

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE SUBRAMONIAM PRASAD

Writ Petition No.22253 of 2018
W.M.P.Nos.26075 and 26076 of 2018

A.Mahalingam ... Petitioner

v.

1. The Chancellor,
Madurai Kamaraj University,
Raj Bhavan, Chennai 600 022.
 2. The Chief Secretary,
Government of Tamil Nadu,
Fort St. George, Chennai 600 009.
 3. The Principal Secretary,
Higher Education, Secretariat,
Fort St. George, Chennai 600 009.
 4. The Additional Chief Secretary to Governor/Chancellor,
Governor's Secretariat, Raj Bhavan,
Chennai 600 022.
 5. The Registrar,
Madurai Kamaraj University,
Madurai 625 021.
 6. Dr.C.Thangamuthu,
Member, VC Search Committee,
Madurai Kamaraj University,
Madurai 625 021.
- ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records, relating to the impugned proceedings of the Syndicate of the 1st respondent University, dated 16.06.2018 and quash the same and consequently, direct the respondent authorities to strictly follow the provisions of Section 11 Statute 4 of Chapter V of

Madurai Kamaraj University Act 1965 and redo the exercise of appointment of member for the Search Committee contemplated under Statute 1 of Chapter V of the Act.

For petitioner ... Mr.S.Thankasivan

For respondents 1, 5 & 6... Mr.Godwin Swaminath,
Standing Counsel
for

For 2nd respondent ... Mr.Vijay Narayan,
Advocate General
Assisted by Mr.T.N.Rajagopal,
AGP

For 3rd Respondent ... Mr.C.Munusamy,
Spl. Government Pleader

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Petitioner, a member of the Alumni of Madurai Kamarajar University, has filed the instant public interest litigation, challenging the proceedings of the Syndicate of the 1st respondent University, dated 16.06.2018 and consequently, to direct the respondents to strictly follow the provisions of Section 11 Statute 4 of Chapter V of Madurai Kamaraj University Act 1965 and redo the exercise of appointment of member for the Search Committee, contemplated under Statute 1 of Chapter V of the Act.

2. The petitioner has contended that certain persons have filed writ petitions, challenging the appointment of Prof. P.P.Chellathurai, as Vice-Chancellor of Madurai Kamaraj University. After hearing the writ petitions, the Hon'ble First Bench of this Court, by order, dated 14.6.2018, in W.P. (MD) No.12788 of 2017 and W.P.No. 14705 of 2017, set aside the appointment of Vice Chancellor of Madurai Kamaraj University, by holding that the proceedings of the Search Committee are flawed.

3. The Hon'ble First Bench of this Court issued directions, for redoing the process of selection of Vice Chancellor for Madurai Kamaraj University. Relevant portion of the order, is extracted hereunder:

"6. Conclusion: Owing to our narrative and discussion supra, we hold and give directions as follows:

(a) The Search Committee for selecting a panel of three names for appointment as Vice-Chancellor of Madurai Kamaraj University shall be re-constituted with three new members (other than Respondent Nos. 5,

6 and 7). One shall be nominated by the Senate, another shall be nominated by the Syndicate and the third one shall be nominated by the Chancellor.

(b) New Search Committee so constituted, as aforesaid, shall embark upon the process of selecting a panel of three names for appointment as Vice-Chancellor of Madurai Kamaraj University in accordance with Madurai Kamaraj University Act, 1965 and all other applicable statutes, after due deliberations, consultations and discussions amongst themselves.

(c) On such new Search Committee being constituted, Respondent No.1/appointee shall not be precluded from applying again and if he chooses to do so, the Search Committee shall evaluate the candidature of Respondent No.1 uninfluenced by these proceedings or anything that might have been said in this order or in the course of these proceedings. Such fresh evaluation shall be with regard to both eligibility and suitability. To be noted, we have left the issue of eligibility open.

(d) The above process shall be completed within a period of three months from the date of receipt of a copy of this order and the panel of three names shall be submitted to the Chancellor within this three months period.

(a) We set aside the appointment of Respondent No.1 in W.P (MD)No.12788 of 2017 as Vice-Chancellor of Madurai Kamaraj University on the ground that the proceedings of the Search Committee are flawed without expressing any opinion on eligibility and noticing that Respondent No.1 has been dropped/deleted from the criminal case/charge sheet after further investigation. We have given directions for redoing the process of selecting Vice Chancellor for MKU again and such directions are contained under the caption 'Conclusion' supra in this judgment. With regard to Madras University Vice-Chancellor, which is also referred to in Traffic Ramasamy's PIL, as no arguments were advanced, the same does not fall for discussion here and with regard to Vice Chancellor of Madras University, the issue is treated as closed as far as these proceedings are concerned.

(b) W.P.(MD) No.12788 of 2017 filed by Lionel Antony Raj and W.P.No.14705 of 2017, filed by Traffic Dr.Ramaswamy (with regard to appointment of Vice-Chancellor of MKU alone) are allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petitions are closed."

4. The petitioner has further submitted that the Hon'ble First Bench of this Court has directed the authorities to strictly follow the Act and Statutes, to ensure that suitability and eligibility of persons to be selected for the panel for the post of Vice Chancellor are not compromised. However, the Government officials who are holding ex-officio position, as Syndicate members of Madurai Kamaraj University exhibited their total disregard to the statute, in appointing the Syndicate Nominee of the Vice Chancellor Search Committee.

5. The procedure for constituting the Search Committee, in the event of a permanent vacancy, occurring in the Office of the Vice Chancellor, has been specifically set out in Chapter V of Madurai Kamaraj University Act 1965. Statute 4 under Chapter 5 of the Madurai Kamaraj University Act 1965 reads as follows:

"when a permanent vacancy occurs or is about to occur in the office of the Vice-Chancellor, the Registrar shall under direction of the Syndicate cause a notification to the fact to be published in the Gazette and take immediate steps for the constitution of the committee referred in the statute. I mentioning the date and hour of the last date for filing nominations and the place, date and hour for the scrutiny of the nomination papers. The date for filing nominations must be atleast 14 clear days after the date of publication of the notification. A copy of the said notification shall be sent to the Chancellor and to each of the members of the Senate and the Syndicate and placed at the next meeting of the Syndicate immediately after the publication of the notification."

6. The petitioner has further submitted that, while setting aside the appointment of Vice Chancellor of Madurai Kamaraj University, the Hon'ble First Bench of this Court has clearly stated that the process of preparing a fresh Panel shall be completed within a period of three months, from the date of receipt of a copy of the order. However, even before the said copy of the order was made ready, the Secretary to the Government, Higher Education Department, has instructed the Registrar, Madurai Kamaraj University, to convene a meeting of the Syndicate on 16.06.2018, which was declared as a public holiday. Vide G.O.Ms No.421 dated 14.06.2018 (Public Miscellaneous Department), on account of Ramzan.

7. The Registrar, without giving sufficient time to the syndicate members, hurriedly convened the syndicate meeting of Madurai Kamarajar University and six Government officials have travelled from Chennai to Madurai, and in such a meeting, dated 16.06.2018, Dr.C.Thangamuthu, 6th respondent herein, has been nominated as syndicate nominee, in the Search Committee.

8. The petitioner has further submitted that conducting a meeting of the Syndicate on 16.06.2018, is vitiated by violation of the statute. No notice whatsoever was issued to the Syndicate members, in spite of the fact that the statute mandates publication of such notification, in the Gazette for constitution of the committee. Further, the last date for filing nomination for search committee members, must be fixed at least 14 days after the date of publication of notification. Copy of such notification shall be sent to the Chancellor and also to each member of the Syndicate and that the same should be placed at the next meeting of the Syndicate, immediately after the publication of notification.

9. It is the further case of the petitioner that as per the Madurai Kamarajar University Act, 1965 and Statutes, consent letters of the person to be selected/elected should be placed in the Syndicate meeting. But, it is reliably learnt no such consent letter of Dr.C.Thangamuthu was produced, in the said Syndicate Meeting, nor notification whatsoever has been made by the Registrar of MKU, as mandated by the statute.

10. The petitioner has contended that all that has been done, is that all the Government officials in their capacity, as ex-officio members of the Syndicate have travelled to Madurai, on a Government holiday, sat together and signed the minutes, nominating the 6th respondent herein, as the syndicate nominee, which has been done under the instigation and compulsion of the Principal Secretary, Higher Education, 3rd respondent herein.

