATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
8. FINANCE DEPARTMENT, GOVERNMENT OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY TO FINANCE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
9. DIRECTORATE OF TECHNICAL EDUCATION, REPRESENTED BY DIRECTOR OF TECHNICAL EDUCATION, PADMAVILASOM STREET, FORT P.O., THIRUVANANTHAPURAM - 695 023.
10. ALL INDIA COUNCIL FOR TECHNICAL EDUCATION, REPRESENTED BY ITS CHAIRMAN, NELSON MANDELA MARG, VASANT KUNJ, NEW DELHI - 110 070.
11. KERALA PUBLIC SERVICE COMMISSION, REPRESENTED BY ITS SECRETARY, PATTOM, THIRUVANANTHAPURAM - 695004.
12. THE SECRETARY, KERALA PUBLIC SERVICE COMMISSION PATTOM, THIRUVANANTHAPURAM - 695 004.
13. SUJITH KUMAR K.V., AGED 36 YEARS, S/O.S.KESAVAN ASHAN, RESIDING AT SAROVARAM, VENKAVILA, IRINCHAYAM P.O., NEDUMANGAD, THIRUVANANTHAPURAM - 695 561 PRESENTLY WORKING AS WORKSHOP INSTRUCTOR, GOVERNMENT TECHNICAL HIGH SCHOOL, PAMPADY, KOTTAYAM - 686 502.
14. KIRAN K.S., AGED 37 YEARS, S/O.KRISHNAN G., DWARAKA, KUDUMBANOOR, PRAVACHAMBALAM, NEMOM P.O., THIRUVANANTHAPURAM - 695 020 PRESENTLY WORKING AS WORKSHOP INSTRUCTOR, GOVERNMENT POLYTECHNIC COLLEGE, NEDUMANGAD - 695 541.

This petition again coming on for orders on 12/09/2024 upon perusing the petition and the affidavit filed in support of OP(KAT) and this Court's order dated 09/08/2023 upon hearing the arguments of M/S.P.NANDAKUMAR & AMRUTHA SANJEEV, Advocates for the petitioners and M/S.RAGHUL SUDHEESH, K.J.GLAXON, J.LAKSHMI & AMAL JEES ALEX, Advocates for the Respondents No. 1 to 5, SENIOR GOVERNMENT PLEADER FOR R6 TO R9, SRI.SAJITH KUMAR V, STANDING COUNSEL for the Respondent No.10, AND OF SRI.P.C.SASIDHARAN, STANDING COUNSEL(KPSC) FOR R11 AND R12 of , the court passed the following:



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CR

A. MUHAMED MUSTAQUE , Acg. C. J. &amp;

SHOBA ANNAMMA EAPEN &amp; S. MANU , JJ.

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O.P.(KAT)No.152/2021 & 154/2021  
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Dated this the 12th day of September, 2024

ORDERA. Muhamed Mustaque, Acg. C. J.

These matters have been placed before the Full Bench on a reference order passed by a Division Bench doubting the proposition of law laid down in **Suresh v. State of Kerala (2021 (1) KLT 566)** and **Haridas v. Athira (2021 (1) KLT 546)**. The point of law involved for consideration is, on the power of the All India Council for Technical Education (AICTE) to fix and stipulate the mode or method of appointment of teaching staff in technical institutions. In **Suresh's** case and **Haridas's** case (supra), the Division Bench was of the view that the power of AICTE includes the power to prescribe qualification, method of appointment etc. of teaching staff in Engineering Colleges and Technical Institutions. The Division Bench referred



to Section 10 of the AICTE Act to hold that, the power conferred under the statutory provision includes all such steps to be taken as they think fit for ensuring coordinated and integrated development of technical and management education, particularly noting the power under Section 10(i), the Division Bench, in no uncertain terms declared that AICTE have the power to lay down norms and standards as to the staff pattern, staff qualification etc. The Division Bench in the reference order, notes the power of the State to make Rules as per Entry 41, Public Services of List-II State List r/w Entry 25, General Education of Concurrent List and also notes the power under Article 309 of the Constitution to frame Rules, was of the view that the power of the AICTE to prescribe qualification to achieve a standard of education cannot extend to prescribing a method of appointment, which falls in the domain of the State. The Division Bench was of the view that the method of appointment has nothing to do with the standard of education or quality of education, which is the prerogative of the AICTE.

