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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 20.03.2023
Judgment pronounced on: 18.05.2023

\+ **LPA 210/2021 & CM No.22927/2021**

M EHTESHAM UL HAQUE ..... Appellant
Through : Mr Mobashshir Sarwar, Adv.

Versus

UNION OF INDIA DEPARTMENT OF HIGHER EDUCATION MINISTRY OF HUMAN RESOURCE DEPARTMENT THROUGH ITS SECRETARY & ORS. ..... Respondents
Through : Mr Kirtiman Singh, CGSC with Mr Waize Ali Noor and Ms Durgesh Nandini, Advs. for R-1 along with Mr Satish Kumar Singh and Mr Mannu Kumar, Section Officers, Ministry of Education.
Mr Vikramjit Banerjee, ASG with Mr Pritish Sabharwal, Standing Counsel along with Mr Shruti Agarwal, Ms Janhavi Prakash, Mr Kartik Dey, Mr Shashank, Mr Sanjeet and Mr Sharad Shukla, Advs. for JMI.
Mr Ravinder Agarwal, Mr Girish Pandey and Mr Lekh Raj Singh, Advocates for R-3/CVC.
Mr. Apoorv Kurup and Ms Keerti Dadheechi, Advs. for R-4/UGC.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE TALWANT SINGH
[Physical Court Hearing/Hybrid Hearing (as per request)]

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PREFACE:

1. This intra-court appeal is directed against the judgement dated 05.03.2021 passed by the learned single judge in W.P(C) 952/2020 [hereafter referred to as the "impugned judgment"].

1.1 *Via* the impugned judgment, the learned single judge has dismissed the writ action preferred by the appellant.

BACKGROUND:

2. The appellant, who is an alumnus of respondent no.5 i.e., Jamia Millia Islamia [hereafter referred to as "JMI"] had sought a writ of *quo warranto* and/or an appropriate writ, order, or direction *qua* the appointment of respondent no.2 i.e., Professor Najma Akhtar [in short "Professor Akhtar"] to the post of the Vice Chancellor [in short "VC"] of JMI.

2.1 The relief sought in the writ petition is premised on the assertion, that Professor Akhtar's appointment was made without complying with the provisions of Statute 2(1) appended to the Schedule, as promulgated by Section 24 of the Jamia Millia Islamia Act, 1988 [in short, the "JMI Act"], and Regulation 7.3.0 of the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and

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Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 [in short, the "2010 UGC Regulations"]. Notably, JMI, via a notification dated 18.07.2018, has also adopted the UGC Regulations 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, 2018 [in short, the "2018 UGC Regulations"].

3. There are various strands to the challenge that was laid by the appellant to Professor Akhtar's appointment as the VC. However, before we proceed to discuss each of the grounds raised, it would be useful to set forth the backdrop in which the instant action came to be instituted in this Court. The backdrop will be necessary, as it would *inter alia*, shed light on the manner, in which Professor Akhtar was appointed as the VC.

4. The resignation of the erstwhile VC of JMI, which took effect from 06.08.2018, propelled the Department of Higher Education, Ministry of Human Resource Development (MHRD) i.e., respondent no.1 to issue an advertisement for filling up the post of VC in JMI. The end date for filing applications was fixed as 13.09.2018. A total of 107 applications were received against the advertisement.

5. While the process of receiving applications was on, the Executive Council of JMI, in line with the provisions of Statute 2(1) of the JMI Act, nominated Justice MSA Siddique, a former judge of this Court, and Professor Ramakrishna Ramaswamy, School of Physical Sciences, JNU, New Delhi as members of the Search-cum-Selection Committee [in short, the "SCS Committee"], at its meeting held on 31.08.2018.

6. The decision of the Executive Council was communicated to MHRD

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by JMI, through a letter dated 05.09.2018. Via this letter, it was brought to the notice of the MHRD, that to constitute a Committee as per the terms of Statute 2(1) of the JMI Act, the Visitor of JMI, who is none other than the President of India, was required to choose his nominee, to complete the composition of the Committee [i.e., the SCS Committee].

7. As per Statute 2(1), the nominee of the Visitor was required to helm the SCS Committee. On 11.10.2018, the MHRD apprised the Visitor about the persons nominated by the Executive Council for the constitution of the SCS Committee, coupled with its request to consider the nomination of one of the two persons indicated by it, as the Chairman of the SCS Committee. The two persons recommended by the MHRD were:

(i) Professor D.P. Singh, Chairman, UGC

(ii) Professor (Retd.) K.K. Aggarwal, former VC, Guru Govind Singh Indraprastha University, Delhi

8. Concededly, the Visitor chose Professor D.P. Singh as his nominee, to helm the SCS Committee.

9. The SCS Committee held its first meeting on 06.11.2018, for selecting the VC. At this meeting, the SCS Committee perused and deliberated upon the curricula vitae (CVs) of 107 applicants, having regard to their academic achievements, administrative experience, research contributions, and contribution made in the corporate life of the concerned institutions.

9.1 The deliberation carried out by the SCS Committee led to the zone of consideration being scaled down to thirteen (13) candidates. These thirteen (13) candidates were invited for personal interaction and discussion with the members of the SCS Committee, at its meeting convened on 28.11.2018.

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10. The SCS Committee, thereafter, unanimously, recommended a panel of the following three (3) names, *albeit* in alphabetical order, for appointment to the post of VC:

(i) Professor Furqan Qamar, AIU, New Delhi

(ii) Professor Najma Akhtar, NIEPA, New Delhi

(iii) Professor Saiyed Muzaffar Ishtiaque, IIT-Delhi, New Delhi

11. Pertinently, these recommendations were made, subject to vigilance clearance. It is in this context, that the Central Vigilance Commission [in short, the "CVC"] via Office Memorandum (OM) dated 10.01.2019, provided input by way of an advisory, which was, that Professor Akhtar should not be considered "for any post-retirement assignment/re-employment in the organizations/institutions/Universities falling within the administrative control of MHRD."

12. Consequently, the Vigilance Section of MHRD denied clearance for considering Professor Akhtar for appointment to the post of VC. It appears, that the Chief Vigilance Officer (CVO), MHRD gave fresh inputs to the CVC, for reconsideration of the decision whereby vigilance clearance was denied to Professor Akhtar. The CVC, via OM dated 26.02.2019 agreed with the view taken by the CVO, MHRD which entailed revision of its advice, rendered via OM dated 10.01.2019. As a result of the revised advice, on 05.03.2019, the Vigilance Section of MHRD wrote to the Director (CU-II), Department of Higher Education, that there was "no vigilance case either pending or contemplated" against Professor Akhtar.

13. Given this position, a Summary Note dated 04.04.2019 [which was prepared by the Joint Secretary to the Government of India], was placed before the Visitor, for his consideration.

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13.1 The Summary Note alluded to the recommendation of the Minister of Human Resource Development, which was to consider Professor Akhtar for appointment to the post of VC, JMI.

14. Via communication dated 11.04.2019, the Director (Central Universities) MHRD conveyed to the Registrar, JMI, the decision of the Visitor to appoint Professor Akhtar as the VC of JMI.

