"C.R."

ANTONY DOMINIC, A.HARIPRASAD &
P.B.SURESH KUMAR, JJ.

W.P(C).Nos.29253, 29512 & 30711 of 2012,
15739,16220 & 17148 of 2013,
OP(KAT).No.1329 of 2013 and
W.A.No.1676 of 2013

Dated this the 23rd day of February, 2016

JUDGMENT

Antony Dominic, J.

1. Among these cases, the writ petitions came up before a learned single Judge of this Court and the common question raised was whether the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Other Measures for the Maintenance of Standards in Higher Education, 2010 (hereinafter referred to as the 'UGC Regulations, 2010', for short) was applicable while making appointments to the post of Principal in colleges affiliated to the Kerala and Mahatma Gandhi Universities. When the matters were heard, placing reliance on the Division Bench judgment of this Court in S.N.College v. N.Raveendran [2001 (3) KLT 938], it was contended that the conditions of service of teachers of affiliated colleges are to be prescribed by the University concerned in terms of the Act governing the same and

that in the absence of any amendment being made to the University Act or the Regulations framed thereunder, the UGC Regulations, 2010 are inapplicable. However, in view of the principles laid down in the Apex Court judgments in Gujarat University v. Krishna Ranganath Mudholkar [AIR 1963 SC 703], Dr.Preeti Srivastava v. State of M.P. [(1999) 7 SCC 120], State of Tamil Nadu v. S.V.Bratheep [(2004) 4 SCC 513], Annamalai University represented by Registrar v. Secretary to Government, Information and Tourism Department [(2009) 4 SCC 590] and University Grants Commission v. Neha Anil Bobde (Gadekar) [(2013) 10 SCC 519], learned single Judge doubted the correctness of the said principles laid down in the judgment in Raveendran's case (supra). Accordingly, learned Judge referred the writ petition to be heard by a larger Bench.

2. Thereafter, the writ petitions, the writ appeal and the OP(KAT) were considered by a Division Bench and order dated 17.7.2015 was passed agreeing with the learned single Judge that Raveendran's case required

reconsideration. Accordingly, the cases were referred to be heard by a Bench of appropriate strength. It was accordingly that these matters were placed before the Full Bench for hearing and we heard the counsel for the parties.

3. Before we deal with the merits of the individual cases, it is apposite to consider the correctness of the Division Bench judgment in Raveendran's case (supra). Raveendran's case arose from an order passed by the University Appellate Tribunal setting aside the appointment of the respondent therein as Principal of the appellant college. This was on the ground that the appointee did not possess the requisite qualification prescribed in the UGC scheme of 1998 so as to be appointed as Principal of a special grade college. This question was considered in the light of the provisions contained in the University Grants Commission Act, 1956 and the Regulations framed thereunder and also the Kerala University Act. In its judgment, the Division Bench held thus:

"8. S. 57 of the Kerala University Act stipulates that conditions of service of teachers of the affiliated colleges are to be prescribed by the University. As per S. 58 of the Kerala University Act, teachers of colleges shall possess such qualifications as may be prescribed by regulations by Academic Council. As has already been indicated the said scheme was brought in by the Regulations of the Kerala University as per amendment made in the Regulation by academic council on 10.12.1990 which has not been amended yet in line with UGC Scheme. In fact in CCC 721/2000 which was filed in connection with O.P. 12665/2000 State Government filed a statement stating that UGC Scheme was introduced from 1.1.1986 based on the directions from the Government of India. The qualification for the post of Lecturers/Principals etc. of Universities and Colleges were prescribed by the U.G.C. and Government passed GO(P)171/99/H.Edn. dated 21.12.1999 for implementation of the said scheme. Unless and until amendments are effected in the University statutes the same would not be applicable to the private colleges. Management of private colleges are not bound to follow the same.

9. The Apex Court in University of Delhi v. Raj Singh & Ors. (AIR 1995 SC 336) upheld that the validity of the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a University and Institutions affiliated to it) Regulations, 1991. It was ordered that the Delhi University was obliged under law to comply with the provisions contained therein and was directed selection of Lecturers strictly in accordance with the said Regulations. While holding so, Apex Court also considered the consequences of non-complying with

the U.G.C. Regulations.

In this connection it is profitable to refer para. 21 of the said judgment. We may extract the relevant para. 21 of the said judgment.

