

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

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Date of decision: 18th January, 2011

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W.P.(C) 260/2011 & CM No.471/2011 (for stay).

DR. MUJAHID BEG & ORS

..... Petitioners

Through: Mr. Chandra Shekhar & Mr.
Saurabh Upadhyay, Advocates.

versus

U.O.I.& ORS.

..... Respondents

Through: Mr. Sachin Datta with Mr.
Manikya Khanna, Advocates for
UOI.
Dr. Saif Mahmood, Amicus Curiae
to The Fact Finding Inquiry
Committee (R-3).

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? NO
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported
in the Digest? NO

RAJIV SAHAI ENDLAW, J.

1. The twelve petitioners impugn the communication dated 27th July, 2010 of the Director (Central Universities) of the Department of Higher Education, Ministry of Human Resource Development, Govt. of India rendering clarification with respect to the order dated 4th February, 2010. The order dated 4th February, 2010 was issued by the President of India in capacity as the Visitor of the Aligarh Muslim University and in exercise of powers under Section 13(2B) of the Aligarh Muslim University Act, 1920. It is the case of the petitioners that in the name of the clarification,

the scope of the order dated 4th February, 2010 has been restricted.

2. The order dated 4th February, 2010 was a sequel to the original order dated 23rd July, 2009 made in exercise of powers under Section 13(2B) supra. Under the provisions of the Act, the President of India is the Visitor of the University. Section 13(2B) empowers the Visitor to, on consideration of any representation made to the Visitor by the University, cause to be made such inspection or inquiry in any matter connected with the administration or finance of the University. The order dated 23rd July, 2009 records that in order to look into the allegations made against the Vice Chancellor by eight members of the Executive Council of the University, the AMU Old Boys (Alumni) Association and the non-teaching employees of the University, as also the counter allegations made by the petitioners herein along with certain other against the complaints aforesaid, the Visitor was pleased to appoint a Fact Finding Committee to examine in detail the complaints and the counter complaints submitted to the Visitor. The Fact Finding Committee earlier appointed, was unable to complete the inquiry and expressed inability to continue, leading to the order dated 4th February, 2010 appointing another Fact Finding Committee but with the same terms of reference as in the order dated 23rd July, 2009. The time fixed for the Committee to render the report was last extended till 31st December, 2010.

3. Dr. Saif Mahmood, Advocate who has been appointed as the Amicus Curiae by the Fact Finding Committee was requested to assist this Court and informs that he has been given to understand that the time for

submission of the report has been extended till 31st January, 2011, though no communication in that regard has been received. He further clarifies that he on behalf of the Committee is only placing the facts before this Court and else the Committee is not opposing or supporting the petitioners.

4. The grievance of the petitioners is that the Director, (Central Universities) aforesaid while replying to the clarifications sought by the Fact Finding Committee, has made the scope of inquiry narrower than as contained in the orders dated 23rd July, 2009 and 4th February, 2010. It is contended that the clarification dated 27th July, 2010 has not been issued by the Visitor, as the orders dated 23rd July, 2009 and 4th February, 2010 have been and the Director could not restrict the ambit of the orders and the inquiry made by the Visitor.

5. There can be no doubt with the said proposition and thus it is not deemed necessary to discuss *Dr. S.C. Barat v. Hari Vinayak Pataskar* AIR 1962 MP 73 relied upon by the counsel for the petitioners. The counsel for the petitioners has also referred to Article 361 of the Constitution of India to contend that the provisions thereof do not apply to the President of India acting in the capacity as the Visitor of the University but the same is also not found necessary for adjudication of the controversy.

