
(2015) 01 MAD CK 0119

In the Madras High Court

Case No : Writ Petition No. 13726 of 2014 and M.P. Nos. 1, 2 and 7 of 2014

K.R.S. Girija Shyamsundar

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 16(1), 3(1)

Citation : (2015) 3 LW 163 : (2015) 3 MLJ 144

Hon'ble Judges : M.M. Sundresh, J.

Bench : Single Bench

Advocate : R. Muthukumaraswamy, Senior Counsel for A. Arulmozhi, for the Appellant; V. Subbiah, Spl. G.P., Advocates for the Respondent

Final Decision : Allowed

Judgement

1. The writ petitioners as well as the seventh respondent are working as Professors in the Ethiraj College for Women, Chennai-600 008, which in turn is governed by the fourth respondent-Board. The qualifications pertaining to the petitioners are as follows:

The seventh respondent has discharged her functions as Associate Professor, Department of English. The qualification of the seventh respondent is as follows:

"a) A Ph.D. Degree holder from the year 1994 itself

b) Officially worked as Steering Committee Co-ordinator in 2003 for UGC Programme and successfully submitted the report and College was declared by the UGC as "College with potential for Excellence" in X plan and I crore rupee grant was sanctioned for the college.

c) Took part in formulation of online/offline Admission Procedure of the college in 2011

d) Took part in training for Principal in "Workshop for College Principals on Understanding Quality and Excellence in Colleges with Potential for Excellence"

organised by the Department of Higher and Professional Education of National University of Educational Planning and Administration, New Delhi from September 17-21, 2011.

e) IQAC-Co-ordinator since 2012 (which is a special and vital post with financial allowance from UGC) for the college, successfully completed NAAC Re-Accreditation and the College was ranked with in top five Colleges out of 65 in that Batch-result declared in Oct., 2013."

2. The fifth respondent has issued a Circular dated 20.03.2014 calling for applications for the post of the Principal. The petitioner and seventh respondent, who were also the applicants of the above, were called for the interview having secured Academic Performance Indicators Scores("API scores" in short). As against the petitioners, the seventh respondent was selected and appointed as the Principal. Challenging the said decision made in favour of the seventh respondent, the petitioners are before this Court.

3. Submissions of the Petitioners:-

3.1. The learned Senior Counsel appearing for the petitioners submitted that as against them, who are far-more qualified than the seventh respondent, for the reasons known, she has been selected. The UGC Regulations on minimum qualifications for appointment of Teachers and other Academic Staff in Universities and Colleges for the year 2010 and the subsequent amendment made thereunder to Regulations 6.1.0 and 6.0.2 have not been followed, with respect to the constitution of the Selection Committee and the procedures adumbrated for the Committee's constitution thereunder.

3.2. The constitution of the Selection Committee was made based upon the Regulations of the year 2000, as seen from the first counter affidavit filed. No adequate consideration has been given with respect to the API and Performance Based Appraisal System (PBAS in short). There is no transparency as mandated by the Regulations. The fourth respondent cannot be allowed to take a contrary stand. Professor Dr. S. Vittal was not the part of the Selection Committee. The fact that he has attended the Governing Body Meeting on the very same day would prove the same. In support of the said submission, the learned Senior Counsel has made reliance upon the following decisions.

(1) Dr. S. Arulmani Vs. Government of Tamil Nadu and Others, ; and

(2) ASSOCIATION OF MANAGEMENT OF PRIVATE COLLEGES V. THE SECRETARY, UNIVERSITY GRANTS COMMISSION AND OTHERS (CDJ 2006 MHC 2466) (W/P. No. 25433 of 2006 dated 12.09.2006).

4. Submissions of the Respondents:-

4.1. The learned Senior Counsel appearing for the fourth respondent and the learned counsel appearing for the seventh respondent submitted that the selection has been based upon objective consideration of the available materials.

As there is no mala fides involved, the power of judicial review is not required to be extended. The API scores are meant for shortlisting alone. The total discretion lies only with the fourth respondent in making selection. The mistake committed in the earlier counter affidavit was rectified in the subsequent one. Appropriate steps have been taken by informing the Universities for appointing the nominees of the Vice Chancellor, for which the fourth respondent cannot be held responsible. The Regulations have been correctly followed both with respect to the constitution of the Selection Committee and the subsequent selection process. Therefore, no interference is required.