11. The petitioner has contended that the unilateral decision of the Principal Secretary, Higher Education Department, by executing the orders independently, would completely undermine the autonomy of the University. Therefore, if the present committee is allowed to function further, they would nominate ineligible persons to the office of Vice Chancellor, which would ultimately result in grave prejudice and irreparable injury to the system contemplated under the University Act.

12. In the above circumstances, the petitioner has submitted a detailed representation, dated 31.07.2018, to the authorities including the Chancellor of Madurai Kamaraj University, requesting to take necessary action for redoing the exercise of appointing Search Committee, in a free and fair manner in accordance with law. Till date, no action has been taken by the respondent authorities. Therefore, the petitioner has filed this instant Public Interest Litigation, on the following grounds,

(i) The proceedings of the Syndicate of the 1st respondent University dated 16.06.2018, wherein the 6th respondent is nominated as Search Committee Member for preparing a panel of three names and submitting the same to the Chancellor for appoint to the post of Vice Chancellor of the Madurai Kamaraj University, is vitiated by complete violation of the mandatory provisions of Section 11 (4) of Madurai Kamaraj University Act 1965 and hence the same is completely unconstitutional and illegal;

(ii) The Statute 4 under Chapter V of Madurai Kamaraj University Act 1965 mandates publication of notification in the Gazette for constitution of the committee referred in Statute 1 of Chapter V of the Act. No such notification has been published in the Gazette as mandated by the Act. Therefore the same is vitiated by complete violation of the mandatory provisions of the Act.

(iii) Statute 4 under Chapter V mandates that 14 days clear notice shall be given for filing nomination from publication of notification and copy of such notification shall be sent to the Chancellor viz. the 1st respondent and each of the Senate and Syndicate members. However, no such notification has been either published or circulated and the mandatory provisions of the Act have been willfully violated by the authorities and therefore, the impugned proceedings, dated 16.06.2018 is liable to be set aside.

(d) The impugned proceedings, dated 16.6.2018 violate the specific direction issued by the Hon'ble Division Bench of this Court, in its Judgment, dated 14.06.2018 wherein this Court has directed the authorities to strictly follow the rules and statutes and hence the impugned proceedings is vitiated by complete violation of the Judgment of this Court, dated 14.06.2018, in the matter of the 1st respondent University."

13. On 29.08.2018, we ordered notice to the respondents.

14. Responding to the averments, Mr.Vijay Narayan, learned Advocate General, Government of Tamilnadu, raised a preliminary

objection to the maintainability of the writ petition on the ground that the cause of action has arisen, within the jurisdiction of the Madurai Bench of the Madras High Court, and therefore, writ filed in the Principal Bench of this Court, is not maintainable.

15. He further submitted that the petitioner, resident of Madras, cannot be said to have any public interest, in the matter of nomination of a syndicate nominee to the search committee for selecting the Vice Chancellor to Madurai Kamarajar University and therefore, he has no locus to maintain the writ petition.

16. Without prejudice to the above, learned Advocate General, submitted that selection to the office of Vice Chancellor, Madurai University has a chequered history, that every time when the office of Vice Chancellor is either filled up or during the process, obstacles have been made and the selection or process was questioned. He further submitted that the Hon'ble First Bench in order dated 14.06.2018, has directed that the process of selecting the search committee members, to be completed within three months from the date of receipt of the order made in the said order, and the panel of three members to be submitted to the Vice Chancellor, within three months.

17. Learned Advocate General further submitted that notification for selection of Senate nominee has been published in the Gazette, and selection has been made. Referring to the notwithstanding clause in 10(2) in Chapter V of the Statute, of Madurai Kamarajar University, learned Advocate General, submitted that "Notwithstanding anything contained herein it shall be competent for the Syndicate to elect such nominee to the Committee by a resolution assented to by the majority of the members of the Syndicate after obtaining the consent of the concerned nominee to serve on the committee.

18. Learned Advocate General further contended that out of 13 members in the syndicate, 12 of them have given their consent, in nominating Dr.C.Thangamuthu, the 6th respondent, as the syndicate nominee and none of them have made any complaint that they were either influenced or compelled to choose the 6th respondent, as the syndicate nominee. He denied the allegations of the petitioner that the Secretary to the Government, Higher Education, Government of Tamilnadu, exerted pressure.

19. Learned Advocate General further submitted that in the absence of Vice Chancellor, to exercise the powers and performing the duties of the Vice Chancellor, a convenor committee comprising of three members, to look after the day to day affairs of the University was constituted.

20. According to the learned Advocate General, in the light of the past events, where obstructions were made, in the process of filling up the office of the Vice Chancellor for Madurai Kamarajar University, power under Statute 10(2) of the Madurai Kamarajar University was exercised, which overrides the procedure contemplated, in 10(1) of the Statute r/w Statute 4 in Chapter V.

21. He further submitted that no malafide can be attributed to the selection of the 6th respondent, as the nominee of the syndicate and the 6th respondent was a former Vice Chancellor of Bharadhidasan University, person of eminence, in terms of the Madurai Kamarajar University Act, 1965. Reference has been made to the explanation to Section 3 of the Amendment to Madurai Kamarajar University Act, 1965, wherein, eminent educationist, means,

"(i) who is or has been a Vice Chancellor of any University established by the State Government or Central Government; or

(ii) who is a distinguished academician, with a minimum of ten years of experience as Professor in a State or Central University or in both taken together; or

(iii) who is or has been a Director or Head of any institute of national importance.

Provided that person so nominated shall not be a member of any of the authorities of the University or shall not be connected with the University or any college or any recognized institution of the University."

22. He further submitted that Dr.Nageswar Rao, Vice Chancellor, of Indira Gandhi National Open University, New Delhi and Dr.M.Anantha Krishanan, Former Vice Chancellor of Anna University have been nominated as Governor's Nominee and Senate Nominee, respectively. He also submitted that there are no illegalities in the selection of syndicate nominee. For the abovesaid reasons, he prayed for dismissal of the writ petition.

23. On 31.08.2018, we directed the files pertaining to the nomination of syndicate member to be produced. On 03.09.2018, files were produced. Inviting the attention of this Court to the dates and events, process and timeline, in filling up the office of Vice Chancellor, Madurai Kamarajar University, Mr.Vijay Narayan, learned Advocate General, submitted that the as per order of the Hon'ble Division Bench of this Court, the whole process has to be completed within three months, and as on day, it is already beyond the time, ordered. It is also his

submission that as the majority of the syndicate members have already consented to the selection of the 6th respondent, as syndicate nominee, it would be a wasteful exercise, in redoing the process once again and it would only delay the nomination of the syndicate nominee, and consequently, filing up the office of Vice Chancellor, to Madurai Kamarajar University.

24. Placing reliance on the decision of the Delhi High Court in P.L.Lakhanpal vs. A.N.Ray and Others, reported in AIR 1975 Delhi 66, learned Advocate General submitted that when the defect in the selection is curable, by subsequent nominations, by following the procedure, then there is no need to interfere with the nomination of the 6th respondent, as syndicate nominee, already made.

25. Mr.S.Thankasivan, learned counsel for the petitioner submitted that there is change in the office of the Secretary to Government, Higher Education Department. He further submitted that very same 6th respondent has been chosen as one of the syndicate nominees for selection to the post of Vice Chancellor of Annamalai University.

26. Placing reliance on the decision of the Hon'ble Supreme Court in Central Electricity Supply Utility of Odisha v. Dhobei Sahoo reported in 2014 (1) SCC 161, he submitted that the petitioner has every locus to challenge the selection of syndicate nominee.

Heard Mr.S.Thankasivan, learned counsel for the petitioner and Mr.Vijay Narayan, learned Advocate General, Government of Tamilnadu and perused the materials on record.

