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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 14.09.2020

Pronounced on: 25.09.2020

+ W.P. (C) 5497/2020 & CM 19796/2020

DR PRASANNANSHU

..... Petitioner

Through: Mr. Rajiv Bansal, Senior Advocate with
Mr. Karan Suneja, Advocate

versus

SELECTION COMMITTEE FOR VICE CHANCELLOR,
NATIONAL LAW UNIVERSITY, DELHI & ANR.

..... Respondents

Through: Mr. Rajshekhar Rao, Mr. Sanjay
Vashishtha, Mr. S.D. Sharma,
Mr. Anandh Venkataramani & Mr. Areeb
Amanullah, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. Petitioner herein seeks quashing of the decision of the Chancellor, National Law University, Delhi (hereinafter referred to as 'NLUD') dated 25.06.2020 rejecting his representation for accepting his candidature for the post of Vice Chancellor of the University as well as quashing of the decision of the Selection Committee dated 05.02.2020 whereby it had shortlisted candidates for personal interaction for appointment to the post of Vice Chancellor to be held on 25.02.2020 and the decision recommending a panel. A mandamus is sought directing the Respondents to take steps to call the Petitioner for interview/interactive session for the said post.

2. The narrative of facts as set out by the Petitioner is in a narrow compass and is encapsulated as under:

- a. Petitioner joined NLUD in 2009 as an Associate Professor and was promoted to the post of Professor on 01.07.2015.
- b. A Notification was issued on 11.10.2019 (hereinafter referred to as 'Notification') by the Convenor of the Selection Committee of NLUD inviting nominations for the post of Vice Chancellor, NLUD. The eligibility conditions mentioned in the Notification are as follows:

“Eligibility and Terms & Conditions:

(As per the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 and National Law University Act 2007 (Delhi Act No. 1 of 2008) – As Amended by Act 7 of 2009)

- *Vice Chancellor to be a person possessing the highest level of competence, integrity, morals and institutional commitment is to be appointed as Vice-Chancellor. The person to be appointed as a Vice-Chancellor should be a distinguished academician, with a minimum of ten years of experience as Professor in a University or ten years of experience in a reputed research and / or academic administrative organization with proof of having demonstrated leadership.*
- *Vice Chancellor to be an academic person and outstanding scholar in law / relevant subject/ or*

an eminent jurist. He shall be a whole time salaried officer of the University.

- *The Vice-Chancellor shall hold office for a term of five years or such less period as the Governing Council made decide, from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier, and he shall be eligible for reappointment for further term till he attains the age of seventy years.”*

- c. Petitioner applied for the post of Vice Chancellor within the prescribed time vide e-mail dated 11.11.2019 along with the requisite documents. Petitioner avers that he came to know that the Selection Committee was conducting a Meeting on 05.02.2020 for the purpose of shortlisting candidates for interaction on 25.02.2020.
- d. Petitioner avers that being a distinguished academician, a scholar in law and an eminent jurist, having more than 10 years of experience in a reputed research/academic administrative organization with proof of having demonstrated academic leadership, which he mentioned in the Application Form, hoped and aspired that he shall be called for the interaction, being eligible for the post.
- e. According to the Petitioner despite fulfilling the essential eligibility conditions, he did not receive any communication for personal interaction with the Selection Committee nor was any

intimation received furnishing the reasons for excluding him from interaction and rejecting his candidature.

- f. Petitioner avers that feeling aggrieved by this exclusion, which violated his fundamental right under Article 14 of the Constitution of India, he made a representation dated 03.06.2020 to the Chancellor, NLUD to provide the Petitioner a fair opportunity for interaction with the Selection Committee.
- g. When the representation of the Petitioner was not responded to, he filed a petition in this Court being W.P.(C) 3661/2020, challenging what according to him was an arbitrary and discriminatory action of the Selection Committee. The said petition was disposed of by the Court vide order dated 26.02.2020, directing the Registrar, NLUD to place the representation of the Petitioner before the Chancellor, NLUD for consideration.
- h. Representation of the Petitioner was decided by the Chancellor vide order dated 25.06.2020 whereby candidature of the Petitioner was rejected. It is this decision that has been assailed by the Petitioner in the present petition along with the decision dated 05.02.2020 shortlisting the candidates and 25.02.2020 whereby the Selection Committee recommended a panel.

