

IN THE HIGH COURT OF DELHI AT NEW DELHI

(EXTRAORDINARY CIVIL WRIT JURISDICTION)

W. P. (C) NO. OF 2020

IN THE MATTER OF:

M. EHTESHAM-UL-HAQUE ... PETITIONER

Versus

UNION OF INDIA & ORS. ... RESPONDENTS

AND IN THE MATTER OF:

SELECTION AND APPOINTMENT OF DR. NAJMA
AKHTAR, DEPARTMENT OF EDUCATIONAL
ADMINISTRATION, NATIONAL INSTITUTE OF
EDUCATIONAL PLANNING AND ADMINISTRATION,
NEW DELHI AS THE VICE CHANCELLOR, JAMIA
MILLIA ISLAMIA (A CENTRAL UNIVERSITY), NEW
DELHI IN FLAGRANT VIOLATION AND NON-
COMPLIANCE OF THE STATUTORY PROVISIONS AND
REGULATIONS OF STATUTE 2(1) OF THE JAMIA
MILLIA ISLAMIA ACT, 1988 READ WITH CLAUSE 7.3.0
OF THE UGC (MINIMUM QUALIFICATIONS FOR
APPOINTMENT OF TEACHERS AND OTHER

**ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES
AND MEASURES FOR THE MAINTENANCE OF
STANDARDS IN HIGHER EDUCATION) REGULATIONS,
2010 AND SUBSEQUENT MODIFICATIONS /
AMENDMENTS THERETO; AS ADOPTED AND
APPROVED BY THE COMPETENT AUTHORITY OF THE
RESPONDENT UNIVERSITY THAT IS ACADEMIC
COUNCIL AND THE EXECUTIVE COUNCIL.**

AND IN THE MATTER OF:



- a. The Jamia Millia Islamia Act, 1988
- b. The UGC (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the maintenance of standards in Higher Education) Regulations, 2010 and subsequent modifications/amendments carried out thereto.
- c. The Constitution of India, 1950

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION

OF INDIA FOR:

- a. Calling the entire record from Respondent No. 1 pertaining to the impugned appointment of Dr. Najma Akhtar (Respondent No. 3) as the Vice Chancellor of the Respondent University including the denied Vigilance Clearance Certificate *vide* Office Memorandum bearing No. Conf.3657/12 dated 10.01.2019;
- b. An appropriate writ, order, direction and/or declaration in the nature of *quo warranto* declaring the appointment of Dr. Najma Akhtar (Respondent No. 3) in flagrant violation / contravention and total non-compliance of the statutory provisions and regulations of Statute 2 of the Jamia Millia Islamia Act, 1988 read with clause 7.3.0 of the UGC Regulations, 2010 as amended from time-to-time, as the Vice Chancellor of the Respondent University being illegal, arbitrary, *void ab initio* and *non est* in law.
- c. Pass such other or further order(s) and/or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

To,

Hon'ble the Chief Justice and

His Companion Justices of the

High Court of Delhi at New Delhi

MOST RESPECTFULLY SHOWETH:

PREFACE

2. That the petitioner is a senior secondary school (+2) graduate from the SAH Senior Secondary School, an alumnus of Faculty of Law, Jamia Millia Islamia and a public-spirited person and has no personal interest in the present litigation and that the present petition is not guided by self-gain or for gain of any other person/institution/body and that there is no motive other than the interest of institution in filing the writ petition. The Petitioner is deeply aggrieved by the wholly illegal and arbitrary manner in which the process of appointment of Dr. Najma Akhtar (Respondent No. 3) to the post of Vice Chancellor of the Jamia Millia Islamia has been carried out and is therefore, constrained to approach this Hon'ble Court in exercise of its extraordinary writ jurisdiction.
3. That Jamia Millia Islamia (Respondent No. 6) is a Central University, established in the year 1920 at Aligarh during the national movement led by Mahatma Gandhi (later shifted to Delhi) and was accorded the said status by an Act of Parliament (Act No. 58 of 1988). It is a teaching and research University with nine faculties through which it offers academic and extension programs to thousands of students. It is one of the largest central institutions in the country covering nursery education to higher

learning. The Respondent University is represented through its Registrar in terms of Statute 5(3) of the JMI Act, 1988.

4. That the University Grants Commission was established by an Act of Parliament (Act No. 10 of 1956) to make provisions for the coordination and determination of standards in Universities and to ensure that the available resources are utilized to the best possible effect and for determining and allocating of funds to Universities made available by the Central Government, giving the UGC the unique distinction of being the only grant-giving agency in the country vested with two responsibilities: that of providing funds and that of coordination, determination and maintenance of standards in institutions of higher education.