27. Madurai Kamarajar University Act, has been enacted in 1965. Chapter VI of the Act, 1965, deals with statutes, ordinances and regulations. Statute 30 of the said Act, is extracted hereunder:

"30. Statutes - Subject to the provisions of this Act, the statutes may provide for all or any of the following matters, namely -

(a) the constitution or reconstitution, powers and duties of the authorities of the University;

(b) the conditions of recommendation by the Senate of areas to be recognised by the Government as University Centres;

(c) the conditions of recognition of approved colleges and of affiliation to the University of affiliated colleges;

(cc) the manner in which and the conditions subject to which a college may be designated as an

autonomous college or the designation of such college may be cancelled and the matters incidental to the administration of autonomous colleges including the constitution or reconstitution, powers and duties of academic council, staff council, boards of studies and boards of examiners;

(d) the institution and maintenance of University colleges and laboratories and hostels;

(e) the powers, duties and conditions of service of the officers of the University other than the Chancellor and the Pro-Chancellor;

(f) the holding of convocations to confer degrees;

(g) the conferment of honorary degrees;

(h) the administration of endowments and the institution and conditions of award of fellowships, travelling fellowships, scholarships, studentships, bursaries, exhibitions, medals and prizes;

(i) the classification and the mode of appointment of the teachers of the University;

(j) the institution of pension, gratuity or provident fund for the benefit of the teachers of the University or its servants;

(k) the maintenance of a register of registered graduates; and

(l) all other matters which by this Act may be prescribed by the statutes."

28. Now let us consider as to how the office of Vice Chancellor to Madurai Kamarajar University has to be filled up. Chapter V of the Madurai Kamarajar University Act, 1965, reads thus,

"3. When any temporary vacancy occurs in the office of the Vice-Chancellor, the Syndicate shall, as soon as possible, subject to the approval of the Chancellor, make the requisite arrangements for exercising the powers and performing the duties of the Vice-Chancellor.

4. When a permanent vacancy occurs or is about to occur in the office of the Vice-Chancellor, the Registrar shall under direction of the Syndicate cause a notification of the fact to be published in the Gazette and take immediate steps for the constitution of the committee referred in the statute mentioning the date and hour of the last date for filing nominations and the place, date and hour for the scrutiny of the nomination papers. The date for filing nominations must be at least 14 clear days after the date of publication of the notification. A copy of the said notification shall be sent to the Chancellor and to each of the members of the Senate and the Syndicate and placed at

the next meeting of the Syndicate immediately after the publication of the notification.

5. The Committee referred to in Statute 1 shall consist of 3 persons of whom one shall be nominated by the Senate of the University, one by the Syndicate of the University and one by the Chancellor, provided that the person nominated shall not be a member of any of the authorities of the University.

6. (1) Each member of the Senate shall have a right to nominate not more than one person who is not a member of any of the authorities of the University, to the committee referred to in statute 5. Similarly each member of the Syndicate shall have a right to nominate not more than one person who is not a member of any of the authorities of the University to the said Committee.

(2) The Registrar shall call for nominations for election of person by the members of the Senate and one person by the members of the Syndicate to the said Committee.

(3) Every nomination shall be in writing signed by the proposer who shall be a member of the Senate and seconded in writing by another member of the Senate called the seconder in the form prescribed (Vide Appendix). No nomination shall be valid unless it contains the signature of both the proposer and the seconder.

(4) The nomination form shall also be signed by the person, proposed expressing his consent to be nominated.

(5) Every nomination must be presented before the Registrar either by the proposer or the seconder or the person proposed, before 3 p.m on the date notified as on the date for filing nomination under Statute 4.

6. Soon after the expiry of the last date and hour for receipt of nominations, the Registrar shall scrutinize the nomination papers at the place, date and hour notified under Statute (4). The proposer or the seconder or the proposed nominees are entitled to be present at the time of the scrutiny. A list of persons whose nominations have been declared valid by the Registrar shall be published on the notice board of the office of the University. A copy of the list shall be sent to the persons nominated for election if he or they were not present at the time of scrutiny.

7. Any person whose nomination had been declared valid may withdraw his nomination by a letter in writing and presented to the Registrar in person not later than 7 clear days after the date of publication of valid nominations or by a letter writing and

attested by any other member of the Senate and sent by registered post to the registrar so as to reach him not later than the above said 7 clear days after the date of publication of the above said nominations. Such withdrawal once made shall be final.

8(a) If the number of persons validly nominated and who have not withdrawn is only one that person shall be deemed to have been duly elected and nominated by the Senate to the Committee referred to in Statute 5 and shall be so declared by the Registrar.

(b) If the number of person validly nominated and who have not withdrawn is more than one each member of the Senate shall be informed of the date and hour fixed by the Vice-Chancellor for the meeting and a list of such persons shall be sent to each member of the Senate not less than ten clear days fixed for the meeting.

(c) The election shall be held at the next ordinary meeting of the Senate immediately preceding the date when the office of the Vice-Chancellor shall fall vacant, provided that the Vice-Chancellor shall convene a special meeting of the Senate for election of the nominee if he thinks it necessary.

(d) The election shall be conducted by secret ballot at the place specifically set apart for the purpose and the ballot box properly locked and sealed shall be provided to receive the votes of the nominees.

(e) All members present at the meeting shall be entitled to vote. No vote can be given by proxy. Members present shall sign in the nominal electoral roll kept for the purpose as a record of voting at the election.

(f) Before a member is ready to vote, the Registrar shall ascertain and satisfy himself that the person desiring to vote is a member who has not already voted. The Registrar shall then enter his name upon the counterfoil of the ballot paper in the ballot paper book which shall be provided for the purpose of the election and shall then tear out the ballot paper corresponding to the counterfoil and having initialled the ballot paper on the back thereof shall hand it over to the member. Every ballot paper, shall contain the names of all nominees arranged in alphabetical order.

(g) When a member has received a ballot paper, he shall proceed to the place arranged for marking the vote and shall mark thereon by "X" against the name for whom he intends to vote. The number of nominees for whom each elector may vote shall be only one. The member shall then fold the ballot paper and drop it in the ballot box placed in front of the returning officer.

(h) If a member inadvertently spoils a ballot paper, he may return it to the Registrar, who shall if satisfied of such inadvertence, give him another paper, and retain the spoiled paper; and this spoiled paper shall be immediately cancelled and the fact of such cancellation shall be noted on the counterfoil.

(i) Two scrutinisers shall be selected by the Chairman of the meeting of the Senate to count the votes polled. The counting shall be done in the presence of the members of the Senate present and the Chairman. Persons securing the highest number of votes shall be declared by the Chairman of the meeting to have been duly elected and nominated by the Senate to the Committee referred to in Statute 5.

9. Chairman of the meeting held for the purpose of the election under Statute 5, shall conduct other items of business, if any, but the business of electing a member to the committee shall precede all other business and shall be disposed of before the meeting is adjourned or before any other item, if any, on the agenda is considered.

10(1) The Statutes in this Chapter relating to the procedure for nomination and election of a person by the Senate to the Committee referred to in statute 5 shall as far as may be necessary apply to the nomination and election of a person by the Syndicate to the committee mentioned in Statute 5, the word "Syndicate" being read in substitution of the word "Senate" wherever necessary.

(2) Notwithstanding anything contained herein it shall be competent for the syndicate to elect such nominee to the Committee by a resolution assented to by the majority of the members of the Syndicate after obtaining the consent of the concerned nominee to serve on the committee.

11. The Registrar shall report to the Chancellor of the names of the persons elected by the Senate and the Syndicate to the Committee. After the Chancellor nominates the third member to the committee, the names of the members of the committee shall be published in the gazette. The member nominated by the Chancellor shall be the convener of the committee.

12. The Committee shall meet soon after the names of 3 members are published and submit to the Chancellor a panel containing the names of 3 persons suitable for holding the office of the Vice-Chancellor. While submitting the panel to the Chancellor the Committee shall also send a statement showing the age, educational qualification, academic and administrative experienced and other distinctions of each of the 3

persons whose names are included in the panel. The panel shall be in alphabetical order.

13. The Chancellor shall appoint one of the persons whose names are given in the panel as the Vice-Chancellor."

29. A detailed procedure is contemplated in the statute, for selecting both the Senate and Syndicate Nominees. As per the Statute 10(1), the statutes in this chapter relating to the procedure for nomination and election of a person by the Senate to the Committee referred to in statute 5 shall as far as may be necessary apply to the nomination and election of a person by the Syndicate to the committee mentioned in Statute 5, the word "Syndicate" being read in substitution of the word "Senate" wherever necessary. The process involved, in selecting the senate and syndicate nominee as the case may be, is one and the same.