15. Resultantly, a notification dated 12.04.2019 was issued by the Registrar, JMI, which adverted to the fact, that Professor Akhtar had assumed charge as the VC of JMI, with effect from the date of the notification.

16. The record shows, that the appellant had received information regarding certain documents and processes followed for the appointment of Professor Akhtar to the post of VC, *via* a response dated 20.05.2019. This response was given pursuant to an online RTI application preferred by one, Mr Raghib Ahsan. Although the appellant was provided with the relevant information and documents on 20.05.2019, the writ petition i.e., W.P(C) 952/2020 was filed on 22.01.2020; after a delay of a little over seven months.

17. Notice in the writ petition i.e., W.P(C) 952/2020 was issued on 27.01.2020. During the pendency of the writ petition, one of the members of the SCS Committee i.e., Professor Ramaswamy, addressed a letter dated 08.03.2020 to the Visitor. This letter alluded to newspaper reports, which had indicated that the CVC, via OM dated 10.01.2019 had asserted that Professor Akhtar should not be considered for any post-retirement assignment or re-employment in organizations/institutions/universities falling within the administrative control of the MHRD.

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17.1 According to the communication, the advice of the CVC was not brought to the notice of the SCS Committee. This, according to Professor Ramaswamy, was a grave matter, since in the process of shortlisting, the SCS Committee had overlooked otherwise meritorious candidates only on account of issues concerning vigilance clearance.

18. Upon completion of pleadings, the learned single judge rendered his decision on 05.03.2021. Being aggrieved, the instant appeal was preferred. Notice in the appeal was issued on 30.07.2021, and broadly, the contentions advanced on behalf of the appellant by Mr Mobashshir Sarwar, Advocate and those advanced for the respondent nos.2-5 by Mr Vikramjit Banerjee, ASG, were recorded.

SUBMISSIONS ADVANCED ON BEHALF OF THE APPELLANT

19. Mr Sarwar has assailed the appointment of Professor Akhtar to the post of VC, JMI on the following broad grounds:

(i) The SCS Committee had to comprise "***persons of eminence in the sphere of higher education***" in terms of Regulation 7.3(ii) of the 2018 UGC Regulations. Justice (Retd.) MSA Siddique, who was a member of the SCS Committee did not fulfil the criteria, as prescribed in the aforesaid Regulation.

(ii) In terms of Regulation 7.3 of the 2018 UGC Regulations, the SCS Committee was required to provide "reasons" for empanelling Professor Akhtar for appointment to the post of VC.

(iii) The MHRD had no role to play in the constitution of the SCS Committee. Therefore, it ought not to have submitted, to the Visitor, a panel comprising names of persons from which he could choose his nominee, for helming the SCS Committee.

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(iv) The Minister of Human Resource Development had no role to play in the selection of the VC, and therefore, he could not have made a recommendation to the Visitor. In this behalf, reference was made to paragraph 6 of the Summary Note dated 04.04.2019 submitted to the Visitor.

(v) The appointment of Professor Akhtar as the VC was flawed, for the reason, that even though her empanelment was subject to vigilance clearance, due weight was not given to the CVC's advice rendered via OM dated 10.01.2019.

20. In support of his submissions, Mr Sarwar placed reliance on the following judgements:

(i) ***Gorakhpur University Aff. College Teacher Asso. v. State of U.P. 2015 SCC Online All 3719***

(ii) ***Kanwaljeet Singh (Dr.) v. Union of India 2018 SCC OnLine Del 12391***

(iii) ***Rajesh Awasthi versus Nand Lal Jaiswal and Ors. (2013) 1 SCC 501***

(iv) ***Hardwari Lal versus Shri G.D Tapase and Ors., Civil Writ Petition No. 3658 of 1980***

SUBMISSIONS ADVANCED ON BEHALF OF RESPONDENT NOS. 2-5

21. On the other hand, Mr Banerjee made the following submissions:

(i) Justice (Retd.) MSA Siddique was eminently fit to be a part of the SCS Committee, given his experience as the Chairman of the National Commission for Minority Educational Institutions, New Delhi. According to Mr Banerjee, the experience that Justice (Retd.) MSA Siddique had acquired brought him within the scope of the expression "persons of eminence in the sphere of higher education", as set out in Regulation 7.3(ii) of the 2018

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UGC Regulations.

(ii) Insofar as the submission made on behalf of the appellant, that the SCS Committee had not provided reasons is concerned, Mr Banerjee sought to place reliance on paragraphs 53 to 55 of the impugned judgement. It was also Mr Banerjee's contention, that the SCS Committee was only a body which recommended suitable names, and the same being an administrative function, it was not required to furnish reasons.

(iii) As regards the argument advanced on behalf of the appellant, that the recommendation made by the Minister of Human Resource Development to the Visitor had contaminated the selection process, it was Mr Banerjee's submission, that what was put to the Visitor was only a recommendation, and was not binding on him. In any event, the 2018 UGC Regulations did not bar the Visitor, from receiving inputs from the MHRD.

(iv) On the contention made on behalf of the appellant, that the CVC had revised its earlier advice issued via OM dated 10.01.2019, it was Mr Banerjee's contention, that such power was available to the CVC. In support of this plea, Mr Banerjee relied upon clause 1.6.4 of the CVC Manual. For the sake of convenience, the said clause is extracted hereafter:

> *"1.6.4 Reconsideration of advice: Commission may be consulted for reconsideration of its 1st stage or 2nd stage advice. The Commission entertains the reconsideration proposal only for one time at each stage and strictly when there are new facts which have not been considered by the Commission earlier."*

ANALYSIS AND REASONS:

22. We have heard the learned counsel for the parties and perused the record carefully.

23. Pertinently, at the time when we had issued notice in the appeal, we

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had also directed the CVC to place the relevant record concerning Professor Akhtar before us. We have perused the record, only to satisfy ourselves, as to whether or not it aligns with the averments made by the contesting respondents, and as to why, and in what manner, the CVC revised its initial advice rendered on 10.01.2019. We shall advert to this aspect of the matter in detail a little later, as this is the mainstay of the appellant's challenge to the appointment of Professor Akhtar as the VC of JMI.

24. That said, at this juncture, it would, perhaps, be appropriate to extract the relevant parts of the advertisement, the provisions of Statute 2 appended to the Schedule of the JMI Act, as well as Regulation 7.3 of the 2018 UGC Regulations, to set forth the qualifications that an applicant had to have, along with the process that was required to be adopted, for selecting and appointing a suitable candidate to the post of VC of JMI.

I. Advertisement for appointment of VC, JMI

"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

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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"

II. Statute 2(1) of the JMI Act

"*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 persons: two to be nominated by the Majlis-i-Muntazimah (Executive Council) and one, who shall be the Chairman of the Committee to be

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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."