4.2. The learned counsel appearing for the University Grants Commission, who has been impleaded suo motu by the order of this Court dated 28.11.2014, submitted that the Regulations are very clear. As per the proviso, API scores cannot be used for Expert Assessment of candidates. In other words, API scores would be used for screening purpose only. Insofar as the PBAS is concerned, it is for the Universities to adopt the template proforma or devise their own self-assessment-cum-performance Appraisal Forms for teachers. However, while adopting this, the University shall not change any of the categories or scores of API given in Appendix III. Hence, it is submitted that appropriate orders have to be passed on merits.

5. DISCUSSION:-

When a selection for a post is questioned, the power of judicial review is limited to the decision making process adopted by the authority concerned. This Court is not expected to conduct a roving enquiry and act either as an Appellate Authority or expert body over the decision made. Keeping the said principle in mind, let us consider the issues raised.

6. Regulations of the UGC:-

There are two legal issues involved before this Court. The first one is the constitution and composition of the Selection Committee. The second issue pertains to the interpretation of the Regulations, especially of UGC Regulations 6.1.0 and 6.0.9 of the year 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, 2010.

7. Constitution of the Selection Committee:-

Regulation of the year 2000, which has been replaced by the subsequent Regulation of the year 2010 provides for the constitution of Selection committee in the following manner to the post of Principal.

- "1. Chairperson of the Governing Board as Chairperson.
2. One member of the Governing Board to be nominated by the Chairperson.
3. Two Vice Chancellor"s nominees, out of whom one should be an expert.

4. Three experts consisting of the Principal of a college, a Professor and an accomplished educationist not below the rank of a Professor (to be nominated by the Governing Board) out of a panel of experts approved by the Vice Chancellor."

This Regulation has been replaced by the Regulation of the year 2010. Regulation 5.1.6, which deals with the constitution of the Selection Committee to the post of College Principal is fruitfully recapitulated hereunder.

"5.1.6. College Principal:

(a) The Selection Committee for the post of College Principal shall have the following composition:

1. Chairperson of the Governing Body as Chairperson.
2. Two members of the Governing Body of the college to be nominated by the Chairperson of whom one shall be an expert in academic administration.
3. One nominee of the Vice Chancellor who shall be a Higher Education expert. In case of Colleges notified/declared as minority educational institutions, one nominee of the Chairperson of the College from out of a panel of five names, preferably from minority communities, recommended by the Vice-Chancellor of the affiliating university of whom one should be a subject expert.
4. Three experts consisting of the Principal of a college, a Professor and an accomplished educationalist now below the rank of a Professor (to be nominated by the Governing Body of the college) out of a panel of six experts approved by the relevant statutory body of the university concerned.
5. An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice Chancellor, if any of the above members of the selection committee do not belong to that category.

(b) At least five members, including two experts, should constitute the quorum.

(c) All the selection procedures of the selection committee shall be completed on the day of the selection committee meeting itself, wherein minutes are recorded along with the scoring proforma and recommendation made on the basis of merit with the list of selected and waitlisted candidates/Panel of names in order of merit, duly signed by all members of the selection committee."

From the above, it is clear that the earlier constitution of the Selection Committee was modified by the subsequent Regulation of the year 2010. When a contention was raised by the petitioners in the affidavit filed originally with regard to the constitution, the following is the reply given by the fourth respondent in the counter affidavit filed.

"With regard to the averments in Para 12, it is stated that the constitution of the selection Committee is as per the UGC regulations prescribed for the purpose. It is submitted that the Chairperson is myself and the other member from the

Governing Body is Mr. T.M. Nagarajan. He is a member of Governing Body who is the financial Trustee and an independent member of the Trust. The Vice Chancellor's nominees are Dr. Sriman Narayan and Dr. Niranjali Devarajan. The three experts nominated by the Governing body out of the panel of experts approved by the Vice Chancellor are Dr. Rani who is in the Principal of S.D.N.B. Vaishnava College and Dr. M. Ravichandran, who is in the rank of a Professor and Dr. S.P. Mohan who is in the rank of Professor from the University of Madras. Therefore, the averments in Para 12 of the affidavit about the constitution of the selection committee are not correct, It is submitted that the averments that none of the members of the selection committee were nominated by the Vice Chancellor of the University is not true and as already stated that the Vice Chancellor's nominees are Dr. Sriman Narayan and Dr. Niranjali Devarajan."

This statement of oath has been made to fit into the Regulation of the year 2000, which provides for the composition of the Selection Committee. There is absolutely no difficulty on this.