FACTUAL NARRATION

5. Consequent upon the acceptance of resignation, with effect from 06.08.2018, tendered by Prof. Talat Ahmad as the Vice Chancellor of the Respondent University, by the Hon'ble Visitor (Respondent No. 2), the Department of Higher Education, Ministry of Human Resource Development (Respondent No. 1), advertised the post of the Vice Chancellor of the Respondent University, for which the last date of receipt of applications was 13.09.2018. The said advertisement reads as follows:

“Government of India

Ministry of Human Resource Development

Department of Higher Education

Appointment of Vice-Chancellor of Jamia Millia Islamia (A Central University)

Jamia Millia Islamia is an Institution of National Importance.

The Vice-Chancellor, being the academic as well as administrative head, is expected to be:

- *A visionary with proven leadership qualities, administrative capabilities as well as teaching and research credentials.*

- *Having outstanding academic record throughout and a minimum of 10 years' experience as a Professor in a University system or in an equivalent position in a reputed research and/or academic administrative organisation.*

- *Preferably not more than 65 years of age as on the closing date of receipt of applications of this advertisement.*

Salary and Service Conditions

- *The post carries a pay of Rs. 2,10,000/- (Fixed) per month with Special Allowance of Rs. 5000/- and other usual allowances.*

- *The terms and conditions of the services will be those as set forth in the Act, Statutes and Ordinances of the University.*

Procedure for appointment

• *Appointment will be made from a panel of names recommended by a Committee constituted under the provisions of Jamia Millia Islamia Act.*

• *The advertisement and the format of application are available on the websites <http://mhrd.gov.in> and www.imi.ac.in*

• *The applications in the prescribed proforma should reach within 30 days from the date of the publication of this advertisement, by Registered/Speed Post to:*

***Deputy Secretary (CU-I/II),
Department of Higher Education, Ministry of HRD,
Room N0.429, 'C' Wing, Shastri Bhawan, New Delhi-110115***

6. In this context, it is deemed expedient to reproduce herein below Clause 7.3.0 of the UGC (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the maintenance of standards in Higher Education) Regulations, 2010 i.e. 7.3.0 titled as "*VICE CHANCELLOR*", as amended by the UGC (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the maintenance of standards in Higher Education) (2nd Amendment) Regulations, 2013 *vide* Notification dated 13.06.2013:

“(i) Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice Chancellors. The Vice-Chancellor to be appointed should be a distinguished academician with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organisation.

(ii) The selection of Vice Chancellor should be through proper identification of a panel of 3 - 5 names by a Search Committee through a public notification or nomination or a talent search process or in combination. The members of the above search Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with the university concerned or its colleges. While preparing the panel, the search committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance to be given in writing along with the panel to be submitted to the

Visitor/Chancellor. The constitution of the search committee could be as per the Act/Statutes of the concerned university.

(iii) The Visitor/Chancellor shall appoint the Vice Chancellor out of the panel of names recommended by the search committee.

(iv) The conditions of services of the Vice Chancellor shall be as prescribed in the Act/Statutes of the university concerned in conformity with the Principal Regulations.

(v) The term of office of the Vice Chancellor shall form part of the service period of the incumbent concerned making him/her eligible for all service related benefits."

(Emphasis supplied in bold)

7. It is the Petitioner's respectful submission that the aforesaid Regulations, having the force of statute, have been violated in the appointment of the Dr. Najma Akhtar (Respondent No. 3) herein.

8. Pertinently, the application form under Entry 3 laying down the eligibility criteria, attached with the advertisement specifically states that '**eligibility**' would be as per the UGC Regulations, 2010 and subsequent modifications. The UGC Regulations, 2010 framed by the UGC under Section 26(1) of the UGC Act, 1956 possess statutory force, and thus, can be enforced by way of a writ of *quo warranto*. The said Regulations are mandatory, and not recommendatory, as is clearly spelt out from Clause 1.2 of the UGC Regulations, 2010, which states as under:

"They shall apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution holding a constituent or an affiliated college recognized by the Commission, in consultation with the University concerned under Clause (f) of Section 2 of the University Grants Commission Act, 1956 and every institution deemed to be a University under Section 3 of the said Act."