3. Learned Senior Counsel for the Petitioner as a Preface to the arguments has highlighted the qualifications, publications and other achievements of the Petitioner. He submits that the Petitioner is a

Professor teaching various subjects such as Law and Language, Law and Literature, Law and Communication, Law and Poetry, Law and Culture, Linguistic Justice and Endangered Languages etc. in NLUD. He has been active in publishing, speaking on and promoting inter-disciplinary areas of law, both in India and abroad. Attention is drawn to a lengthy but non-exhaustive list of the various books and publications of the Petitioner, succinctly brought out in the writ petition.

4. It is submitted that the Petitioner joined NLUD in 2009 as an Associate Professor. He was promoted as Professor on 01.07.2015 and has been teaching in the Institution till date. His academic credentials include degrees such as LL.B, M.A (Linguistics), M.A (General Linguistics), M.A(English), M.Sc., M.Phil and Ph.D. Petitioner is the Director, 'Centre for Linguistic Justice and Endangered Languages'; 'Project Coordinator' of 'Study and Research towards Preservation and Promotion of Indigenous and Endangered Languages' and a Member of the Publication Committee of the Linguistic Society of India. Petitioner has taught on various themes and subjects in Law, Language, Poetry and Culture, both in India and abroad. The argument is that the academic profile of the Petitioner shows that he has enriched himself in the field of Law at the highest academic level, with an inter-disciplinary approach and he is thus a 'Distinguished Academician' and 'an Eminent Jurist' as well as 'Scholar in Law'.

5. It is next contended that the Respondents are bound by the UGC Regulations on 'Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges' and have to

follow the provisions therein for selecting the Vice Chancellor. Relevant UGC Regulation, relied upon by the Petitioner, governing the selection of Vice Chancellor of the Universities is as under:

“7.3 VICE CHANCELLOR:

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

ii. The selection for the post of Vice-Chancellor should be through proper identification by a Panel of 3-5 persons by a Search-cum-Selection-Committee, through a public notification or nomination or a talent search process or a combination thereof. The members of such Search-cum-Selection Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the Search cum-Selection Committee shall give proper weightage to the academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance, to be given in writing along with the panel to be submitted to the Visitor/Chancellor. One member of the Search cum Selection Committee shall be nominated by the Chairman, University Grants Commission, for selection of Vice Chancellors of State, Private and Deemed to be Universities.

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

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

6. It is submitted that the Petitioner fulfills the minimum eligibility criteria under the said Regulations, the NLUD Act and the Notification. Petitioner is a distinguished academician, teaching for the past around 17 years and having more than 10 years of experience in NLUD itself teaching Law and Language, Law and Poetry, Law and Literature etc. Petitioner is a Scholar in law which is allegedly a pre-requisite mentioned in the Notification and this is reflected from his articles and publications, both domestic and international as well as his academic standing, internationally as well as the accolades mentioned extensively in the petition. Petitioner is also an eminent jurist. The word ‘Jurist’ is a word of lexical ambiguity and has not been defined either in the National Law University Delhi Act, 2007 or the UGC Regulations (hereinafter referred to as ‘Act & Regulations’). Without prejudice to the above argument, it is not, according to the Petitioner, mandatory that an eminent jurist applying for the post of Vice Chancellor must be a scholar in law, in view of the subjects being taught and the inter-disciplinary thrust of modern academic thinking. It cannot be assumed that only a professor of law is entitled to be a Vice Chancellor as the term ‘eminent jurist’ includes not only a legal jurist but a person who contributes new dimensions to legal thinking. As per the Petitioner, he has been adding new areas of research scholarship and thinking in the field of law as well as in various areas related to law such as culture, language and poetry.

7. The argument is that it is nowhere prescribed in the Notification or the Act & Regulations that a candidate applying for the post of Vice Chancellor should necessarily be a 'Professor of law' with minimum 10 years of experience. As an example, learned Senior Counsel cites the case of Prof. V.S. Elizabeth, the 4th Vice Chancellor of Tamil Nadu National Law University, who had a background in History. It is elaborated that had the intention of the Legislature been to use the term 'Professor of Law' then it would have been expressly so provided in the Act & Regulations. However, the phraseology used is 'Scholar in Law' which is a term broader than 'Professor of Law' and therefore, there is no reason why a narrower interpretation should be adopted when the Legislature thought it appropriate otherwise, and oust the Petitioner on this frivolous ground.