8. Thereafter, a better affidavit has been filed by the petitioners stating what is followed is Regulation of the year 2010 with respect to the constitution of the Selection Committee. Let us see the Regulations of the year 2010. For this, a consolidated counter affidavit has been filed by the fourth respondent taking the following stand.

"14. I deny the averments in Para 12 of the affidavit and para 5 of the additional affidavit that the Chairperson had nominated only one member from the governing body and that there is no expert in academic administration in the selection committee. I state that the 4th respondent who is the Chairperson of the Selection Committee had nominated two members of the Governing body namely Shri T.M. Nagarajan and Prof. Dr. S. Vittal to form part of the Selection Committee. However Prof. Dr. S. Vittal was not present on the day of interview. I state that myself being the Chairperson, Shri. T.M. Nagarajan, Dr. Sriman Narayan, Dr. Niranjali Devarajan, Dr. Rani, Dr. M. Ravichandran and Dr. S.P. Mohan formed part of the quorum of the selection committee. Therefore it is in accordance with Rule 5.1.6. clause (b) of the UGC Regulations, 2010. Rule 5.1.6. Clause (b) reads as follows:

"...

(b) At least five members, including two experts, should constitute the quorum.

..."

I further state that I being the Chairperson of the Board of Trustees am an expert in academic administration. I have been a member of the governing body for several years."

9. Now, this counter affidavit has been filed seeking to justify the Selection Committee apparently made in compliance of the Regulation 2010. This Court is of the view that the unexplained change in the stand taken by the fourth

respondent is only for the purpose of giving validity to the Selection Committee appointed as per the Regulation 2000.

10. Now, we have seen both the Regulations pertain to the Selection Committee, Regulation 3.5.0 of the Regulation 2000 speaks about one member of the governing body to be nominated by the Chairperson. It also requires two Vice Chancellor's nominees, out of whom one should be an expert. Besides these, three experts have to be appointed out of the panel approved by the Vice Chancellors. Under the Regulation 2010, no doubt, two members of the Governing Body are to be nominated by the Chairperson of whom one should be an expert in "academic administration".

11. A perusal of the records produced in the typed set of papers would show that there is only one person of the governing body nominated by the Chairperson. Perhaps, this may be inconsonance with the Regulation 2000 and not 2010. It has been constituted with the named members as per the UGC Regulations as seen from the documents produced at page No. 29 of the typed set of papers filed by the fourth respondent.

12. Now, an attempt has been made that Dr. S. Vittal was absent. He was present in the evening with the Governing Body Meeting. The nominees of the Selection Committee speak about the Committee constituted, which clearly spells out only one member of the Governing Body nominated by the Chairman. The issue does not end with this.

13. Under the Regulation 2000, there has to be two Vice Chancellor's nominees. The Committee constituted by the first respondent indicates two Vice Chancellor's nominees. Under the Regulation 2000, what is required is two nominees of the Vice Chancellor, out of whom only one nominee is an expertise in higher education. It is rather puzzling as to why two Vice Chancellor's nominees have to come in, when the Regulation requires only one, that too, with an expertise in higher education. The Regulation of the year 2010 mandates that out of the two members of the Governing Body, only one shall be an expertise in academic administration. Even here also, a feeble attempt is made to say that the Chairperson himself is an expert in academic administration. This has not been complied with. This Court is afraid that the submissions made in the counter affidavit cannot at all be accepted. The Chairperson under the Regulations is required to act only as a Chairperson of the Selection Committee. It is only one of the members to be nominated by him should be an expert in an "academic administration".

14. The learned Senior Counsel appearing for the fourth respondent has submitted that the earlier counter affidavit filed was based upon the averments made in the writ petition at that point of time. This contention is liable to be rejected. When a statute mandates the constitution of a Selection Committee in a particular manner, the same will have to be complied with, in letter and spirit. If the Selection Committee is constituted in accordance with the Regulation 5.1.6

of the year 2010, there is no necessity to justify the constitution as per Regulation 2000. Therefore, the averment made originally in the writ petition has got no relevancy. Accordingly, this Court has got no hesitation in holding that the Selection Committee has not been constituted in accordance with the Regulation 5.1.6 of the Regulation 2010.

