IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION (LODGING) NO.80 OF 2011

Suresh Patilkhede)
of Thane, Adult, Indian Inhabitant)
residing at 403/A, Snow White Co.op. Hsg.Soc. Ltd.)
Hans Road, Khopat, Panchpakhadi, Thane (W) 400601)..Petitioner

Versus

1) The Chancellor)
Universities of Maharashtra having his office at)
Raj Bhavan, Malabar Hill, Mumbai 400 035.)

2) State of Maharashtra)
through the Government Pleader, High Court)
(O.S.) having his office at P.W.D Building)
High Court Compound, Fort, Mumbai 400 032)

3) The Acting Vice Chancellor)
University of Pune, having its office at)
Ganesh Khind, Pune 411 007.)

4) The Registrar)
University of Pune, having his office at)
Ganesh Khind, Pune 411 007.)

5) Justice Shri Mukul Mudgal (Retd.))
through Nodal Officer, Shri R. Narayanan)
Registrar, Institute of Social and Economic)
Change, Nagarbhavi, Bangalore 560072)

6) Dr. R.S. Deshpande)
Member Search Committee)
through Nodal Officer Shri R. Narayanan)
Registrar, Institute of Social and Economic)
Change, Nagarbhavi, Bangalore 560072)
7) Shri Sanjay Kumar)
the Principal Secretary to Government of)
Maharashtra, Higher & Technical Education)
Department, Mantralaya, Mumbai 400 032.)

8) The University Grants Commission)
having its office at Bahadur Shah Zafar Marg)
New Delhi 110 002.)Respondents

Mr. A.V. Anturkar along with Mr. Pankaj Kowli i/b V.B. Tiwari & Co. for the Petitioner.

Mr. Darius Khambata, Advocate-General, with Mr. D.A. Nalawade, Government Pleader and Mrs.Anjali Helekar for Respondent Nos.1, 2 and & 7.

Mr. Girish Kulkarni with Ms. Swati Deshmukh for Respondent Nos.3 and 4.

Mr. Rui Rodriques for Respondent No.8.

CORAM : MOHIT S. SHAH, C.J. & N.M. JAMDAR, J.

Judgment Reserved On : 24 April, 2012
Judgment Pronounced On : 11 May, 2012

***JUDGMENT* : (Per Chief Justice)**

This Public Interest Litigation raises interesting questions about the role of University Grants Commission (UGC) in appointment of Vice Chancellor of a University governed by the provisions of the Maharashtra Universities Act, 1994 ('MU Act').

2. The petitioner has challenged the appointment of Search Committee for recommending the panel of suitable persons for selection of the Vice Chancellor of Pune University on the ground that the appointment of the Search Committee by the Chancellor in accordance with the provisions of Section 12 of MU Act is not in conformity with the provisions of Regulation 7.3.0 of the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 (" the UGC Regulations, 2010") made under the University Grants Commission Act, 1956 ("the UGC Act").

3. The Chancellor of Pune University (Governor of Maharashtra) formed a three member Search Committee comprising

(i) Mr. Justice Mukul Mudgal (Retired), Former Chief Justice of Punjab & Haryana High Court (Chairman),

(ii) Dr. R.S. Deshpande, Director, Institute of Social and Economic Change, Bangalore; and

(iii) Mr. Sanjay Kumar, Principal Secretary to Government of Maharashtra, Higher & Technical Education Department, Mumbai,

for recommending suitable nominations for the post of Vice Chancellor of Pune University. Chairman of the Search Committee issued an advertisement, which was published in the newspapers dated 4 November 2011 (Exhibit "G") inviting applications/nominations from eminent academicians who fulfill the qualifications required for the post of Vice Chancellor, Pune University as prescribed by the Higher & Technical Education Department of the State Government vide its order dated 27 May 2009. The applications/nominations were required to reach on or before 5 December 2011.

4. The petitioner herein submitted representation dated 23 November 2011 to the Chancellor objecting to the procedure adopted for appointment of Vice Chancellor of Pune University on the ground that it was in violation of University Grants Commission Regulations,

2009 which came to be gazetted on 30 June 2010. The present petition came to be filed on 19 December 2011. While issuing notice on 6 January 2012, it was clarified that there was no ad-interim stay against the interviews scheduled to be held on 9 January 2012. The interviews were held and the Search Committee submitted its recommendations to the Chancellor. Since the University Grants Commission (UGC) had not sent instructions to its counsel for more than a month inspite of service of notice, on 14 February 2012 this Court passed an order specifically highlighting the controversy raised in the petition and calling upon the UGC to make clear whether UGC had any objection or reservation regarding composition of the Search Committee. It was also made clear that since the Search Committee had already conducted interviews and the Chancellor was in the process of finalising the selection for making appointment, UGC shall treat the matter as most urgent.

5. Thereafter by affidavit dated 6 March 2012 of its Deputy Secretary, UGC has taken the stand that the UGC Regulations, 2010 (including those for appointment of Pro-Chancellor and Vice Chancellor) under the UGC Act, 1956 are traceable to Entry 66, List I, VII Schedule of the Constitution and the Regulations are, therefore, binding on the State Government and the concerned universities and that, therefore, in view of Regulation 7.3.0 of UGC Regulations, 2010, the Search Committee in question cannot be termed valid for the purpose of selection and appointment to the post of Vice Chancellor of Pune University.

6. In view of the above stand of UGC, the controversy is essentially between the petitioner in this Public Interest Litigation supported by UGC on the one hand and the State of Maharashtra and the Chancellor of Pune University (Governor of Maharashtra) on the other hand.

7. Mr.Anturkar, learned Counsel for the Petitioner, and Mr.Rui Rodriques, learned Counsel for the UGC, have raised the following contentions :-

(i) Parliament alone is competent to make legislation on the subjects covered by Entry 66 in List I (Union List) VII Schedule i.e. “co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.” The standards of a university would depend to a great extent on the incumbent of the post of academic head of the University i.e. Vice Chancellor and, therefore, Section 26(1)(e) and (g) of the UGC Act empower the delegate of Parliament i.e. UGC to lay down the minimum educational qualifications and also to determine the method of appointment of Vice Chancellor of any University regulated by the provisions of the UGC Act.