8. Learned Senior Counsel for the Petitioner draws the attention of the Court to the order dated 25.06.2020 passed by the Chancellor rejecting the representation of the Petitioner. He submits that representation has been rejected observing that the Committee has taken a decision based on its 'subjective satisfaction' and argues that a Selection Committee cannot base its decision on a subjective satisfaction as the decision must be objective. It is argued that the eligibility of a candidate could only be decided by an objective test as a subjective satisfaction will lead to a dangerous situation whereby arbitrariness, biasness and malice may seep in. Reliance is placed on the decision in ***S.K. Gupta v. Union of India & Ors., AIR 1977 Delhi 209***, for controverting the reason assigned by the Competent Authority while rejecting the representation. Reliance

is also placed on the definitions of the terms ‘subjective’ and ‘objective’ in Black’s Law Dictionary and P. Ramantha Aiyar’s Law Dictionary.

9. Learned Senior Counsel further relies on Section 20(6) of the NLUD Act which is as follows:

“20. The Vice Chancellor:-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) If the office of the Vice-Chancellor becomes vacant due to death, resignation or otherwise or if he is unable to perform his duties due to ill health or any other cause, the Chancellor shall have the authority to designate a professor of the University to perform the functions of the Vice-Chancellor until the new Vice-Chancellor assumes his office or until the existing Vice-Chancellor attends to the duties of his office, as the case may be.”

10. The argument is that in view of the said provision a designated Professor and not just a Professor of Law of the University can be an acting Vice Chancellor and therefore, there is no reason why Section 20(1) should not be read in light of Section 20(6) to make eligible any designated Professor for appointment as Vice Chancellor and not restrict the field only to a Professor of Law. Thus, the Petitioner being a Professor in the University having more than 10 years of diverse, inter-

disciplinary and multi-disciplinary teaching experience and being an eminent jurist should be called for an interaction to make the spectrum of selection broad-based and competitive.

11. Per contra, learned Counsel for the Respondent No.2/NLUD argues that the relief sought by the Petitioner that he should be called for an interaction pursuant to his application for the post of Vice Chancellor, NLUD, cannot be sought as a matter of right. As per the Petitioner, candidates who fulfilled the prerequisite qualifications under the Notification were required to be called for an interactive meeting and thus being eligible he could not be excluded. This, according to the Counsel for Respondent is no more than a self-serving statement of the Petitioner, who has no right to be called for an interaction, being ineligible. Even otherwise, Petitioner has been unable to point out any provision either in the NLUD Act or UGC Regulation or even the Notification which mandates calling every candidate, who applies for the post, for an interaction. On the contrary, the procedure for appointment of the Vice Chancellor, stipulated in the NLUD Act, 2007, has no provision making it obligatory for the Selection Committee to call all applicants for interaction.

12. It is argued that the Petitioner's challenge to the Chancellor's order dated 25.06.2020 is also premised on the misplaced notion that the Petitioner meets the eligibility criteria and interaction with all applicants is mandatory. Learned counsel defending the order submits that the order is a speaking order, based on record and consistent with the NLUD Act. Dealing with the grievance in the representation, the Chancellor has

correctly observed that as per the procedure laid down under Section 20 of the NLUD Act, there is no duty vested in the Selection Committee to call each and every candidate for interaction. The argument of the Petitioner that the Chancellor ought to have determined or commented on the Petitioner's eligibility is also erroneous and beyond the scope of the representation itself, as well as the provisions of the NLUD Act. As per Section 20, the Chancellor is only to select a Vice Chancellor from amongst the panel of candidates recommended by the Selection Committee. Selection Committee has undertaken the task of shortlisting candidates from the eligible candidates and drawing up a panel for final selection by the Chancellor. As stipulated in the Proviso to Section 20(2), it is also open to the Chancellor to call for fresh recommendations, if he does not approve of any of the persons so recommended. The observation in the order that the panel has been prepared on the subjective satisfaction of the Committee cannot be faulted with in view of Supreme Court's consistent judgements that it is for the Committee comprising of experts to decide who is best suited to be selected and the Court cannot sit as an appellate authority and interfere in the said satisfaction.