15. When the Selection Committee has not been constituted in accordance with law, the entire selection would fall to the ground. Considering the said issue, it has been held by this Court in Dr. S. Arulmani Vs. Government of Tamil Nadu and Others, , which reads thus:

"That apart when once the regulations are adopted by the University, the 5th respondent college affiliated to the University is bound to follow the regulations. In this context, the constitution of the committee to select the post of Principal should be only in accordance with the conditions prescribed under the regulation of UGC. There is no dispute that the committee which interviewed and selected the 6th respondent for the post of Principal was not in conformity with the composition of the committee prescribed in UGC Act and to this extent, the selection of the 6th respondent cannot be held to be valid."

16. The said decision rendered therein was also followed in ASSOCIATION OF MANAGEMENT OF PRIVATE COLLEGES V. THE SECRETARY, UNIVERSITY GRANTS COMMISSION AND OTHERS (CDJ 2006 MHC 2466) (W.P. No. 25433 of 2006 dated 12.09.2006). Taking note of the said ratio laid down in the decisions referred to supra, this Court is of the view that the selection of the seventh respondent is liable to be set aside on the ground of wrongly constituted Selection Committee.

17. Selection Process:-

Under the Regulations, the University Grant Commission has formulated Performance Based Appraisal System(PBAS), which in turn, is based on the Academic Performance Indicators(API). The selection procedure to the post of Principal as per the amended Regulation 6.1.0 is as follows:-

"6.1.0. "The overall selection procedure shall incorporate transparent, objective and credible methodology of analysis of the merits and credentials of the applicants based on weightages given to the performance of the candidate in different relevant dimensions and his/her performance on a scoring system proforma, based on the Academic Performance Indicators (API) as provided in this Regulations in Tables 1 to IX Appendix III.

Provided that API scores will be used for screening purpose only and will have no bearing on expert assessment of candidates in Direct Recruitment/CAS(Career Advancement Scheme).

Provided also that the API score claim of each of the sub-categories in the Category III (Research and Publications and Academic Contributions) will have the following cap to calculate the total API score claim for Direct Recruitment/

CAS.

In order to make the system more credible, universities may assess the ability for teaching and/or research aptitude through a seminar or lecture in a class room situation or discussion on the capacity to use latest technology in teaching and research at the interview stage. These procedures can be followed for both direct recruitment and CAS promotions wherever selection committees are prescribed in these Regulations."

18. Similarly Clause 6.0.2 of the Pre-Regulation 2010 has been amended and substituted in the following manner.

"6.0.2 The Universities shall adopt these Regulations for selection committees and selection procedures through their respective statutory bodies incorporating the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) at the institutional level for University Departments and their Constituent colleges/affiliated colleges (Government/Government-aided/Autonomous/Private Colleges) to be followed transparently in all the selection processes. An indicative PBAS template proforma for direct recruitment and for Career Advancement Schemes (CAS) based on API based PBAS is annexed in Appendix III. The universities may adopt the template proforma or may devise their own self-assessment cum performance appraisal forms for teachers. While adopting this, universities shall not change any of the categories or scores of the API given in Appendix-III. The Universities can, if any wish so, increase the minimum required score or devise appropriate additional criteria for screening of candidates at any level of recruitment."

19. Clause 6.0.9 speaks about the API scoring system in the process of selection and the assessment by the Selection Committee with the appropriate weightages. It is apposite to reproduce the said provision.

"6.0.9 The Academic Performance Indicator (API) scoring system in the process of selection of Principal shall be similar to that of directly recruited College Professors. In addition, the selection committee shall assess the following dimensions with the weightages given below:

- a. Assessment of aptitude for teaching, research and administration (20%);
- b. Ability to communicate clearly and effectively (10%);
- c. Ability to plan institutional programmes, analyze and discuss curriculum development and delivery, research support and college development/administration (20%)
- d. Ability to deliver lecture programmes to be assessed by requiring the candidate to participate in a group discussion or exposure to a class room situation by a lecture (10%); and
- e. Analysis of the merits and credentials of the candidates on the basis of the Performance Based Appraisal System (PBAS) proforma developed by the

affiliating University based on these Regulations (deduced to 40% of the total API score)."

20. Interpretation of 6.1.0:-

6.1.0 of the Regulation lays emphasis on the procedure, which will have to be incorporated. It is required to be transparent, objective with the credible methodology of analysis of the merits and credentials of the applicants. It has two parts. One is based on the weightages given to the performance of the candidates in different relevant dimensions. The second one is on the performance on a scoring system proforma, based on the API as provided in the Regulations in Tables 1 to IX of Appendix III. The proviso to Regulation 6.1.0 says that API scores will be used for screening purpose only. It will not have any bearing on expert assessment of candidates.