"The provisions of clause of the said Regulations are, therefore, recommendatory in character. It would be open to a University to comply with the provisions of clause 2 by employing as lecturers only such persons as fulfil the requirement as to qualification for the appropriate subject provided in the schedule to the said Regulations. It would also be open, in specific cases, for the University to seek the prior approval of the U.G.C. to relax these requirements. Yet again, it would be open to the University not to comply with the provisions of clause 2, in which case, in the event that it failed to satisfy the U.G.C. that it had done so for good cause, it would lose its grant from the U.G.C. The said Regulations do not impinge upon the power of the University to select its teachers. The University may still select its lecturers by written test and interview or either. Successful candidates at the basic eligibility test prescribed by the said Regulations are awarded no marks or ranks and, therefore, all who have cleared it stand at the same level. There is, therefore, no element of selection in the process. The University's autonomy is not entrenched upon by the said Regulations."

We may also refer to para. 24 of the judgment wherein Apex Court held as follows :

"Put shortly, the Delhi University is mandated to comply with the said Regulations. As analysed above,

therefore, the Delhi University may appoint as a lecturer in itself and its affiliated colleges one who has cleared the test prescribed by the said regulations. Or it may seek prior approval for the relaxation of this requirement in a specific case, or it may appoint as lecturer one who does not meet this requirement without having first obtained the UGC's approval, in which event it would, if a failed to show cause for its failure to abide by the said Regulations to the satisfaction of the U.G.C. forfeit its grant from the U.G.C. If however, it did show cause to the satisfaction of the U.G.C. it not only would not forfeit its grant but the appointment made without obtaining the U.G.C.'s prior approval would stand regularised."

We may indicate it is entirely for the State Government and the University authorities to regulate their affairs and face the consequences of non-compliance with the U.G.C. Regulations, as held by the Apex Court, which we have extracted herein before. We may also indicate since necessary amendments have not been incorporated in the University statutes it cannot be held that the management of affiliated colleges are bound to follow the same. They are governed by the University Act and Statutes. In this connection we may also refer to the decision of the Division Bench of this Court in Joykutty v. State of Kerala, 2000 (3) KLT SN P. 32 wherein this court held that U.G.C. Scheme does not become applicable because of any statutory mandate making it obligatory for the Government and the University to follow the same. It is for the State Government and University Authorities to take steps to carry out necessary amendments in the University Act and Statutes and issue orders accordingly. Since the qualifications

> prescribed by the U.G.C. were not incorporated in the Statutes the Tribunal was not justified in holding that the selection conducted by the Management on the basis of the existing provisions of the University Act and Statutes is bad in law."

4. Judgment in Raveendran's case (supra) would therefore show that according to the Division Bench, as per the provisions of the Kerala University Act, the conditions of service of teachers of the affiliated colleges are to be prescribed by the Academic Council of the University and though the scheme was brought in by the Regulations of the University, the University statutes were not amended in terms thereof and that unless and until amendments are effected in the University Statutes, the UGC Regulations would not be applicable to private colleges and the managements of private colleges are not bound to follow the same. Thereafter, reference was made to the judgment of the Apex Court in University of Delhi v. Raj Singh [AIR 1995 SC 336] to conclude that the provisions of the UGC Regulations were recommendatory in nature and that non-compliance thereof would only entail in forfeiture of grant from the UGC.

5.The University Grants Commission Act, 1956 is a central legislation enacted in exercise of the legislative power of the Parliament under Entry 66 of List I providing for co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Section 20 of the UGC Act provide that in the discharge of its functions under the Act, the Commission shall be guided by such directions on questions of policy relating to national purposes as may be given to it by the Central Government. Section 26 of the UGC Act confers power on UGC to make regulations, consistent with the Act and the Rules. Section 26(1)(e) empowers UGC to prescribe the qualifications ordinarily required for appointment to the teaching staff and sub section (g) authorises it to regulate the standards of education. Sections 20 and 26(1)(e) and (g) of the UGC Act are extracted below for reference:

"20. Directions by the Central Government-

(1) In the discharge of its functions under this

Act, the Commission shall be guided by such directions on questions of policy relating to national purposes as may be given to it by the Central Government."

"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 -

xxx xxx xxx

(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) xxx xxx xxx

(g) regulating the maintenance of standards and the coordination of work or facilities in universities;"

6.In pursuance of the directive dated 30.3.2001 issued by the Government of India under section 20 of the Act, on 30.6.2010, the UGC framed the UGC Regulations, 2010, which, in so far as it is

relevant, prescribed qualifications for the posts of Assistant Professors, Associate Processors, Professors, Principal and such other teaching posts. The object that is sought to be achieved by the Government of India while issuing the directive has been explained by the Apex Court in the judgment in P.Suseela v. University Grants Commission [(2015) 8 SCC 129], where, it was held thus:

