

\$~33

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

Date of decision: 27th March, 2019

+ W.P.(C) 12030/2015

M.K. SINGH

..... Petitioner

Through: Mr. Sandeep Aggarwal, Sr. Adv. with
Mr. M. K. Singh, Adv.

versus

CHANCELLOR, RASHTRIYA SANSKRIT SANSTHAN & ORS.

..... Respondents

Through: Mr. Manish Mohan, CGSC and
Mr. Manisha Saroha, Adv. for R-1,6
& 7.
Mr. Shibashisk Misra, Adv. for R-3.
Mr. R. Venkatramani, Sr. Adv. with
Mr. Gyan Prakash, Adv. for R-2 & 4.
Mr. Manoj R. Sinha, Adv. for R-5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J. (ORAL)

The petitioner, M.K. Singh challenges the appointment of respondent No.2/Professor P.N. Shastry as Vice-Chancellor of respondent No.3/Rashtriya Sanskrit Sansthan (hereinafter the “Sanskrit Sansthan”) by way of a writ of *quo warranto* and seeks his removal from office. It is the petitioner’s contention that Professor P.N. Shastry (Professor P.N. Shastri) was appointed in violation of the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in

Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 as amended in 2013(hereinafter the “UGC Appointment Regulations 2010”) ; and the petitioner thereby seeks quashing of order dated 15.06.2015 issued by respondent No.6/Ministry of Human Resource Development (hereinafter the “Ministry) appointing Professor P.N. Shastry as Vice-Chancellor. The petitioner also seeks a direction to respondent No.5/University Grants Commission (hereinafter the “UGC”) and the Ministry to evolve a mechanism and appoint officers to monitor strict compliance of the regulations for appointment of Vice-Chancellors of universities.

2. The petitioner claims to be a qualified law practitioner and social activist who, being conscious of the importance of quality and standards required to be followed by educational institutions, has purportedly filed the petition in public interest, based upon information gathered through the mechanism of the Right to Information Act, 2005. Sanskrit Sansthan is a deemed university operating under the regulatory regime of the UGC. Sanskrit Sansthan is established as a society and is governed by its Memorandum of Association, with its main office situate at New Delhi and with 11 campuses around the country. The main objective of the society/sansthan is to propagate, develop and encourage traditional Sanskrit learning and research. The governing body of the Sanskrit Sansthan is its Board of Management. The Vice-Chancellor is the Chairperson of the Board.

3. The appointment of the Vice-Chancellor is to be made in accordance with Article 25 of the Memorandum of Association, the relevant part of which reads as under:-

<i>No.</i>	<i>Name of the Society</i>	<i>The name of the Society shall be Rashtriya Sanskrit Sansthan</i>
25.	<i>Vice-Chancellor</i>	<i>(i) The Vice-Chancellor shall be a whole time salaried officer of the Sansthan deemed to be university and shall be appointed by the Chancellor <u>from a panel of three names suggested by a Search-cum-Selection Committee.</u> The <u>composition of the Search-cum-Selection Committee shall be:-</u></i> <i>1. A nominee of the Chancellor</i> <i>2. A <u>nominee of Central Government; who shall be an eminent academic nominated by the Government in consultation with the UGC.</u></i> <i>3. A nominee of the Board of Management</i>

“

(Emphasis Supplied)

4. It is the appointment of the Vice-Chancellor that is under challenge by way of the present petition.

5. It is the petitioner's contention that appointment of Professor P.N. Shastry as Vice-Chancellor (hereinafter the “Vice-Chancellor”) is vitiated

by reason of defect in the composition of the Search-cum-Selection Committee (hereinafter the “Search Committee”) which recommended his name for appointment. The petitioner argues that since the nomination of one of the three members of the Search Committee, namely the nominee of the Central Government, is not in accordance with Regulation 7.3.0 of the UGC Appointment Regulations 2010, the appointment of the Vice-Chancellor is bad in law.

6. The relevant part of Regulation 7.3.0 of the UGC Appointment Regulations 2010 as amended *vide* notification dated 13.6.2013, to which the petitioner refers, reads as under:-

“7.3.0 VICE-CHANCELLOR

i.

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

(Emphasis Supplied)

7. The petitioner contends that the appointment of the Central Government nominee, one Dr. Kutumb Shastri (Prof. V Kutumba Sastry) (hereinafter the “Government Nominee”), as one of three members of the Search Committee was in violation of Regulation 7.3.0 (ii) extracted above inasmuch as the said person was *connected* with the university.