30. In the case on hand, senate nominee of the Search Committee, is stated to have been done by following the procedure, as contemplated in the Act. But the procedure, in respect of Syndicate nominee, has not been followed, by issuing a notification and 14 days' time was not given. Reason assigned by the learned Advocate General is that there is a power conferred under Statute 10(2) of the Chapter V of the Act and taking note of the chequered history in the matter of filling up the office of Vice Chancellor, a meeting of the syndicate members, was convened on 16.08.2018 and the 6th respondent was unanimously selected by the Syndicate Members, as the Syndicate Nominee. Timelines are extracted hereunder:

Timelines for the process of appointment of VC of
Madurai Kamaraj University

16.06.2018	:Syndicate Meeting held at MKU to nominate one member for the Search Committee. Prof.C.Thangamuthu, Former VC, Bharathidasan Univ. has been nominated.
22.06.2018	:Gazettee notification for the election of a Senate Nominee to Search Committee.
07.07.2018	:Preliminary list of valid nominations released by The Registrar, MKU.

13.07.2018 :Declaration of valid and invalid applications for the Senate Nomination. Prof.M.Anandakrishnan, Former VC, Anna Univ., Chennai declared elected.

23.07.2018 :First Meeting of all 3 members of Search Committee with Hon'ble Governor Chancellor at Raj Bhavan, Chennai - Submitted the Schedule/timelines of MKU-VC selection process.

04.08.2018 :Gazette Notification by Govt., of Tamil Nadu, towards the constitution of Search Committee to recommend a panel of three persons to the Hon'ble Chancellor for the election of Vice Chancellor to Madurai Kamaraj University under the MKU act.

07.08.2018 :Dr.Ka.Ilango has been appointed as Nodal Officer to co-ordinate MKU-VC Search Committee (Lr.No.8153/U.I/2018, Dt.07.08.2018 of Addl. Chief Secretary to Governor)

07.08.2018: Prof.K.Balakrishnan, Special Officer (RP), MKU, has been appointed as Liaison Officer to co-ordinate with Dr.Ka.Ilango, Nodal Officer, MKU-VC Selection Process (lr.Dt. 07/08/2018 from Thiru.R.Rajagopal, I.A.S., Addl. Chief Secretary to Govt.)

09.08.2018: VC-MKC advertisement uploaded in MKU website.

10.08.2018: Advertisement for VC-MKU appeared in Tamil Daily Thina Thanthi and English daily The Hindu (in all India Edition)

03.09.2018 : Last date for submission of application
for the
post of VC-MKU.

15.09.2018 : Dates fixed by the Search Committee
for
& Scrutiny of applications by the
Convener and 2
16.09.2018 other Members at Chennai
(@: No.19, Rukumani
Lakshmipathy Road, Annamalai Univ.
Study
Centre, Egmore, Chennai-8.

31. There are no materials in the files to indicate that there was any pressure or influence on the syndicate members. But, as rightly contended by the learned counsel for the petitioner that the meeting has been convened in just two days, after the pronouncement of the order made in W.P.(MD)No.12788 of 2017 and W.P.No.14705 of 2017, dated 14.06.2018 and that too, on a holiday. Hon'ble First Bench in the said order, has granted three months time, to constitute a Search Committee.

32. Indisputedly, procedure has not been followed, in the matter of selecting a syndicate nominee. When the Registrar or the Convenor Committee, as the case may be, has followed the procedure contemplated to select a senate nominee, by issuing a notification and giving 14 days' time to the Senate Members, there is no reason, as to why, the same procedure has not been followed, in the matter of nomination of a syndicate nominee.

33. Statute 10(2) of Chapter V of Madurai Kamaraj University Act, 1965, dealing with the procedure for nomination and election of a member by the Syndicate to the Committee referred to in Statute 5, reads thus,

"Notwithstanding anything contained herein it shall be competent for the Syndicate to elect such nominee to the Committee by a resolution assented to by the majority of the members of the Syndicate after obtaining the consent of the concerned nominee to serve on the Committee."

34. True that there is a power conferred, under Statute 10 (2) to override the procedure contemplated under Statute 10(1) r/w Statute 4 of chapter V of the Act, for nomination and election of a member by the syndicate to the search committee, but the files does not indicate, as to how and why the said power under Statute 10(2) has been exercised, excepting to state the time, stipulated in the order of the Hon'ble First Bench.

35. Reasons to exercise the power under Statute 10(2) are not reflected, in the impugned proceedings. Reference can be made to a decision in M/s.Steel Authority of India Ltd., v. STO, Rourkela-I Circle & Ors., reported in 2008 (5) Supreme 281, wherein, the Hon'ble Supreme Court held that reasons are the heartbeat of every conclusion. In this context, this Court deems it fit to extract the decisions, considered by the Hon'ble Supreme Court in Kranti Associates Private Limited and another vs Masood Ahamed Khan and Others reported in (2010) 9 SCC 496, as follows:

"12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262].

13. In Keshav Mills Co. Ltd. v. Union of India [(1973) 1 SCC 380], this Court approvingly referred to the opinion of Lord Denning in R. v. Gaming Board for Great Britain, ex p Benaim [(1970) 2 QB 417] and quoted him as saying "that heresy was scotched in Ridge v. Baldwin [1974 AC 40]".

14. The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

16. In Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala [AIR 1961 SC 1669], the question of recording reasons came up for consideration in the context of a refusal by Harinagar to transfer, without giving reasons, shares held by Shyam Sunder. Challenging such refusal, the transferee moved the High Court contending, inter alia, that the refusal is mala fide, arbitrary and capricious. The High Court rejected such pleas and the transferee was asked to file a suit. The transferee filed an appeal to the Central Government under Section 111(3) of the Companies Act,

1956 which was dismissed. Thereafter, the son of the original transferee filed another application for transfer of his shares which was similarly refused by the Company. On appeal, the Central Government quashed the resolution passed by the Company and directed the Company to register the transfer. However, in passing the said order, the Government did not give any reason. The Company challenged the said decision before this Court.

17. The other question which arose in Harinagar was whether the Central Government, in passing the appellate order acted as a tribunal and is amenable to Article 136 jurisdiction of this Court.

18. Even though in Harinagar the decision was administrative, this Court insisted on the requirement of recording reason and further held that in exercising appellate powers, the Central Government acted as a tribunal in exercising judicial powers of the State and such exercise is subject to Article 136 jurisdiction of this Court. Such powers, this Court held, cannot be effectively exercised if reasons are not given by the Central Government in support of the order (AIR pp. 1678-79, para 23).

19. Again in Bhagat Raja v. Union of India [AIR 1967 SC 1606] the Constitution Bench of this Court examined the question whether the Central Government was bound to pass a speaking order while dismissing a revision and confirming the order of the State Government in the context of the Mines and Minerals (Development and Regulation) Act, 1957, and having regard to the provision of Rule 55 of the Mineral Concession Rules. The Constitution Bench held that in exercising its power of revision under the aforesaid Rule the Central Government acts in a quasi-judicial capacity (see AIR p. 1610, para 8). Where the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying any reason, this Court, exercising its jurisdiction under Article 136, may find it difficult to ascertain which are the grounds on which the Central Government upheld the order of the State Government (see AIR p. 1610, para 9). Therefore, this Court insisted on reasons being given for the order.

20. In Mahabir Prasad Santosh Kumar v. State of U.P. [(1970) 1 SCC 764], while dealing with the U.P. Sugar Dealers' Licensing Order under which the licence was cancelled, this Court held that such an order of cancellation is quasi-judicial and must be a speaking

one. This Court further held that merely giving an opportunity of hearing is not enough and further pointed out where the order is subject to appeal, the necessity to record reason is even greater. The learned Judges held that the recording of reasons in support of a decision on a disputed claim ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant law and that the decision was just. (See SCC p. 768, para 7 : AIR p. 1304, para 7.)

21. In Travancore Rayon Ltd. v. Union of India [(1969) 3 SCC 868], the Court, dealing with the revisional jurisdiction of the Central Government under the then Section 36 of the Central Excises and Salt Act, 1944, held that the Central Government was actually exercising judicial power of the State and in exercising judicial power reasons in support of the order must be disclosed on two grounds. The first is that the person aggrieved gets an opportunity to demonstrate that the reasons are erroneous and secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power (see SCC p. 874, para 11 : AIR pp. 865-66, para 11).