> "**12**. It is clear that Section 26 enables the Commission to make regulations only if they are consistent with the UGC Act. This necessarily means that such regulations must conform to Section 20 of the Act and under Section 20 of the Act the Central Government is given the power to give directions on questions of policy relating to national purposes which shall guide the Commission in the discharge of its functions under the Act. It is clear, therefore, that both the directions of 12-11-2008 and 30-3-2010 are directions made pertaining to questions of policy relating to national .purposes inasmuch as, being based on the Mungekar Committee Report, the Central Government felt that a common uniform nationwide test should be a minimum eligibility condition for recruitment for the appointment of Lecturer/Assistant Professors in universities/ colleges /institutions. This is for the obvious reason that MPhil degrees or PhD degrees are granted by different universities/institutions having differing standards of excellence. It is quite possible to conceive of MPhil/PhD degrees being granted by several

> universities which did not have stringent standards of excellence. Considering as a matter of policy that the appointment of Lecturers/Assistant Professors in all institutions governed by the UGC Act (which are institutions all over the country), the need was felt to have in addition a national entrance test as a minimum eligibility condition being an additional qualification which has become necessary in view of wide disparities in the granting of MPhil/PhD degrees by various universities/institutions. The object sought to be achieved by these directions is clear: that all Lecturers in universities/colleges/institutions governed by the UGC Act should have a certain minimum standard of excellence before they are appointed as such. These directions are not only made in exercise of powers under Section 20 of the Act but are made to provide for coordination and determination of standards which lies at the very core of the UGC Act. It is clear, therefore, that any regulation made under Section 26 must conform to the directions issued by the Central Government under Section 20 of the Act."

7. We also find that on the issuance of the UGC Regulations, 2010, the Government of Kerala issued G.O(P). 392/10/H.Edn dated 10.12.2010 approving and implementing the Regulations with effect from 18.9.2010, the date of publication of the Regulations in the Government of India gazette and also ordering that amendments required will be made to the Acts of

the Universities to implement the Regulations. This Government Order being relevant reads thus:

GOVERNMENT OF KERALA

Abstract

HIGHER EDUCATION-UGC SCHEME-REVISION OF SCALE OF PAY OF TEACHERS OF UNIVERSITIES, AFFILIATED COLLEGES, TEACHERS IN LAW COLLEGES AND ENGINEERING COLLEGES AND KERALA AGRICULTURAL UNIVERSITY AND TEACHERS IN PHYSICAL EDUCATION AND QUALIFIED LIBRARIANS ETC.-REGULATIONS OF UGC ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FSOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION 2010-REGULATIONS APPROVED-ORDERS ISSUED

HIGHER EDUCATION (C) DEPARTMENT

G.O.(P).No.392/2010/H.Edn. Dated,Thiruvananthapuram,10th December, 2010.

Read:- 1. G.O.(P) No.58/2010/H.Edn. Dated 27-3-2010
2. Letter No.F.No.I-2/2009(EC/PS)Pt. File -3 dated 23- 11-2010 from the UGC.

ORDER

Government vide order read as 1st paper above have issued orders implementing UGC pay revision of Teachers in Universities, Affiliated Colleges, Teachers in Law Colleges and Engineering Colleges and Kerala Agricultural University and Teachers in Physical Education and qualified Librarians etc.

2. Now, UGC vide letter read as 2nd paper above have furnished UGC regulations, 2010 on minimum qualifications for appointment of Teachers and other Academic Staff in Universities and Colleges and measures for the maintenance of standards in Higher Education.

3. Government have examined the matter in detail and are pleased to approve and to implement the Regulations as such.

4. The Regulations shall come into force with effect from 18-9-2010, ie., the date of publication of the Regulations in the Government of India Gazette.

5. All the Universities shall incorporate the UGC Regulations in their Statutes and Regulations within one month from the date of this order Government will initiate steps to amend the Acts of the University, if required to implement the Regulations. Government will also initiate steps to amend the Special Rules to give effect to the stipulations of the UGC Regulations.

6. Government are also pleased to order that where there are any provision in the Regulations inconsistent with the provisions in the G.O. read as 1st paper above, those provisions in the G.O. Would override the provisions in the Regulations to the extent of such inconsistency.

7. Government are also order that notwithstanding anything contained in the Regulations only those benefits both monetary and others specified in the Government Order read as 1st paper above would be receivable.

By order of the Governor,

M.MOHAMMED BASHEER,
Additional Secretary to Government.