(Emphasis supplied in bold)

9. The Executive Council i.e. the principal executive body and the Academic Council i.e. the principal academic body, which are collectively the Competent Authority of the Respondent University, have in principle approved and adopted the UGC

Regulations, 2010 and the subsequent modifications/amendments thereto, and the Academic Council in its meeting held on 25.01.2017 *vide* Item No. 2.36 in principle has adopted the 4th Amendment of the UGC Regulations, 2010 published in the Gazette of India on 11.07.2016. The Academic Council in its meeting held on 04.02.2019 *vide* agenda AC-2019 (I): Reso-6, in principle, has approved and adopted the UGC Regulations, 2018 published in the Gazette of India dated 18.07.2018 and the Executive Council in its meeting held on 31.08.2018 *vide* its Item no. 2.15 had in principle approved and adopted the UGC Regulations, 2018 published in the Gazette of India on 18.07.2018.

A true copy of the relevant Minutes of the Meetings of the Academic Council dated 25.01.2017 and 04.02.2019 and the Executive Council Minutes of the Meeting dated 31.08.2018 are annexed hereto and marked as **Annexure: P – 1 (Colly.)**

10. Statute 2, pertaining to the appointment of the Vice Chancellor, promulgated under Section 24 under the JMI Act, 1988, provides as under:

“2.THE SHAIKH-UL-JAMIA (VICE-CHANCELLOR):

- 1. The Shaikh-ul-Jamia (Vice-Chancellor) shall be appointed by the Visitor from a panel of at least three persons recommended by a Committee consisting of*

three person: two to be nominated by the Majlis-i-Muntazimah (Executive Council) and one, who shall be the chairman of the Committee to be nominated by the Visitor.

Provide that no member of the above Committee shall be connected with the University:

Provide further that if the Visitor does not approve of any of the persons so recommended, he may call for fresh recommendations.

2. *The Shaikh-ul-Jamia (Vice-Chancellor) shall be a whole-time salaried officer of the University.*

3. *The Shaikh-ul-Jamia (Vice-Chancellor) shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment for not more than another term: Provided that notwithstanding the expiry of the said period of five years, he shall continue in office until his successor is appointed and enters upon his office.*

4. *Notwithstanding anything contained in clause (3), a person appointed as Shaikh-ul-Jamia (Vice-Chancellor) shall, if he completes the age of seventy years during the term of his office, retire from office.*

5. *The emolument and other terms and condition of service of the Shaikh-ul-Jamia (Vice-Chancellor) shall be such as may be prescribed by the Ordinances.*

6. *If the office of the Shaikh-ul-Jamia (Vice-Chancellor) becomes vacant due to his death, resignation or otherwise or if he is unable to perform his duties owing to absence, illness or any other cause, the Naib Shaikh-ul-Jamia (Pro-Vice Chancellor) shall discharge the duties of the Shaikh-ul-Jamia (Vice-Chancellor) and will be designated as Qaim Maqam Shaikh-ul-Jamia (Officiating Vice Chancellor) until a new Shaikh-ul-Jamia (Vice-Chancellor) assumes office or the existing Shaikh-ul-Jamia (Vice-Chancellor) attends to the duties of his office as the case may be;*

Provided that if the Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor) is not available, the senior most Professor, who has not attained the age of superannuation of 65 years, shall discharge the duties of the Shaikh-ul-Jamia (Vice-Chancellor) until a new Shaikh-ul-Jamia (Vice-Chancellor) or the Shaikh-ul-Jamia (Vice-Chancellor), as the case may be, assumes office.

(Emphasis supplied in bold)

11. The Executive Council in its meeting held on 31.08.2018 resolved to nominate Hon'ble Justice (Retd.) MSA Siddiqui (Respondent

No. 8) and Prof. Ramakrishna Ramaswamy (Respondent No. 9), as members of the Search Committee for the appointment of the new Vice Chancellor of the Respondent University pursuant to Statute 2(1) of the JMI Act, 1988 and requested Respondent No. 1 to take necessary action for completing the panel by obtaining the name of the nominee of the Hon'ble Visitor (Respondent No. 2), who shall be the Chairman of the Search Committee, so that the process of appointment of new Vice Chancellor of the Respondent University could commence.

A true copy of the minutes of the meeting of the Executive Council dated 31.08.2018 (relevant portion) and consequent letter dated 05.09.2018 by the Registrar (Respondent No. 6) to the Respondent No. 1, are annexed hereto and marked as **Annexure: P – 2 (Colly.)**

12. That while the Petitioner has the highest regard for Hon'ble Justice (Retd.) MSA Siddiqui (Respondent No. 8) who is a retired judge of this Hon'ble Court and has also served as the former Chairman, National Commission for Minority Educational Institutions, New Delhi, it is respectfully submitted that he is not '*a person of eminence in the sphere of higher education*' which is what is required by the applicable Statute & Regulations.