2. To understand the legal issue, we shall refer to the facts at a bare minimum.

AICTE by notification dated 01/03/2019, issued a notification in exercise of the power conferred on it under Section 23 r/w Section 10(g), (h) and (i) of All India Council for Technical Education Act, 1987 fixing minimum



qualification for appointment of teachers and other academic staff in the technical institution. This notification is referred to as Technical Education (Diploma) Regulation, 2019. The notification prescribes cadre structure and mode of appointment. As per the notification, the post of lecturer will have to be filled by a qualified hand by direct recruitment. An original application was filed before the Kerala Administrative Tribunal by candidates, who are included in the rank list published by the Public Service Commission for the post of lecturer in different branches of engineering colleges and polytechnics under the Technical Education department in the State. They approached the Tribunal aggrieved by an action by the department to fill up vacancies of lectures following the Special Rules, mainly Kerala Technical Education Service (Amendment) Rules 2010, in the ratio of 13:7 between direct recruitment and by transfer. The applicant contended before the Tribunal in light of AICTE regulations that the only method of appointment is by direct recruitment. The Tribunal directed to fill all the vacancies of lecturers by direct recruitment discarding the special rules. The petitioners in these cases working as Workshop Instructor/Demonstrator/Instructor Gr.II etc. in the Technical Education Department approached the Tribunal to review the order. The Tribunal dismissed the review petition. Accordingly, the petitioners approached this Court.



3. When the matter came up before the Division Bench, the Division Bench noted the judgment of another Division Bench in **Suresh**'s case and **Haridas**'s case (supra) in the same line of view taken by the Tribunal. This is how the Division Bench doubted the proposition laid down in **Suresh**'s case and **Haridas**'s case (supra).

### **SUBMISSIONS**

4. The learned counsel for the petitioners Sri.P.Nandakumar would contend that though AICTE can fix qualifications for various teaching posts in technical institutions, it has no authority to fix the method of appointment as the same has no bearing measures for the maintenance of standards in higher education. According to the learned counsel, the method of appointment is in the domain of the State Government under Entry 41 in List II, interpreted in conjunction with the powers conferred on the State under Article 309 of the Constitution of India. The State is competent to make laws relating to public services. Placing reliance on various precedents and also the special rules notified by the Government of Kerala in the Kerala Public Service Act, 1968, learned counsel argued that special rules address the method of appointment.

5. We shall refer to the precedents cited by the counsel Sri.P.Nandakumar:

**George v. State of Kerala (1992 KHC 57)**

The Apex Court held that teachers cannot claim as a matter of right that they are entitled to retire at the age provided for superannuation under the UGC scheme.

**Bharathidasan University v. All India Council for Technical Education (2001 KHC 1682)**

The Apex Court in the above judgment, in paragraphs 8, 10 and 13 referred to the regulatory power of AICTE and opined that AICTE is not created as a superior authority to supervise and control Universities thereby superimpose itself upon such Universities merely for the reason that it is imparting teaching in technical education or programmes.

**Association of Management of Private Colleges and Another v. All India Council for Technical Education and Others (2013 KHC 4346)**

Referring to paragraphs 38 and 39 of the above judgment, learned counsel argued that the AICTE's competence to inspect is confined to maintaining appropriate standards and competitive norms and not an authority to issue and enforce any sanction by itself to regulate any other University.



**Jagdish Prasad Sharma and Others v. State of Bihar and Others (2013 KHC 4564)**

In the above judgment, the Apex Court observed the competence of the State Government to enact its law concerning the service conditions of the teachers and the Apex Court held that UGC norms regarding the age of superannuation as such would bind the State Government.