8.It is in this background, the question regarding the applicability of UGC Regulations, 2010 to appointment to the post of Principal is required to be considered. This issue is no longer res integra. We

find from the judgment in Dr.Preeti Srivastava v. State of M.P. [(1999) 7 SCC 120] that the Apex Court has considered the binding effect of the provisions contained in the Indian Medical Council Act, another Central Legislation under Entry 66 of List I to the VIIth Schedule to the Constitution of India and held thus:

> **"55**. We do not agree with this interpretation put on Section 20 of the Indian Medical Council Act, 1956. Section 20(1) (set out earlier) is in three parts. The first part provides that the Council may prescribe standards of postgraduate medical education for the guidance of universities. The second part of sub-section (1) says that the Council may advise universities in the matter of securing uniform standards for postgraduate medical education throughout. The last part of sub-section (1) enables the Central Government to constitute from amongst the members of the Council, a Postgraduate Medical Education Committee. The first part of sub-section (1) empowers the Council to prescribe standards of postgraduate medical education for the guidance of universities. Therefore, the universities have to be guided by the standards prescribed by the Medical Council and must shape their programmes accordingly. The scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council. For example, the medical qualifications granted by a university or a medical institution have to

be recognised under the Indian Medical Council Act, 1956. Unless the qualifications are so recognised, the students who qualify will not be able to practise. Before granting such recognition, a power is given to the Medical Council under Section 16 to ask for information as to the courses of study and examinations. The universities are bound to furnish the information so required by the Council. The Postgraduate Medical Committee is also under Section 17, entitled to appoint Medical Inspectors to inspect any medical institution, college, hospital or other institution where medical education is given or to attend any examination held by any university or medical institution before recommending the medical qualification granted by that university or medical institution. Under Section 19, if a report of the Committee is unsatisfactory the Medical Council may withdraw recognition granted to a medical qualification of any medical institution or university concerned in the manner provided in Section 19. Section 19-A enables the Council to prescribe minimum standards of medical education required for granting recognised medical qualifications other than postgraduate medical qualifications by the universities or medical institutions, while Section 20 gives a power to the Council to prescribe minimum standards of postgraduate medical education. The universities must necessarily be guided by the standards prescribed under Section 20(1) if their degrees or diplomas are to be recognised under the Medical Council Act. We, therefore, disagree with and overrule the finding given in Ajay Kumar Singh v. State of Bihar to the effect that the standards of postgraduate medical education prescribed by the Medical Council of India are merely directory and the universities are not bound to comply

with the standards so prescribed."

9.Similarly, in State of Tamil Nadu v. S.V.Bratheep [(2004) 4 SCC 513], the Apex Court had occasion to consider the very same issue and it was held thus:

> "Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to form an exclusivity in the matter of admission but if certain prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State in Exercise of powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards made by the State Government is in any way adverse to, or lower than, the standards fixed by AICTE. It is, no doubt, true that AICTE prescribed two modes of admission - one is merely dependent on the qualifying examination and the other, dependent upon the marks obtained at the common entrance test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum in the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State Government than what had been prescribed by AICTE, can it be said that it is in any manner adverse to the standards fixed by AICTE or reduces the standard fixed by it? In our opinion, it

does not. On the other had, if we proceed on the basis that the norms fixed by AICTE would allow admission only on the basis of the marks obtained in the qualifying examination, the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by the AICTE to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either event, the streams proposed by AICTE are not belittled in any manner. The manner in which the High Court has proceeded is that what has been prescribed by AICTE is inexorable and that that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in Dr.Preeti Srivastava case. It is no doubt true, as noticed by this Court in Adhiyaman case that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. It is not a very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher than the mere pass marks. Excellence in higher education is always insisted upon by a series of decisions of this Court including Dr.Preeti Srivastava case. If higher minimum marks have been

> prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.
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> In this view of the matter, we think these appeals deserve to be allowed in part and the order of the High Court stands modified to the extent of stating that it is permissible for the State Government to prescribe higher qualifications for purposes of admission to the engineering colleges than what had been prescribed by AICTE and what has been prescribed by the State and considered by us is not contrary to the same but is only complementary or supplementary to it."

10. In Annamalai University represented by Registrar v. Secretary to Government, Information and Tourism Department [(2009) 4 SCC 590] also, the question regarding the binding nature of the provisions of the UGC Act was considered and the question was answered thus:

> **"40**. The UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system

of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

41. Was the alternative system envisaged under the Open University Act in substitution of the formal system, is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and an informal system is in the mode and manner in which education is imparted. The UGC Act was enacted for effectuating coordination and determination of standards in universities. The purport and object for which it was enacted must be given full effect.

42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of

> the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof."