13. Consequently, it is respectfully submitted that his nomination as a member of the Search Committee is *void ab initio* and in clear infringement of Clause 7.3.0 of the UGC Regulations, 2010. As a *sequitur* thereto, the constitution of the Search Committee was itself bad in law, an appointment effected on the basis of recommendation made by such committee, being devoid of lawful origin, the continuance of Dr. Najma Akhtar (Respondent No. 3) as the Vice Chancellor of the Respondent University – Jamia Millia Islamia, New Delhi is untenable in law.

14. That the Respondent No. 1 *vide* communication dated 11.10.2018 through its Joint Secretary apprised the Hon'ble Visitor (Respondent No. 2) of the nomination of two members by the Executive Council of the Respondent University for the purpose of the constitution of Search Committee. However, contrary to Statute 2(1) of the JMI Act, 1988, the Hon'ble Minister of Human Resource Development (for brevity 'the Hon'ble Minister') recommended that the President of India, in his capacity as Visitor of the Respondent University may nominate his nominee from a panel of names, to be the Chairman of the Committee, for making recommendation for the appointment of Vice Chancellor of Jamia Millia Islamia – Respondent University. The said panel included:

1. Prof. D. P. Singh, Chairman, UGC
2. Prof. (Retd.) K. K. Aggarwal, former Vice Chancellor,
Guru Govind Singh Indraprastha University, Delhi

15. It is in these circumstances, that the Hon'ble Visitor (Respondent No. 2) approved the name of Prof. D. P. Singh, Chairman, UGC as Chairman of the Search Committee.
16. It is respectfully submitted that Statute 2(1) of the JMI Act, 1988, empowers the Visitor to nominate one person who shall be the Chairman of the Committee. Such provision, already set out above, therefore, clearly stipulates that it is the Visitor (and the Visitor alone) who must exercise the said power independently and in his discretion. The same cannot be stretched by Respondent No. 1 to confer authority on, or to empower, the Hon'ble Minister to exercise direct or indirect control over the process or procedure under the JMI Act, 1988.
17. It is submitted that the Act and the Statute(s) of the University are sacrosanct, and in any case, cannot be interfered with by the Hon'ble Minister. The JMI Act, 1988 and Statute(s) are binding on the University and all its functionaries, including Respondent No. 1 and the Hon'ble Visitor (Respondent No. 2). No provision in the JMI Act, 1988 or Statute(s) empowers the Hon'ble Minister to recommend a panel of names for the nomination by the Hon'ble Visitor. The Hon'ble Visitor (Respondent No. 2) is mandated by the JMI Act, 1988 and Statute(s) therein to apply his mind independently and take a decision objectively, without being influenced by the recommendation of the Hon'ble Minister.

18. In the present case, the action of the Hon'ble Minister in recommending the panel of two names tantamount to *de facto* nomination of the Chairman of the Committee by restricting the Hon'ble Visitor's discretion. Therefore, the purported nomination of Prof. D.P. Singh, Chairman, UGC as Chairman of the Search Committee is *void ab initio* being *ultra vires* Statute 2(1) of the JMI Act, 1988.

A true copy of the summary note dated 11.10.2018 submitted by the Joint Secretary, Department of Higher Education, Minister of Human Resource Development (Respondent No. 1) submitted to the Visitor (Respondent No. 2) for approval is annexed hereto and marked as **Annexure: P – 3**.

19. That in the backdrop of these illegalities, the purported Search Committee constituted under the Statute 2(1) of the JMI Act, 1988 comprising of i) Prof. D. P. Singh, Chairman, UGC, as the Chairman of the Committee ii) Hon'ble Justice (Retd.) MSA Siddiqui and iii) Prof. Ramakrishna Ramaswamy, held its first meeting on 06.11.2018 in the Chamber of the Chairman, UGC, New Delhi and shortlisted thirteen candidates out of 107 applications for further consideration.

20. Notably, the shortlisted candidates included i) Prof. Sher Ali, a renowned Indian academic and scientist of international repute in Molecular Science, ii) Padma Shri Professor (*Emeritus*) Akhtarul Wasey, iii) Prof. M. Sami, internationally renowned Astrophysicist and Cosmologist, and recipient of President of India Visitors' Award, 2015 for path breaking research in Astrophysics and Cosmology, nominated by Nobel Laureates (as per RTI information) and Padma Vibhushan (Prof.) J. V. Narlikar amongst others, iv) Dr. Shahid Jameel, CEO, The Wellcome Trust – DBT India Alliance, a world-renowned virologist known for research in Hepatitis E virus; to name a few. The Committee decided to meet next on 28.11.2018 for personal interaction and discussion with the shortlisted candidates before making its final recommendations.