13. It is argued that, pertinently, Petitioner has neither challenged the Notification nor any provision of the NLUD Act and thus cannot, at this stage, challenge the process of selection, which has been conducted strictly in terms of the statutory provisions. It is also argued that there is no allegation of bias or malice against the members of the Selection Committee and it is settled law that in the absence of any such allegations it is not open for Court, in judicial review, to interfere with the considered

decision of Selection Committee. Supreme Court has consistently held that where the jurisdiction to make selection is vested in a Selection Committee comprising of expert members, Courts have to trust their assessment unless it is actuated with malice or mala fide or arbitrariness or there are violations of Statutory Rules. In the present case, the Selection Committee comprised of persons of high integrity, holding high offices and had the necessary expertise for short-listing eligible candidates and preparing a panel for consideration of the Chancellor. Merely because the Petitioner has not been shortlisted by the Selection Committee, does not imply that the decision is arbitrary or flouts any statutory provision.

14. It is vehemently argued that the Petitioner cannot question the decision of the Committee and insist on being called for the interaction as he is ineligible for the post of Vice Chancellor. Section 20(1) requires that the Vice Chancellor has to be an academic person and an outstanding scholar in Law or an eminent jurist. Relevant provision of the NLUD Act relied upon by the counsel for Respondent is as follows:

“20. The Vice Chancellor:-

(1) The Vice-Chancellor shall be an academic person and an outstanding scholar in law or an eminent jurist. He shall be a whole time salaried officer of the University.”

15. It is argued that the requirement in the Notification is in sync with the nature of the post as NLUD Act sets up a Law School and not a

general University. Black's Law Dictionary is relied upon to argue that an 'eminent jurist' is a 'legal scholar' who is versed or skilled in 'law'; the term is commonly applied to those who have distinguished themselves by their writings on legal subjects or to Judges. Petitioner does not fit into these descriptions and is clearly ineligible in terms of the NLUD Act. It is emphasized that the Petitioner does not teach law subjects and only heads the 'Centre for Linguistic Justice and Endangered Languages'. It is an admitted case of the Petitioner that he teaches English Language and Linguistics at NLUD and has only 4 years of experience as a Professor. Besides, there is hardly any doubt that his work has been on the intersection of Law and Language and thus it cannot be said that he is a Professor in the core study of law and its principles.

16. Petitioner does not qualify, according to the Respondent, under the Notification as he is not a Professor with 10 years' experience, which is clearly the prerequisite of eligibility, as stipulated therein. Petitioner also does not qualify in the second and the alternate category of 10 years experience in a reputed research and/or academic administrative organisation with proof of demonstrated academic leadership as the Notification has to be read in consonance with the NLUD Act, which mandates scholarship in Law. Petitioner clearly does not have any demonstrated academic leadership in law for 10 years and the application of the Petitioner lists out routine administrative tasks and Publications on the intersection of Law and Language.

17. Last but not the least, it is argued that the petition suffers from delay and laches. Petitioner seeks quashing of the decisions of the

Selection Committee dated 05.02.2020 and 25.02.2020, apart from the decision dated 25.06.2020 rejecting his Representation. Petition has been filed clearly after a delay of 6 months from the former and 3 months from the latter. It is also argued that when the decision to shortlist candidates for the interaction was taken, it was not questioned or challenged by the Petitioner and he waited for the Committee to recommend a panel and thereafter raised a grievance, months later. Thus the relief sought is even otherwise infructuous and Petitioner cannot be called for interaction at this stage.

18. I have heard the learned Senior Counsel for the Petitioner and the learned counsel for the Respondent.

19. The fulcrum and heart of the dispute before this Court lies in the eligibility of the Petitioner for consideration to the post of Vice Chancellor, NLUD and legality of the action of the Selection Committee in not calling the Petitioner for the interaction. The conundrum that the Court is called upon to resolve is the right of a candidate to be called for an interview vis-à-vis the discretion and prerogative of a Selection Committee to draw a list of candidates for the purpose of interview in a selection process. Before proceeding to decide the issues raised, in my view, it is uncontrovertibly comprehensible to look at the fundamental principles on the scope of judicial review to interfere in a matter related to a selection process, undertaken by a duly constituted Selection Committee, having expertise to do so.