22. In Woolcombers of India Ltd. v. Workers Union [(1974) 3 SCC 318] this Court while considering an award under Section 11 of the Industrial Disputes Act insisted on the need of giving reasons in support of conclusions in the award. The Court held that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. The learned Judges said that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The third ground is that such awards are subject to Article 136 jurisdiction of this Court and in the absence of reasons, it is difficult for this Court to ascertain whether the decision is right or wrong (see SCC pp. 320-21, para 5 : AIR p. 2761, para 5).

23. In Union of India v. Mohan Lal Capoor [(1973) 2 SCC 836] this Court while dealing with the question of selection under the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations held that the expression "reasons for the proposed supersession" should not be

mere rubber-stamp reasons. Such reasons must disclose how mind was applied to the subject-matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. This Court held that the reasons in such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two (see SCC pp. 853-54, paras 27-28 : AIR pp. 97-98, paras 27-28).

24. In *Siemens Engg. and Mfg. Co. of India Ltd. v. Union of India* [(1976) 2 SCC 981], this Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law (see SCC p. 986, para 6 : AIR p. 1789, para 6).

25. In *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248], which is a decision of great jurisprudential significance in our constitutional law, Beg, C.J. in a concurring but different opinion held that an order impounding a passport is a quasi-judicial decision (SCC p. 311, para 34 : AIR p. 612, para 34). The learned Chief Justice also held, when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears to be done as well. This principle would obviously demand disclosure of reasons for the decision.

26. Y.V. Chandrachud, J. (as His Lordship then was) in a concurring but a separate opinion in *Maneka Gandhi* also held that refusal to disclose reasons for impounding a passport is an exercise of an exceptional nature and is to be done very sparingly and only when it is fully justified by the exigencies of an uncommon situation. The learned Judge further held that law cannot permit any exercise of power by an executive to keep the reasons undisclosed if the only motive for doing so is to keep the reasons away from judicial scrutiny. (See SCC p. 317, para 39 : AIR p. 613, para 39.)

27. In *Rama Varma Bharathan Thampuram v. State of Kerala* [(1979) 4 SCC 782] V.R. Krishna Iyer, J. speaking for a three-Judge Bench held that the

functioning of the Board was quasi-judicial in character. One of the attributes of quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural justice. The learned Judge held that natural justice requires reasons to be written for the conclusions made (see SCC p. 788, para 14 : AIR p. 1922, para 14).

28. In *Gurdial Singh Fijji v. State of Punjab* [(1979) 2 SCC 368] this Court, dealing with a service matter, relying on the ratio in *Capoor*, held that "rubber-stamp reason" is not enough and virtually quoted the observation in *Capoor* to the extent that: (*Capoor* case, SCC p. 854, para 28)

"28. ... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions." (See AIR p. 377, para 18.)

29. In a Constitution Bench decision of this Court in *H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt.* [(1979) 4 SCC 642], while giving the majority judgment *Y.V. Chandrachud, C.J.* referred to (SCC p. 658, para 29) *Broom's Legal Maxims* (1939 Edn., p. 97) where the principle in Latin runs as follows:

"*Cessante razione legis cessat ipsa lex.*"

30. The English version of the said principle given by the Chief Justice is that: (*H.H. Shri Swamiji* case, SCC p. 658, para 29)

"29. ... 'reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself'." (See AIR p. 11, para 29.)

31. In *Bombay Oil Industries (P) Ltd. v. Union of India* [(1984) 1 SCC 141], this Court held that while disposing of applications under the Monopolies and Restrictive Trade Practices Act the duty of the Government is to give reasons for its order. This Court made it very clear that the faith of the people in administrative tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well-considered orders. In saying so, this Court relied on its previous decisions in *Capoor* and *Siemens Engg.* discussed above.

32. In *Ram Chander v. Union of India* [(1986) 3 SCC 103], this Court was dealing with the appellate provisions under the Railway Servants (Discipline and Appeal) Rules, 1968 condemned the mechanical way of dismissal of appeal in the context of requirement of Rule 22(2) of the aforesaid Rules. This Court held that the word "consider" occurring in Rule 22(2) must mean

that the Railway Board shall duly apply its mind and give reasons for its decision. The learned Judges held that the duty to give reason is an incident of the judicial process and emphasised that in discharging quasi-judicial functions the appellate authority must act in accordance with natural justice and give reasons for its decision (SCC pp. 106-07, para 4 : AIR p. 1176, para 4).

33. In *Star Enterprises v. City and Industrial Development Corpn. of Maharashtra Ltd.* [(1990) 3 SCC 280] a three-Judge Bench of this Court held that in the present day set-up judicial review of administrative action has become expansive and is becoming wider day by day and the State has to justify its action in various fields of public law. All these necessitate recording of reason for executive actions including the rejection of the highest offer. This Court held that disclosure of reasons in matters of such rejection provides an opportunity for an objective review both by superior administrative heads and for judicial process and opined that such reasons should be communicated unless there are specific justifications for not doing so (see SCC pp. 284-85, para 10).

34. In *Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi* [(1991) 2 SCC 716], this Court held that even in domestic enquiry if the facts are not in dispute non-recording of reason may not be violative of the principles of natural justice but where facts are disputed necessarily the authority or the enquiry officer, on consideration of the materials on record, should record reasons in support of the conclusion reached (see SCC pp. 738-39, para 22).

35. In *M.L. Jaggi v. MTNL* [(1996) 3 SCC 119], this Court dealt with an award under Section 7 of the Telegraph Act and held that since the said award affects public interest, reasons must be recorded in the award. It was also held that such reasons are to be recorded so that it enables the High Court to exercise its power of judicial review on the validity of the award. (See SCC p. 123, para 8.)

36. In *Charan Singh v. Healing Touch Hospital* [(2000) 7 SCC 668] a three-Judge Bench of this Court, dealing with a grievance under the CP Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons. This Court held that the said Act, being one of the benevolent pieces of

legislation, is intended to protect a large body of consumers from exploitation as the said Act provides for an alternative mode for consumer justice by the process of a summary trial. The powers which are exercised are definitely quasi-judicial in nature and in such a situation the conclusions must be based on reasons and held that requirement of recording reasons is "too obvious to be reiterated and needs no emphasising". (See SCC p. 673, para 11 : AIR p. 3141, para 11 of the Report.)

37. Only in cases of Court Martial, this Court struck a different note in two of its Constitution Bench decisions, the first of which was rendered in *Som Datt Datta v. Union of India* [AIR 1969 SC 414] where Ramaswami, J. delivering the judgment for the unanimous Constitution Bench held that provisions of Sections 164 and 165 of the Army Act do not require an order confirming proceedings of Court Martial to be supported by reasons. This Court held that an order confirming such proceedings does not become illegal if it does not record reasons. (AIR pp. 421-22, para 10 of the Report.)

38. About two decades thereafter, a similar question cropped up before this Court in *S.N. Mukherjee v. Union of India* [(1990) 4 SCC 594]. A unanimous Constitution Bench speaking through S.C. Agrawal, J. confirmed its earlier decision in *Som Datt* in *S.N. Mukherjee* case, SCC p. 619, para 47 : AIR para 47 at p. 2000 of the Report and held that reasons are not required to be recorded for an order confirming the finding and sentence recorded by the Court Martial.

39. It must be remembered in this connection that the court martial as a proceeding is sui generis in nature and the Court of Court Martial is different, being called a court of honour and the proceedings therein are slightly different from other proceedings. About the nature of Court Martial and its proceedings the observations of Winthrop in *Military Law and Precedents* are very pertinent and are extracted hereinbelow:

"Not belonging to the judicial branch of the Government, it follows that Courts Martial must pertain to the executive department; and they are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander-in-Chief, to aid him in properly commanding the Army and Navy and enforcing discipline therein, and utilised under his orders or those of his authorised military representatives."

40. Our Constitution also deals with court-martial proceedings differently as is clear from Articles 33, 136(2) and 227(4) of the Constitution.

