

KERALA RAJ BHAVAN
Proceedings of the Chancellor,
University of Calicut
Dated 07.03.2024
Present: Shri. **Arif Mohammed Khan**
(File No. GS6-1225/2022)

ORDER

- Ref:
1. Notification dated 16.07.2019 constituting the Search committee
 2. Notification dated 02.04.2020 appointing the Vice Chancellor, University of Calicut.
 3. Judgment dated 21.10.2022 of the Hon'ble Supreme Court in Sreejith P S Vs Rajasree M S
 4. Notice dated 24.10.2022 issued to Dr M.K. Jayaraj, Vice Chancellor, University of Calicut
 5. Judgment in W P (C) No. 35005 of 2022 dated 25.1.2024
 6. Hearings held on 12.12.2022 and 24.2.2024

The Chancellor of the University of Calicut, as per the 1st referred notification constituted a Search Committee in terms of Section 10 (1) of the Calicut University Act for the selection of the Vice Chancellor to be appointed in the University. The members of the Search Committee were Dr. V K Ramachandran (nominee of the State Government), Professor M Jagadish Kumar (nominee of UGC) and the Chief Secretary to the State Government(nominee of the Chancellor). The Committee had recommended three names separately as they could not agree on names.

2. As the Search Committee could not make a unanimous recommendation as contemplated in Section 10 of the Calicut University Act, submitted panel of candidates to the Chancellor. The Chancellor appointed Dr M K Jayaraj as the Vice Chancellor the Calicut University and issued the 2nd referred notification. He was appointed as the Vice Chancellor on 13.07.2020.

3. The Hon'ble Supreme Court while considering a challenge made against the appointment of the Vice Chancellor in A P J Abdul Kalam Technological University in

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Kerala on the grounds of improper constitution of the Search Committee and the unanimous recommendation of the candidate to the post, held that the appointments of Vice Chancellors made in violation of the University Grants Commission [herein after referred to UGC for short] Regulations shall be void ab initio.

4. In the wake of the 3rd referred judgment, the Chancellor of the Universities in Kerala verified the different appointments made to the post of Vice Chancellors in the state and found that some of the appointments were made contrary to the UGC Regulations. The Hon'ble Supreme Court, in its judgment referred as 3rd above referred to other judgments covering the appointment of Vice Chancellors and the different Commission Reports to highlight the importance of the post of Vice Chancellor in a University. The judgments stressed upon the need to ensure that the appointments made to the post of Vice Chancellors shall be strictly in terms of the UGC Regulations. The various judgments rendered by the Hon'ble Court also highlighted the need to have the Search Committee consisting of eminent persons from the field of higher education.

5. The Hon'ble Supreme Court having laid down the law in the matter, it became imperative on the part of the Chancellor of the University to ensure that the appointment of the Vice Chancellors under him is in tune with the provisions of the UGC Regulations and the law as laid down by the Apex Court. In the wake of the declaration by the Hon'ble Supreme Court that the appointment of the Vice Chancellors, in violation of the UGC Regulations are void ab initio, it also became necessary to have validly appointed Vice Chancellors in the Universities.

6. In the above circumstances the Chancellor of the Calicut University, on noting that the Search Committee which recommended Dr M K Jayaraj for the post of Vice Chancellor was constituted contrary to the UGC Regulations, issued the 4th referred notice to Dr M K Jayaraj proposing to remove him from the post of Vice Chancellor, as his appointment is void ab initio in the light of the judgment referred 3rd above.

7. Dr. M K Jayaraj, challenged the notice before the Hon'ble High Court in WP(C).No 35005 of 2022 and the Hon'ble High Court on 03.11.2022 in an Interim Order passed in the matter permitted the submission of explanations to the Show Cause Notice issued by the Chancellor by 07.11.2022. Thereafter on 08.11.2022 the Hon'ble Court

taking note of the submission of the explanations and the submissions by the petitioners that they have sought a hearing in the matter, passed an interim order to the effect that the final orders by the Chancellor shall not be issued until the writ petition is disposed of. The Interim Order issued by the Hon'ble Court continued till the disposal of the Writ Petition on 25.01.2024.