20. It is a settled law that the scope of judicial review of Courts and/or Tribunals in matters of selection is extremely limited. Courts have repeatedly affirmed that recommendations of Selection Committees cannot be challenged except on grounds of malafides or violations of Statutory Rules. Court cannot sit as an Appellate Authority to examine the recommendations or findings of a Selection Committee. Supreme Court has observed in several judgements that the discretion to select is that of a Selection Committee only and it is not the business of the Court to examine its recommendations for evaluating and substituting its opinion for that of the Committee. Selection Committees are carefully constituted and are manned by experts in the field and their assessments have to be invariably respected and trusted unless they are actuated and bristle with malice or arbitrariness. While there are plethora of judgements enunciating the said proposition but to avoid prolixity and not burden the judgement, I may only refer to a few.

21. In *University of Mysore v. C.D. Govinda Rao, AIR 1965 SC 491*, the Court was dealing with selection of candidates by a Board of Experts appointed by the University for the Post of Reader, an academic post. Negating the challenge to the recommendations of the Board, the Supreme Court held as under:-

“13. ... Boards of Appointments are nominated by the universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise

and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to it for its decision. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show that the High Court applied tests which would legitimately be applied in the case of writs of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane and relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that Appellant 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified.”

22. Supreme Court in ***M.V. Thimmaiah v. UPSC, (2008) 2 SCC 119*** held has under:-

“21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...”

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30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection. It is not their domain, it should be clearly understood, as has been clearly held by this Court in a number of decisions. Our attention was invited to a decision of this Court in R.S. Dass [1986 Supp SCC 617 : (1987) 2 ATC 628] wherein at para 28 it was held as follows: (SCC pp. 638-39)

“28. ... It is true that where merit is the sole basis of promotion, the power of selection becomes wide and liable to be abused with less difficulty. But that

does not justify presumption regarding arbitrary exercise of power. The machinery designed for preparation of select list under the regulations for promotion to all-India service, ensures objective and impartial selection. The Selection Committee is constituted by high-ranking responsible officers presided over by Chairman or a member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection. The recommendations of the Selection Committee are scrutinised by the State Government and if it finds any discrimination in the selection it has power to refer the matter to the Commission with its recommendations. The Commission is under a legal obligation to consider the views expressed by the State Government along with the records of officers, before approving the select list. The Selection Committee and the Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view we find no good reasons to hold that in the absence of reasons the selection would be made arbitrarily. Where power is vested in high authority there is a presumption that the same would be exercised in a reasonable manner and if the selection is made on extraneous considerations, in arbitrary manner the courts have ample power to strike down the same and that is an adequate safeguard against the arbitrary exercise of power.”

31. Our attention was invited to a decision of this Court in UPSC v. Hiranyalal Dev [(1988) 2 SCC 242 : 1988 SCC (L&S) 484 : (1988) 7 ATC 72] wherein it was held as follows: (SCC pp. 243-44)

“The mere fact that the Selection Committee erred in taking into account the non-existent adverse remarks does not necessarily mean that the respondent should have been categorised or considered as ‘very good’ vis-à-vis others who were also in the field of choice. How to categorise in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. This function had to be discharged by the Selection Committee by applying the same norm and tests and the selection was also to be made by the Selection Committee as per the relevant rules. The powers to make selection were vested unto the Selection Committee under the relevant rules and the Tribunal could not have played the role which the Selection Committee had to play by making conjectures and surmises. The proper order for the Tribunal to pass under the circumstances was to direct the Selection Committee to reconsider the merits of the respondent vis-à-vis the official who was junior to him. The jurisdiction of the Supreme Court under Article 136 in this respect is, however, wider and cannot be equated with that of the Tribunal.”

32. Our attention was invited to a decision of this Court in *Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan* [(1990) 1 SCC 305 : 1990 SCC (L&S) 80 : (1991) 16 ATC 528] wherein it was observed as follows: (SCC pp. 309-10, para 12)

“12. ... it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such

expertise. ... in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.”

33. Similarly in *National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman* [1992 Supp (2) SCC 481 : 1992 SCC (L&S) 959 : (1992) 21 ATC 680] this Court held that the expert committee's finding should not be lightly interfered. It was held as follows: (SCC p. 482)

“...The function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. Where selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility and there is no rule or regulation brought to the notice of the Court requiring the Selection Committee to record reasons, the Selection Committee is under no legal obligation to record reasons in support of its decision of selecting one candidate in preference to another. Even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement.”