A true copy of the minutes of the meeting of the Committee held on 06.11.2018 received under RTI is annexed hereto and marked as **Annexure: P – 4.**

21. The purported Search Committee then met on 28.11.2018 for personal interaction with the thirteen shortlisted candidates. Thereafter, *vide* a non-speaking letter of the same date, the Committee recommended a panel of three names in alphabetical order for appointment to the post of Vice Chancellor of

Respondent University – Jamia Millia Islamia, subject to Vigilance Clearance etc.:

- a. Prof. Furqan Qamar, AIU, New Delhi
- b. Prof. Najma Akhtar, NIEPA, New Delhi
- c. Prof. Saiyed Muzaffar Ishtiaque, IIT-Delhi, New Delhi

A true copy of the Minutes of the Meeting of the purported Committee dated 28.11.2018 recommending a panel of three names, received under RTI is annexed hereto and marked as **Annexure: P – 5.**

22. A perusal of the Minutes of Meeting of the purported Committee dated 28.11.2018 reveals that the same was completely non-speaking and, in fact, the Committee did not even discharge its obligations either in letter and spirit. Notably, the purported Search Committee did not even record its reasons for recommending the panel of three names out of the 13 candidates interviewed/interacted with. This is in the teeth of Clause 7.3.0(ii) of the UGC Regulations which stipulates as under:

“...While preparing the panel, the search committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance ‘to be given

in writing' along with the panel to be submitted to the Visitor/Chancellor".

(Emphasis supplied in bold)

23. The proceedings of the Search Committee manifest that neither was academic excellence nor exposure to the higher education system in the country and abroad, and/or adequate experience in academic and administrative governance considered by the Committee despite the fact that it was so required to record its satisfaction that the 3 names are persons '*highest level of competence, integrity, morals and institutional commitment*' in writing. In the absence of such satisfaction being reduced in writing, the purported Search Committee has acted in contravention of Statute 2(1) of the JMI Act, 1988 read with Clause 7.3.0 of the UGC Regulations, 2010. Consequently, the selection of Dr. Najma Akhtar (Respondent No. 3) though such a process is legally unsustainable and her impugned appointment is *non est* in law.

24. Furthermore, the Petitioner has reason to believe that initially the Central Vigilance Commission (Respondent No. 4) 'CVC' *vides* its O. M. bearing no. Conf.3657/12 dated 10th January, 2019, had explicitly denied Vigilance Clearance / Certificate to Dr. Najma Akhtar (Respondent No. 3) stating, *inter alia*, "*not to consider Dr. Najma Akhtar for any post-retirement assignment / re-*

employment in the organizations / institutions / Universities falling within the administrative control of MHRD.” This, in itself, demonstrates that Dr. Najma Akhtar (Respondent No. 3) was clearly ineligible for being considered, leave alone being recommended, by the Search Committee. While the impugned appointment would ordinarily have been liable to be declared *non-est* and void for this reason alone.

25. Shockingly, however, the Petitioner has reason to believe that thereafter, in a complete departure from the mandate entrusted to it, the Vigilance Section of Respondent No. 1 took up the matter with Respondent No. 4 to revise its stand in the matter which ultimately resulted in the CVC revising its previous advice. That the Petitioner had sought to obtain these documents / correspondences under the Right to Information Act *vide* Application dated 16th April 2019 (filed online on 19th April 2019) & 22nd April 2019 (filed online on 25th April 2019), by having a friend makes applications for the same.
26. In response to the RTI Application dated 16th April 2019, a letter dated 20th May 2019 was received enclosing, *inter alia*, the following information:

“

- (a) A total 107 applications were received against the advertisement. A list is enclosed.*
- (b) A copy of JMI letter No. AC-3(5)/RO/2018 dated 05.09.2018 regarding the nomination of two persons by EC for constitution of Committee, is enclosed.*
- (c) President's Secretariat I.D. No. CIII-07007/3/2018-CA-III dated 15.10.2018 regarding nomination of President's Nominee on the Committee is enclosed.*
- (d) The Minutes of the meeting shortlisting the candidates are enclosed.*
- (e) Copies of applications form of all the 13 shortlisted candidates are enclosed.*
- (f) Shortlisted candidates are invited for interaction by the Committee.*
- (g) & (h) Copy of the minutes of the Committee held on 28.11.2018 including the panel is enclosed.*
- (i) President's Secretariat I.D. No. CIII-07007/3/2018-CA-III dated 10th April, 2019 is enclosed.*
- (j) Copy of letter dated 6-8/2018 CU-II dated 28.03.2019 is enclosed.*
- (k) Election Commission letter No. 437/CG/ECI/LET/FUNCT/MCC/2019 dated 3.4.2019 is enclosed.*
- (l) Copy of vigilance clearance received from their respective employers are enclosed."*