6. Learned counsel for the petitioners referring to **Suresh's** case (supra) would argue that the Division Bench had not adverted to any reason to hold that method of appointment would fall in the Entry 66 - List I of the VIIth Schedule of the Constitution.

7. The Standing Counsel for the Public Service Commission placing reliance on **Dr.J.Vijayan & Others v. The State of Kerala and Others (2022 LiveLaw (SC) 6655** and **Dr.Prakashan v. State of Kerala (2023 (5) KLT 181 (SC))** would submit that service conditions fall purely as a matter within the domain of the State Government.

8. Learned Standing Counsel for the AICTE placing reliance on Full Bench judgment of this court in **Radhakrishnan Pillai v. Travancore Devaswom Board [2016 (2) KLT 245 (F.B.)]**, Division Bench judgment of this Court in **Aleyamma Kuruvila v. Mahatma Gandhi University, Kottayam (2023 (2) KHC 11)** and the judgment of the Apex Court in **State**





**of M.P and Ors. v. Shardul Singh (MANU/SC/0510/1969), Syed Khalid Rizvi and Ors. v. Union of India (UOI) and Ors. (MANU/SC/0682/1992), State of Haryana and Others v. Charanjit Singh and Others ((2006) 9 SCC 321)** would argue that the AICTE is competent to lay down norms and standards for technical institutions as referable under Section 10(i) of the AICTE Act, 1987. It is submitted that the prescription by AICTE that the post of lecturer shall be filled by direct recruitment is to bring uniformity and to maintain quality and standard of education.

### **DISCUSSIONS**

9. In the notification issued by the AICTE dated 01/03/2019, it is explicitly stated that the mode of appointment to the post of lecturer is by direct recruitment. In the Kerala Technical Education Service (Amendment) Special Rules made by the State Government in the year 2010, appointment to the post of lecturer is by direct recruitment and by transfer appointment in the ratio of 13:7. In **Haridas**'s case (supra), the Division Bench held that Rules framed by the State under Article 309 of the Constitution, in conjunction with provisions of Public Service Act cannot operate against the stipulation of the AICTE, if such stipulations pertain to the maintenance of standards of education. The Division Bench in obvious terms opined in



**Haridas's** case (supra) that stipulation regarding direct recruitment can be construed as a requirement relating to the maintenance of standards. The Division Bench reasoned that AICTE had intended for fresh graduates and other qualified candidates to be better equipped to impart technical education than those who would fill the position through promotion.

10. In **Jagdish 's** case (supra), which was quoted extensively in the reference order, the Apex Court held that “regulations framed by UGC under UGC Act, 1956 which relates to Sch.VII List I Entry 66 cannot alter any terms and conditions of enactments by a State under Art.309. A State is entitled to enact any laws about service conditions of teachers and other staff of State Universities, and the same would have effect unless repugnant to any primary Central legislation.”

11. In **Vijayan's** case (supra), the Apex Court reiterated that the question of enhancement of the age of retirement is exclusively within the domain of the policy-making power of the State Government and in paragraph 8 it was observed as follows:

“8. The UGC Regulations have to be consistent with the directions on questions of policy relating to national purposes, as may be given by the Central Government as per Section 20 of the UGC Act, 1956. In the case of any dispute between UGC and the Central Government, as to whether a question is a question of policy relating to



national purpose, a decision of the Central Government prevails over that of UGC.”