(ii) the power of the State Legislature to make laws under Entry 11 in List II prior to 1977 and under Entry 25 in List III (Concurrent List) from 1977 onwards will be only in respect of subjects excluding co-ordination and determination of standards in institutions of higher learning. Hence, the State Legislature and State Government can prescribe salaries and allowances payable to Vice Chancellor of a University governed by the MU Act and similarly make other provisions like salaries and allowances payable to other teaching staff of the Universities in the State of Maharashtra, but the State legislature or the State Government as its delegate have no legislative competence to prescribe the qualifications for appointment of Vice Chancellor or to prescribe the method of appointment of Vice Chancellor. Hence the constitution of the Search Committee by the Chancellor under Section 12(1) of the MU Act, 1994, is illegal, because it does not include a nominee of UGC and, therefore, it is not in conformity with Regulation 7.3.0 of the UGC Regulations, 2010 framed under the UGC Act, 1956.

(iii) the provisions of Section 12 and particularly Section 12(1)(a) of the MU Act, 1996 are repugnant to the provisions of the UGC Act, 1956 and the UGC Regulations, 2010.

(iv) UGC Regulations, 2010 are made by UGC in exercise of the powers under Section 26(1)(e) and (g) of the UGC Act, 1956. Since the UGC Act was enacted by Parliament in exercise of its law making power under Article 246 read with Entry 66 in List I of the VII Schedule, the UGC Regulations, 2010 over-ride the provisions of Section 12 of the MU Act which is enacted by the State legislature. Reliance has been placed on the decisions of the Supreme Court in

(a) *Bharati Vidyapeeth (Deemed University) and others vs State of Maharashtra and another*, [1]

(b) *Prof. Yashpal and another vs State of Chattisgarh and others*,[2]

(c) State of Tamilnadu and another vs Adhiyaman Educational & Research Institute and another, [3]

1 (2004)11 SCC 755
2 (2005) 5 SCC 420
3 (1995) 4 SCC 104

8. On the other hand, Mr.Darius Khambata, learned Advocate-General for the State of Maharashtra and the Chancellor of Pune University (Governor of Maharashtra) as well as Mr.Girish Kulkarni, learned Counsel for the Pune University have opposed the petition and made the following submissions :

(a) When Parliament enacted UGC Act in 1956 its legislative power was traceable to Article 246(1) read with Entry 66 in List I (Union List) in the VII Schedule. Hence, UGC (as delegate of Parliament) has no power to go beyond Entry 66. Section 26 of the UGC Act also, therefore, did not give the delegate (UGC) any power wider than the power which Parliament had under Entry 66 in the Union List.

(b) Section 26(1) (e) of the UGC Act conferring power on UGC to make Regulations consistent with the Act and the Rules made thereunder confers power to make Regulations “defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction”. It is submitted that Vice Chancellor

is not a member of the teaching staff of the University as the Vice Chancellor is not expected to give instructions. The Vice-Chancellor is the Administrative Head of the University for day to day administration and even to make appointments to the posts of teachers like Professors, Assistant Professors and Lecturers.

(c) Even otherwise Section 26(1)(e) provides that the UGC may make Regulations defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff. The UGC Regulations are, therefore, recommendation in nature as held by the Supreme Court in Delhi University v/s. Raj Singh & ors.[4] The State Government order dated 15 February 2011 at Exhibit "F" enumerates those Regulations which are adopted by the State Government out of the UGC Regulations, 2010, since Regulations 7.2.0 and 7.3.0 are not adopted, non-adoption of a recommendation or directory provision like Regulation 7.3.0 would not render the State legislation invalid or unconstitutional.

4 1994 Supp.(3) SCC 516

(d) Clause (g) of Section 26(1) of the UGC Act conferring power on UGC to make regulations for "regulating the maintenance of standards and the co-ordination of work or facilities in Universities" cannot be treated as conferring power to prescribe the qualifications for the post of Vice Chancellor or to lay down the method of appointment of Vice Chancellor. Clause (g) merely provides for maintenance of standards of work or facilities in Universities and the co-ordination of work or facilities in the Universities.

(e) In view of the above constitutional and legislative scheme, UGC Regulations, 2010 go far beyond the Regulation making power of UGC and, therefore, Regulation 7.3.0 must be treated as invalid.

(f) In any view of the matter, even proceeding on the assumption that Section 26(1)(e) and (g) of the UGC Act confer power on UGC to make Regulations prescribing the qualifications and mode of selection and method of appointment of Vice Chancellor of a University governed by the UGC Act, 1956 and, therefore, Regulation 7.3.0 of the UGC Regulations, 2010 is valid, even then such Regulations, being in the nature of subordinate legislation, cannot over-ride the provisions of Section 12 of the MU Act, 1994 which is a plenary legislation made by the State legislature.

(g) Relying on the following decisions, it was vehemently submitted by the learned Advocate General that though a Central legislation can over-ride a State legislation in a Concurrent List to the extent of the repugnancy or inconsistency in view of the provisions of Article 246(3), a subordinate legislation under a Central legislation cannot over-ride a plenary legislation made by the State Legislature.

(i) Ch. Tika Ramji and others vs the State of Uttar Pradesh and others,[5] (paragraph 41).

(ii) Chief Inspector of Mines and another vs Karam Chand Thapar, etc.[6](paragraphs 11, 20, 21).

(iii) Meghraj Kothari vs Delimitation Commission and others[7] (paragraphs 14 and 21).

(iv) Indian Express Newspapers (Bombay) Private Ltd and others vs Union of India and others[8] (paragraph 25).

(v) Kerala Samsthana Chethu Thozhilali Union vs State of Kerala and others,[9] (paragraph 17).

(vi) M/s.New India Sugar Mills Ltd. Vs State of Bihar and others,[10] (paragraphs 16 and 29.)

5 AIR 1956 SC 676
6 AIR 1961 SC 838
7 AIR 1967 SC 669
8 (1985) 1 SCC 641
9 (2006) 4 SCC 327 (Page 337)
10 AIR 1996 Patna 94 (Pages 101, 107)

Constitutional and Statutory provisions:

9. Art.246. Subject-matter of laws made by Parliament and by the Legislatures of States.-
(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule..