8. Dr M K Jayaraj was heard by the Chancellor on 12.12.2022 and no Orders were issued in the light of the Interim Order issued by the Hon'ble Court in the above-mentioned Writ Petition. The Hon'ble Court finally disposed of the Writ Petition through the 5th referred judgment in the following manner:

"Accordingly, these writ petitions are ordered directing the Chancellor to consider the objections filed by the petitioners and decide on the legality/jurisdiction to issue the show cause notices as well as on the merits of the alleged violation of the UGC Regulations in terms of the law laid down in Rajasree's case (supra). The above exercise shall be completed within six weeks from the date of receipt of a copy of this judgment. Needless to say, the petitioners will be afforded a reasonable opportunity for hearing, and they will cooperate to decide the issue within the time fixed by this Court."

9. In the light of the above directions Dr M K Jayaraj was given an opportunity of being heard on 24.2.2024. In the hearing he was represented by Sri P C Sasidharan, Advocate. Sri Gopakumar, Joint Secretary, University Grants Commission and Sri S Krishnamoorthy, Counsel for the UGC also attended the hearing. Written notes of submissions was also presented to the Chancellor at the time of the hearing.

10. The Counsel representing Dr M K Jayaraj primarily contended that the Chancellor, while exercising the powers conferred on the Chancellor cannot have any other authority, other than what is contemplated in the Act and the Statutes. The position was canvassed to contend that the Chancellor lacks the authority to review the order of appointment issued by him and also the proposition that the Vice Chancellor can be removed only in the manner provided in the Calicut University Act and Statutes. The counsel also contended that the judgment referred 3rd above cannot have any application in the present case as the decision was rendered in a challenge made against the appointment of a particular person to the post of Vice Chancellor. The findings and directions are

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binding on the parties included in the litigation and the same need not be invoked to unseat a Vice Chancellor who was appointed by the Chancellor himself. It was also his contention that the mistake, if at all had happened, the appointee had no contribution in the mistake and his rights to continue in the post of Vice Chancellor continues. He further tried to canvass the proposition that the Chancellor cannot assume as the appointing authority with any discretion or with a sole discretion. The supremacy of the State Act over the UGC Regulations which falls under the category of Legislated legislation was also raised in the notes submitted by Dr M K Jayaraj.

11. Sri S Krishnamoorthy, Counsel for the UGC expressed the view that the appointments made in violation of the UGC Regulations are void ab initio. In the case of the constitution of the Search Committee if the UGC Regulations are violated the constitution itself is bad and the recommendations made by such a Search Committee is not sustainable in law. It was also pointed out that in the light of the law declared by the Supreme Court in the matter of appointment of the Vice Chancellors, it is incumbent upon the Chancellor to ensure that the Vice Chancellors in office are legally appointed and that their appointments are not hit by the law laid down by the Hon'ble Supreme Court, not only in Sreejith's case but also in other judgments which stress on the necessity of compliance with the UGC Regulations in the process of appointment. According to him over and above the powers conferred on the Chancellor by the relevant Act and statutes, the Chancellor being the appointing authority of the Vice Chancellor, enjoys the power to remove him from office under the provisions of the General Clauses Act as well. Interpreting the concept of 'void ab initio' it was contended that none of the Vice Chancellors who are presently served with the notices by the Chancellor can be treated as properly appointed Vice Chancellors, until it is verified and satisfied that their appointment is not hit by the judgments of the Hon'ble Supreme Court as the judgment rendered is law of the land.

12. Before going into the contentions regarding the authority of the Chancellor to remove the Vice Chancellor, it is necessary to consider whether the judgment rendered by the Hon'ble Supreme Court has got relevance in the case of the appointment of Dr M K Jayaraj as the Vice Chancellor of the Calicut University.