III. Regulation 7.3 of the 2018 UGC Regulations

"7.3. VICE CHANCELLOR:

i. A person possessing the highest level of competence, integrity, morals and institutional commitment is to be appointed as Vice-Chancellor. The person to be appointed as a Vice-Chancellor should be a distinguished academician, with a minimum of ten years' of experience as Professor in a University or ten years' of experience in a reputed research and / or academic administrative organisation with proof of having demonstrated academic leadership.

ii. The selection for the post of Vice-Chancellor should be through proper identification by a Panel of 3-5 persons by a Search-cum-Selection-Committee, through a public notification or nomination or a talent search process or a combination thereof. The members of such Search-cum-Selection 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 cum-Selection Committee shall give proper weightage to the 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. One member of the Search cum-Selection Committee shall be nominated by the Chairman,

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University Grants Commission, for selection of Vice Chancellors of State, Private and Deemed to be Universities.

iii. The Visitor/Chancellor shall appoint the Vice Chancellor out of the Panel of names recommended by the Search-cum-Selection Committee.

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

25. As would be evident from a perusal of the advertisement, the qualifications which were prescribed were the following:

(i) The applicant should have throughout had an outstanding academic record.

(ii) The applicant should have had a minimum of ten years' experience as a Professor in a university system, or an equivalent position, in a reputed research and/or academic administrative organization.

(iii) Preferably, the applicant should not have crossed 65 years of age, as on the closing date stipulated for receipt of applications.

26. Insofar as the procedure for the appointment was concerned, the advertisement touched upon it only briefly and indicated that the appointment would be made from a panel of names recommended by a Committee, constituted under the provisions of the JMI Act.

27. A further elaboration on the process of selection is made in Statute 2(1), which sets forth that the appointment would be made by the Visitor from a panel of at least three (3) names recommended by a Committee consisting of three (3) persons. Of the three (3) persons, two (2) persons would be nominated by the Executive Council, while the third person, who would be the Chairman of the Committee, was required to be nominated by

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the Visitor.

28. The first proviso to Statute 2(1) makes it clear, that the SCS Committee could not comprise members connected with JMI. More importantly, the second proviso to Statute 2(1) provides, that if the Visitor did not approve of any of the persons so recommended, he could call for fresh recommendations.

29. Likewise, if one were to peruse the extract of Regulation 7.3 of the 2018 UGC Regulations, it would disclose, that while sub-regulation (i) alluded to the qualifications and/or attributes required of the applicant who sought appointment to the post of the VC [which were, broadly, in line with what was briefly outlined in the advertisement], sub-regulation (ii) of the very same Regulation alluded to the composition of the SCS Committee, and how the selection process had to be carried out.

29.1 Insofar as the composition of the SCS Committee was concerned, sub-regulation (ii) of Regulation 7.3 indicates, that it ought to consist of 3-5 persons, who necessarily were required to be persons of eminence in the sphere of higher education, and should not have been connected either with the concerned University or its colleges. Therefore, in a sense, sub-regulation (ii) of Regulation 7.3 added an attribute, that a member of the SCS Committee was required to have, which is not provided in Statute 2(1). This attribute, on which much emphasis has been laid by Mr Sarwar, is that the members of the SCS Committee should be persons of eminence in the sphere of higher education.

30. Furthermore, sub-regulation (ii) of Regulation 7.3, like in the advertisement, adverts to the obligation of the SCS Committee, to give weight to academic excellence, exposure to higher education systems in the

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country and abroad, and adequate experience in academic and administrative governance, while preparing the Panel. The SCS Committee was also required to give its recommendation "in writing" while submitting the Panel of names to the Visitor.

31. The fact, that Regulation 7.3 did not apply to JMI, which is, concededly, a Central University, emerges upon reading that part of sub-regulation (ii) of Regulation 7.3, which says that one member of the SCS Committee would be nominated by the Chairman, UGC *albeit* for selection of VCs of State, Private and Deemed to be Universities.

32. Sub-regulation (iii) of Regulation 7.3 confers the power on the Visitor to appoint the VC out of the Panel of names recommended by the SCS Committee.

33. The first issue which arises for consideration is, in case of variance between the Regulation i.e., Regulation 7.3 of the 2018 UGC Regulations, and the Statute i.e., Statute 2(1), what would be given preference?

33.1 As noticed above, there are aspects, concerning the composition of the SCS Committee, which includes the number of persons that could be co-opted/nominated, as also the attributes and manner of submission of the Panel of names by the SCS Committee, to the Visitor. In our view, since the VC was to be appointed to JMI, which is a Central University having its own Statute, the provisions of the Statute would apply.

34. Therefore, one straight answer to the submission made by Mr Sarwar, that the members nominated to the SCS Committee should be persons of eminence in the sphere of higher education, is that it is not provided in the Statute. Statute 2(1) only requires, that the members of the SCS Committee should not be connected with the concerned University. This attribute, as

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noticed above, is also embedded in Regulation 7.3(ii) of the 2018 UGC Regulations.

35. Notwithstanding this, Mr Sarwar has not disputed, that Justice (Retd.) MSA Siddique was Chairman of the National Commission for Minority Educational Institutions, New Delhi, and had dealt with issues concerning educational institutions.

35.1 The expression "in the sphere of higher education" is wider than, say, for example, "in the field of higher education". The expression "in the sphere of" would *inter alia*, mean areas to which a person has been exposed, or had influence. To our minds, in the context of the facts that obtain in the instant case, the expression in the sphere of higher education does not have the same rigour as when one says, that a person should have been in the field of higher education. That said, had the expression been "field" of higher education, it would have necessarily meant, that the members should have knowledge and experience in a particular field; the expression "sphere" of higher education casts a wider net.

36. Since the selection was being made for the post of VC, in our opinion, the attribute has been consciously made broad-based, as in a University and/or in colleges run under the aegis of a University, there would be several fields of education, such as law, technology, medicine, management etcetera. The applicants would have domain expertise in one or more fields. In this case, the applicants were more than a hundred in number, and perhaps therefore, it was not thought fit to provide, that the members of the SCS Committee should themselves have necessarily acquired eminence in one or more fields.

37. It may not be out of place to mention, that Justice (Retd.) MSA

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Siddique, after years of experience as a judge, had expertise in the field of law, and as noticed above, had dealt with issues concerning minority institutions, which were engaged in imparting education in various fields.

37.1 There is another way of looking at this aspect. The members of the SCS Committee, who had acquired eminence and experience in various areas, were required to give weight to aspects such as academic excellence, exposure to the higher education system in the country and abroad, and the experience gathered by the applicants in academic and administrative governance. The question really is, were the members of the SCS Committee, given their experience, in a position to evaluate the applicants on these parameters? There is nothing brought on record by the appellant to show, that the members of the SCS Committee were unable to evaluate candidates, based on the broad parameters outlined in Regulation 7.3(ii) of the 2018 UGC Regulations.

38. This brings us to the issue: whether the SCS Committee was required to give "reasons" for empanelling the 3 candidates, out of the 107 applicants who had applied for the post of VC. As noticed above, the SCS Committee, based on an iterative process, drilled down the number of applicants from 107 to 13 and finally empanelled 3 candidates. The parameters on which the evaluation was to take place were those, which we have referred to above.