21. Under 6.0.2., the University concerned either adopt the template proforma or devise its own self assessment cum performance appraisal forms for teachers. However, it shall not change any of the categories or scores of the API given in Appendix III.

22. Now coming back to Regulation 6.0.9, the assessment of the candidate would include a, b, c and d. These four components constitute 60% of the marks to be awarded by the Selection Committee. Now the dispute is with regard to Clause (e). As discussed earlier, a PBAS can be developed by the University concerned. For that purpose, it can also adopt the one, which is available with the UGC. In the case on hand, it was adopted based upon the analysis made on the merits and credentials of the candidates on the basis of the PBAS proforma (deduced to 40% of the total API Scores).

23. A detailed procedure has been provided in Table I and III of Appendix III insofar as the appointment of the Professor is concerned. Therefore, the total API score will have to be deduced to 40%. In other words, while Clause a to d deals with assessment by the Selection Committee, Clause (e) deals with analysis based upon PBAS, the remaining 60% marks are to be meant as in addition to the analysis made with respect to the 40% marks. To put it differently, of the 100% marks, the Selection Committee can assess it upto 60% and remaining 40% is analysis of the marks obtained on the basis of PBAS. In other words, the Regulation 6.0.9 does not give 100% discretion to the Selection Committee but only 60% marks. For example, if a candidate has obtained 60% marks by way of API scores for the purpose of evaluating his performance, 60 marks would be deduced to 24 marks by adopting the following methodology $60 \times 40/100 = 24$. This 24 marks would be added with the percentage marks awarded under Clause a, b, c and d of the Regulation 6.0.9. Admittedly, such a yardstick has not been followed as it is the specific case of the fourth respondent as the discretion vested in it is unfettered.

24. Clause 6.1.0:-

As discussed above, there is no difficulty in understanding the object and rationale behind clause 6.1.0. It makes it abundantly clear that over all selection process shall have transparent objective and credible methodology. Though the proviso states that API scores will be used for screening purpose only but it should be construed in consonance with Regulation 6.0.9. In other words, the marks obtained by way of API scores form a different category and they do not have any bearing on the expert assessment on the candidates. To put it differently, the API scores cannot act as a bar with respect to the expert assessment of Clause a to d of the Regulation 6.0.9 as dealt with already. The object and rationale behind this is to prevent a selection solely based upon API scores and give an elbow room for the expert assessment.

25. It is settled law that a proviso will have to be construed in tune with the main provision and the object and rationale behind the enactment. Otherwise, the principle laid down in Regulation 6.1.0 would get vitiated. While API scores is not supposed to stand in the way of expert assessment with respect to Clause a to d of Regulation 6.0.9., there cannot be excess assessment with 100% discretion contrary to Regulation 6.1.0.

26. The object of proviso has to be read in consonance with the main provision which is a substantive one. A proviso is not a separate and independent enactment. When the language of the main enactment is clear, a limited interpretation cannot be given to a proviso destroying the same. The proviso is not to be taken in a strict literal sense, but, in aid of the main provision in particular, and the enactment, in general. Considering the scope of the proviso to a main provision, the Supreme Court in a recent judgment in *Dashrath Rupasingh Rathod Vs. State of Maharashtra*, held as follows.

44. Also pertinent is a four-Judge Bench decision of this Court in *Dwarka Prasad v. Dwarka Das Saraf* where this Court was examining whether a cinema theatre equipped with projectors and other fittings ready to be launched as entertainment house was covered under the definition of "accommodation" as defined in Section 2(1)(d) of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947. The proviso provided for some exception for factories and business carried in a building. It was held that sometimes draftsmen include proviso by way of over caution to remove any doubts and accommodation would include this cinema hall: (SCC p. 137, para 18)

"18. ... A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context" *Thompson v. Dibdin*. If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction

that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

"The proper Scores is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail." (Maxwell on Interpretation of Statutes, 10th Edn., p. 162)"

(Emphasis supplied)

45. In *Sreenivasa General Traders v. State of A.P.* another three-Judge Bench of this Court examined the role of a proviso while interpreting Rule 74(1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969:

"46. ... The normal function of a proviso is to except something out of the main enacting part or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. Proviso to Rule 74(1) is added to qualify or create an exception." (SCC p. 388, para 46)

46. Reference may also be made to *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal* wherein this Court clearly held that when the language of the main enactment is clear, the proviso can have no effect on the interpretation of the main clause:

"6. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect." (SCC p. 447, para 6)

47. The same line of reasoning was followed in *A.N. Sehgal v. Raje Ram Sheoran* while interpreting a proviso in the Haryana Service of Engineers Rules, 1960

where the Court held that the proviso to Rule 5(2)(a) cannot be applied to confer the benefit of regular appointment on every promotee appointed in excess of 50% quota. This Court harmoniously read the main provision and the proviso and gave effect to the rule.