41. In England there was no common law duty of recording of reasons. In *Stefan v. General Medical Council* [(1999) 1 WLR 1293 (PC)] it has been held: (WLR p. 1300)

the established position of the common law is that there is no general duty imposed on our decision makers to record reasons.

It has been acknowledged in the Justice Report, Administration Under Law (1971) at p. 23 that:

"No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions."

42. Even then in *R. v. Civil Service Appeal Board, ex p Cunningham* [(1991) 4 All ER 310 (CA)], Lord Donaldson, Master of Rolls, opined very strongly in favour of disclosing of reasons in a case where the Court is acting in its discretion. The learned Master of Rolls said: (All ER p. 317)

"... it is a corollary of the discretion conferred upon the Board that it is their duty to set out their reasoning in sufficient form to show the principles on which they have proceeded. Adopting Lord Lane, C.J.'s observations [in *R. v. Immigration Appeal Tribunal, ex p Khan (Mahmud)* [1983 (2) ALL ER 420 (CA)] All ER at p. 423, QB at pp. 794-95], the reasons for the lower amount is not obvious. Mr Cunningham is entitled to know, either expressly or inferentially stated, what it was to which the Board were addressing their mind in arriving at their conclusion. It must be obvious to the Board that Mr Cunningham is left with a burning sense of grievance. They should be sensitive to the fact that he is left with a real feeling of injustice, that having been found to have been unfairly dismissed, he has been deprived of his just desserts (as he sees them).'"

43. The learned Master of Rolls further clarified by saying: (*Civil Service Appeal Board case* [(1991) 4 All. ER 310 (Ca), All ER p. 317)

"... Thus, in the particular circumstances of this case, and without wishing to establish any precedent whatsoever, I am prepared to spell out an obligation on this Board to give succinct reasons, if only to put the mind of Mr Cunningham at rest. I would therefore allow this application.'"

44. But, however, the present trend of the law has been towards an increasing recognition of the duty of court to give reasons (see *North Range Shipping Ltd. v. Seatrans Shipping Corpn.* [(2002) 1 WLR 2397]). It has been acknowledged that this trend is consistent with the development towards openness in the Government and judicial administration.

45. In *English v. Emery Reimbold and Strick Ltd.* [(2002) 1 WLR 2409]. It has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. The House of Lords in *Cullen v. Chief Constable of the Royal Ulster Constabulary* [(2003) 1 WLR 1763], Lord Bingham of Cornhill and Lord Steyn, on the requirement of reason held: (WLR p. 1769, para 7)

"7. ... First, they impose a discipline ... which may contribute to such refusals being considered with care. Secondly, reasons encourage transparency ... Thirdly, they assist the courts in performing their supervisory function if judicial review proceedings are launched."

46. The position in the United States has been indicated by this Court in *S.N. Mukherjee* in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In *S.N. Mukherjee* this Court relied on the decisions of the US Court in *Securities and Exchange Commission v. Chenery Corpn.* [87 L Ed. 626] and *Dunlop v. Bachowski* [44 L Ed 2d 377] in support of its opinion discussed above.

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given

for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

36. When the Convenor Committee has directed a meeting of the Syndicate on 16.06.2018, to select the syndicate nominee, except reference to the order made in W.P.(MD)No.12788 of 2017 and W.P.No.14705 of 2017, dated 14.06.2018, there is nothing to indicate, as to why, the procedure contemplated for selection of syndicate nominee, could not be followed, more so, when the said procedure has been followed while selecting a senate nominee.

37. Contention of the learned Advocate General, regarding past events, in the matter of filling up the office of Vice Chancellor to Madurai University and therefore, power under 10 (2) of the Statute was exercised, is not supported by the files produced.

38. Examining the records, this Court is unable to find any reason and attendant circumstances, warranting exercise of power under Statute 10(2). Had the files disclosed the need with valid reasons to exercise the power under Statute 10(2), Court cannot sit over the consideration of the Convenor Committee, the subjective satisfaction and consequently, the decision of the Government, in notifying the syndicate nominee, but the files do not disclose the same.

39. On the aspect of non-obstante clause, is useful to refer few decisions,

(i) In State of West Bengal v. Union of India reported in [1964] 1 SCR 371, it is observed as under:

"The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs."

(ii) In Union of India v. I.C.Lala reported in AIR 1973 SC 2204, the Hon'ble Supreme Court held that non obstante clause does not mean that the whole of the said provision of law has to be made applicable or the whole of the other law has to be made inapplicable. It is the duty of the Court to avoid the conflict and construe the provisions to that they are harmonious.

(iii) In Union of India v. G.M.Kokil reported in AIR 1984 SC 1022, the Supreme Court, at Paragraph 10, held as

follows:

"It is well-known that a non-obstante clause is a legislative device which is usually employed to give over-riding effect to certain provision over some contrary provision that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

(iv) In *Chandavarkar Sita Ratna Rao v. Ashalata S.Guram* reported in 1986 (4) SCC 447, at Paragraph 67, the Hon'ble Supreme Court held as follows:

"67. A clause beginning with the expression "notwithstanding any thing contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in *The South India Corporation (P) Ltd., v. The Secretary, Board of Revenue, Trivandrum & Anr.*, AIR 1964 SC 207 at 215-[1964] 4 SCR 280."

(v) In *Vishin N.Kanchandani v. Vidya Lachmandas Khanchandani* reported in AIR 2000 SC 2747, at Paragraph 11, held that,

"There is no doubt that by non-obstante clause the Legislature devices means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind."

(vi) In ICICI Bank Ltd., v. SIDCO Leathers Ltd., reported in 2006 (10) SCC 452, the Hon'ble Supreme Court, at Paragraphs 34, 38, 46 and 49, held as follows:

"34. Section 529-A of the Companies Act no doubt contains a non-obstante clause but in construing the provisions thereof, it is necessary to determine the purport and object for which the same was enacted.

.....

36. The non-obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy.....

37. A non-obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same.

38. Section 529-A of the Companies Act does not ex facie contain a provision (on the aspect of priority) amongst the secured creditors and, hence, it would not be proper to read thereinto things, which the Parliament did not comprehend."

(vii) The Hon'ble Supreme Court in Central Bank of India v. State of Kerala reported in 2009 (4) SCC 94, at Paragraphs 103 to 107, the Hon'ble Supreme Court considered as follows:

"103. A non obstante clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. While interpreting non obstante clause, the Court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used. This rule of interpretation has been applied in several decisions.

104. In State Bank of West Bengal v. Union of India [(1964) 1 SCR 371], it was observed that:

68.the Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs."

105. In Madhav Rao Jivaji Rao Scindia v. Union of India and another [(1971) 1 SCC 85], Hidayatullah, C.J. observed that the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of

the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. A search has, therefore, to be made with a view to determining which provision answers the description and which does not.

106. In *R.S.Raghunath v. State of Karnataka and another* [(1992) 1 SCC 335], a three-Judge Bench referred to the earlier judgments in *Aswini Kumar Ghose v. Arabinda Bose* [AIR 1952 SC 369], *Dominion of India v. Shrinbai A. Irani* [AIR 1954 SC 596], *Union of India v. G.M.Kokil* [1984 (Supp.) SCC 196], *Chandravarkar Sita Ratna Rao v. Ashalata S.Guram* [(1986) 4 SCC 447] and observed:

".....The non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules."

107. In *A.G.Varadarajulu v. State of Tamil Nadu* [(1998) 4 SCC 231], this Court relied on *Aswini Kumar Ghose's* case. The Court while interpreting non obstante clause contained in Section 21-A of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 held :-

"It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. In *Aswini Kumar Ghose v. Arabinda Bose* [AIR 1952 SC 369], Patanjali Sastri, J. observed:

"The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously;"

40. Non-obstante clause confers discretion to dispense with the procedure. Let us consider few decisions of the Hon'ble Supreme Court, on discretion, as to how it should be exercised, and judicial review thereof.

(i) In *Suman Gupta and others v. State of Jammu and Kashmir and others* reported in (1983) 4 SCC 339, the Hon'ble Supreme Court while explaining as to how administrative discretion should be exercised, at paragraph No.6, held as follows:

"The exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason - relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting is valid exercise than its governance by these twin tests. A stream of case law radiating from the now well known decision in this Court in *Maneka Gandhi v. Union of India* reported in (1978) 1 SCC 248 has laid down in clear terms that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason.