8. The Search Committee, the composition of which the petitioner challenges, was constituted *vide* letter dated 03.09.2014 issued by the Ministry, which letter reads as under:-

“Subject:- Composition of Search-Cum-Selection Committee for the post of Vice-Chancellor of Rashtriya Sanskrit Sansthan (12S ICS)- regarding.

Sir,

I am directed to refer to this Ministry’s letter of even number dated 11th July, 2014 on the subject cited above and to convey the approval of Department of Personnel & Training’s approval Subject to compliance of instructions contained in DoPT’s O.M. no. AB-14017/11/2014-ESst.(RR) dated 30th July, 2007 (copy enclosed) for composition of the Search-cum-Selection Committee for selection of Vice-Chancellor of the Rashtriya Sanskrit Sansthan.

(i)	Dr. Ramakrishna- charya. Former Vice-Chancellor, Sanskrit University, Jaipur	Nominee of Chancellor, Chancellor Hon’ble HRM’s
-----	--	---

- (ii) *Dr. Kutumb Shastri. Former Vice-Chancellor, Rashtriya Sanskrit Sansthan.* *Nominee of the Central Govt. in consultation with UCG, New Delhi.*
- (iii) *Dr. Pankaj IC. Pauli. Former Vice-Chancellor. Somnath Sanskrit University* *Nominee of Board of Management of RSKS.*

2. *It may also be noted that the Committee shall be chaired by the nominee of the Board of Management Of Rashtriya Sanskrit Sansthan in terms of UCG Regulations, 2010. The instruction mentioned in DoPT's said O.M. dated 30.7.2007 may be complied strictly.*

3. *It is requested that the panel of three names so suggested by the Search-cum-Selection Committee may please be forwarded to this Ministry at the earliest so that approval of Appointments of the Cabinet could be solicited."*

(Emphasis Supplied)

9. The petitioner contends that Prof. V. Kutumba Sastry who was a nominee of the Central Government on the Search Committee, was a former Vice-Chancellor of the Sanskrit Sansthan *and* also held the substantive post of Principal at the Sanskrit Sansthan, having been so appointed by office order dated 03.11.2004 issued by the Sanskrit Sansthan which was in the following terms:

“OFFICER ORDER NO.377

In pursuance of the resolution of the Board of Management in its meeting held on 2.11.2004, the President, Rashtriya Sanskrit Sansthan is pleased to absorb and appoint Prof. V. Kutumb Sastry, Prof. of Sanskrit, Pondicherry University and presently working as Vice-Chancellor of the Rashtriya Sanskrit Sansthan, New Delhi in Rashtriya Sanskrit Sansthan (Deemed University) on permanent basis against the vacant substantive post of Principal in the scale of Rs.16400-22400/- w.e.f. 3.11.2004 (F/N). He will continue to hold the post of Vice-Chancellor till the expiry of his tenure i.e. upto 11.5.2008 and continue to be in the service of the Sansthan as Principal in grade of Rs.16400-22400/- thereafter till his superannuation.”

(Emphasis Supplied)

10. For clarity it may be mentioned that at the time when the Government Nominee was appointed as a member of the Search Committee, he was *not* the Vice-Chancellor of Sanskrit Sansthan ; but was serving as Vice Chancellor of Somnath Sanskrit University, Gujarat ; and was holding a *lien* on the post of Principal at the Sanskrit Sansthan.

11. Also relevant in the above context, is that by Office Memorandum dated 27.08.2015 issued by the Sanskrit Sansthan it was notified that the Government Nominee would continue to hold the post of Principal and would retire from the services of the Sanskrit Sansthan upon attaining the age of superannuation on 31.08.2015. Office Memorandum dated 27.08.2015 reads as under:-

“OFFICE MEMORANDUM

It is notified for information of all concerned that Prof. V. Kutumb Sastry, Principal shall stand retired from the service at this Sansthan upon attaining the age of superannuation on 31.08.2015(AN).

Accordingly, the name of Prof. Sastry shall struck off the roll of the Sansthan w.e.f 01.09.2015 (F/N)”

(Emphasis Supplied)

12. Towards identifying suitable candidates for the post of Vice-Chancellor, *vidé* proceedings dated 20.10.2014 the Search Committee recommended to the Ministry three names *in order of priority* to consider for appointment of Vice-Chancellor of the Sanskrit Sansthan in the following words:-

“With this approach, the Search cum Selection Committee unanimously recommends the following names for consideration for appointment as the Vice-Chancellor of Rashtriya Sanskrit Sansthan in order of priority.