11. Again in University Grants Commission v. Neha Anil Bobde (Gadekar) [(2013) 10 SCC 519], the issue was considered and answered thus:

> "4. The U.G.C.Act, 1956 was enacted by Parliament under the provisions of Schedule VII List I Entry 66 to the Constitution, which entitled it to legislate in respect of
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> > "coordination and determination of standards in institutions for higher education or research and scientific and technical education".
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> 5. For the said purpose, the Act authorised the Central Government to establish a commission, by name, the University Grants Commission, Chapter III of the Act deals with the powers and functions of the Commission. Section 12 states that 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 coordination 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 the Act, the Commission has been bestowed with certain powers under the Act.

6.	xxx	xxx	xxx
7.	xxx	xxx	xxx

8. UGC, in exercise of its powers conferred under clauses (e) and (g) of Section 26 (1) of the UGC Act and in supersession of the University Grants Commission (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to It Regulations, 2000, issued the University Grants Commission (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in universities and Colleges and Other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010. Regulation 2 states that the minimum qualifications for appointment and other service conditions of university and college teachers, librarians and Directors of Physical Education and Sports as a measure for the maintenance of standards in higher education, shall be as provided in the annexure to the above Regulations.

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22. We have elaborately referred to various statutory provisions which would clearly indicate that UGC as an expert body has been entrusted by the UGC Act the general duty to take such steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the universities. It is also duty -bound to perform such functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India. UGC has also got the power to define the qualification that should ordinarily be required for any person to be appointed to the teaching

staff of the university and to regulate the maintenance of standards and coordination of work and faculties in the universities".

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25. UGC, in exercise of its powers conferred under clauses (e) and (g) of Section 26 (1) of the UGC Act, issued the UGC (Minimum Qualification of Teachers and Other Academic Staff in Universities and Colleges and Other Measures for Maintenance of Standards of Higher Education) Regulations, 2010. Regulation 3.3.1 of the Regulations specifically states that NET shall remain the minimum eligibility condition for recruitment and for appointment of Assistant Professors in the universities/colleges/institutions. Regulation 4.4.1 stipulates that before fulfilling the other prescribed qualifications, the candidates must have cleared the National eligibility Test conducted by UGC. Therefore, the power of UGC to prescribe, as it thinks fit, the qualifying criteria for maintenance of standards of teaching examination, etc. cannot be disputed, It is in exercise of the above statutory powers, UGC has issued the notification for holding NET on 24-6-2012.

31. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the university. For attaining the said standards, it is open to UGC to lay down any "qualifying criteria", which has a rational nexus to the object to be achieved, that is, for maintenance of standards of teaching, examination and research."

12.Subsequently, the matter was again considered by the Apex Court in P.Suseela v. University Grants Commission [(2015) 8 SCC 129] where the Apex Court reiterated the mandatory nature of the UGC Regulations and rejected the claim for exemption therefrom by holding thus:

> **"17.** One of the learned counsel for the petitioners argued, based on the language of the direction of the Central Government dated 12-11-2008 that all that the Government wanted UGC to do was to "generally" prescribe NET as a qualification. But this did not mean that UGC had to prescribe this qualification without providing for any exemption. We are unable to accede to this argument for the simple reason that the word "generally" precedes the word "compulsory" and it is clear that the language of the direction has been followed both in letter and in spirit by the UGC Regulations of 2009 and 2010.
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> **18.** The arguments based on Article 14 equally have to be rejected. It is clear that the object of the directions of the Central Government read with the UGC Regulations of 2009/2010 are to maintain excellence in standards of higher education. Keeping this object in mind, a minimum eligibility condition of passing the national eligibility test is laid down. True, there may have been exemptions laid down by UGC in the past, but the Central Government now as a matter

> of policy feels that any exemption would compromise the excellence of teaching standards in universities/colleges/institutions governed by the UGC. Obviously, there is nothing arbitrary or discriminatory in this — in fact it is a core function of UGC to see that such standards do not get diluted."

13. However, on behalf of the contesting respondents, reliance was placed on the Apex Court judgment in Kalyani Mathivanan v. K.V.Jeyaraj [(2015) 6 SCC 363] to contend that the University Regulations in question are directory for the Universities and colleges under the purview of State Legislations. In this judgment, the question that arose for consideration was whether the UGC Regulations, 2010 are applicable to appointment to the post of Vice Chancellor of Madurai Kamaraj University established under the Madurai Kamaraj University Act, 1965. The discussions were summed up by the Apex Court in paragraph 62 of the judgment by holding thus:

> "**62**. In view of the discussion as made above, we hold:
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> **62.1**. To the extent the State legislation is in conflict with the Central legislation including subordinate legislation made by the Central legislation under Entry 25 of the Concurrent List shall be repugnant to the