38.1 The first and foremost question which arises in the context of this issue is, what was the nature of the exercise carried out by the SCS Committee? Was it administrative or judicial or even quasi-judicial? Clearly, the SCS Committee was not deciding a *lis* or *inter se* rights of the applicants. Therefore, the evaluation conducted by the SCS committee was neither judicial nor quasi-judicial.

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38.2 The obligation to furnish reasons arises when an authority exercises judicial or quasi-judicial powers. It is in such circumstances, that reasons are required to be furnished, as it then allows for a review by an appellate authority to *inter alia*, examine the viability of the conclusions reached in a given matter, via remedies well-entrenched in law.

38.3 Likewise, there can be no cavil, that when judicial or quasi-judicial power is exercised i.e., once a decision is rendered, it cannot be reviewed, unless a provision made in that behalf is embedded in the process, either in a statute, rule or even guidelines which have a statutory flavour.

38.4 Therefore, the only slot in which evaluation carried out by the SCS Committee can be placed, is that which is available to a purely administrative act. Because it is a purely administrative act, there was, in law, no obligation to provide reasons.[1] Furthermore, as is well-known, a purely administrative act can always be reviewed. In fact, in the instant case, the entire exercise to appoint the VC could have been given up, by calling for fresh recommendations, if the Visitor did not approve of any of the

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[1] See National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman and Others 1992 Supp (2) SCC 481:

"*In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with.*

The Capoor case [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : (1974) 1 SCR 797] cannot, therefore, be construed as an authority for the proposition that there should be reason formulation for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in R.S. Dass v. Union of India [1986 Supp SCC 617 : (1987) 2 ATC 628] in which Capoor Case [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 :

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persons so recommended for appointment.

39. Thus, the only scope for interfering, if at all, in the exercise carried out by the SCS Committee, concerned the following aspects: First, whether the appointee had the stipulated qualifications. Second, whether the prescribed process put in place for the appointment was followed. The second aspect is also connected with the argument advanced by the opposing respondents, that this was not a case for the issuance of a writ of *quo warranto*.

39.1 Before we proceed further, we must state, with emphasis, that the argument advanced by Mr Sarwar, that because the submission of the Panel of names to the Visitor had to be "in writing", reasons were required to be furnished by the SCS Committee, is completely untenable. The expression "in writing" cannot be extrapolated to mean, that reasons had to be furnished for making the recommendation. It appears, that since the Visitor has been vested with the power to have a final say in the appointment of the VC, consciously, no provision is made which obliged the SCS Committee to give reasons, as to why certain persons had been empanelled. If reasons were required to be furnished, the members of the SCS Committee would necessarily tend to indicate who, according to them, was the best out of the lot made available for evaluation. Such an exercise would be fraught with several difficulties. First, this would denude, in a sense, the Visitor of his discretion. Second, it could throw up a possibility of the members of the SCS Committee not being able to arrive at a unanimous decision, as to who was the best candidate. Third, while members of the SCS Committee may

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(1974) 1 SCR 797] was also distinguished." [confirmed in UPSC v. K. Rajaiah and Others (2005) 10 SCC 15]

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reach a unanimous decision as to the best candidate, their reasons could vary.

40. The other contention of Mr Sarwar is, that the selection of Professor Akhtar was severely flawed, on account of the fact, that before her appointment, the CVC had rendered its advice *via* OM dated 10.01.2019, indicating that Professor Akhtar should not be considered for any post-retirement assignment/re-employment in any organizations/institutions or University over which MHRD had administrative control.

41. In this context, it is also submitted by Mr Sarwar, that the revision by CVC of its advice, which cleared the path for the appointment of Professor Akhtar as the VC of JMI, is an aspect which should have been looked at by the SCS Committee before her name was forwarded to the Registrar for consideration.

41.1 In support of this submission, Mr Sarwar sought to place reliance on the communication dated 08.03.2020. We must confess, that at first blush, when notice in the appeal was issued, this did appear to be a serious issue. However, after examining the matter closely, we have concluded, that the revision in CVC's stand was in order. The MHRD [i.e., respondent no.1], in its counter-affidavit, has broadly adverted to the reasons, as to why the CVC had revised its advice. Since the averments were broad, we called for and examined the original record. On the aspect of revision of advice by the CVC, it may be of help to extract the relevant averments made by MHRD in its counter-affidavit.

> *"It is submitted that the CVC's OM dated 10.01.2019 relates to observation/advice of Central Vigilance Commission ('CVC') which was tendered in reply to a report furnished by the office of the Chief Vigilance Officer ('CVO'), MoE to consider [the] closure of the complaint against*

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regularization of Respondent No. 03 as a Senior Fellow in the NIEPA.

However, in the meantime the above observation/advice of CVC received under OM dated 10.01.2019 advising MoE not to consider Respondent No. 03 for post-retirement assignment was conveyed by CVO, MoE to the administrative Bureau of Central Universities in MoE that had then sought Vigilance Clearance from CVO, MoE in relation to her name figuring in the selection Panel of Vice Chancellor, Jamia Millia Islamia.
Thereafter, in the backdrop of advice of CVC, the matter relating to the complaint was again examined by the O/o CVO, MoE and the CVC was once again requested to reconsider its advice dated 10.01.2019 elaborating [on] Recruitment Rules for the post of Senior Fellow in NIEPA.
That the CVC reviewed the case and decided to revise its advice and deleted the observation made in para 2(i) of its OM dated 10.01.2019. Considering that the CVC had withdrawn its observation against post retirement assignment of Respondent No. 03, vigilance clearance in view of [the] revised position was conveyed to [the] administrative Bureau which acted in the light of the same."

"After examining the case, CVC vide O.M. dated 10.01.2019 advised such as stated by the Petitioner. However, MHRD vide their OM No. C-34013/5/2018-Vig.dated 24.01.2019, requested to reconsider the advice of the Commission and as such the Commission examined the case and thereafter advised to delete the said portion of the advice/verdict vide OM dated 26.02.2019."

42. The aforesaid extract would show, that it was at the MHRD's behest, that the CVC decided to reconsider its advice. Since both the OM dated 24.01.2019, via which the MHRD called upon the CVC to reconsider its advice, and the revised advice given by the CVC *via* OM dated 26.02.2019 were not on record, we directed their production. For the sake of convenience, the relevant parts of both the OM dated 24.01.2019 and the OM dated 26.02.2019 are set forth hereafter, as it would provide a perspective, as to what exactly was held against Professor Akhtar, when the CVC had rendered its initial advice, via OM dated 10.01.2019.

I. <u>OM dated 24.01.2019</u>

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"

F. No. C-34013/5/2018-Vig
Government of India
Ministry of Human Resource Development
Department of Higher Education
(Vigilance Section)
Room No. 106-C Wing, Shastri Bhawan
New Delhi dated the 24th January, 2019

OFFICE MEMORANDUM

Sub.:- Complaint under PIDR against the officials of NIEPA – reg.

The undersigned is directed to refer to Central Vigilance Commission's OM No.Conf/3657/12 dated 10.01.2019 conveying the advice of the Commission in the above subject complaint.