A true copy of the reply dated 20th May, 2019, from the Respondent No. 1 received under RTI is annexed hereto and marked as **Annexure: P – 6**.

27. That however, in response to the RTI Application dated 22nd April 2019 wherein the Petitioner has specifically sought details of the correspondence pertaining to the Vigilance Clearance granted to Dr. Najma Akhtar, *vide* letter dated 20th May 2019, the Respondent No.1, though its vigilance section took the position that the said information could not be provided in terms of Section 8(i) (j) of the RTI Act, 2005 read with DoP&T OM No. 11/2/2013-IR (Pt.) dated 14th August, 2013.
28. It is pertinent to mention that along with the documents received in response to the RTI Application dated 16th April 2019, was also enclosed a copy of the O. M. dated 05.03.2019 issued by the Vigilance Section, Respondent No. 1 which reveals these shocking details and, in particular, the fact that “in agreement with CVO, MHRD, the Commission (CVC) has reviewed the case (of Dr. Najma Akhtar) and has decided to revise its advice issued vide OM dated 10th January 2019.” This, in itself, casts a serious cloud over the appointment of Dr. Najma Akhtar (Respondent No. 3) and warrants intervention by this Hon’ble Court in exercise of its extraordinary Writ Jurisdiction.

A true typed copy of the O. M. dated 05.03.2019 issued by the Vigilance Section, Respondent No. 1, is annexed hereto and marked as **Annexure: P – 7**.

29. That the information received under RTI also demonstrated that upon receipt of vigilance clearance after review by the CVC in the aforesaid circumstances, the Respondent No. 1 *vide* communication dated 04.04.2019 through its Joint Secretary submitted a proposal to the Hon'ble Visitor (Respondent No. 2) seeking approval for the appointment of Prof. Najma Akhtar (Respondent No.3), as the Vice Chancellor of the Respondent University on the ground that the Hon'ble Minister for HRD, had gone through the CVs of all three panelists recommended by the purported Search Committee and "has recommended that Prof. Najma Akhtar, NIEPA, New Delhi, may be considered for the post of the Vice Chancellor, JMI, if the Hon'ble President deems it fit." The Respondent No. 2 (Hon'ble Visitor) appears to have approved the proposal without any independent application of mind, in these unusual and shocking circumstances.

30. In this regard, it is respectfully submitted that the JMI Act, 1988 and Statutes read with Clause 7.3.0 of the UGC Regulations, 2010 lay down the procedure for the appointment of the Vice Chancellor. There is no provision in the Act and Statute(s) empowering the Hon'ble Minister to recommend the name of a specific candidate for appointment as the Vice Chancellor. The Hon'ble Visitor (Respondent No. 2) has to apply his mind independently with respect to the panel of three names as also the

process of appointment and appoint the Vice Chancellor on the basis of a reasoned decision which ought to be in writing.

31. In the present case, the act of the Hon'ble Minister, recommending the name of Prof. Najma Akhtar (Respondent No. 3) is clearly in violation of the applicable statutory and regulatory framework apart from being in contravention of the spirit of the entire structure which requires each of the authorities / committees / individuals to independently discharge their respective obligations in the larger public interest and in keeping with the letter and spirit of the designated procedure. The actions of the Hon'ble Minister for HRD in effectively appointing the Chairperson of the Search Committee and, thereafter, making a recommendation of the candidate to be appointed is tantamount to *de facto* appointing the Vice Chancellor of the Respondent University which is completely contrary to the scheme envisaged by the JMI Act and the Statute. This is yet another reason warranting the intervention of this Hon'ble Court in the instant case and demonstrates that the appointment of Prof. Najma Akhtar (Respondent No. 3) as the Vice Chancellor of the Respondent University is *ultra vires* Statute 2(1) of the JMI Act, 1988.

A true copy of the summary note dated 04.04.2019 submitted by the Joint Secretary, Department of Higher Education, MHRD – Respondent No. 1 to the Hon'ble Visitor (Respondent No. 2) is annexed hereto and marked as **Annexure: P – 8**.