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13. The Hon'ble High Court, while disposing of WP(C).No.35005 of 2022, in paragraph 3 of the judgment observed as follows:

“The Supreme Court in Dr Rajasree M.S. and others (supra) held in unmistakable terms that the UGC Regulations were applicable as regards the appointment of the Vice Chancellor in the Universities in the State and that it shall be as per the relevant provisions of the UGC Regulations amended from time-to-time. Further, the Apex Court held that any appointment as a Vice Chancellor contrary to provisions of the UGC Regulations is bad, and a writ of quo warranto can be issued. It was also held that the UGC Regulations shall become part of the Statute framed by the Parliament and will prevail. The submission on behalf of the State that unless the State specifically adopts the UGC Regulations, the UGC Regulations will not be applicable, and the State legislation shall prevail, was not accepted. In the facts of that case, it was found that the Search Committee was not duly constituted going by the Regulations, inter alia, found that the members of the Search Committee are given the privilege and honour of selecting and suggesting names for the appointment of Vice Chancellor and therefore, the Search Committee had to be duly constituted. As aforesaid, the solitary premise of which the Chancellor had issued the notice was the judgment in Dr Rajasree M.S. and others (supra). Though the declaration of law in the said judgment is binding on all, a factual adjudication is required to determine whether the Vice Chancellors' appointment in the instant case was in terms of the relevant UGC Regulations as applicable at the time of their appointments.”

14. The above findings make it clear that the 3rd referred judgment is binding on all and what is required to be adjudicated by the Chancellor is whether the appointment of the Vice Chancellors were made in terms of the UGC Regulations and in terms of the judgment of the Apex Court. Even otherwise the law laid down by the Hon'ble Supreme Court, is binding on all and the Chancellor is duty bound to ensure that the Vice Chancellors appointed by him are in terms of the UGC Regulations. The direction contained in the judgment referred 5th above has to be understood and implemented in the light of the above findings as well.

15. On going through the judgment of the Hon'ble Supreme Court in Sreejith's case it is to be seen that the Hon'ble Court relied on the judgment rendered in Gambirdhan K

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Gadhvi to hold that the State Act if not on a par with the UGC Regulations, must be amended to bring it on a par with the UGC Regulations and till then the UGC Regulations would prevail. It is also held in paragraph 8.4 that in view of the judgments in Gambhirdan Gadhvi and Anindya Sundar Das that any appointment of the Vice Chancellor made on the recommendation of the Search Committee, which was constituted contrary to the provisions of the UGC Regulations shall be void ab initio. Considering the above propositions the contention of Dr M K Jayaraj regarding the non - applicability of the 3rd referred judgment in his case cannot be accepted.

16. Now the contention regarding the legality of the notice issued to the Vice Chancellor by the Chancellor in the light of the 3rd referred judgment and the authority of the Chancellor to do so needs to be looked into. The contentions raised by Dr M K Jayaraj are two fold. One is that the Chancellor lacks the authority to review his own order since there is no specific power of review provided under the Act or the Statutes. The second one is that the removal of the Vice Chancellor from the post is contemplated only under Section 7 (9) of the Calicut University Act, 1975.

17. In this context the contention of Dr M K Jayaraj that the Chancellor is not the appointing authority with discretion also needs to be considered. It is no more in dispute that the law laid down by the Hon'ble Supreme Court confers discretion on the Chancellor to appoint a person of his choice from the panel submitted to him as the Vice Chancellor. It is to be noted in this context that Section 10 of the Calicut University Act, 1975 for the reason of insisting for unanimous recommendation of a name for the post of Vice Chancellor runs contrary to the UGC Regulations and hence cannot be accepted or acted upon. In the light of this conflict the state law cannot be applied and the UGC Regulation need to be applied and followed. So the contention of Dr M K Jayaraj that the Chancellor is not an appointing authority with discretion and that the State law will prevail over the UGC Regulations cannot be accepted.

18. The power of the Chancellor to appoint the Vice Chancellor necessarily includes the power to remove him from the office as well. The provisions under Section 16 of General Clauses Act says that the power to appoint includes the power to suspend or dismiss. The settled law is that the power to terminate is a necessary adjunct of the power

of appointment. The Hon'ble High Court in the judgment rendered in Dr A V George v The Chancellor [WA 1432 of 2014] upheld the authority of the Chancellor to terminate the service of the Vice Chancellor. That was a case where after the appointment of the Vice Chancellor, certain irregularities were detected and the Chancellor decided to remove the person from his office. In the said case also the contention similar to the one raised in the present case was raised, and the Hon'ble Court upheld the authority of the Chancellor to remove the Vice Chancellor, whom he had appointed, from the office.