12. We may not have much doubt as to the competence of the State Government to fix the method or mode of appointment as it falls within the power of the State to make laws regulating state public services under Entry 41 of List II. The State also has the necessary power under Article 309 of the Constitution to regulate the recruitment of service of persons appointed to public services in connection with the affairs of the State. Mode or method of recruitment cannot be equated with conditions of service in public services. The State’s competency under Article 309 to regulate recruitment necessarily implies that it has the power to prescribe the mode and method of recruitment. At the same time, under the Union List in Entry 66 in List I, it is in the exclusive domain of the Union to prescribe standards of higher education which includes technical institutions. AICTE Act, 1987 is an enactment of the Parliament. In the exercise of power under that enactment, AICTE issued the notification. Under Section 23 of the above enactment, AICTE has the power to make regulations. Based on this power, AICTE issued notifications regulating the method of appointment, which means, the method of appointment is governed by central enactment. It cannot be said, that the method of appointment is not covered under Section 10(i) of the



AICTE Act, which reads thus:

“10. Functions of the Council. - It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may -

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(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations.”

13. If the method of appointment would have a bearing on standards of learning to be imparted in technical education, the court cannot say that such a prescription of the method of appointment is beyond the power of AICTE. While, it may be true that AICTE Act does not explicitly grant authority to prescribe mode of appointment in technical institution, the ACITE believes that the method of appointment is integral to the quality of education to be imparted in a technical institution, the court cannot judicially review the wisdom of an expert body. As rightly noted in **Haridas**'s case (supra) AICTE might have concluded that open selection through direct recruitment would attract more meritorious candidates than by transfer appointment. In direct



recruitment, it is obvious that more opportunities will be available to consider a large number of meritorious candidates. In by transfer appointments, such consideration is restricted and limited to those who are in employment. Therefore we cannot *per se* say that the method of recruitment has no direct bearing on the standard of education. Therefore, we all are of the view that the method of appointment is inextricably connected with the standard or quality of education in technical institutions.

14. Under the Constitutional Scheme in the Concurrent List, the State is also competent to make laws under Entry 25 in regard to education including technical education subject to Entry 66 of List I. Viewed from that angle, any Rules made by the State invoking Entry 25 will be subject to laws made under the Central enactment.

15. Furthermore, laws made by the State under Entry 41 of List II (State List), which relate to State Public Service, may overlap with laws made by the Union. Although the State has the authority to enact laws, such laws may become repugnant if conflicts cannot be avoided. The essence of the regulations made by the AICTE is to maintain educational standards, while the laws made by the State establish recruitment policies. Although the objectives differ, conflicts are inevitable, resulting in unavoidable repugnancy. This repugnancy can arise from the facts of the situation. It need not be



explicitly stated in the legislation; if the court finds, upon inquiry, that factual repugnancy exists, the inevitable consequence is that the applicable law may directly conflict with both parliamentary and State legislation.

16. Under the Constitution, repugnancy can arise in two ways. First, if enactments fall within the legislative spheres allocated to Parliament or State legislation, they may substantially or incidentally overlap, resulting in conflict. In light of the distribution of powers under Article 246, State legislation must yield to parliamentary supremacy. This scenario occurs when Parliament enacts a law covering a field under List I while the State enacts a law for fields under List II of Schedule VII. The second situation arises when laws made by Parliament and the State in the Concurrent List are in direct conflict. In the first situation, State law cannot be upheld as the constitutional framework emphasizes parliamentary supremacy over State laws. In the second situation, State law may be preserved if there is an inconsistency between the laws made by Parliament and those made by the State Legislature, provided the State law receives the assent of the President, as outlined in clause 2 of Article 254.

17. Article 246 addresses the distribution of legislative powers, and the non-obstante clause in Article 246(1) indicates that the power of Parliament is exclusive, thereby excluding State laws. The Constitution envisions that



Union laws enumerated in List I shall prevail over State laws in List II of Schedule VII. If the court finds that the laws made by Parliament and the State cannot coexist, it must resolve the conflict, ruling that the State law becomes inoperative

18. In **Deep Chand v. The State of U.P. and Others (AIR 1959 SCC 648)**, the Apex court in paragraph 16 after referring to American Law in regard to the effect of law made in excess of power in paragraph 16 held as follows:

16. If Arts. 245 and 13 (2) define the ambit of the power to legislate, what is the effect of a law made in excess of that power? The American Law gives a direct and definite answer to this question. Cooley in his "Constitutional Limitations" (Eighth Edition, Volume 1) at page 382 under the heading "Consequences if a statute is void" says:-