1. *Karanam Arvinda Rao Srl. No.9*
2. *Parameshwara Narayana Shastry Srl. No.36*
3. *Ark Nath Chaudhary Srl. No.3”*

(Emphasis Supplied)

and thereby the Search Committee recommended Professor P.N. Shastry as the second best candidate for the post.

13. Upon considering the names recommended by the Search Committee, *vidé* order dated 15.6.2015 issued by the Ministry, Professor P.N. Shastry came to be appointed as Vice-Chancellor of the Sanskrit Sansthan w.e.f

15.06.2015 , for a term of five years or till the age of 70 years, whichever is earlier.

14. It is the petitioner's contention that since the Government Nominee was a former Vice-Chancellor of the Sanskrit Sansthan and was holding the substantive position of Principal at the Sanskrit Sansthan at the time he was a member of the Search Committee, he was clearly *connected* with the Sanskrit Sansthan ; and therefore could not have been a member of the Search Committee. The petitioner asserts that by reason of his position, the Government Nominee's membership of the Search Committee was in the teeth of the requirements of Regulation 7.3.0 (ii), in particular the following portion :

".....the member of above Search Committee shall not be connected in any manner with the University concerned or its colleges."

(Emphasis Supplied)

This, the petitioner alleges, vitiated the composition of the Search Committee and consequently the appointment of the Vice-Chancellor.

15. On the other hand, learned Senior Counsel appearing for respondents Nos. 2 and 4, namely the Vice-Chancellor and the Board of Management of the Sanskrit Sansthan, submits that other things apart, the essence and purpose of Regulation 7.3.0 (ii) stipulating that a member of the Search Committee must not in any manner be connected with the university concerned or its colleges, is to ensure that none of the members of the Search Committee is in a position of conflict of interest *vis-à-vis* the

candidates that the Search Committee would recommend to the Ministry for appointment as Vice-Chancellor. Senior Counsel further submits that it must be borne in mind, that the pool of eminent persons from amongst whom members of the Search Committee would be nominated is a relatively small group, considering that such persons must be of eminence not just in the sphere of higher education generally as mentioned in Regulation 7.3.0 (ii), but preferably with eminence in the field of Sanskrit education. Furthermore, Senior Counsel says that the Government Nominee was only a *former* Vice-Chancellor of the Sanskrit Sansthan; and after expiry of his term on 11.5.2008 was holding only a *lien* on the post of Principal till his superannuation on 31.08.2015 ; and was, at the relevant time, serving as Vice-Chancellor of Somnath Sanskrit University, Gujarat. Senior Counsel also argues that at the point of time when he was nominated as a member of the Search Committee, namely in 2014, the Government Nominee had nothing to gain or lose by recommending Professor P.N. Shastry as *one of three* names for the Ministry to consider for appointment as Vice-Chancellor. He further submits that Regulation 7.3.0 (ii) was intended to exclude persons who were *administratively* connected to a university or its colleges in a manner as to be in a position of conflict with prospective candidates ; and merely being *academically* connected with the university or its colleges was immaterial.

16. Senior Counsel also cites the ‘doctrine of necessity’, which he submits would apply to the circumstances of the present case, inasmuch as necessity demands that members of the Search Committee be picked from the small pool of eminent persons in Sanskrit education, rather than from

amongst rank outsiders who would have little information or knowledge about the suitability of candidates for the post of Vice-Chancellor of a Sanskrit University. As a sequitur, Senior Counsel contends, that the doctrine of necessity would obviate an allegation of bias in the present case. On this point he cites the case of ***Election Commission of India & Anr. Vs. Dr. Subramaniam Swamy & Anr.*** reported as (1996) 4 SCC 104 where a three Judge Bench of Supreme Court has, in para 16, held as under:-

“16. We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making.”