48. In *Kerala State Housing Board v. Ramapriya Hotels (P) Ltd.* this Court was examining whether the period of 4 years envisaged in proviso to Section 16(1) under the Kerala Land Acquisition Act, 1961 could be reckoned from date when agreement was executed or from date of publication of notification under Section 3(1) of the Act after the agreement was executed. After relying on *Tribhovandas Haribhai Tamboli* and *A.N. Sehgal* this Court held that the proviso should be harmoniously read with the section. To quote *Tribhovandas* as followed in this judgment: (*Ramapriya Hotels case*, SCC p. 680, para 6)

"6. In *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal* this Court held that the proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment and its effect is to be confined to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says, nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect. In that case it was held that by reading the proviso consistent with the provisions of Section 88 of the Bombay Tenancy and Agricultural Act, the object of the main provision was sustained."

(Emphasis supplied)

49. In *Kush Saigal v. M.C. Mitter* a landlady made an application for eviction of the tenant on the basis that she wanted the place for business purposes which was not allowed as per the proviso to Section 21(2) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The Court examined the role and purport of the proviso and observed: (SCC p. 538, para 32)

"32. ... This we say because the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. (See *Kedarnath Jute Mfg. Co. Ltd. v. CTO.*) Since the natural presumption is that but for the proviso, the enacting part of the section would have included the subject-matter of the proviso, the enacting part has to be given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant

should be avoided (see Justice G.P. Singh's Principles of Statutory Interpretation, 7th Edn., 1999, p. 163). This principle has been deduced from the decision of the Privy Council in *Province of Bombay v. Hormusji Manekji* as also the decision of this Court in *Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories*."

50. To the same effect are the decisions of this Court in *Ali M.K. v. State of Kerala*, *Nagar Palika Nigam v. Krishi Upaj Mandi Samiti* and in *SAIL v. SUTNI Sangam*.

51. In conclusion, we may refer to Maxwell, *Interpretation of Statutes*, 12th Edn., 1969, on pp. 189-90 which states that it is a general finding and practice

"that inconsistencies can be avoided by applying the general rule that the words of a proviso are not to be taken "absolutely in their strict literal sense" [*R. v. Dibdin*] but that a proviso is "of necessity ... limited in its operation to the ambit of the section which it qualifies" [*Lloyds and Scottish Finance Ltd. v. Modern Cars and Caravans (Kingston) Ltd.*]. And, so far as that section itself is concerned, the proviso receives a restricted construction: where the section confers powers, "it would be contrary to the ordinary operation of a proviso to give it an effect which would cut down those powers beyond what compliance with the proviso renders necessary". [*Tabrisky, In re, exp Board of Trade*]"

Taking note of the ratio laid down therein, this Court is of the view that the Selection committee cannot have an unlimited discretion in the selection of candidates.

27. Regulation 6.1.0 will have to read with 6.0.2 and 6.0.9. Though the learned Senior Counsel appearing for the fourth respondent submitted that by the amendment made by way of 6.1.0, the regulation 6.0.9 would get amended automatically, the same cannot be countenanced as it is a primary duty of the Court to reconcile, the various provisions of an Act. In view of the express provisions contained in the Regulations, there cannot be any implied amendment as sought to be argued.

28. In the case on hand, there is no dispute on the PBAS that has been adopted. Even otherwise, there is no material sufficient enough to hold that the marks have been awarded inconsonance with the Regulation 6.1.0 even for the remaining 60% as per the clause a to d.

29. In the result, the selection made in favour of the seventh respondent is set aside and consequently, the fourth respondent is directed to re-constitute the Selection Committee strictly in accordance with the Regulations of the year 2010. The fourth respondent will have to follow the selection procedure as contemplated under Regulations 6.0.9, 6.1.0 and 6.0.2 in the light of the discussions made. The entire exercise will have to be done by the fourth respondent within a period of twelve weeks from the date of receipt of a copy of this order.

30. In view of the submission made by the learned Senior Counsel appearing for

the fourth respondent, till a fresh selection is made, the seventh respondent shall be allowed to continue as the Principal.

Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.