19. In this regard it is also to be noted that the contention raised by the UGC that the appointment of the Vice Chancellor, if made in violation of the UGC Regulations is void ab initio and the person cannot be treated as a Vice Chancellor at all. So the second contention that the Chancellor could remove the Vice Chancellor only under Section 7 (9) of the Calicut University Act, 1975 is not available to Dr M K Jayaraj till it is shown that his appointment to the post of Vice Chancellor is legally valid.

20. The judgments rendered in *Patel Narshi Thakrshi and others v Pradyumansighji Arjunsinghji*; (1971) 3 SCC 844 and *Haryana State Industrial Development Corporation V Mawasi* (2012) 7 SCC 200, cannot canvas the proposition of lack of inherent power of the appointing authority to terminate the service. Both the judgments deal with the power of review and the same does not apply in the present case. As rightly pointed out by the UGC even without any declaration the appointment of the Vice Chancellors made in violation of the UGC Regulations is void ab initio and the Chancellor is duty bound to take appropriate actions to get the mistake corrected.

21. Considering the factual and legal matrix involved in the present case, it is to be held that the notice issued by the Chancellor to Dr M K Jayaraj is legally valid and the Chancellor has the authority to look into the legality of his appointment as Vice Chancellor in the light of the 3rd referred judgment.

22. Having found that the notice issued to Dr M K Jayaraj, being valid it is necessary to consider whether the constitution of the search committee for the selection of the Vice Chancellor for the University of Calicut made as per the 1st referred notification was in tune with the UGC Regulations.

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23. Section 10 (1) of the Calicut University Act, 1975 contemplates the Constitution of the Search Committee and the selection of the person to the post of the Vice Chancellor. It reads:

"10. The Vice-Chancellor:

(1) The Vice-Chancellor shall be appointed by the Chancellor on the unanimous recommendation of the committee appointed by him consisting of three members, one elected by the Senate, one nominated by the chairman of the University Grants commission and the third nominated by the chancellor. The Chancellor shall appoint one of the members of the Committee to be its convener. The Committee shall make its recommendation within a period of three months of its appointment (or within such further period, not exceeding one month, as the Chancellor may specify on this behalf) (*Act 21 of 1979, came into force on 03-7-1979)*

(2) In case the Committee appointed under sub section (1) is unable to recommend a name unanimously, the Vice-Chancellor shall be appointed by the Chancellor from among the panel of three names submitted to him by the Committee within the period specified in (or under the said subsection) (*Act 21 of 1979, came into force on 03-7-79)*

(3) In case the Committee fails to make a unanimous recommendation as provided in sub section (1) or to submit a panel as provided in sub section (2), each member of the Committee may submit a panel of three names to the Chancellor, and the Vice-Chancellor shall be appointed from among the persons mentioned in the panels.

(4) Non Submission of the panel under subsection (3) by any member of the Committee shall not invalidate the appointment of the Vice-Chancellor."

24. In terms of the above provision, the Chancellor constituted the Search Committee as per the 1st referred notification. During the said process, The Principal Secretary to the Government, Higher Education (B) Department, as per letter dated 7.6.2019 nominated the then Chief Secretary as the representative of the Chancellor in the Search Committee. Based on this nomination the Chief Secretary to the government was included in the Search Committee as the representative of the Chancellor. The other two members in the Search Committee were Dr V K Ramachandran, Vice Chairman of the

Planning Board, elected by the Senate of the University and Prof M Jagadesh Kumar, nominated by the Chairman of the UGC.

25. It is to be noted in this context and as rightly pointed out by the UGC representatives, the provision in the State Act stresses on the unanimous recommendation of a single person and on that count the provision runs contrary to the UGC Regulations, and the different judgments rendered by the Hon'ble Courts. It was also pointed out that in the matter of including the representative of the Chancellor in the Search Committee, the state should not have nominated a person of their choice as the Chancellor's nominee.