2. The advice of the Commission with regard to [the] selection of Dr. Najma Akhtar in NIEPA has been examined and it is stated that the National Institute of Educational Administration published an Advertisement dated 12/01/2002 inviting application[s] for the Faculty position-Senior Fellow, with specialization in Educational Administration wherein the method of recruitment is mentioned as Direct Recruitment/Transfer on Deputation/Transfer (by advertisement or by personal contract or by invitation) (Annexure-I). In the said advertisement there was no mention of the Faculty position being a leave vacancy and also no specific mention was made in the advertisement regarding the number of posts to be filled up.

2. In the minutes of the Selection Committee meeting held on 18 July, 2002 (Annexure II), it is recorded that 28 applications were received by NIEPA, in response to the advertisement carried out [by] Employment News, the Hindustan Times, University News during January, 2002, out of which 12 candidates were recommended by Screening Committee to be called for interview. However, the record of the Screening Committee is not readily available. The Selection Committee took note of the fact that one post each of [the] Senior Fellows are [sic: is] lying vacant and the Committee recommended [the] empanelment of [the] following candidates, in descending order of merit, for appointment as Senior Fellow in NIEPA and recorded the same as follows:

Senior Fellow (Educational Administration)

1. Dr. Najma Akhtar (Leave Vacancy)

Senior Fellow (Educational Management)

1. Prof. Satish Kalra

2. Dr. Sudhansu Bhushan

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3. It can, therefore, be seen from the advertisement dated 12/01/2002 that the post of senior Fellow [Educational Administration] which was advertised and against which Dr. Najma Akhtar was given [an] offer of appointment was not said to be a Leave vacancy. However, the offer of appointment made to Dr. Najma by NIEPA was said to be against a Leave vacancy. It can also be seen from the Selection Committee minutes that even though it states that the empanelment of candidates is being made in descending order of merit, the actual order of merit cannot be ascertained from the minutes. Further, Dr. Najma Akhtar, as per records made available, was a permanent employee of AMU and was on EOL (Lien) with NIEPA.

4. Dr. Najma Akhtar made a representation on 14.2.2003 (Annexure III) for placing her against a clear post. The proposal was duly approved by the then Director after first informing the Executive Committee about the representation and that the same would be duly processed (Annexure IV). Had the representation of Dr. Akhtar been declined, she could have returned to her parent organization (which is also an institution under the Central Government) where she was a permanent employee and working on [sic: in] a similarly placed post. The RR for the post of Senior Fellow inter-alia provides the modes of recruitment as by advertisement or by personal contract by invitation (Annexure V). Therefore, even if it is assumed that she was initially recruited against a Leave Vacancy; her subsequent absorption, without any further advertisement appears to be covered under the RRs.

5. In the light of the above submission, the Commission is requested to reconsider its advice dated 10/01/2019.

This issues with the approval of the Hon'ble Minister of Human Resource Development.

(Sanjay Kumar)
Under Secretary to the Govt. of India

Central Vigilance Commission,
(Shri Mukesh Kumar, Director)
Satarkata Bhawan, GPO Complex
Block A, INA, New Delhi-11023

"

II. <u>OM dated 26.02.2019</u>

"

Conf/3657/12/411518

26/02/2019

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OFFICE MEMORANDUM

Sub.:- Complaint under PIDR against the officials of NIEPA – reg.

MHRD may refer to their OM No. C-34013/5/2018-Vig. dated 24/01/2019 on the subject cited above.

2. The Commission, in agreement with CVO, MHRD, has reviewed the case and has decided to revise its advice issued vide OM dated 10/01/2019. Accordingly, para 2(i) of [the] Commission's OM dated 10/01/2019 may be treated as deleted.

(Mukesh Kumar)
Director

Ministry of Human Resource Development,
(Shri S.S. Sandhu, CVO),
Room No. 103, 'D' Wing,
Shastri Bhawan,
New Delhi-110001.

"

43. A perusal of the extracts would reveal the following:

(i) An advertisement dated 12.01.2002 was published in Employment News, the Hindustan Times, University News, at the behest of the National Institute of Educational Planning and Administration (NIEPA) [now National University of Educational Planning and Administration (NUEPA)], whereby applications were invited for faculty position i.e., Senior Fellow who had specialization in Educational Administration.

(ii) The advertisement, it appears, indicated that the source of recruitment would be Direct recruitment/Transfer on Deputation/Transfer (by advertisement or by personal contract or by invitation). Importantly, the advertisement did not indicate that the faculty position was sought to be filled against "Leave Vacancy".

(iii) Apparently, the advertisement also did not make any mention, as regards the number of posts, that had to be filled up.

(iv) NIEPA received 28 applications. The Screening Committee, out of

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the 28 applications received, recommended 12 candidates. Notably, the record of the Screening Committee, was, however, not readily available, as per the OM dated 24.01.2019. The Selection Committee, thereafter, recommended the empanelment of Professor Akhtar, and two other persons i.e., one Mr Prof. Satish Kalra and Dr. Sudhanshu Bhushan. While Professor Akhtar's recommendation for the appointment was under the category of "Educational Administration" *albeit* against Leave Vacancy, the recommendation made qua appointment of Mr Kalra and Dr Bhushan as Senior Fellow was under the category of "Educational Management."

(v) At the relevant time, Professor Akhtar was a permanent employee of AMU, and was on EOL (Lien) with NEIPA.

(vi) It is in this context, that Professor Akhtar made a representation on 14.02.2003, for placing her against a clear post.

(vii) Professor Akhtar's proposal was approved by the then Director, after informing the Executive Committee about the representation, and that it would be duly processed.

44. The OM dated 24.01.2019 brought these facts to the notice of the CVC. The note, thus, contended, that the CVC should revisit its initial advice *inter alia*, also for the reason, that since at the relevant point in time, Professor Akhtar was a permanent employee of AMU [which is also an institution under the Central Government], had her representation for absorption against a clear vacancy/post been declined, she could have returned to her parent employer, in a post which was similar to the one she held in NEUPA.

45. It was also sought to be highlighted in the very same communication, that the Recruitment Rules ["RRs"] provided for recruitment to the post of

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Senior Fellow either pursuant to an advertisement, or by "personal contract by invitation". The argument was, that even if Professor Akhtar, in the first instance, was recruited against leave vacancy, her subsequent absorption, without any further advertisement, was covered under the RRs.

46. This led to the CVC revising its initial advice rendered via OM dated 10.01.2019. The revision was carried out, as noticed above, through OM dated 26.02.2019.

47. We may point out, that the OM dated 26.02.2019 was preceded by a detailed note dated 13.02.2019 prepared by the then Director of CVC i.e., one Mr Mukesh Kumar. A perusal of the said note shows, that the issue concerning the appointment of Professor Akhtar to the post of Senior Fellow against a leave vacancy was triggered by a complaint dated 03.04.2012. A fact-finding enquiry was conducted by one Mr Sanjay Kumar Sinha, JS (Mgt.), which led to the generation of a report. The said report, insofar as Professor Akhtar was concerned, stated that the lapses were only procedural, and that no mala fide had been brought out.