In the above reported judgement, the Hon'ble Apex Court further held that,

"We do not doubt that in the realm of administrative power the element of discretion may properly find place, where the statute or the nature of the power intends so. But there is a well recognised distinction between an administrative power to be exercised within defined limits in the reasonable discretion of designated authority and the vesting of an absolute and uncontrolled power in such authority. One is power controlled by law countenanced by the Constitution, the other falls outside the Constitution altogether."

(ii) Reiterating as to how the discretionary power has to be exercised, the Hon'ble Supreme Court in *Sant Raj and another v. O.P.Singla and others* reported in (1985)2 SCC 349, held that "whenever, it is said that something has to be done, within the discretion of the authority, then that something has to be done, according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to

be not arbitrary, vague and fanciful but legal and regular and it must be exercised within the limit to which an honest man to the discharge of his office ought to find himself. Discretion means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful.

(iii) In *Fasih Chaudhary v. Director General, Doordarshan and others* reported in 1989 1 SCC 89, the Hon'ble Supreme Court held that exercise of discretion should be legitimate, fair and without any aversion, malice or affection. Nothing should be done which may give the impression of favouritism or nepotism. While fair play in action in such matters is an essential requirement, 'free play in the joints' is also a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere as the present one.

(iv) While considering, a litigation arising out of Bangalore Development Authority Act, 1976, the Hon'ble Supreme Court in *Bangalore Medical Trust v. B.S.Muddappa and others* reported in (1991) 4 SCC 54, held that "discretion is an effective tool in administration. It provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authority to abuse the law or use it unfairly. Where the law requires an authority to act or decide, 'if it appears to it necessary' or if he is 'of opinion that a particular act should be done' then it is implicit that it should be done objectively, fairly and reasonably. In a democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exerciser of discretion is accountable for his action. It is to be tested on anvil of rule of law and fairness or justice particularly if competing interests of members of society is involved. Decisions affecting public interest or the necessity of doing it in the light of guidance provided by the Act and rules may not require intimation to person affected yet the exercise of discretion is vitiated if the action is bereft of rationality, lacks objective and purposive approach. Public interest or general good or social betterment have no doubt priority over private or individual interest but it must not be a pretext to justify the arbitrary or illegal exercise of power.

It must withstand scrutiny of the legislative standard provided by the statute itself. The authority exercising discretion must not appear to be impervious to legislative directions. The action or decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised. No one howsoever high can arrogate to himself or assume without any authorisation express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra virus and bad in law.

(v) In Shiv Sagar Tiwari v. Union of India and others reported in 1997 1 SCC 444 the Hon'ble Supreme Court held that the discretionary power has to be exercised to advance the performance, to subserve for which the power exists.

(vi) In Rakesh Kumar v. Sunil Kumar reported in (1999) 2 SCC 489, the Hon'ble Supreme Court has held that administrative action/quasi-judicial function is the duty of the authority to give reasons/record reasons/and it should be a speaking order.

(vii) In A.P. Aggarwal v. Govt. of NCT of Delhi reported in (2000) 1 SCC 600, the Hon'ble Supreme Court held as under:

"The conferment of power together with a discretion which goes with it to enable proper exercise of the power and therefore it is coupled with a duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual."

(viii) In State of NCT of Delhi v. Sanjeev, reported in (2005) 5 SCC 181, the Hon'ble Supreme Court explaining the scope of judicial review of executive action has held as follows:

"15. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside, if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (see State of U.P. v. Renuagar Power Co.). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power.

Professor de Smith in his classical work *Judicial Review of Administrative Action*, 4th Edn. at pp.285-87 states the legal position in his own terse language that the relevant principles formulated by the courts may be broadly summarised as follows:

The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts *ultra vires*.

(ix) In *Indian Railway Construction Co. Ltd. v. Ajay Kumar* reported in (2003) 4 SCC 579, at paragraphs No.13 to 15, the Hon'ble Supreme Court explained the manner in which discretionary power has to be exercised, while discharging an administrative function. In the above judgment, the Supreme Court held that in matters relating to administrative functions, if a decision is tainted by any vulnerability as such illegality, irrationality and procedural impropriety, Courts should not hesitate to interfere, if the action falls within any of the categories stated *supra*.

"14. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troops, entering into international treaties etc. The distinctive features of some of these recent cases signify the willingness of the courts to assert their power to scrutinize the factual basis upon which

discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See CIT v. Mahindra and Mahindra Ltd.) The effect of several decisions on the question of jurisdiction has been summed up by Grahame Aldous and John Alder in their book Applications for Judicial Review, Law and Practice thus:

"There is a general presumption against ousting the jurisdiction of the courts so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the Government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service this is doubtful. Lords Diplock, Scarman and Roskill appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject-matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney-General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."

(Also see Padfield v. Minister of Agriculture, Fisheries and Food)

15. The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above: like illegality, irrationality and procedural impropriety. Whether the action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

17. Before summarizing the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. (KB at p.229 : All ER pp.682 H-683 A). It reads as follows:

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority. ... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

Lord Greene also observed: (KB p.230 : All ER p.683 F-G)

"... it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable. ... The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another." (emphasis supplied)

18. Therefore, to arrive at a decision on "reasonableness" the court has to find out if the

administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view.

(x) In *Union of India v. Kuldeep Singh* reported in (2004) 2 SCC 590, the Hon'ble Supreme Court while testing the correctness of the judgment rendered under the Narcotic Drugs and Psychotropic Substances Act, 1985, and the discretion to be exercised by the High Court, explained the principles governing the mode of exercise of the discretionary power for public functionaries as follows:

"20. When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law. In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty or power of acting without control other than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore, whoever hath power to act at discretion, is bound by the rule of reason and law. 21. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons.

22. The word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion

cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes a heavy responsibility. "The discretion of a judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper and passion. In the best it is often times caprice; in the worst it is every vice, folly, and passion to which human nature is liable," said Lord Camden, L.C.J., in *Hindson and Kersey* reported in (1680) 8 HOW St Tr 57.

23. If a certain latitude or liberty is accorded by a statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of discretion, and prevents it from being wholly absolute, capricious, or exempt from review."

(xi) While testing the validity of Central Electricity Regulatory Commission (Procedure, terms and conditions for grant of trading licence and other related matters) (Amendment) Regulations, 2006, the Hon'ble Supreme Court in *Global Energy Limited and another v. Central Electricity Regulatory Commission*, reported in 2009 (15) SCC 570, started the judgment with an epilogue and it reads as follows:

Epilogue

71. The law sometimes can be written in such subjective manner that it affects efficiency and transparent function of the Government. If the statute provides for pointless discretion to agency, it is in essence demolishing the accountability strand within the administrative process as the agency is not under obligation from an objective norm, which can enforce accountability in decision-making process. All law-making, be it in the context of delegated legislation or primary legislation, have to conform to the fundamental tenets of transparency and openness on one hand and responsiveness and accountability on the other. These are fundamental tenets flowing from due process requirement under Article 21, equal protection clause embodied in Article 14 and fundamental freedoms clause ingrained under Article 19. A modern deliberative democracy cannot function without these attributes.

41. The power conferred on the authority without any guidelines may likely to be abused or arbitrarily exercised and in such circumstances, the guidance and control of exercise of such power has to be gathered from the object of conferment of power. Non-consideration or non-application of mind to relevant factors renders the exercise of discretion manifestly erroneous, and it is cause for judicial interference.

42. Decision to invoke 10(2) of the Statute, though administrative in nature and the authority, need not pass a detailed order, but such a decision, to dispense with the detailed procedure, should atleast be recorded in the meeting, with reasons. By citing the past history, object of the statute, a democratic process in the matter of selection of the Syndicate Nominee, cannot be defeated, except for valid reasons. Duty is cast upon the University to follow the procedure. Power is there to dispense with the same.

43. Whether exercise of power under 10(2) of the Statute is simpliciter or coupled with a duty, while examining Statute 5, the object, observance and above all, the democratic process in the matter of selection, the inconvenience or injustice which may result, if such procedure is not followed, leads us to the conclusion that exercise of power is coupled with a duty, and merely because, there is power, under Statute 10(2), the same cannot be exercised, arbitrarily or indiscriminately, without reasons.