32. It is in these circumstances that *vide* notification dated 11th April, 2019 issued by the Director (Central Universities), Department of Higher Education, Govt. of India, Ministry of Human Resource Development, that Dr. Najma Akhtar (Respondent No. 3) was appointed as the Vice Chancellor of the Respondent University. A true copy of the notification dated 11.04.2019 is annexed hereto and marked as **Annexure: P – 9**.
33. That *vide* notification dated 12th April 2019 issued by the Registrar (Respondent No. 6), Dr. Najma Akhtar (Respondent No. 3) assumed the office of, and took charge as, the Vice Chancellor, Jamia Millia Islamia – Respondent University. A true copy of the notification dated 12.04.2019 is annexed hereto and marked as **Annexure: P – 10**.
34. The Petitioner respectfully submits that the entire process culminating into the impugned of appointment of Dr. Najma Akhtar (Respondent No. 3) is a colorable exercise of power and in flagrant violation and total non-compliance of the statutory provisions and regulations enshrined in the Statute 2(1) of JMI Act, 1988 read with Clause 7.3.0 of the UGC Regulations, 2010 along with the subsequent modifications / amendments thereto, and therefore, the same deserves to be quashed and set aside in exercise of the power conferred upon this Hon'ble Court under Article 226

of the Constitution of India on the following grounds, *inter alia*, which are taken without prejudice to one another:

GROUND:

- A. Because, the nomination of Hon'ble Justice (Retd.) MSA Siddiqui, not being '*a person of eminence in the sphere of higher education*', as a member of the Search Committee is *void ab initio*. As such any appointment pursuant to recommendation of an incorrectly formed committee is a nullity in the eyes of law.
- B. Because, the nomination of Prof. D. P. Singh as the Chairman of the Search Committee by the Hon'ble Visitor from a panel of two names recommended by the Hon'ble Minister is *void ab initio*, appointment pursuant to recommendation of such committee is perverse in the eyes of law.
- C. Because the failure of the purported Search Committee to give reasons for recommending the panel of 3 candidates (including Dr. Najma Akhtar) out of the 13 candidates who it interacted with is contrary to the Act and/or the Statute and, particularly, in the teeth of Regulation 7.3.0 which specifically requires that "...*While preparing the panel, the search committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate*

experience in academic and administrative governance 'to be given in writing' along with the panel to be submitted to the Visitor/Chancellor" and hence, liable to be declared void.

- D. Because, the office of Vice Chancellor of a Central University being a statutory post, all relevant factors have to be carefully considered before appointment is made; as the Search Committee failed to consider all factors, namely '*highest level of competence, integrity, morals and institutional commitment*', it is liable to be set aside.
- E. Because, the recommendation made to the Hon'ble Visitor in respect of Dr. Najma Akhtar (Respondent No. 3), made by the Hon'ble Minister from amongst the panel of three names recommended by the Search Committee, is not only contrary to the Scheme envisaged by the JMI Act and the Statute for the appointment of the Vice Chancellor but also violative of the letter and spirit underlying the same. As such, the appointment of Respondent No. 3 being made through a process which is tainted right from the outset is *void ab initio* and a nullity in the eyes of law and ought to be declared as such by this Hon'ble Court.
- F. Because the consideration and recommendation of Dr. Najma Akhtar by the purported Search Committee "subject to vigilance

clearance” was in itself irregular and illegal and vitiates the entire process.

- G. Because the decision of the CVC to revise its original decision whereby it has recommended stating, *inter alia*, “***not to consider Dr. Najma Akhtar for any post-retirement assignment / re-employment in the organizations / institutions / Universities falling within the administrative control of MHRD.***” is completely without authority and jurisdiction and is liable to be declared as a nullity and warrants a proper enquiry being conducted into the same in order to ascertain the real reasons for the withdrawal of such a stinging and adverse recommendation.
- H. Because the decision of the CVC to revise its original decision and that too at the instance of the MHRD, whose participation in the process was not contemplated by the Act and/or the Statute or Regulations is legally unsustainable.
- I. Because the manner in which the MHRD has intervened in, and effectively determined, the selection process is legally unsustainable and contrary to the letter and spirit of the Act and/or the Statute or Regulations and liable to be declared as such.
- J. Because, the appointment of Dr. Najma Akhtar in the absence of any object and explanation behind the revisit of the Vigilance Clearance initially denied and later granted by the CVC is a

colorable exercise of power making the appointment unsustainable in the eyes of law.