47.1 This report was received in the Vigilance Section of MHRD on 15.10.2018. Having examined the report, the CVO, MHRD requested that the complaint be closed. Because the CVC, on 10.01.2019, came to a different conclusion, a second round was started. As indicated above, after complete facts were brought to the notice of the CVC, which is recorded in great detail in the note of its Director dated 13.02.2019, the initial advice dated 10.01.2019 was revised via OM dated 26.02.2019.

47.2 Thus, the examination of this material has led us to conclude, that Professor Akhtar had no role to play, in her employment in NEUPA against a leave vacancy. The advertisement issued for the post of Senior Fellow

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(Educational Administration) did not advert to the fact, that applications were sought against leave vacancy. The fact, that Professor Akhtar's representation for absorption against a clear vacancy/post was accepted by the Director cannot be put against her, for the reason that if her representation had been rejected, she would have returned to her parent institution i.e., AMU. Therefore, in our view, the revisionary advice was not *mala fide*, as was sought to be conveyed on behalf of the appellant.

48. It is important to highlight, that when the SCS Committee appraised the applications, there was, concededly, no vigilance case pending against Professor Akhtar. NEUPA had indicated the same; a factor which, concededly, was taken into account by the SCS Committee, while shortlisting Professor Akhtar, amongst others, for empanelment.

49. Professor Ramaswamy's letter dated 08.03.2020 is founded on newspaper reports. Quite obviously, Professor Ramaswamy did not have the benefit of perusing the official records. For the sake of convenience, the said letter, an extract of which is available in the impugned judgement, is set forth hereafter:

> *"From recent newspaper reports, I am given to understand that there are serious questions regarding the bona fides of the Vice Chancellor Prof. Akhtar, and in particular, that the CVC has denied vigilance clearance. The CVC (in an office memo dated 10th January, 2019) has asserted "not to consider Dr. Najma Akhtar for any post-retirement assignment or re-employment in organizations / institutions / Universities falling within the administrative control of MHRD" as quoted in the newspaper. This is a grave matter, since in the process of arriving at a short-list; otherwise meritorious candidates were passed over by the Committee on account of*

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even the remotest vigilance clearance issues."

50. Insofar as Mr Sarwar's argument, that the aspect of revision of CVC's initial advice should have been placed before the SCS Committee is concerned, the same is untenable, for the reason, that after empanelment, the SCS Committee had become *functus officio*. The initial advice of the CVC was rendered on 10.01.2019 i.e., after the SCS Committee had arrived at its decision, at the meeting held on 28.11.2018. At that point in time, no complaint or vigilance enquiry was pending against Professor Akhtar. Therefore, she was correctly cleared for shortlisting, and thereafter empanelment, by the SCS Committee. Professor Ramaswamy's concern, as articulated in the letter dated 08.03.2020 is, in our view, perhaps, founded on a conception, that there was a complaint, which had not been closed, at the time when they convened and took a decision for empanelling Professor Akhtar, along with the other persons. This is clearly not so, as is evident from the record placed before us.

51. This brings us to Mr Sarwar's submission, that the Summary Note dated 04.04.2019 brought to bear influence on the Visitor, which then led to Professor Akhtar's appointment as the VC. The argument advanced on this aspect is, that because the Minister of Human Resource Development gave his recommendation that Professor Akhtar should be appointed as the VC, the final decision taken by the Visitor was flawed in law.

51.1 In our opinion, this submission fails to take into account, the plain language of the second proviso to Statute 2(1). As noticed above, the second proviso to Statute 2(1) provides, that if the Visitor does not approve of any of the persons so recommended, he may call for fresh recommendations. The second proviso has to be read alongside the main provision i.e., Statute

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2(1), which confers the power of appointment only on the Visitor. Clause (1), read with the second proviso appended to the statute i.e., Statute 2 makes it abundantly clear, that the Visitor had the discretion, not to go by the recommendations made to him, if he did not approve the names put forth before him, by the SCS Committee. The Visitor, in such a situation, as noticed above, is empowered to call for fresh recommendations. Therefore, while an iterative process has been put in place for selecting the most suitable candidate for appointment to the post of VC, the Visitor is not bound by the recommendations made to him, which includes the recommendations made even by the SCS Committee, which is constituted in terms of clause (1) of Statute 2.

51.2 Therefore, if the recommendations of the SCS Committee do not bind the Visitor, then surely, the recommendation made by the Minister of Human Resource Development can have no impact on the final decision taken by the Visitor. The recommendation, at best, could be categorized as a superfluity.

51.3 The real question is, something which Mr Sarwar did articulate in so many words, did the recommendation create a bias or likelihood of bias in favour of Professor Akhtar? In our opinion, it did neither, as the Minister was not a part of the selection process. Further, he had no legal standing, in terms of the statutory process configured for the appointment of the VC. Had the Minister been a part of the selection process, perhaps, some weight could have been given to the submission advanced by Mr Sarwar.

52. The practice of preparing Summary Notes and making a recommendation, on the part of the MHRD, is a regular feature, and not a device (as was sought to be portrayed on behalf of the appellant) adopted in

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this particular case. The necessary averment made in that behalf, in the affidavit of MHRD is extracted hereafter:

> *"It is submitted that the averments contained in Para 30 & 31 relate to [the] recommendation of [the] Minister of Education. In this regard, it is pertinent to mention that this is the general practice followed by the answering respondent in all the cases of Central Universities such as [the] appointment of Vice Chancellor, [the] appointment of Chancellor, Statute framing/Amendment etc. which are submitted to the Visitor have the recommendation of the Hon'ble Minister of Education. Further, the recommendation of the Hon'ble Minister of Education is suggestive only and not mandatory."*

53. Evidently, the Summary Note prepared went through official channels, and the appellant has not brought on record anything, that would show that the Summary Note and the recommendation made therein were out of the ordinary.

54. While the recommendation by the Minister may not be a wholesome practice, the material placed before us does not indicate, that it was done to bear influence on the Visitor. We have no material before us, to come to a different conclusion. In the future, it may be advisable for the MHRD to eschew the practice of indicating, as to which candidate, according to it, fits the bill.

55. Before we conclude, it may be relevant to note, as to what is the scope and ambit of the Court's power to issue a writ of *quo warranto*. Firstly, it empowers the Court to control executive action in matters concerning the appointment of persons to public offices. Second, the Court's power is hemmed in by examining the executive's choice, in the backdrop of the

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following parameters:

(a) Whether the appointment is contrary to the qualifications prescribed for the office?

(b) Whether the manner of selecting the appointee is contrary to the relevant statutory provisions?

56. In effect, if any of the aforesaid parameters are infracted, the appointee would be categorized as a usurper, triggering the Court's power to issue the writ of quo warranto.[2]

57. Therefore, what cannot be questioned by the Court, is the choice of the appointee, as that lies within the ken of the Visitor. In this case, the appointee chosen is Professor Akhtar. Since she was appointed to a public office, the appellant had, in our view, the *locus* to move the Court and challenge her appointment.

58. To assail the appointment of appointees to a public office, the litigant who moves the Court need not have any direct interest in the matter. To that extent, no fault can be found with the appellant, in instituting the writ action. However, our examination of the record has not led us to conclude, that in the appointment of Professor Akhtar, the iterative process put in place had been given a go-by. Concededly, even the appellant has raised no issue regarding Professor Akhtar's qualification to hold the office of the VC.