44. Statute 5 casts a duty to perform and Statute 10(2) confers discretion. On a conjoint reading of both, we are of the view that this is a case of conferment of power together with discretion, and therefore coupled with a duty. Exercise of power coupled with a duty to act, to promote the object of the Act and the Statutes, cannot be exercised arbitrarily, without reasons.

45. It is also useful to refer as to what Lord Cairns said in *Julius vs. Lord Bishop of Oxford*, in (1874-80) 5 AC 214 : 1847-80 All England Reporter 43 HL, considered in *State (Delhi Admn.) Vs. I.K.Nangia and another*, reported in (1980) 1 SCC 258, held thus:-

"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something, in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so."

46. Maxwell on Interpretation of Statutes, 11th Edn. at Page 231, referred to in I.K.Nangia's case is reproduced hereunder:-

"Statutes which authorise persons to do acts For the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they "may" or "shall, if they think fit", or, "shall have power", or that "it shall be lawful" for them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have to say the least-a compulsory force, and so could seem to be modified by judicial exposition. (Emphasis supplied)."

47. Though in Kumari Shrilekha Vidyarthi and Others vs. State of U.P. and Others, reported in (1991) 1 SCC 212, the Hon'ble Supreme Court considered appointment to the office of Public Prosecutor/Law Officers, a State action, reference can be made to few paragraphs on the aspect of arbitrariness,

"35. It is now too well-settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason,

is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that be you ever so high, the laws are above you'. This is what men in power must remember, always.

37. Almost a quarter century back, this Court in *S.G. Jaisinghani v. Union of India and Ors.*, [1967] 2 SCR 703, at p. 7 18-19, indicated the test of arbitrariness and the pit-falls to be avoided in all State actions to prevent that vice, in a passage as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey--"Law of the Constitution"-Tenth Edn., Introduction cx). "Law has reached its finest moments", stated Douglas, J. in *United States v. Wunderlick*, (*), "when it has freed man from the unlimited discretion of some ruler ... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilker* (*), "means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful."

38. After *Jaisinghani's* case (supra), long strides have been taken in several well-known decisions of this Court expanding the scope of judicial review in such matters. It has been emphasized time and again that arbitrariness is anathema to State action in every sphere and wherever the vice percolates, this Court would not be impeded by technicalities to trace it and strike it down. This is the surest way to ensure the majesty of rule of law guaranteed by the Constitution of India. It is, therefore, obvious that irrespective of the nature of appointment of the Government Counsel in the districts in the State of U.P. and the security of tenure being even minimal as claimed by the State, the impugned circular, in order to survive, must

withstand the attack of arbitrariness and be supported as an informed decision which is reasonable.

39. No doubt, it is for the person alleging arbitrariness who has to prove it. This can be done by showing in the first instance that the impugned State action is uninformed by reason inasmuch as there is no discernible principle on which it is based or it is Contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repel the attack by disclosing the material and reasons which led to the action being taken in order to show that it was an informed decision Which was reasonable. If after a prima facie case of arbitrariness is made out, the State is unable to show that the decision is an informed action which is reasonable, the State action must perish as arbitrary."

48. At this juncture, it is useful to refer, De Smith's Judicial Review of Administrative Action, Fourth Edition Page 283 and 285, considered in Andhra Pradesh S.R.T.C. v. State Transport Appellate Tribunal, reported in 1998 7 SCC 353, held as follows:-

"An authority may have a discretion whether to exercise a power, and a discretion in the manner of exercising it. But discretionary powers are frequently coupled with duties. A Minister may be empowered to confirm or refuse to confirm a compulsory purchase order. In making his decision he is entitled to exercise a very wide discretion, but he is under a legal duty to determine the application for confirmation one way or the other. Again, to the extent that a discretionary power is not absolute, the repository of a discretion is under a legal duty to observe certain requirements that condition the manner in which its discretion may be exercised." Page 285:-

"The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been

forbidden to do, nor must it do what it has not been authorised to do. it must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously."

49. Delay in constituting the Search Committee, the process involved cannot be the ground to ignore the discussion and directions made in W.P.(MD)No.12788 of 2017 and W.P.No.14705 of 2017, dated 14.06.2018, wherein, this Court considered the entire process, in the matter of filling up the office of Vice Chancellor.

50. Contention of the learned Advocate General that as the majority of syndicate members have consented to the selection 6th respondent, as a syndicate nominee, who is a former Vice Chancellor of Bharathidasan University, a person of eminence, reliance on the judgment of the Delhi High Court in P.L.Lakhanpal vs. A.N.Ray and Others, reported in AIR 1975 Delhi 66, and the further contention that if the whole process has to be redone, it would be a futile exercise, cannot be accepted, for the reason that exercise of power under 10(2) of the Statute, is arbitrary and without reasons. When the Statute contemplates a procedure, the same has to be done in the manner therefor, and not otherwise, except for valid and justifiable reasons. At this juncture, it is also relevant to consider few decisions,

(i) Lord Roche in Nazir Ahmad Vs. King Emperor reported in AIR 1935 PC 253, said that, "Where a power is given to do certain thing in a certain way, the thin should be done in that way or not at all. Other methods of performance are necessarily forbidden.

(ii) In T.Ramamoorthy v. The Secretary, Sri Ramakrishna Vidyalaya High School, etc. & Others reported in 1998 Writ. LR 641, at Paragraph 6, held as follows:

"This principle that where a power is given to do a certain thing in a certain way, things must be done in that way and not otherwise and that the other method of performance is necessarily precluded, is not only well settled, but squarely applies to this case also in construing the scope of the power as also its exercise by the management under Section 22 of the Act."

(iii) In Captain Sube Singh v. Lt. Governor of Delhi reported in (2004) 6 SCC 440], the Hon'ble Supreme Court, at Paragraph 29, held as follows:

"29. In Anjum M.H. Ghaswala, a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. (See also in this connection Dhanajaya Reddy v. State of Karnataka.) The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1)(d) read with sub-clause (i) thereof."

(iv) The Hon'ble Supreme Court in State of Jharkhand v. Ambay Cements reported in 2005 (1) CTC 223, at Paragraph 27, held as follows:

"27. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation and where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case of obtaining prior permission is mandatory, therefore, non-compliance of the same must result in cancelling the concession made in favour of the grantee-the respondent herein."

Though the above decision deals with a penal provision, principles laid down, can be made applicable to the facts of this case.

(v) In Pandit D Aher v. State of Maharashtra reported in 2007 (1) SCC 437, the Hon'ble Supreme Court, at Paragraph 19, held as follows:

"It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

50. On the contention that the petitioner has no locus standi, to prefer this writ petition and territorial jurisdiction, going through the materials on record, we are of the view that the office of the Vice Chancellor, is very important, in any University. Hon'ble First Bench, in the order made in W.P.(MD)No.12788 of 2017 and W.P.No.14705 of 2017, dated 14.06.2018, has found flaw in the procedure. In the event of violation of the statute, a litigant claiming public interest, can always bring it to the notice of this Court and in such circumstances, a writ would lie, in this Court. Moreover, the earlier decision, has been rendered by the Principal Bench of this Court.

51. In the light of the above discussion and decisions, impugned proceedings, dated 16.06.2018, is set aside. The 5th respondent is directed to adhere to the provisions of the Madurai Kamarajar University Act, 1965 and Statute, in letter and spirit. Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dm/asr

To

1. The Chancellor,
Madurai Kamaraj University,
Raj Bhavan, Chennai 600 022.
2. The Chief Secretary,
Government of Tamil Nadu,
Fort St. George, Chennai 600 009.
3. The Principal Secretary,
Higher Education, Secretariat,
Fort St. George, Chennai 600 009.

4. The Additional Chief Secretary to Governor/Chancellor,
Governor's Secretariat, Raj Bhavan,
Chennai 600 022.

5. The Registrar,
Madurai Kamaraj University,
Madurai 625 021.

+lcc to Mr.P.Godson swaminath, Advocate Sr.61137

+lcc to Mr.S.Thankasivan, Advocate Sr.61069

Writ Petition No.22253 of 2018
W.M.P.Nos.26075 and 26076 of 2018

gj ii[col]
srg 24/09/2018



WEB COPY