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule.

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule.

(4) ….....

Seventh Schedule-

List- I

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

	Prior to 42nd Amendment	As per 42nd Amendment (w.e.f. 3-1-1977)
State List Entry 11	Education including universities, subject to the provisions of entries 63,64,65 and 66 of List I and Entry 26 of List III	Entry 11 is omitted
Concurrent List Entry 25	Vocational and technical training of laour	“25. Education including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I ; vocational and technical training of labour.”
Concurrent List Entry 26	Legal, medical and other professions	Legal, medical and other professions

`

(emphasis supplied)

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.-
(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

(emphasis supplied)

10. **University Grants Commission Act, 1956**

Preamble- An Act to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission.

Sec.12. **Functions of the Commission.** - It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co- ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may-

(a) inquire into the financial needs of Universities;

(b) & (c) .....

(d) recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation;

(e) to (i) …..

(j) perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions.

(emphasis supplied)

> 14. **Consequences of failure of Universities to comply with recommendations of the Commission**.- If any University ……. fails within a reasonable time to comply with any recommendation made by the Commission under section 12 …. or commits breach ….. of any regulation made under clause (e) or clause (f) or clause (g) of section 26, the Commission, after taking into consideration the cause, if any, shown by the University for such failure or contravention, may withhold from the University the grants proposed to be made out of the Fund of the Commission.
>
> 26. **Power to make regulations**.
>
> (1) The Commission may, by notification in the Official Gazette make regulations consistent with this Act and the rules made thereunder,-
> (a) to (d).. .
> (e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction;
>
> (f) defining the minimum standards of instruction for the grant of any degree by any University;
>
> (g) regulating the maintenance of standards and the co- ordination of work or facilities in Universities.
>
> (h) to (j) ……..
>
> (2) & (3) ……..

11. The composition of the Search Committee as provided in Section 12(1) of the MU Act, 1994 and the composition of the Search Committee as provided in Regulation 7.3.0 of UGC Regulations, 2010 is required to be compared and contrasted in *juxtaposition* with each other:-

Section 12(1) of the MU Act, 1994.		UGC Regulation 7.3.0
(a) There shall be a Committee consisting of the following members to recommend suitable names to the Chancellor for appointment of Vice-Chancellor, namely :-		(ii) The selection of Vice Chancellor should be through proper identification of a Panel of 3-5 names by a Search Committee …... The members of the above Search Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. ….the following shall be the constitution of the Search Committee.
(i) a member nominated by the Chancellor, who shall be the retired Judge of the Supreme Court or retired Chief Justice of a High Court or an eminent scientist of national repute or a recipient of Padma Award in the field of education;		a) a nominee of the Visitor/Chancellor, who should be the Chairperson of the Committee.
(ii) the Principal Secretary of Higher and Technical Education Department or any officer not below the rank of Principal Secretary to Government nominated by the State Government;		b) a nominee of the Chairman, University Grants Commission.
(iii) the Director or Head of an institution or organisation of national repute, such as, Indian Institute of Technology, Indian Institute of Management, Indian Institute of Science, Indian Space Research Organisation or National Research Laboratory, nominated by the Management Council and the Academic Council, jointly, in the manner specified by the State Government by an order published in the Official Gazette;		c) a nominee of the Syndicate/ Executive Council/ Board of Management of the University.
(b) The member nominated by the Chancellor shall be the Chairman of the Committee;		
(c) The members nominated shall be the persons who are not connected with the university or any college or any recognised institution of the university;		
(3) The Committee shall recommend a panel of not less than five suitable persons for the consideration of the Chancellor for being appointed as the Vice-chancellor. The names so recommended shall be in alphabetical order without any preference being indicated. The report shall be accompanied by a detailed write up on suitability of each person included in the panel.		(iii) The Visitor/ Chancellor shall appoint the Vice Chancellor out of the Panel of names recommended by the Search Committee.

12. We have carefully considered the rival submissions, and given anxious consideration to the issues raised before us.

13. In the first place, we find considerable substance in the submission made by learned Advocate General for the State Government that since the Vice Chancellor of a University under the MU Act is an Administrative Head, next to the Chancellor, he cannot be considered as a member of teaching staff merely because he is considered as the Academic Head also. The language of clause (e) of Section 26(1) itself indicates that a member of teaching staff is one who is expected to give instructions in a particular branch of education. Obviously, the Vice Chancellor of a University is not expected to give instructions in a particular branch of education. It may be that in his capacity as a Professor, the incumbent of the post of Vice Chancellor may be expected to give instruction in a particular branch of education and may be giving instruction, but it is not the Vice Chancellor as such who is expected to give instructions in a particular branch of education and, therefore, in his capacity as Vice Chancellor of the University, he cannot be considered as a member of teaching staff of the University. Regulation 7.3.0 is, therefore, not traceable to Clause (e) of Section 26(1) of the UGC Act.

14. We may also note in this regard that UGC Regulations, 2000, which are repealed by UGC Regulations, 2010 did not deal with the posts of Pro-Chancellor and Vice Chancellor of a University. In fact, the preamble to the UGC Regulations, 2010 itself states that "regulations are issued for minimum qualifications for appointment and other service conditions of University and College Teachers, Librarians, Directors of Physical Education and Sports for the maintenance of standards in higher education and revision of pay scales". The same was the preamble for UGC Regulations, 2000, which are now repealed and which did not deal with the posts of Pro-Chancellor and Vice-Chancellor.

15. Coming to the question whether Regulations 7.2.0 and 7.3.0 can be considered as falling under clause (g) of Section 26(1), it is true that clause (g) confers power on UGC to make regulations "regulating the maintenance of standards and the co-ordination of work or facilities in Universities". While the argument of Mr. Anturkar for the petitioner may have substance in so far as it is contended that clause (g) of Section 26 (1) of UGC Act is traceable to entry 66 in List-I which is "Co-ordination and determination of standards in institutions for higher learning" and, therefore, may take colour from the words of the said entry, we are of the view that qualifications and method of appointment of Pro-Chancellor and Vice Chancellor of the University cannot be treated as satisfying the "direct impact" test.