59. During the hearing, Mr Sarwar also referred to the judgements set forth above in paragraph 20. Insofar as ***Gorakhpur University*** was concerned, this was a matter, in which a challenge was laid to the appointment of three persons as members of the Uttar Pradesh Higher

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Education Services Commission ["in short, the "Services Commission"]. The writ petitioners had contended, that the appointments were contrary to the statutory provisions contained in Section 4(2-a) of the Uttar Pradesh Higher Education Services Commission Act, 1980 [in short, the "1980 Act"].

59.1 It was asserted by the petitioners, that since the appointees did not meet the eligibility criteria in the aforesaid provision, recourse had been taken to Clause g(2-a) of Section 4 of the 1980 Act. This clause allowed the State Government to appoint a person as a member of the Services Commission, who in its opinion was "an eminent person having made valuable contribution in the field of education". It is in this context, that the Court found fault with the appointments, on the following grounds-

(i) None of the members met the qualification criteria prescribed for appointment as members of the Services Commission.

(ii) There was no notification issued concerning vacancies available in the Services Commission, which resulted in a situation, where only those who knew of the vacancies could lodge their applications, for being considered for appointment.

(iii) The recourse to the residuary clause was taken only to avoid the rigour of the qualification criteria, which *inter alia*, stipulated a minimum period of experience that the candidates ought to possess, without the State Government forming an opinion, based on the material placed before it, that the person being

[2] [See: The University of Mysore vs C.D. Govinda Rao & Anr. AIR 1965 SC 4914, B. Srinivasa Reddy vs. Karnataka Urban Water Supply & Drainage Board Employee's Association, (2006) 11 SCC 731 (2), Gorakhpur University Aff. College Teacher Asso. v. State of U.P. 2015 SCC Online All 3719

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considered was not only eminent but had also made valuable contribution in the field of education.

(iv) There was no Search Committee formed to scrutinize the credentials, standing and integrity of the candidates under consideration, rendering the process flawed.

60. It is against this backdrop, that the Court invalidated the appointment of the three persons, whose selection was assailed before it.

60.1 Mr Sarwar attempted to apply the ratio of *Gorakhpur University* to this case, by extrapolating the principle to the constitution of the SCS Committee. The phraseology of Clause g(2-a) of Section 4 of the 1980 Act, as seen in Gorakhpur University's case is clearly different from the phraseology provided in Regulation 7.3 of the 2018 UGC Regulations. For the sake of convenience, the relevant part of Clause and Regulation referred to hereabove is set forth hereafter:

> *"(2-a) No person shall be qualified for appointment as [a] member unless he –*
>
> *……..*
>
> *(g) is in the* ***opinion of the State Government an eminent person having made valuable contribution in the field of education.****"*

> *"The members of such Search-cum-Selection 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."* [Emphasis is ours]

60.2 As noticed above, the attribute, that members of the SCS Committee were required to have, is not found in Statute 2(1). Furthermore, for the

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reasons given above, it is clear, that Justice (Retd.) MSA Siddique could be considered as an eminent person in the "sphere" of higher education. Pertinently, the appellant has not questioned the eminence of Justice (Retd.) MSA Siddique. It was the latter aspect i.e., eminence in the *sphere of higher education*, which was flagged by the appellant. We have already adverted to the fact, that Justice (Retd.) MSA Siddique was, as also noted by the learned single judge, exposed to aspects concerning educational institutions. This judgement is, thus, in our opinion, clearly distinguishable.

61. In ***Dr Kanwaljeet Singh's*** case, the Court was called upon to consider the writ action filed by the appellant, challenging the appointment of one, Mr Dr Dilip Kumar Dureha as the Vice-Chancellor of Laxmibai National Institute of Physical Education, Gwalior (LNIPE), which was validly approved by the Appointments Committee of the Cabinet (ACC), based upon the recommendation of the Minister of State for Ministry of Youth Affairs and Sports [in short, "the Minister, YAS"].

61.1 The Search-cum-Selection Committee, constituted for the purpose of appointment of the Vice-Chancellor had recommended a panel consisting of three candidates. The recommendation was drawn up in a manner, which put the name of the appellant i.e., Dr Kanwaljeet Singh at the top, with the person recommended by the Minister, YAS i.e., Mr Dr Dilip Kumar Dureha below him, followed by the third person i.e., Ms Dr Nayana D. Nimkar. The record, as placed before the Court, bore the following endorsement made by the Minister, YAS:

> *"I have examined the bio-data of all three candidates. I recommend Dr. Dilip Kumar Dureha considering his merits. We may seek ACC approval for the same."*

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62. The Division Bench of this Court allowed the appeal, broadly, on the following grounds.

(i) Given the Office Memorandums (OMs) issued by the concerned Department, requiring the Search-cum-Selection Committee to set forth their recommendation in order of merit, it would have to be construed, that the recommendation made by the Search-cum-Selection Committee was indeed in order of merit, which put the appellant, in the first position.

(ii) There were no reasons given by the Minister, YAS as to why he chose Mr Dr Dilip Kumar Dureha over the appellant, although he was below him, in the order of merit, as captured in the recommendation of the Search-cum-Selection Committee.

63. Pertinently, while emphasising the need to give reasons by an administrative authority, the Court noticed the Constitution Bench judgement of the Supreme Court, rendered in the case of ***S.N. Mukherjee v. Union of India***.[3] The relevant part of the observation is extracted hereunder:

> *18. This Court, in its decision in Prakash Atlanta JV v. National Highway Authority of India, 169 (2010) DLT 664, considered the judgment of the Constitution Bench of the Supreme Court in S.N. Mukherjee v. Union of India (1990) 4 SCC 594 and made the following observations:*
>
> *"23. The requirement of an administrative authority to record reasons for its decisions was considered by the Constitution Bench of the Supreme Court in S.N. Mukherjee v. Union of India (supra). In para 9 of the said judgment (AIR @ p.1988) one of the first questions formulated was "is there any general principle of law which requires an administrative authority to record the reasons for its decisions". It was noticed that there was a divergence of opinion on the issue in common law countries. While in the United States of America, the Federal*

[3] (1990) 4 SCC 594

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Administrative Procedure Act, 1946 required administrative decisions to indicate a statement of findings and conclusions as well as reasons or basis therefor, in England there was no such requirement. A reference was then made to the recommendations of the Donoughmore Committee and the Franks Committee which led to the enactment in the United Kingdom (U.K.) of the Tribunals and Enquiries Act, 1958 which mandated the tribunal or Minister to furnish a statement, either written or oral, and the reasons for the decision, if requested, on or before the giving of notification of the decision to support the decision. The Tribunals and Enquiries Act, 1971 also contained a similar provision. As far as India was concerned, the 14th Report of the Law Commission of India relating to reforms in judicial administration, recommended that administrative decisions should be accompanied by reasons. A reference was made to the decision of the Supreme Court in Madhya Pradesh Industries Ltd. v. Union of India (supra) and Bhagat Raja v. Union of India, AIR 1967 SC 1606. Reference was also made to the decisions in Travancore Rayon Ltd. v. Union of India (1969) 3 SCC 868 : AIR 1971 SC 862; Mahabir Prasad Santosh Kumar v. State of U.P. (1970) 1 SCC 764 : AIR 1970 SC 1302 and Raipur Development Authority v. Chokhamal Contractors (1989) 2 SCC 721 : AIR 1990 SC 1426. Thereafter in paras 34 and 35, the Supreme Court observed as under (AIR @ p. 1995):

"34. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of

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recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

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63.1 A careful perusal of the extract set forth from the said judgement would only highlight the principle that we noted hereinabove, which is that this obligation rests on an administrative authority when it is exercising "quasi-judicial functions".