> Central legislation and would be inoperative.
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> **62.2.** The UGC Regulations being passed by both the Houses of Parliament, though a subordinate legislation has binding effect on the universities to which it applies.
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> **62.3.** The UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central universities and colleges thereunder and the institutions deemed to be universities whose maintenance expenditure is met by UGC.
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> **62.4.** The UGC Regulations, 2010 are directory for the universities, colleges and other higher educational institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, the UGC Regulations, 2010 are partly mandatory and is partly directory.
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> **62.5.** The UGC Regulations, 2010 having not been adopted by the State of Tamil Nadu, the question of conflict between the State legislation and the Statutes framed under the Central legislation does not arise. Once they are adopted by the State Government, the State legislation to be amended appropriately. In such case also there shall be no conflict between the State legislation and the Central legislation."

14. According to us, this judgment cannot, in any manner, dilute the principles laid down in the aforesaid judgments for the reason that the State of Kerala itself has adopted the UGC Regulations vide

Government Order dated 10.12.2010, which has been extracted in the earlier part of this judgment. Once the UGC Regulations were adopted by the State Government and implemented with effect from 18.9.2010, the Regulations are mandatorily to be complied with by the Universities in the State. It is also clarified that anything that is in conflict with the Central law and the subordinate legislation made thereunder, will be void and inoperative.

15. However, the contention raised by the Universities was that consequent amendments were carried out only subsequently and that until then, the University Acts and Statutes, as it stood then, governed the appointments. It was submitted that the Kerala University carried out amendments with effect from 23.11.2013, the Calicut University with effect from 30.7.2013, the Mahatma Gandhi University with effect from 1.8.2011 and the Kannur University with effect from 19.10.2011. Therefore, according to them, till the Universities amended the statutes, irrespective of whether the Government have adopted the UGC Regulations, 2010 or not, the Regulations had no

relevance so long as appointments were made in terms of the University Statutes as it stood at the relevant time.

16. This question will have to be answered with reference to the provisions of the UGC Act, the University Act and Article 245 of the Constitution of India and the answer to this question would be the answer to the question whether, in the event of a conflict, the University Act, enacted under Entry 25 of List III and the Statutes would prevail over the UGC Act and the Regulations framed thereunder. This question also has been answered by the Apex Court judgment in Kalyani Mathivanan v. K.V.Jeyaraj [(2015) 6 SCC 363] where it was held thus:

> "**46**. Article 246 demarcates the matters in respect of which Parliament and State Legislature may make laws. The legislative powers of the Central and State Governments are governed by the relevant entries in the three lists given in the Seventh Schedule.
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> **47**. Entry 66 of List I provides for coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Prior to the 42nd Amendment,

education including universities was subject to the provisions of Entries 63, 64, 65, 66 of List I and Entry 25 of List III was shown in Entry 11 of List II—State List. By the 42nd Amendment of the Constitution w.e.f. 3-1-1977 Entry 11 of List II—State List was omitted and was added as Entry 25 of List III. At present the aforesaid provisions read as follows:

"**SEVENTH SCHEDULE**

.LIST I — UNION LIST

66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

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LIST III — CONCURRENT LIST

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."

48. Article 254 relates to repugnancy of law made by the State with the law made by Parliament. Article 254 reads as follows:

"**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."

49. The effect in case of inconsistency between the legislation made by Parliament and the State Legislature on the subject covered by List III has been decided by this Court in numerous cases.

50. In State of T.N. v. Adhiyaman Educational & Research Institute, this Court noticed that Schedule VII List I Entry 66 has remained unchanged from the inception and that Entry 11 was taken out from List II and was amalgamated with Entry 25 of List III. In the said case the Court held as follows: (SCC pp. 113-14 & 134-35, paras 12 & 41)

12. "The subject 'coordination and determination of standards in institutions for higher education or research and scientific and technical institutions' has always remained the special preserve of Parliament. This was so even before the Forty-second Amendment, since Entry 11 of List II even then was subject, among

others, to Entry 66 of List I. After the said Amendment, the constitutional position on that score has not undergone any change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it .contended before us, that the legislation with regard to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions has always been the preserve of Parliament. What was contended before us on behalf of the State was that Entry 66 enables Parliament to lay down the minimum standards but does not deprive the State Legislature from laying down standards above the said minimum standards. We will deal with this argument at its proper place.

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41. What emerges from the above discussion is as follows:

(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.

(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.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the .applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central

law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally."