16. In Dr. Preeti Shrivastava and another vs. State of Madhya Pradesh and ors.[11] , the Apex Court has laid down the test to be applied viz. “direct impact on the standards of education” and thereafter, the Supreme Court enumerated some of the factors on which standards of education in an institute or college depend. They are :

(i) The caliber of the teaching staff;
(ii) A proper syllabus designed to achieve a high level of education in the given span of time;
(iii) The student-teacher ratio;
(iv) The ratio between the students and the hospital beds available to each student;
(v) The caliber of the students admitted to the institution;
(iv) Equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;
(vii) Adequate accommodation for the college and the attached hospital; and
(viii) The standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.

Thus the rules regarding eligibility of students for admission, syllabus, student-teacher ratio, qualifications for appointment of teachers, assessment of students, facilities for teaching etc. will have a direct impact on the standards of education. The list is obviously not exhaustive, but would not include administrative matters of the University such as the method of appointment of Vice Chancellor.

The view that we are inclined to take is supported by the decision of the Supreme Court in State of T.N. v. S.V.Bratheep[12] . The Supreme Court has held that both the entries viz. Entry 66 in List-I

11 (1999) 7 SCC 120
12 (2004) 4 SCC 513

and Entry 25 in List-III have to be read together. In State of A.P. V/s. K.Purshottam Reddy,[13] the Supreme Court followed the decision of the Constitution Bench in R.Chitralekha v. State of Mysore, AIR 1964 SC 1823 holding that the State Law providing for such standard having regard to Entry 66 of List-I would be struck down as unconstitutional only in the event the same is found so heavy or devasting so as to wipe out or appreciably abridge the Central field and not otherwise. As per the law laid down by the Supreme Court both the entries have to be read together.

Applying the aforesaid test of "direct impact on the standard of Education" and the principles laid down in the aforesaid decisions, we are of the view that the qualifications and the method of appointment for the post of Pro-Chancellor and Vice Chancellor of a University cannot be considered as having " direct impact on the standards of education".

17. We are, accordingly, of the considered view that Regulations 7.2.0 and 7.3.0 of UGC Regulations for appointment of Pro-Chancellor and Vice Chancellor of the University governed by UGC Act cannot be treated as falling under Clauses (e) and (g) of Section 26(1) of the UGC Act, 1956.

18. But, now that "Education including ….Universities..." has been moved from the State list to the concurrent list, it cannot be said that Regulations 7.2.0 and 7.3.0 go beyond the law making power of Parliament. Section 12 of the UGC Act, 1956 enlists various functions of UGC and includes inter alia, the following

13 (2003) 9 SCC 564

functions to be performed in consultation with the Universities :

> "(d) recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation.
> (e) to (i).....
> (j) perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions.

In the first phase it is not shown whether Regulations 7.2.0 and 7.3.0 were made in consultation with the University. Assuming that such consultation had taken place, Regulations 7.2.0 and 7.3.0 traceable to the above provisions of Section 12(d) and (j) are only recommendatory in nature and, therefore, not binding on the State Government or the Universities. It may be that Section 14 of the UGC Act may permit the UGC to withhold from the concerned University grants proposed to be made out of the fund of the UGC after following principles of natural justice, on account of non-compliance with any recommendations made by the UGC under Section 12, but that cannot render Section 12 of the Maharashtra Universities Act, 1994 unconstitutional or invalid.

19. In this connection, we may refer to the principle laid down by the Supreme Court in Dr. Ram Pal Chaturvedi vs. State of Erajasthan and ors., 1970 (1) SCC 75, wherein the Supreme Court was concerned with the question about conflict of the rules made for recruitment to the post of Professor in a Government College. The Recruitment Rules made by the Government under the proviso to

Article 309 of the Constitution provided for qualification which was different from the qualification stipulated in the University Ordinance. The appointment in the Government College was challenged on the ground of non-fulfillment of conditions prescribed by the University Ordinance. The Supreme Court held that non-compliance with the provision of the University Ordinance may invite the consequence of withdrawal of affiliation of that Government College, but it would not have the consequence of invalidation of the appointment made in conformity with the Recruitment Rules framed by the Government for appointment of teachers in the Government College. The same principle would apply here and, therefore, non-compliance with the recommendations of the UGC under Section 12(d) or (j) may result into invocation of Section 14 of the UGC Act. But, that will not render the provisions of Section 12 of the MU Act invalid, as not being in conformity with the UGC Regulations.

20. We may also note that the only difference between the composition of the Search Committee under Section 12(1) of the MU Act and the composition of the Search Committee under UGC Regulation 7.3.0 (ii) is not materially different, except in one respect, i.e. while appointment of a nominee of UGC is required by the UGC Regulations, 2010, the MU Act provides for appointment of the Principal Secretary of Higher Education Department of the State Government as one of the three Members of the Search Committee. In any case, the said Government Officer is not to be appointed as the Chairman of the Search Committee, because only the Member

nominated by the Chancellor (a retired Judge of the Supreme Court, or a retired Chief Justice of a High Court or an eminent scientist of national repute or a recipient of Padma Award in the filed of education) alone can be the Chairman of the Search Committee. The MU Act, therefore, specifies who could be nominated by the Chancellor as the Chairman of the Committee. As against that, UGC Regulations, 2010 are silent on the qualification of the Chairperson of the Search Committee, except stating that he should be a person of eminence in the sphere of higher education. Similarly, the UGC Regulations provide for nomination of one Member by Syndicate/Executive Council/Board of Management of the University. The MU Act goes much farther and specifies that the nomination to be made jointly by the Management Council and the Academic Council shall be from out of Director or Head of an institution or organisation of national repute, such as, Indian Institute of Technology, Indian Institute of Management, Indian Institute of Science, Indian Space Research Organization or National Research Laboratory.