- K. Because, the mode, manner, procedure and process of appointment adopted by the Respondents falls foul of the law due to non-compliance of Statute 2(1) of the JMI Act, 1988 and Clause 7.3.0 of the UGC Regulations, 2010, and resultantly, any consequential appointment, being *void ab initio*, is liable to be quashed and set aside.
- L. Because in proceedings seeking a writ of *quo warranto*, judicial review is concerned not only with the question whether the incumbent possessed qualification for appointment, but also the manner in which the appointment came to be made and procedure adopted thereof is fair, just and reasonable and whether the selection is as per law and procedure in this behalf.
- M. Because in proceedings seeking a writ of *quo warranto*, any person who holds an independent substantive public office is called upon to show by what right he holds the same so that his title to it may be duly determined and in the event it is found that the holder has no title, s/he would be directed to be removed from the said office by a judicial order.
- N. Because the decision taken by the statutory authority, without looking into the relevant material having nexus to the object and

purpose of the Act, under which the appointment is made or takes into account irrelevant circumstances, would stand vitiated on the ground of official arbitrariness.

- O. Because, the decision-making process of the recommending and appointing authorities should constitute a fair and transparent process of consideration and if the same is not done, it amounts to non-application of mind resulting in an arbitrary exercise of power, thereby offending Article 14 of the Constitution of India, 1950.

35. That in the aforementioned facts and circumstances, it is necessary, expedient, and in the interest of justice that this Hon'ble Court may be pleased to exercise its powers under Article 226 of the Constitution of India and grant the prayers sought for in the present petition.

36. That the petitioner has got no other equally efficacious alternative remedy for the reliefs prayed for in the petition.

37. That the petitioner has not previously filed a similar writ petition in this Hon'ble Court, in the Hon'ble Supreme Court of India or in any other Hon'ble High Court.

38. That this Petition is filed being *bona fide* and in the interest of justice.

PRAYER

In light of the abovementioned circumstances, it is most humbly and respectfully prayed that this Hon'ble Court may be pleased to:

- A. Calling the official record from Respondent No. 1 pertaining to the impugned appointment of Dr. Najma Akhtar (Respondent No. 3) as the Vice Chancellor of the Respondent University including the denied Vigilance Clearance Certificate *vide* Office Memorandum bearing No. Conf.3657/12 dated 10.01.2019;
- B. Issue an appropriate writ, order, direction and/or declaration in the nature of *quo warranto* declaring the appointment of Dr. Najma Akhtar (Respondent No. 3) in flagrant violation / contravention and total non-compliance of the statutory provisions and regulations of Statute 2(1) of the Jamia Millia Islamia Act, 1988 read with clause 7.3.0 of the UGC Regulations, 2010' as amended from time-to-time, as the Vice Chancellor of the Respondent University illegal, arbitrary, *void ab initio* and *non est* in law.

- C. Pass such other or further order(s) and/or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

New Delhi
Date: 22.01.2020

Through

Live
Law
(MOBASHSHIR SARWAR)
Counsel for the Petitioner
ALL ABOUT LAW

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA ORDINARY CIVIL WRIT JURISDICTION)

W. P. (C) NO. OF 2020

M. Ehtesham-ul-Haque ... PETITIONER
Versus
Union of India & Ors. ... RESPONDENTS

AFFIDAVIT

1. That I am the petitioner above named and I know the facts of the case and competent to swear this affidavit.
2. That I have gone through the contents of the accompanying writ petition and say that the facts stated and averments made therein are true and correct to my knowledge.
3. I have read and understood the contents of the writ petition from pages ____ to ____, Synopsis and List of Dates & Events from pages ____ to ____ and the accompanying application is true and correct to my knowledge and the same has been drafted under my instruction.
4. I also state that the annexure annexed to the writ petition from Annexure P – 1 to P – 10 are true and correct copies of their respective originals.



VERIFICATION:

Verified on solemn affirmation at New Delhi on this 22 JAN 2020 day of January, 2020 that the contents of the above affidavit are true to my knowledge and no material has been concealed therefrom.

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT BY THE EXECUTANT WHO IS SEENED BY ME TO
UNDERSTAND AFFIRMED BY DEPONENT IN NEW DELHI
22/01/2020
10069818217
IDENTIFY THE EXECUTANT DEPONENT WHO HAS
SIGNED IN MY PRESENCE
NOTARY PUBLIC (NEW DELHI)
M. K. KISHOR AGARWAL, ANAGRAH

22 JAN 2020