(Emphasis Supplied)

He also cites the case of *J. Mohapatra and Co. & Anr. Vs. State of Orissa & Anr.* reported as (1984) 4 SCC 103 where, carving-out an exception to the rule that no man shall be a Judge in his own cause, the Supreme Court observes as follows in para 12 of the judgment:-

“12. There is, however, an exception to the above rule that no man shall be a judge in his own cause, namely, the doctrine of necessity. An adjudicator, who is subject to disqualification on the ground of bias or interest in the matter which he has to decide, may be required to adjudicate if there is no other person who is competent or authorized to adjudicate or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In such cases the principle of natural justice would have to give way to necessity for otherwise there would be no means of deciding the matter and the machinery of justice or administration would break down. The doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters. ”

(Emphasis Supplied)

Although in the above-cited case the Supreme Court held that the High Court had incorrectly applied the doctrine to the matter, what is emphasized is that the doctrine of necessity applies equally to administrative matters as it does to judicial or quasi-judicial matters, such as the one involved in the present case.

17. We may note that other things apart, the role of the Search Committee was *not to appoint* the Vice-Chancellor but *only to recommend* three names for appointment, from among which the Ministry was to pick one for

appointment to the post. The Search Committee was therefore not the deciding authority. We make this point only to be sure, that the issue of bias is not central to a decision on whether the process of appointment of Vice-Chancellor stood vitiated by reason of one of the three members of the Search Committee having some past, tenuous connection with the institution.

18. Senior Counsel appearing for the Vice-Chancellor and the Board of Management further contends that the scope of a writ of *quo warranto* does not extend to evaluating the ‘suitability’ of a candidate for a given post but only to the court being satisfied as to the ‘qualifications’ of such candidate apart from statutory and procedural compliances, where applicable. In support of this proposition he cites the decision of the Supreme Court in the case of ***Rajesh Awasthi Vs. Nand Lal Jaiswal & Ors.*** reported as ***AIR 2013 SC 78*** in which Supreme Court has reiterated the position that the scope of power of the High Court to issue a writ of *quo warranto* is limited to an appointment made contrary to statutory provisions; and the suitability of a candidate for appointment does not fall within the scope of a *quo warranto* action. In the said case the Supreme Court has further clarified that judicial review by way of writ proceedings is concerned with whether an incumbent possessed the *qualification* for appointment and the manner in which the appointment came to be made; and whether the procedure adopted was just, fair and reasonable; and that, Government is not accountable to the courts for the *choice* made but only for lawfulness of its decisions.

19. If there was any doubt in our mind as to the procedural compliances for nomination of members of the Search Committee, that was allayed completely by counsel appearing on behalf of respondent No.5/UGC who drew our attention to clause 6.2(i) of the UGC (Institutions Deemed to be Universities) Regulations, 2010 as amended by the UGC (Institutions Deemed to be Universities) (Amendment) Regulation, 2014, (hereinafter the “UGC Amendment Regulations 2014”) which mandates that in case of a *public funded deemed university*, the Vice-Chancellor is required to be appointed in accordance with the procedure laid down by the Central Government or the State Government.

20. Clause 6.2(i) of the UGC (Institutions Deemed to be Universities) (Amendment) Regulation, 2014 reads as under:-

“(d) For sub-clause (i) of Clause 6.2 the following shall be submitted, namely:-

“(i) The Vice-Chancellor shall be a whole time salaried officer of the Institution deemed to be University and shall be appointed in accordance with the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 as amended from time to time:

Provided that in case of a public funded deemed to be university, the Vice-Chancellor shall be appointed in accordance with the procedure laid down by the Central Government or the State Government, as the case may be.”

(Emphasis Supplied)

21. In the present case, parties are *ad-idem* that the Sanskrit Sansthan is a *public funded deemed university*. The procedure contemplated in the aforementioned proviso has been laid down by the Ministry of Personnel, Public Grievances and Pensions of the Department of Personnel and Training of the Government of India in its Office Memorandum dated 30.07.2007, the relevant portion whereof recites as follows:-

“4. **Search Committees for posts in Government**

In accordance with the guidelines of this Department, immediately after a post is created, the Recruitment Rules for the same should be framed, if the post is likely to continue for one year or more. Action to fill up the post, as per the provisions in the Recruitment Rules, has to be initiated as the procedure of Search Committee cannot be a substitute for the normal recruitment process.

