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# THIS UNSEATING OF VICE CHANCELLORS IS FAULTY

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‘Repugnancy can arise only between the provisions of the University Acts and the UGC Act, and not the regulations of the UGC’ | Photo Credit: Getty Images/iStockphoto

Two recent judgments of the Supreme Court of India on the appointment of vice chancellors (VC) in State universities in violation of the regulations of the University Grants Commission (UGC) are significant in the context of higher education in a federal country such as India.

In the first case, *Gambhirdan K. Gadhvi vs The State Of Gujarat*(March 3, 2022), from Sardar Patel University, Gujarat, the Court (Justices M.R. Shah and B.V. Nagarathna) quashed the appointment of the incumbent Vice Chancellor on the ground that the search committee did not form a panel for the appointment of VC, and, therefore, was not in accordance with the UGC Regulations of 2018. It was held that since the State law was repugnant to the UGC regulations, the latter would prevail and the appointment under the State law had become void *ab initio*.

In the second case, from Kerala, i.e., *Professor (Dr) Sreejith P.S vs Dr. Rajasree M.S.* (October 21, 2022), with the Bench of Justices M.R. Shah and M.M. Sundresh, the appointment of the Vice Chancellor of the A.P.J. Abdul Kalam Technological University, Thiruvananthapuram, was challenged on the ground that the search committee recommended only one name, which is against the UGC Regulations. The challenge succeeded and the Court quashed the appointment of the VC on the ground that the provision relating to the search committee in the University Act is repugnant to the UGC Regulations, and was therefore void.

But this decision of the Supreme Court triggered unprecedented developments in Kerala with the State Governor, Arif Mohammad Khan, who is the Chancellor of all the universities in Kerala, asking as many as 11 VCs of other universities of the State to resign immediately on the ground that their appointments too had become void after the Supreme Court’s judgment. The case is now before the Kerala High Court. No VC has resigned as per the direction of the Governor. This development has intensified an already raging battle between the Left Democratic Front government and the Governor, which is likely to become fiercer with the Kerala High Court quashing the appointment of the VC of the Kerala University of Fisheries and Ocean Studies on November 14 on the ground that this appointment was in violation of the UGC Regulations.

In both these cases, the issue framed by the Supreme Court is about whether the appointment of VCs should be made as per the UGC Regulations or the provisions of the State University Act. In a federal system the framing of such a question by a court may look strange, but under the Indian Constitution both the Union and the State can legislate on a matter under the

Concurrent list. As education is a subject on the Concurrent list, this question needs to be addressed seriously. A VC is appointed by the Chancellor under the relevant University Act, but the Supreme Court has brought in Article 254 of the Constitution to rule that if provisions of the State law are repugnant to the provisions of the Union law, the State law will become void. In the cases mentioned above, the top court found that the search committee recommended only one name for the appointment of VC which violates the UGC Regulations which require three to five names, and, therefore, the provision of the State law is void. Thus, the Court's conclusion is that if any provision in the State university law is repugnant to the UGC Regulations, the latter will prevail and the former will become void. So, on the one side we have an Act passed by a legislature and on the other we have regulations made by a subordinate body such as the UGC.

The Court's conclusion that the provisions of the State University Acts are repugnant to the UGC regulations under Article 254 is faulty.

There are several reasons for saying this. First, a careful reading of Article 254 would show that the repugnancy under this Article relates to a State law and a substantive law made by Parliament. It impliedly excludes rules, regulations, etc. Rules and regulations are made by subordinate authorities — in this case the UGC — whereas the substantive law is made by the superior authority, namely Parliament. Article 254(2) says "... the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President...." Here the term 'law' denotes the Bill passed by the legislature and reserved for the consideration of the President which does not contain rules, regulations, etc. Identical words such as "any provisions of a law made by Parliament" are used in this Article in the context of Parliament. So, it can only mean the substantive law and not the subordinate law. Thus, it becomes clear that the repugnancy can arise only between the provisions of the University Acts and the UGC Act, and not the regulations of the UGC.

Second, the rules and regulations made by the subordinate authority, though laid in Parliament, do not go through the same process as a law. Normally these do not require the approval of Parliament. The rules and regulations have an inferior status as compared to an Act. The Constitution cannot be assumed to equate the Act with the rules.

Third, the Constitution does not, in general terms, define the term law. The inclusive definition of law given in Article 13(2) is applicable only to that Article. It has no application to other Articles, which means the term law does not include the rules, regulations, etc. for the purpose of Article 254.

Fourth, the regulations made by a subordinate authority of the Union overriding a law made by a State legislature will amount to a violation of federal principles and a negation of the concurrent legislative power granted to the State by the Constitution. Finally, the UGC Regulations on the appointment of VCs are outside the scope of the main provisions of the UGC Act as none of its provisions refers to the appointment of VCs.

Regulations are not independent legislations. They should be within the scope of the parent Act as otherwise they will be *ultra vires* the Act. A perusal of Section 26 of the UGC Act, which empowers the UGC to make regulations, would show that the appointment of a VC is not a matter on which the UGC can make regulations. So, the UGC's legal authority to make mandatory regulations on the appointment of VCs of State universities needs to be re-examined urgently.

The Supreme Court did not in the cases above analyse the concept of repugnancy before holding that the State University laws are repugnant to the UGC Regulations, and therefore the appointments are void *ab initio*. Article 254 needs to be analysed in depth before reaching such

conclusions. Such an analysis would make it clear that a State law can be repugnant only to the central Act, and not the regulations and rules made there under. Since this issue is bound with the right of States to manage university education, more serious thought needs to be given to it. Even when there is repugnancy the Court has a duty to reconcile the provisions. The Supreme Court held in *S. Satyapal Reddy vs Govt. Of A.P.* (1994) that “the court has to make every attempt to reconcile the provisions of the apparently conflicting laws and the court would endeavour to give harmonious construction... The proper test would be whether effect can be given to the provisions of both the laws or whether both the laws can stand together”. When this is done in most of the cases, there would be no need to strike down a State law on the ground of repugnancy.

P.D.T. Achary is former Secretary-General, Lok Sabha