51. In Preeti Srivastava v. State of M.P., a Constitution Bench of five Judges dealt with the State competence under List III Entry 25 to control or regulate higher education which is subject to standards laid down by the Union of India. The Court noticed that the standards of higher education can be laid down under List I Entry 66 by the Central legislation and held as follows: (SCC pp. 153-55, paras 35-37)

35. "The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the Seventh Schedule to the Constitution. In the Seventh Schedule as originally in force, Entry 11 of List II gave to the State an exclusive power to legislate on

'education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III'.

Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3-1-1977 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

'**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.'

Entry 25 is subject, inter alia, to Entry 66 of List I. Entry 66 of List I is as follows:

'**66.** Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.'

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while .considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can

have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

(1) the calibre of the teaching staff;

(2) a proper syllabus designed to achieve a high level of education in the given span of time;

(3) the student-teacher ratio;

(4) the ratio between the students and the hospital beds available to each student;

(5) the calibre of the students admitted to the institution;

(6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;

(7) adequate accommodation for the college and the attached hospital; and

(8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.

37. While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training

programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to .which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is a highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their postgraduate courses."

52. In Annamalai University v. Information and Tourism Deptt., this Court observed that the UGC Act was enacted by Parliament in exercise of its power under Schedule VII List I Entry 66 to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III. It was held that in such circumstances the question of repugnancy between the provisions of the said two Acts, does not arise. The Court while holding that the provisions of the UGC Act

are binding on all the universities held as follows: (SCC p. 607, paras 40 & 42)

40. "The UGC Act was enacted by Parliament in exercise of its power under Schedule VII List I Entry 66 to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

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42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of

> the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof."
>
> . **53**. The aforesaid judgment makes it clear that to the extent the State legislation is in conflict with the Central legislation including subordinate legislation made by the Central legislation under Entry 25 of the Concurrent List shall be repugnant to the Central legislation and would be inoperative."

17. Therefore, irrespective of whether the University Acts enacted under Entry 25 of list III or the Statutes framed thereunder are amended in line with the UGC Regulations or not, in view of its adoption by the State of Kerala with effect from 18.9.2010 as per Government Order dated 10.12.2010, the Universities and affiliated colleges in Kerala State are bound to comply with the UGC Regulations, 2010. Viewed in that manner, the natural consequence is that the principles laid down by this Court in Raveendran's case cannot be sustained and is overruled.

18.Turning to the writ petitions under consideration, in W.P(C).15739/13, the petitioner therein commenced

service as Lecturer in a Government college on 12.10.1981. He was later appointed as a Lecturer in a college under the Travancore Devaswom Board with effect from 16.12.1981, which was approved by the Mahatma Gandhi University, to which the college is affiliated. He was placed in the Senior Grade and Selection Grade with effect from 12.10.1989 and 12.10.1997 respectively. Grievance in the writ petition is with respect to the appointment of Dr.P.Chandrasekhara Pillai as the Principal of DB College, Pampa and according to the petitioner, the said appointment was made overlooking his seniority among Selection Grade Lecturers and for the sole reason that he did not possess PhD qualification.

19.In W.P(C).29253/12 and 17148/13, the petitioner therein commenced service as a Junior Lecturer in DB College, Parumala from 27.6.1983 and was placed in the Selection Grade with effect from 27.6.1998. After obtaining M.Phil degree in 2001, the petitioner acquired PhD in Economics in 2004. His grievance is regarding the appointments made to the post of Principal in the various colleges under the

management of Travancore Devaswom Board, which are affiliated to the Mahatma Gandhi University and Kerala University and according to him, appointments can be made only from among Selection Grade Lecturers who had PhD qualification as mandated in the UGC Regulations, 2010.

20.In W.P(C).30711/12 and 16220/13, the petitioner therein was appointed as a Lecturer with effect from 20.6.1991. He was placed in the Senior and Selection Grades with effect from 24.7.1997 and 24.3.2000 respectively. He obtained PhD qualification in 2004 and thereafter, was promoted as Reader with effect from 31.3.2005 which post was re-designated as Associate Professor with effect from 1.1.2006. He was promoted as Principal of Sri.Ayyappa College, Eramalikkara affiliated to the Kerala University with effect from 4.5.2009, which was set aside by this Court in the judgment in W.P(C).15405/09. The said judgment was confirmed in W.A.975/11 and the SLP filed before the Apex Court was also dismissed. In the selection that was subsequently held, the petitioner was not selected to the post of Principal

and was reverted to the post of Associate Professor. The selections effected by the respondent Travancore Devaswom Board vide orders dated 30.11.2012 and 31.5.2013 are impugned in W.P(C).30711/12 and 16220/13 respectively. The specific contention raised by the petitioner is that only those Selection Grade Lectures who have PhD qualification as mandated in the UGC Regulations, 2010 can be appointed as Principal.