21. Having regard to the aforestated eligibility criteria laid down in the MU Act and the discussion in the preceding paras we are of the considered view that Section 12(1) of the MU Act cannot be considered as violative of the provisions of the UGC Regulation 7.3.0. On the contrary, the MU Act provides for higher bench marks for the members of the Search Committee to be nominated by the Chancellor and by the Syndicate/Executive Council/Board of Management of the University. As against this, no such bench mark is laid down in the UGC Regulation 7.3.0.

22. In fact, we may note at this stage that the MU Act, as originally enacted, provided the following composition of the Search Committee :

(i) Principal Secretary of Higher and Technical Education Department;
(ii) a nominee of the UGC;
(iii) One member nominated by Chancellor;
(iv) One member nominated by the management Council;
(v) One member nominated by the Academic Council.

Though the Statement of Objects and Reasons of the Maharashtra Act, of 14 of 2009, by which sub-section (1) of Section 12 was substituted, does not throw any light on why the State Legislature decided to do away with the nomination by UGC and reduced the strength of the Committee from 5 to 3, it appears reasonable that the State Legislature did not favour a large Committee of 5 members. The presence of the Principal Secretary of Higher and Technical Education Department would obviously provide the Search Committee with the inputs about the local needs of the concerned University. It may also be fair to presume that with the proliferation of number of the Universities in the country, the UGC may not be in a position to make nomination of its representative well in time thereby delaying the process of selection and appointment of Vice-Chancellors. Vice-Chancellors of 12 Universities in the State of Maharashtra have been appointed by the Governor of Maharashtra in the last two years.

23. Whatever may be the reason for the legislative amendment to the MU Act in 2009, we find considerable substance in the submission of the learned Advocate General that the power to nominate the representative of the Chairman of UGC in the Search Committee for selection of candidates for appointment to the post of Vice-Chancellor cannot be considered as a matter falling within "Co-ordination and determination of standards in institutions for higher education". At the most it may be considered as "implementation of standards in institutions for higher education" and cannot, therefore, be considered as falling within Entry 66 in List I of the Seventh Schedule. If the contention of the UGC were to be accepted, the UGC would be in a position to contend on the basis of the judgment of the Supreme Court in Dr. Preeti Shrivastava's case[11] that UGC would have the power to insist for nomination of its representative in the Purchase Committee of a University or a College for procuring laboratory equipments or hospital facilities for training in case of a medical college. Such a construction cannot be accepted as Entry 66 in List I only provides for "co-ordination and determination of standards in the institutions of higher learning" and **NOT** "co-ordination, determination and implementation of standards in institutions of higher education".

24. In any view of the matter, proceeding on the basis that Regulation 7.3.0 could be traced to Entry 25 in the Concurrent List , the question is whether the said UGC Regulation can be considered as over-riding Section 12(1) of the MU Act.

11 (1997) 4 SCC 120

25. In support of his contention that UGC Regulation 7.3.0 overrides Section 12(1) of the MU Act, Mr. Anturkar, learned Counsel for the petitioner has heavily relied on the proposition (ii) in para 41 of the judgment of the Supreme Court in State of Tamil Nadu and another Vs. Adhiyaman Educational and Research Institute and others,[3] where the Apex Court arrived at the following conclusions :

> "41. (i) The expression `coordination' used in Entry 66 of the Union List of the Seventh Schedule to the constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make `coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must, be given its full effect according to its plain and express intention.
>
> (ii) To the extent that the State Legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative."
>
> [iii] If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause [2] of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

3 (1995) 4 SCC 104

> [iv] Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.
>
> (emphasis supplied)

26. Per contra, Mr. Darius Khambata, learned Advocate General has countered the submission that the question arising in the present PIL did not arise for consideration in Adhiyaman's case before the Supreme Court.

27. Before proceeding further, it is necessary to refer to following settled principles, as to when and how a decision should be relied upon. In Ashwani Kumar Singh and ors. V/s. U.P.Public Service Commission and ors.,[12] , the Supreme Court has observed as under :-

> "10. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are no to be construed as statutes. To interpret words, phrases and provisions of statute, it may become necessary for Judges to embark into lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

12 (2003) 11 SCC 584

> 12. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

In the above decision, the Supreme Court followed the following observation of Lord Morris in Herrington v. British Railway Board,[13] :

> "There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

In State of Orissa v. Sudhansu Sekhar Mishra, AIR1968 SC, page 647, the Supreme Court quoted the following principles laid down by Earl of- Halsbury. LC said in Quinn v. Leathem, 1901 AC 495

> "Now before discussing the case of Allen v. Flood, (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that <u>every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides.</u> I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."
>
> (emphasis supplied)

13 (1972) All ER, 749

28. In Adhiyaman's case, the only question was about the conflict between provisions of All India Council for Technical Education Act, 1987 (AICTE Act) on one hand and Tamil Nadu Private Colleges (Regulation) Act, 1976 and Rules made thereunder on the other hand. The question was relating to the power of the State Government and the University respectively to derecognise and disaffiliate an engineering college. In para (1) of the judgment in Adhiyaman's case, the Supreme Court formulated the question thus :

> "1. The short question involved in these matters is whether after the coming into force of the All India Council for Technical Education Act, 1987 [hereinafter referred to as the 'Central Act'] the State Government has power to grant and withdraw permission to start a technical institution as defined in the Central Act. In the present case,the technical institutions with which we are concerned are the respondent Engineering Colleges which are being run in the State of Tamil Nadu."

29. The respondent-college was granted permission by the State of Tamil Nadu to start a new Engineering College under the self-financing scheme, subject to certain terms and conditions. The respondent-college also obtained temporary affiliation from the University for the academic year 1987-88, subject to fulfilment of certain conditions. In the year 1988-89, the University extended affiliation subject to implementation of the recommendations of the Inspection Commission and subject to the conditions granted at the time of initial affiliation. The State Government appointed a High Power Committee to visit the self-financing engineering colleges and make an assessment of their functioning. In its report, the High

Power Committee reported that the conditions subject to which the State Government had granted permission to the respondent-college were not fulfilled and there was also violation of conditions imposed by University while granting affiliation. On receipt of the report, the Director of Technical Education issued a show cause notice to the respondent-college to show cause why the permission granted by the Government to run the college should not be withdrawn. In view of the report of the High Power Committee, the University resolved to reject the request of the respondent-college for provisional affiliation for 1989-90 and also cancelled the affiliation granted for the previous years.