6. A perusal of the letter dated 27th July, 2010 shows that what has been stated therein is that the contents of the order dated 4th February,

2010 are self explanatory and need no further elucidation. After having said so, it is further stated that it goes without saying that the Committee should restrict itself to the allegations/counter allegations arising out of the acts of commission and omission by the Vice Chancellor, from the date he entered upon the office of the Vice Chancellor in the University and complaints if any relating to the period prior to joining of the University by the Vice Chancellor should be examined by the Committee. It has further been observed that the Committee though given the freedom in the order dated 4th February, 2010 to look into other aspects that might come into notice during the course of examination of the complaints and counter complaints, should take up only such aspects as are incidental to the complaints and counter complaints referred to in the order and the Committee must keep the time constraints in mind.

7. Dr. Saif Mahmood, Advocate has handed over in the Court a copy of the letter dated 2nd July, 2010 written by him on behalf of the Committee seeking the clarification. It was mentioned therein that the Committee was of the opinion that the terms of reference were vague and open-ended and if the report in terms thereof were to be given, the time period for submission of the report will have to be extended. It is also informed today, that the Committee is now at the stage of final arguments, which could not be completed owing to the injury suffered by one of the Committee members; else the hearing before the Committee may have been completed. He has in this regard also handed over a copy of the order dated 14th January, 2011 of the Chairman of the Committee.

8. The counsel for the respondent Union of India appearing on advance notice also states that the letter impugned in this petition is six months old and the petitioners have approached this Court when the proceedings before the Committee are in the final lap and with an intent to avoid the submission of the report by the Committee. Needless to state that the petition is accompanied with an application for interim relief seeking stay of proceedings before the Committee.

9. In my view, this petition is not maintainable. The letter dated 27th July, 2010 while reiterating the order dated 4th February, 2010 has merely replied to the queries of the Committee in view of the limited time, initially fixed of three months only, for submission of report. The letter leaves it open to any of the parties before the Committee to submit before the Committee that any of the facts which the Committee has been called upon to enquire into are relevant. Else, a perusal of the order appointing the Committee does show that the controversy was post appointment of the Vice Chancellor. It is open to the petitioners to contend before the Committee, as is being contended before this Court, that the letter dated 27th July, 2010 cannot restrict the scope and ambit of the order dated 4th February, 2010 and it is for the Committee to take a call thereon. If this Court at this stage were to interfere in the proceedings before the Committee, the same would stall the proceedings before the Committee indefinitely.

10. Moreover, the report of the Committee is to be submitted to the

Visitor and if the Visitor on perusal of the said report is of the view that any further facts need to be inquired into, it will always open to the Visitor to so direct and interference at this stage by this Court would adversely affect the affairs of the University.

11. The Supreme Court in ***D.P. Maheshwari v. Delhi Administration*** (1983) 4 SCC 293 observed that there was a time when it was thought prudent and wise to decide preliminary objections first but the time has now come for reversal of that policy. It was laid down that the tribunals (in that case adjudicating labour disputes) should decide all issues and disputes at the same time without trying some of them as preliminary issues. It was further held that the High Courts in the exercise of their jurisdiction under Article 226 of the Constitution ought not to stop proceedings before the tribunal so that a preliminary issue may be decided. It was held that the jurisdiction under Article 226 ought not to be permitted to be so exploited by those who can well afford to wait and to the detriment of those who can ill afford to wait. The Supreme Court observed that the Tribunals and Courts should thus ask themselves whether such threshold part- adjudication is really necessary and whether it will not lead to other woeful consequences. The Supreme Court again in ***National Council for Cement & Building Materials v. State of Haryana*** (1996) 3 SCC 206 commented on the appalling situation created by such preliminary issues which take long years to settle. Reliance was placed on ***Cooper Engineering Ltd. v. Shri P.P Mundhe*** (1975) 2 SCC 661 laying down that in order to obviate undue delay in adjudication of the real

dispute, all issues should be decided together so that there is no justification for the party to the proceeding to stall the final adjudication by questioning the decision of the tribunal on the preliminary issue before the Court.

12. There is thus no merit in the petition the same is dismissed in *limine* with no order as to costs.

Dasti under the signatures of court master.

**RAJIV SAHAI ENDLAW
(JUDGE)**

18th January, 2011
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