21.In W.P(C).29512/12, the petitioner started his career as Junior Lecturer in DB College, Mannar affiliated to Kerala University with effect from 14.8.1990. She was placed in the Senior Grade and Selection Grade. She obtained PhD in the year 1995. In 2012, when appointment was made to the post of Principal, she was not selected and this led to the filing of the writ petition. Subsequently, she was appointed as principal of DB College, Thalayolaparambu With effect from 1.4.2003 and the petitioner retired on superannuation on 31.5.2013. She now seeks a direction to the authorities of the

Mahatma Gandhi University to approve her appointment as Principal with effect from 1.4.2013.

22.W.A.1676/13 arises from the judgment in W.P(C). 3685/12. That writ petition was filed by the appellant who had applied in response to the notification for the post of Professor in Botany. The main prayer in the writ petition was to declare that the action of the University in proceeding with the selection to the post of Professor in Botany pursuant to the notification by awarding marks in terms of the University Order No.GAII/C1/3128/08(1) dated 6.11.2008, instead of awarding score as indicated in the Academic Performance Indicator in terms of UGC Regulations, 2010, is illegal and unconstitutional. The petitioner also sought for an order quashing Exts.P12 to P15, by which, selection and appointment of the additional 4th respondent as Professor in Botany was made. Consequential directions were also sought for. The writ petition was dismissed by the learned single Judge on the ground that at the time when the notification was issued, it was the guidelines dated 6.11.2008 which

were in force and that the UGC Regulations, 2010 was not approved by the University even at the time when the interview was held on 25.1.2012. According to the learned Judge, without making any amendment to the University Act or the Statutes, it is not possible for the appellant to insist that the University should follow the UGC Regulations, 2010 for the selection notified. However, as we have already concluded, the UGC Regulations, 2010 having been adopted by the Government of Kerala vide G.O(P). No.392/2010/H.Edn dated 10.12.2010 with effect from 18.9.2010, the selections held thereafter can only be in compliance with the said Regulations. That apart, having regard to the law laid down by the Apex Court in Kalyani Mathivanan extracted supra, in the event of a repugnancy between the UGC Regulations and the Regulations framed thereunder and the University enactments and the statutes, the latter will be void. Therefore, the fact that the University Statutes were not amended is inconsequential. For that reason, the judgment under appeal requires to be set aside.

23.OP(KAT).1329/13 is filed by the Applicant in TA.7290/12. She is the Associate Professor in the Government Law College, Ernakulam. According to her, in terms of the UGC Regulations, 2010, she is qualified to be appointed to the post of Principal. Despite the State Government having adopted the UGC Regulations, 2010, in the seniority list prepared by the second respondent, persons who did not possess the qualifications prescribed by the UGC were also included and she was excluded. In such circumstances, she filed W.P(C).1334/11 before this Court with prayer to include her in the select list for the post of Principal, law College. Pursuant to interim orders passed, the selection and appointment to the said post was made subject to the outcome of the writ petition. On the establishment of the Kerala Administrative Tribunal, the writ petition was transferred and was numbered as TA.7290/12 and in the mean while, candidates who did not possess the mandatory qualifications prescribed for the UGC for the post of Principal were selected. By the impugned order, the Tribunal dismissed the application. Thereupon, the OP was filed seeking to quash the

order of the Tribunal and to direct the respondents to include the petitioner in Annexure D select list and grant her all consequential benefits, including appointment as Principal forthwith. There is a further prayer to direct the second respondent to prepare the select list of candidates fulfilling the qualifications prescribed by the UGC Regulations, 2010 for the post of Principal, Law Colleges and effect appointments therefrom.

24.Having seen the facts of the pleadings of the parties, as aforesaid, in all cases, except W.P(C). 15739/13, the prayer of the petitioners and the appellants is for compliance of the UGC Regulations, 2010 and to make appointments in terms thereof. This prayer, in the light of our conclusions hereinabove, deserves acceptance. Therefore, the writ petitions, except W.P(C).15739/13, the writ appeal and the OP (KAT) have to be allowed declaring that appointments made in contravention of the UGC Regulations, 2010, which are under challenge, are illegal. Consequently, the appointing authorities concerned will consider the claims of the petitioners herein in

accordance with their qualifications, seniority and suitability, along with other eligible candidates and make appointments in accordance with law.

W.P(C).15739/13 necessarily has to fail and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
A. HARIPRASAD, Judge.

Sd/-
P.B.SURESH KUMAR, Judge.

kkb.