The respondent-college filed Writ Petition before the Madras High Court for prohibiting the Director of Technical Education from taking further proceedings in pursuance of the show cause notice. The respondent-college also filed another Writ Petition for for quashing the resolution passed by the University and for direction to the University to grant provisional affiliation to its college.

The learned single Judge allowed the writ petition filed against the State Government after holding that passing of the Central Act the State Government had no power to cancel the permission granted to the Trust to start the college and it could not rely for the purpose on a report of the High Power Committee appointed by the State Government, since the appointment of such a committee was itself illegal and unconstitutional. According to learned Judge, the only course open to the State Government was to refer the matter to the All India Council for Technical Education (AICTE). According to

learned Judge, under the Central Act the Council was the competent authority to recognise or de-recognise any technical institution in the country. The petition against the University was dismissed on the ground that one of the conditions imposed by the University for grant of affiliation was that the Trust should obtain concurrence of the AICTE. Since, such concurrence was not obtained, the University was justified in taking the impugned action.

In Appeal, the Division Bench of the High Court not only confirmed the decision of the learned single Judge that the State Government had no jurisdiction to de-recognise the college but also held that even the University could not have acted on the report of the High Power Committee appointed by the State Government and could not have refused extension of affiliation without giving reasons for the same.

30. It was in the above factual background that the Supreme Court again set out the controversy in paragraph 8 of the judgment in following terms:

> "8. It may thus be seen that although on the facts in the present case, what is questioned is the power of the State Government and the University respectively to de-recognise and disaffiliate the Engineering College, what is involved is the larger issue as stated at the outset, viz., the conflict between the Central Act on the one hand and the Tamil Nadu Private colleges (Regulation) Act, 1976 (for short "the State Act") and the Rules made thereunder, viz. The Tamil Nadu Private Colleges (Regulation) Rules, 1976 and the Madras University

> Aft, 1923 (hereinafter referred to as the "University Act") and the statutes and ordinances made thereunder on the other. We have, therefore, in effect to address ourselves to this larger issue."

After discussing the matter in light of the provisions of the Constitution, the Central Act, (AICTE Act 1987) and the State Act and the rules made under the State Act, the Supreme Court held that there was nothing in the judgment of the High Court which was contrary to or inconsistent with the propositions of law laid down.

31. The Supreme Court held that once an engineering college was granted recognition under the AICTE Act, 1987 (Central Act), if the All India Council for Technical Education has not withdrawn recognition, the State Government and the University cannot withdraw permission/affiliation. In the case before the Supreme Court, there was no question of conflict between the regulations under the AICTE Act, 1987 (Central Act) on one hand and the law made by the State Legislature on the other hand. However, in the present case, the question is about the conflict between the provisions of plenary legislation called MU Act, 1994 enacted by the State Legislature and the UGC Regulations, 2010 made by UGC, a delegate of Parliament, under the UGC Act (Central Act).

32. The learned Advocate General contended that apart from the fact that the above mentioned decision was not directly concerned with the issue regarding primacy of subordinate legislation under a Central legislation over a plenary legislation by the State Legislature, there is a catena of decisions which lay down that the

subordinate legislation framed under the Act of Parliament cannot nullify the plenary legislation enacted by a State Legislature.

33. Before referring to the decisions of the Supreme Court, we may first refer to the judgment of the House of Lords which supports the submission of the learned Advocate General that wiping out a validly enacted law has serious consequences and thus, such power needs to be exercised by Parliament alone and the same cannot be delegated. In R Vs. Secretary of State for Environment and another[1] , the House of Lords quoted with approval the following principles laid down by Lord Donaldzon of Lymington MR:

> "Subordinate legislation, at any rate when subject to the negative resolution procedure, represents the will of the executive exercised within limits fixed by primary legislation. Whether subject to the negative or affirmative resolution procedure, it is subject to much briefer, if any, examination by Parliament and cannot be amended. The duty of the courts being to give effect to the will of Parliament, it is, in my judgment, legitimate to take account of the fact that a delegation to the executive of power to modify primary legislation must be an exceptional course and that, if there is any doubt about the scope of the power conferred upon the executive or upon whether it has been exercised, it should be resolved by a restrictive approach. This principle was endorsed by this House in B-itnell Vs. Secretary of State for Social Security (1991)2-ALL ER-726 at 731-732."
>
> (emphasis supplied)

34. We also find considerable substance in the submission of the learned Advocate General that the assumption that the publication of a regulation will have an effect as if the regulation has become a part

1 (2091) 1 All ER 195

of the Act and lose its character as a subordinate legislation is not justified. The position appears to be that the rules and regulation will not lose their character even after publication and they continue to be subordinate to the primary legislation. Though for interpretation they may be considered as part of the Act, their character as subordinate instrument is not lost. In Chief Inspector of Mines and another Vs Karam Chand Thapar[2] :

> "11. The whole foundation of the argument is the assumption that the necessary consequence of S.31(4) of the 1923 Act is that the regulations, on publication shall have effect as if enacted in the Act is that the Regulations became part and parcel of the Act. Is that assumption justified?
>
> 20. The true position appears to be that the Rules and Regulations do not lose their character as rules and regulations, even though they are to be of the same effect as if contained in the Act. They continue to be rules subordinate to the Act, and though for certain purposes, including the purpose of construction, they are to be treated as if contained in the Act, their true nature as subordinate rule is not lost."