"When a statute is adjudged to be unconstitutional, it is as if it had never been And what is true of an act void in toto is true also as to any part of an act which is found to be unconstitutional, and which, consequently, is to be regarded as having never, at any time, been possessed of any legal force"

In Rottschaefer on Constitutional Law, much to the same effect is stated at page 34:

"The legal status of a legislative provision in so far as its application involves violation of constitutional provisions, must however be determined in the light of



the theory on which Courts ignore it as law in the decision of cases in which its application produces unconstitutional results. That theory implies that the legislative provisions never had legal force as applied to cases within that clause."

In "Willis on Constitutional Law," at page 89:

"A judicial declaration of the unconstitutionality of a statute neither annuls nor repeals the statute but has the effect of ignoring or disregarding it so far as the determination of the rights of private parties is concerned. The Courts generally say that the effect of an unconstitutional statute is nothing. It is as though it had never been passed....."

"Willoughby on Constitution of the United States",  
Second Edition, Volume I, page 10:

"The Court does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognize it, and determines the rights of the parties just as if such statute had no application..."

The validity of a statute is to be tested by the constitutional power of a legislature at the time of its enactment by that legislature, and, if thus tested, it is beyond the legislative power, it is not rendered valid, without re-enactment, if later, by constitutional amendment, the necessary legislative power is granted. 'An after-acquired power cannot, ex proprio vigore, "validate a statute void when enacted"

19. In **Union of India v. H.S. Dhillon (1971) 2 SCC 779**, the Apex Court in paragraph 14 held as follows:





“14. Reading Article 246 with the three lists in the Seventh Schedule, it is quite clear that Parliament has exclusive power to make laws with respect to all the matters enumerated in List I and this notwithstanding anything in clauses (2) and (3) of Article 246. The State Legislatures have exclusive powers to make laws with respect to any of the matters enumerated in List II, but this is subject to clauses (1) and (2) of Article 246. The object of this subjection is to make Parliamentary legislation on matters in Lists I and III paramount.”

20. It is appropriate to refer to paragraphs 38 and 41 in the judgment of the Apex Court in **M/s Hoechst Pharmaceuticals Ltd. and Another etc. v. State of Bihar and Others (AIR 1983 SC 1019)**

“38. It is obvious that Art. 246 imposes limitations on the legislative powers of the Union and State Legislatures and its ultimate analysis would reveal the following essentials:

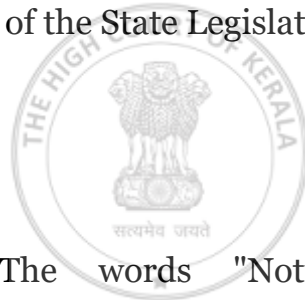
1. Parliament has exclusive power to legislate with respect to any of the matters enumerated in List 1 notwithstanding anything contained in clauses (2) and (3). The non obstante clause in Art. 246 (1) provides for predominance or supremacy of Union Legislature. This power is not encumbered by anything contained in clauses (2) and (3) for these clauses themselves are expressly limited and made subject to the non obstante clause in Art. 246 (1). The combined effect of the different clauses contained in Act 246 is no more and no less than this that in respect of any matter falling within list I, Parliament has exclusive power of legislation.

2. The State Legislature has exclusive



power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II of the Seventh Schedule and it also has the power to make laws with respect to any matters enumerated in List III. The exclusive power of the State Legislature to legislate with respect to any of the matters enumerated in List II has to be exercised subject to clause (1) i.e. the exclusive power of Parliament to legislate with respect to matters enumerated in List 1. As a consequence, if there is a conflict between an entry in List I and an entry in List II which is not capable of reconciliation, the power of Parliament to legislate with respect to a matter enumerated in List II must supersede pro tanto the exercise of power of the State Legislature.