4.1 **Situations in which Search Committee may be constituted, their composition etc.**

XXXX

XXXX

XXXX

XXXX

(viii) *Where officers of Government, Autonomous Bodies, PSUs etc. are nominated as Members, they should be at least one level above the post to which recruitment is being made;*

(ix) **No person who is a recipient of grants/funding from the Ministry concerned or who is closely related to a recipient should be invited to join the Search Committee.**

(x) *The composition of the Committee should be well-balanced. It should invariably include persons of appropriate standing having acknowledged expertise in the relevant field of specialization. At least half the number of such experts should be from outside the Department;”*

The above submission made on behalf of UGC throws fresh light on the matter, inasmuch as in the applicable Office Memorandum, the requirement is that a person who is a *member* of a Search Committee must : (a) *not* be one who receives any grant or funding from the concerned Ministry and (b) *not* be one who is *closely related* to such recipient ; and also that (c) the committee should invariably include persons with acknowledged *expertise in the field of specialization*.

22. The requirement that a member of the Search Committee must not be *connected in any manner* with the university or its colleges as contained in Regulation 7.3.0(ii) of the UGC Appointment Regulations 2010 was therefore not a requisite for the Search Committee to be appointed for the Sanskrit Sansthan since this university is admittedly a public funded institution and is therefore covered by the mandate of the UGC Amendment Regulations 2014 read with Office Memorandum dated 30.07.2007 issued by the Central Government. This submission made on behalf of the UGC also rings true since letter dated 03.09.2014, whereby the Ministry constituted the Search Committee, contains a specific reference to Office Memorandum dated 30.07.2007.

23. It is not the petitioner's case that the Government Nominee was a recipient of any grant or funding from the Ministry. As far as the relationship of the Government Nominee with the recipient is concerned, the recipient in this case being the Sanskrit Sansthan, in our opinion it cannot be said that the Government Nominee was closely related to the Sanskrit Sansthan since he was at that time Vice-Chancellor of a different university and had no proximate, on-going dealings with the Sanskrit Sansthan. At the relevant time the Government Nominee was only holding a lien over the post of Principal at the Sanskrit Sansthan. The Government Nominee was certainly a person of appropriate standing having acknowledged expertise in the relevant field, namely Sanskrit education.

24. The intent and purpose of the rule, as applied to the present case, was that the members of the Search Committee should have been independent persons who were not beholden to the Sanskrit Sansthan in a manner as would compromise their independence ; and who also had knowledge of the concerned field of specialization viz. Sanskrit education. The aim was to have such persons in the Search Committee who would, with fairness and objectivity and not for any tendentious reason, recommend the best names to the Ministry for eventual appointment to the post. We have no reason to believe that the Government Nominee was in any manner beholden to, or had any unholy interest in, the Sanskrit Sansthan that would compromise his objectivity as a member of the Search Committee.

25. For sake of completeness, we may also address the argument made on behalf of the petitioner that Professor P.N. Shastry lacks the qualifications

for appointment as Vice-Chancellor. This allegation is based upon the contention that for a candidate to be considered for the post of Vice-Chancellor, the candidate must have an M.Ed. degree with at least 55% marks or an equivalent grade ; which, as per the curriculum-vitae submitted by Professor P.N. Shastry, he did not have. To be sure, Professor P.N. Shastry's curriculum-vitae *did not specify* the percentage obtained by him in his M.Ed. degree but merely said "passed". This argument however contains a fallacy, inasmuch as, the requirement of an M.Ed. with at least 55% marks is a requirement for appointment as Assistant Professor; and there is no such requirement specified for appointment as Vice-Chancellor. In the counter-affidavit filed by Professor P.N. Shastry, he has also clarified that he was promoted to the position of Reader and then Professor under the UGC's Career Advancement Scheme and not by direct selection process; and was therefore never required to fulfill the qualifications of an Assistant Professor. It is also relevant to note that by way of the present petition, the petitioner has not challenged the appointment of Professor P.N. Shastry as Professor; but only his name being recommended by the Search Committee to the Ministry for appointment as Vice-Chancellor. We therefore do not accept this argument raised on the petitioner's behalf.

26. Accordingly, we are of the opinion that there was nothing amiss in Professor V. Kutumba Sastry being appointed as a member of the Search Committee. We are also of the view that there was full compliance with the procedural requirements as contained in Office Memorandum dated 30.07.2007 for constitution of the Search Committee. We also find no flaw in the recommendation of three names by the Search Committee to the

Ministry ; and the consequent appointment by the Ministry of Professor P.N. Shastry as Vice-Chancellor of the Sanskrit Sansthan.

27. We accordingly dismiss the present petition; without however, any order as to costs. Pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

THE CHIEF JUSTICE

MARCH 27, 2019

Ne

न्यायमेव जयते