35. The most important and relevant decision on the subject matter of the present controversy is the decision of the Constitution Bench of the Supreme Court in C.H. Tilakramji and others v. State of U.P.[3] , dealt with the petitions under Article 32 of the Constitution challenging the validity of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 and the U.P. Sugarcane Regulation of Supply and Purchase order and the notification 9-11-1955 issued by the U.P. Government thereunder. The petitioners were sugarcane growers in

2 AIR 1961 SC 838
3 AIR 1956 SC 676

different districts of the State of U.P. and the office bearers of the Co.operative societies. The impugned Order dated 27-9-1954 issued by the State Government in exercise of the powers under the above Act ordered that where not less than ¾ of the cane growers of the area under operation of a Cane Growers Co.operative Society were members of the society, the occupier of the factory for which the area is assigned shall not purchase or enter into agreement to purchase cane grown by a cane grower except through such Cane Growers Co-operative Society. The notification dated 9-11-1955 under the same Act reserved or assigned to the sugar factories, the cane purchasing centres specified against them for the purpose of supply of sugarcane during the crushing period 1955-56. The writ petitioners, inter alia, challenged the Act on the ground that it was ultra vires powers of the State Legislature and also as being repugnant to Industries (Development and Regulation) Act 1951 and Essential Commodities Act, 1955. Section 3 of the 1955 Act empowered the Central Government to provide for regulating or prohibiting the production, supply and distribution thereof and the trade and commerce therein. Section 16 of the Act repealed (a) the Essential Commodities Ordinance, 1955; (b) any other law in force in any State immediately before the commencement of the Act in so far as such law controlled or authorised the control of the production etc. and trade and commence in any essential commodity.

In exercise of the aforesaid power under Section 3 of the 1955 Act, the Central Government promulgated on 27-8-1955 the Sugarcane Control Order, 1955. Clause 7 of this Central Government

Order provided that any Orders made by the State Government or other authority regulating or prohibiting the production etc. of sugarcane and trade and commerce therein were thereby repealed as respect to things done or omitted to be done under any such order before the commencement of the said Central Government order.

36. The Petitioners contended that the impugned State Act of 1953 stood repealed to the extent that it was repealed by Section 16 of the Essential Commodities Act 1955 and by Clause 7 of the Sugarcane Control Order 1955 made in exercise of the powers conferred by Section 3 of the Essential Commodities Act.

The Supreme Court dealt with the said contention in paragraphs 37 to 41 of its judgment and particularly repelled the above contention in following words:

> "41. There is also a further objection to which cl.7(1) of the Sugarcane Control Order, 1955 is open. The power of repeal, if any, was vested in Parliament and Parliament alone could exercise it by enacting an appropriate provision in regard thereto. Parliament could not delegate this power to repeal to any executive authority. Such delegation, if made, would be void and the Central Government had no power, therefore, to repeal any order made by the State Government in exercise of the powers conferred upon it by S.16 of the impugned Act.
>
> The U.P.Sugarcane Regulation of Supply and Purchase Order 1954, could not, therefore, be validly repealed by the Central Government as was purported to be done by cl.7 of the Sugarcane Control Order, 1955, and that repeal was of no effect with the result that the U.P.Sugarcane Regulation of Supply and Purchase Order, 1954 stood unaffected thereby.

> The result, therefore, is that there was no repeal of the impugned Act or the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 by S.16 of Act 10 of 1955 or by Cl.7 of the Sugarcane Control Order, 1955 as contended by the petitioners."
>
> (emphasis supplied)

37. If it were to be held that the UGC Regulation in question overrides the Section 12 of the MU Act enacted by the State Legislature then, it would be akin to a repeal of a State law. In the aforesaid Judgment the Supreme Court has laid down that the power of repeal cannot be delegated to any executive authority.

38. The above legal proposition has been reiterated by the Apex Court in several judgments. In Indian Express' newspaper (Bombay) Pvt.Ltd and another Vs. Union of India and others[4] , the Apex Court held as under:

> "75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. ….."

4 (1985)1-SCC-641

The, said decision is followed in J.K.Industries Vs Union of India[5] **,** where the Apex Court held as under:

> "127. … … … as held in Indian Express Newspapers (Bombay) (P) Ltd. Vs. Union of India, (1985) 1 SCC 641 at P..689, subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is inconsistent with the provisions of the Act or that it is contrary to some other statute applicable on the same subject-matter. Therefore, it has to yield to plenary legislation. … … ..."
>
> (emphasis supplied in both quotations)

39. The legal position has now been placed beyond any shadow of doubt in Kerala Samsthana Chethu Thozhilali Union vs State of Kerala and others[6], where the Apex Court categorically stated that a subordinate legislation cannot be violative of any plenary legislation made by State legislature. The Apex Court has held in emphatic terms as under:

> "17. A rule is not only required to be made in conformity with the provisions of the Act whereunder it is made, but the same must be in conformity with the provisions of any other Act, as a subordinate legislation cannot be violative of any plenary legislation made by Parliament or the State Legislature."
>
> (emphasis supplied)

5 (2007) 13 SCC 673

6 (2006) 4 SCC 327

40. In M/s New India Sugar Mills Ltd. And etc. Vs. State of Bihar and others[7] , the Division Bench of the Patna High Court, Justice B.P.Singh (as His Lordship then was) held as under:

> "34. I have, therefore, no hesitation in coming to the conclusion that the authorities relied upon by the petitioners do not support the proposition that a control order issued by the Central Government in exercise of its power to make subordinate legislation can alter, amend or repeal a law enacted by a State legislature. On the contrary, there is good authority to support the proposition that alteration, amendment or repeal of such a State law can only be brought about by legislation enacted by the Parliament in exercise of its plenary power of legislation. Even at the cost of repetition I may refer again to the Constitution Bench decision of the Supreme Court in Tika Ramji (supra), the relevant passage wherefrom has been extracted earlier in this judgment, holding that the power of repeal, if any, under Art.254(1) was vested in Parliament, and Parliament alone could exercise it by enacting an appropriate provision, but could not delegate that power to an executive authority. It may be that in the case of rules, regulations etc. which may be "law in force", an executive authority if competent to do so may alter, amend or repeal such rules or regulations. The observations of the Supreme Court in AIR-1966-SC-604 and (1971)3-SCC-804 also support the above legal proposition."
>
> (emphasis supplied)

41. Upon a review of the case law on the subject, we have no hesitation in accepting the submission made by learned Advocate General that a subordinate legislation made under a Central Act cannot override a plenary State legislation on the subject falling in the Concurrent List and that a plenary legislation made by Parliament alone can override the plenary legislation made by the State

7 (AIR 1996 Patna 94)

legislature.