64. The ratio of this judgement as well, to our minds, is distinguishable, as this is a case, where the candidate who had been denied appointment had approached the Court. The power exercised by the Minister, YAS was, in a sense, quasi-judicial in nature. Therefore, the matter fell within the four corners of service jurisprudence. In the instant case, a public interest petition has been filed. The excluded candidates have not approached the Court, with any grievance. The SCS Committee had made their recommendation in alphabetical order. Professor Akhtar's name was, thus, placed in the second position. The argument, which found favour with the Division Bench in Dr. Kanwaljeet Singh's case i.e., that the Minister, YAS had not given reasons for its recommendation, is sought to be utilised to impugn the empanelment made by the SCS Committee in this case, on the ground that no reasons were given. It is important to note, that even in Dr. Kanwaljeet Singh's case, a perusal of the judgement, facially, shows that no reasons were furnished by the Search-cum-Selection Committee. Therefore, the comparison made by Mr Sarwar is misconceived. The ratio of the judgement does not apply to the facts that obtain in the instant case.

65. In ***Rajesh Awasthi's case***, the broad facts were, that the appellant had been elected as the Chairperson of the U.P. State Electricity Regulatory Commission [in short, "SERC"]. The empanelment of the appellant had been carried out by the Selection Committee, constituted under Section

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85(1) of the Electricity Act, 2003 [in short, "the 2003 Act"].

65.1 At the relevant time when the selection process was on, and the appellant, along with another person was empanelled, the appellant was working as the Joint Vice-President of J.P. Power Ventures Ltd. Sub-section (5) of Section 85 of the 2003 Act required the Selection Committee to "satisfy itself" before recommending any person for appointment, that the concerned person did not have any financial or other interest which is likely to affect prejudicially, his functions as Chairperson or Member of the SERC. For the sake of convenience, the said provision is extracted hereunder:

> *"(5) Before recommending any person for appointment as the Chairperson or other Member of the State Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as Chairperson or Member, as the case may be."*

66. The Supreme Court sustained the judgement of the Allahabad High Court on the following grounds:

(i) The plain language of sub-section (5) of Section 85 of the 2003 Act required the Selection Committee to satisfy itself, about the aspects mentioned therein i.e., the candidate's financial or other interest, which may affect prejudicially, his functions, before his name was recommended for appointment. The Court ruled, that the obligation to ascertain, whether the person whose name is recommended had any financial or other interest, which was likely to prejudicially affect his functions as Chairperson, lay on the Selection Committee, and that this satisfaction had to be arrived at, before making the recommendation.

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(ii) The Court noted, that although the Selection Committee had empanelled the candidate, it had passed on the responsibility of ascertaining satisfaction [as provided in subsection (5) of Section 85 of the 2003 Act], so to speak, to the State Government. The facts disclosed demonstrated, that a decision was taken by the Selection Committee to empanel the appellant, along with another person on 26.12.2008. The State Government appointed the appellant as the Chairman of the SERC on 29.12.2008. The appellant had submitted a letter to the State Government on the same date i.e., 29.12.2008, stating that he had resigned from his previous assignment on 27.12.2008, and thus, severed all his links to the private sector. Undoubtedly, the decision of the Court, that the Selection Committee should have satisfied itself with the suitability of the candidate before he was empanelled, cannot be put at par with the facts, which are present in the instant case.

66.1 In the instant case, on the date when the empanelment was made by the SCS Committee, no complaint or vigilance enquiry was pending against Professor Akhtar. The SCS Committee had, based on the material available before it, empanelled Professor Akhtar. This decision was taken on 28.11.2018. The CVC's initial advice came on 10.01.2019, which was revised, based on inputs from the CVO, MHRD, on 26.02.2019. Therefore, the ratio in Rajesh Awasthi's case, again, cannot be made applicable to the facts and circumstances that obtain in the present case.

67. Lastly, a perusal of the full bench judgment rendered by Punjab and Haryana High Court in ***Hardwari Lal*** broadly reveals, that this was a case, where the petitioner had approached the Court with the grievance, that his term as the Vice-chancellor of the Maharshi Dayanand University, Rohtak

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[in short, "University"] was not being renewed, contrary to the promise made to him by the Chancellor. In this context, assertions were made, that the then Chancellor had assured the petitioner, that he would, initially, get a term of three years as the Vice-Chancellor of the University, and that the term would be renewed for another three years.

67.1 The prayer for the renewal of appointment of the petitioner as the Vice-Chancellor was contested by the respondents therein i.e., the Chancellor, Chief Minister of Haryana, as well as the Joint Secretary, Education Department, Government of Haryana. It was *inter alia* argued, that no absolute right inhered in the petitioner to obtain renewal. Furthermore, an argument was also advanced, that since respondent no.1, as the Governor of Haryana was the *ex officio* Chancellor of the University, no writ could be issued against the Chancellor. The Court, in this context, *inter alia* ruled that the Governor had no absolute immunity conferred on him under Article 361 of the Constitution, insofar as his functions as the Chancellor were concerned.

67.2 Besides this, the Court also examined the validity of Section 9-A of the Maharishi Dayanand University (Amendment) Act, 1980, which prevented a person from continuing in the post of the Vice-Chancellor or Pro-Vice-Chancellor beyond the age of 65 years. The Court held, that the provision was designed to operate to the detriment of only the petitioner, whose term had to be renewed, as a result of the promise/assurance extended to him. Mr Sarwar relied on paragraphs 111, 112, 121 and 125 of the judgement to contend, that the Visitor had complete discretion in the matter, which could not be hemmed in by the State i.e., the MHRD. As a proposition, one cannot quibble with this submission. The question which

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arises is, whether the Visitor's discretion in the instant case was sought to be impeded. The Visitor, upon examination of the material placed before him concerning the empanelled candidates, decided to appoint Professor Akhtar as the VC. Therefore, on facts, the ratio of the aforesaid judgement would not apply to the facts set out in the instant case.

CONCLUSION

68. Thus, for the foregoing reasons, we are disinclined to interfere with the conclusion arrived at by the learned single judge.

69. The appeal is, accordingly, dismissed.

70. Parties will, however, bear the burden of their respective costs.

(RAJIV SHAKDHER)
JUDGE

(TALWANT SINGH)
JUDGE

MAY 18, 2023 / ad

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