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41. The words "Notwithstanding anything contained in clauses (2) and (3),, in Article 246 (1) and the words "Subject to Cls. (1) and (2)" in Art. 246 (3) lay down the principle of Federal supremacy viz. that in case of inevitable conflict between Union and State powers, the Union power as enumerated in List I shall prevail over the State power as enumerated in Lists II and III, and in case of overlapping between Lists II and III, the former shall prevail. But the principle of Federal supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is an "irreconcilable" conflict between the Entries in the Umon and State Lists. In the case of a seeming conflict between the Entries in the two lists, the Entries should be read together without giving a narrow and restricted sense to either of them. Secondly an attempt should be made to see whether the two



Entries cannot be reconciled so as to avoid a conflict of jurisdiction. It should be considered whether a fair reconciliation can be achieved by giving to the language of the Union Legislative List a meaning which, if less wide than it might in another context bear, is yet one that can properly be given to it and equally giving to the language of the State Legislative List a meaning which it can properly bear. The non obstante clause in Article 246 (1) must operate only if such reconciliation should prove impossible. Thirdly, no question of conflict between the two lists will arise if the impugned legislation, by the application of the doctrine of "pith and substance" appears to fall exclusively under one list, and the encroachment upon another list is only incidental”

**21. In India Cement Ltd. and Others v. State of Tamil Nadu and Others (1990) 1 SCC 12**, the Apex court in paragraph 18 observed as follows:

“18. Certain rules have been evolved in this regard, and it is well settled now that the various entries in the three lists are not powers but fields of legislation. The power to legislate is given by Article 246 and other articles of the Constitution. See the observations of this Court in *Calcutta Gas Co. v. State of West Bengal*. The entries in the three lists of the Seventh Schedule to the Constitution, are legislative heads or fields of legislation. These demarcate the area over which appropriate legislature can operate. It is well settled that widest amplitude should be given to the language of these entries, but some of these entries in different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. Then, it is the duty of the court to find out its true intent and purpose and to examine a particular



legislation in its pith and substance to determine whether it fits in one or the other of the lists.”

22. In **Baharul Islam and Others v. Indian Medical Association and Others (AIR 2023 SC 721)**, the Apex Court held in paragraph 24 as follows:

“24. We do not think the doctrine of repugnancy governing Article 254 of the Constitution of India, would apply in the instant case. Although, Entry 25 of List III of the Seventh Schedule of the Constitution of India is in the Concurrent List which gives powers to both the Union as well as the State Legislatures to pass laws on the subject of ‘Education’, it is significant to note that any such law to be made by the State Legislature is subject to, inter alia, Entry 66 of List I or the Union List of the Seventh Schedule. Hence, when there is a direct conflict between a State Law and the Union Law in the matter of coordination and determination of standards in higher education (Entry 66 of List I) such as in medical education, concerning allopathic medicine or modern medicine, as is in the instant case, where the State Law is in direct conflict with the Union law, the State Law cannot have any validity as the State Legislature does not possess legislative competence. In other words, the Assam Act and Rules and Regulations made under the said Act, being in conflict with the Indian Medical Council Act, 1956 (IMC Act, 1956) and the Rules and Regulations made thereunder, the doctrine of repugnancy as such would not apply within the meaning of Article 254 of the Constitution.”

23. In this matter, this conflict is not incidental to the matter of



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appointment and being directly in conflict, the court will have to resolve such conflict by placing reliance on Article 246 of the Constitution of India. We are of the view that the regulation framed under the Central enactment would prevail over the Rules framed under the Kerala Public Service Act.

24. In conclusion, we answer that the law laid down in **Suresh**'s case and **Haridas**'s case is correct law and does not require any re-consideration.

Reference is answered.

Sd/-



**A. MUHAMED MUSTAQUE**  
**ACTING CHIEF JUSTICE**

Sd/-

**SHOBA ANNAMMA EAPEN**  
**JUDGE**

Sd/-

**S. MANU**  
**JUDGE**

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