42. Mr.Anturkar, learned counsel for the petitioner relied on the decision of another Division Bench of this Court in Beena Inamdar Vs. University of Pune and others[8] in support of the contention that UGC Regulations are binding on the University. The decision was rendered in the context of appointment to the post of Principal of a College affiliated to Pune University. The matter was, therefore, clearly governed by the provisions of Section 26(1)(e) of the UGC Act. In that case, the Division Bench also held that the University Ordinance itself provided that no person shall be appointed to a teaching post in the University or in any college affiliated to the University if he/she does not fulfill the required qualifications for the appropriate subject, as prescribed by the UGC/University from time to time. The Division Bench held that in absence of specific provision in the Maharashtra Universities Act and the Statute regarding minimum qualifications to hold the post of Principal, the University Ordinance would come into play and by virtue of this Ordinance, the qualifications specified by the UGC would be deemed to have been incorporated in the University Ordinance.

In other words, the Division Bench did not have any occasion to deal with the question about conflict between the provisions of MU Act and University Ordinance on one hand and UGC Regulations on the other hand. On the contrary, in that case the University Ordinance read with the UGC Regulations provided qualifications for the post of Principal, whereas, the provisions of MU Act did not contain any such provision.

8 Writ Petition No.6112 of 2010 decided on 8 December, 2011

43. We may now deal with the submissions made on behalf of the UGC that it is not open to the State Government to take any stand contrary to the stand of UGC. Mr. Rodrigues has heavily relied on the decision in Mahant Dhangir and another v. Madan Mohan and others[9], in support of the above contention. The contention is that in this PIL challenging the process of appointment of Vice Chancellor of Pune University, the State Government as respondent, cannot challenge the legality of regulation 7.3.0 of the Regulations made by co-respondent UGC.

44. Having carefully gone through the above decision, we do not find any substance in the objection raised on behalf of the UGC. In fact, in Mahant Dhangir's case, the Supreme Court has specifically held that when the appeal/petition by some of the parties cannot effectively be disposed of without opening of the matter by the respondents interse or in the case where the objections are common as against the appellant and co-respondent, the Court in such cases would entertain cross-objections against the co-respondent.

45. Mr. Rodrigues also submitted that Regulation 7.3.0 of UGC Regulations, 2010 has to be treated as valid unless declared void or illegal in a petition properly constituted wherein the legality and constitutionality of such regulation is challenged. In the absence of any such writ petition, the State Government is not entitled to assail the legality or constitutional validity of Regulation 7.3.0 of UGC Regulations, 2010. In support of the said contention Mr.Rodrigues

9 1987 (Supp) SCC 528

heavily relied on the following observations in para 19 of the decision in Krishnadevi Malchand Kamathia and others v. Bombay Environmental action Group and others[10], :-

> "19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order ma be void for one purpose or for one person, it may not be so for another purpose or another person."

46. As already held by us, Regulations 7.2.0 and 7.3.0 of UGC Regulations, 2010 are traceable to section 12(d) of UGC Act, 1956. The same are not without any authority of law but at the same time, they are merely recommendatary in nature and, therefore, neither the State Legislature nor the State Government is bound to accept the same. Accordingly, when the State Government issued order dated 15 February 2011 at Exhibit `F' enumerated those regulations which are adopted by the State Government out of UGC Regulations 2010, the State Government decided not to adopt Regulations 7.2.0 and 7.3.0. We , therefore, find considerable substance in the argument of learned Advocate General that non-adoption of directory Regulation 7.3.0 would not render the State legislation or the Government order dated 15 February 2011 invalid or unconstitutional.

10 (2011)3 SCC 363

47. To sum up-

(i) Regulation 7.3.0 of UGC Regulations, 2010 is not traceable to clause (e) or clause (g) of Section 26(1) of the University Grants Commission Act, 1956.

(ii) The source of making Regulation 7.3.0 of UGC Regulations, 2010 is Section 12(d) and (j) of UGC Act, 1956. However, since section 12(d) and (j) of UGC Act merely enables UGC to make recommendations to Universities, Regulation 7.3.0 has to be treated as recommendatory in nature.

(iii) Regulation 7.3.0 of UGC Regulations, 2010 being a subordinate legislation under an Act of Parliament cannot override plenary legislation enacted by the State Legislature and, therefore, also Regulation 7.3.0 does not override section 12 of the Maharashtra Universities Act, 1994.

48. In view of the above conclusions, we find no merit in the petition. The petition is, therefore, dismissed.

CHIEF JUSTICE

N.M. JAMDAR J.

1. At this stage, the learned counsel for the petitioner prays for stay of operation of this judgment in order to have further recourse in accordance with law.

2. The learned counsel for the State Government and the learned counsel for Pune University oppose the prayer and submit that the post of Vice Chancellor of Pune University has been lying vacant for the last about eight months, that the Search Committee constituted under section 12(1) of the Maharashtra Universities Act, 1994 has already recommended suitable nominations for the said post and that the Chancellor is in the process of considering the said recommendations. The Vice Chanacellor is the administrative head next to the Chancellor and now the University is required to discharge very important functions of declaring results of the examinations and the University will have to take several measures for admitting a large number of students to several courses in the ensuing academic year 2012-13 which will commence in June 2012.

3. Having heard the learned counsel for the parties, we are of the view that the real object of a genuine public interest litigation is to invite the attention of the Court to an alleged illegality in the appointment to a public office/post or in the process of such appointment. Since we have held that the respondents have acted in conformity with the provisions of Section 12 of the Maharashtra Universities Act, 1994 and that Regulation 7.3.0 of UGC Regulations, 2010 is recommendatary in nature and being in the nature of subordinate legislation, it does not override the provisions of Section

12 of the Maharashtra Universities Act, 1994, a plenary legislation made by the State Legislature, there is no justification to cause any further delay in appointment to the post of the Vice Chancellor of Pune University, particularly when the ensuing academic year 2012-13 is to commence next month.

4. Hence, the prayer for stay is rejected.

CHIEF JUSTICE

N.M. JAMDAR J.