26. It is apposite to refer to the judgment of the Hon'ble Supreme Court in Civil Appeal No 7700 of 2023 Dr Premachandran Keezhoth and others v The Chancellor Kannur University, where in the Hon'ble Court Supreme Court framed a question of law whether the Chancellor abdicated or surrendered his statutory power of reappointment of Vice Chancellor. While dealing with the said issue, the Hon'ble Court in paragraphs 82 and 63 of the judgment held.

“ 82. Under the scheme of the Act 1996 and the Statutes, the Chancellor plays a very important role. He is not merely a titular head. In the selection of the Vice Chancellor, he is the sole judge and this opinion is final in all respects. In reappointing the Vice Chancellor, the main consideration to prevail upon the Chancellor is the interest of the University.

83. The Chancellor was required to discharge his statutory duties in accordance with law and guided by the dictates of his own judgment and not at the behest of anybody else. Law does not recognize any such extra constitutional interference in the exercise of statutory discretion. Any such interference amounts to dictation from political superiority and has been condemned by courts on more than one occasion.”

27. In the above judgment, the reappointment of the Vice Chancellor was set aside for the reason that the Chancellor did not act on his discretion and the Hon'ble Chief Minister and the Hon'ble Minister, Higher Education for the State interfered with the process of reappointment. Thus going by the said judgment, the inclusion of the Chief Secretary in the Search Committee based on the nomination made by the State Government is bad in law.

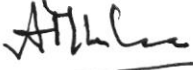
28. Now considering the arguments raised on behalf of Dr M K Jayaraj regarding the suitability of the Chief Secretary to be included in the Search Committee, it is necessary to refer to the UGC Regulations dealing with the Search Committee. The UGC Regulations say that the members of the Selection Committee shall be **persons of eminence in the sphere of higher education**. The plain reading of the provision brings out the fact that the eminence should be in the field of higher education. No scholar, however high his deputation or recognition be, can be treated as a person of eminence in higher education unless he is actively involved in the field of higher education. The number of publications to the credit of the then Chief Secretary cannot entitle him to be treated as a person of eminence in the field of higher education. Admittedly, the Chief Secretary is a part of the Administrative Service which cannot in any way be equated to the services in the field of higher education. So the arguments put forward by Dr M K Jayaraj on the eligibility of the then Chief Secretary to be a member of the Search Committee cannot be accepted. So also in the case of the nominee of the Senate, Dr V K Ramachandran, he was working as the Vice Chairman of the Kerala State Planning Board, which is also not a part of Higher Education. His occupation and the relevant time has nothing to do with the field of higher education.

29. Considering the above aspects the Search Committee constituted as per the 1st referred notification suffered from the vice of violation of the UGC Regulation on the subject. Going by the dictum laid down by the Hon'ble Court in Sreejith's case the Search Committee was not a legally constituted one under the UGC Regulations.

30. Dr M K Jayaraj also raised a contention that the mistake was committed by the Chancellor's office while constituting the Committee and the same cannot affect his right to continue as the Vice Chancellor. As stated earlier the government interfered with the selection process by nominating their nominee and the Chancellor only accepted the nomination. In the light of the judgment of the Hon'ble Supreme Court in Dr Premachandran Keezhoth and others, even the said interference by the government renders the constitution of the Search Committee illegal and contrary to the UGC Regulations and the law laid down by the Hon'ble Supreme Court. Dr M K Jayaraj, being not appointed in terms of the UGC Regulation, his appointment is to be treated as void ab initio and he cannot even contend that his continuance in the post gives him any right to continue.

31. Having found that the constitution of the Search Committee made through the 1st referred notification is contrary to the UGC Regulations and the law laid down by the Hon'ble Supreme Court, which makes all the appointments of Vice Chancellors made on the recommendation of such Search Committees void ab initio, Dr M K Jayaraj's appointment as Vice Chancellor cannot be considered as legal in terms of the UGC Regulations. Hence his appointment as Vice Chancellor is to be treated as void ab initio. It is found accordingly and Dr M K Jayaraj is directed to vacate the office of the Vice Chancellor of Calicut University forthwith.

32. However in the light of the direction contained in the 5th referred judgment this decision is kept in abeyance for a period of ten days.


7.3.2024
The Chancellor,

University of Calicut