34. Our attention was invited to a decision of this Court in *P.M. Bayas v. Union of India* [(1993) 3 SCC 319 : 1993 SCC (L&S) 769 : (1993) 24 ATC 846] . In this case with regard to the IAS (Recruitment) Rules, 1954 which

contemplated that special cases from among persons and special circumstances occurring in the Rules could justify the selection of the incumbents or not, in that context, Their Lordships held as follows: (SCC p. 325, para 16)

“16. We are satisfied that there were ‘special circumstances’ before the State Government to make recruitment under the Regulations. In the face of clear pleadings on the record the Tribunal was not justified in holding that there was no material on the record to show the existence of ‘special circumstances’. The Tribunal was wholly unjustified in asking the Central Government to show the existence of ‘special circumstances’ in terms of Rule 8(2) of the Rules. As interpreted by us the scheme of the Rules and the Regulations clearly show that it is the State Government which has to be satisfied regarding the existence of ‘special circumstances’.”

23. In **UPSC v. M. Sathiyapriya, (2018) 15 SCC 796** Supreme Court set aside the exercise undertaken by the Tribunal and the High Court to reassess the recommendations of a Selection Committee constituted by the UPSC for appointment by promotion to the Indian Police Service and held as follows:-

“17. The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of UPSC and is duly represented by the officers of the Central Government and the State Government who have expertise in the matter. In our considered opinion, when a High-Level Committee or an expert body has considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to CAT and the High Court to sit over the assessment made by the Selection Committee as an appellate authority. The question as to how

the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body i.e. the Selection Committee. The courts have very limited scope of judicial review in such matters.

18. We are conscious of the fact that the expert body's opinion may not deserve acceptance in all circumstances and hence it may not be proper to say that the expert body's opinion is not subject to judicial review in all circumstances. In our constitutional scheme, the decision of the Selection Committee/Board of Appointment cannot be said to be final and absolute. Any other view will have a very dangerous consequence and one must remind oneself of the famous words of Lord Acton "Power tends to corrupt, and absolute power corrupts absolutely". The aforementioned principle has to be kept in mind while deciding such cases. However, in the matter on hand, it is abundantly clear from the affidavit filed by UPSC that the Selection Committee which is nothing but an expert body had carefully examined and scrutinised the experience, Annual Confidential Reports and other relevant factors which were required to be considered before selecting the eligible candidates for IPS. The Selection Committee had in fact scrutinised the merits and demerits of each candidate taking into consideration the various factors as required, and its recommendations were

sent to UPSC. It is the settled legal position that the courts have to show deference and consideration to the recommendations of an Expert Committee consisting of members with expertise in the field, if malice or arbitrariness in the Committee's decision is not forthcoming. The doctrine of fairness, evolved in administrative law, was not supposed to convert tribunals and courts into appellate authorities over the decision of experts. The constraints—self-imposed, undoubtedly—of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

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20. This Court has repeatedly observed and concluded that the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an appellate authority or an umpire to examine the recommendations of the Selection Committee like a court of appeal. This discretion has been given to the Selection Committee only, and the courts rarely sit as a court of appeal to examine the selection of a candidate; nor is it the business of the court to examine each candidate and record its opinion. Since the Selection Committee constituted by UPSC is manned by experts in the field, we have to trust their assessment unless it is actuated with malice or bristles with mala fides or arbitrariness.”

24. Significantly, in the said case, the Court also upheld the recommendations of the Selection Committee which had evolved its own classification, which was at variance with the grading given by the State Government and relied on the earlier judgement of the Supreme Court in **UPSC v. K. Rajaiah, (2005) 10 SCC 15** where the Court had held that the power to classify a candidate as outstanding, good, unfit etc. is vested with the Selection Committee and is a function incidental to the Selection

Process. It was observed that in the absence of allegations of malice or bias against the members of the Selection Committee, Court could not reassess its recommendations as a Court of Appeal since the Selection Committee is constituted and manned by experts in the field.

25. In ***Lila Dhar v. State of Rajasthan, (1981) 4 SCC 159***, Supreme Court observed that in such services where selection must combine academic ability with personality promise, some weight must be given to the interview but there is no thumb rule on what weightage has to be given. In this context the Court observed as under:-

“6. ...It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail by the Research Unit of the Union Public Service Commission.”

26. In a subsequent case titled ***Mehmood Alam Tariq and Others v. State of Rajasthan and Others, (1988) 3 SCC 241***, referring to the aforesaid judgement, the Supreme Court succinctly brought out the ratio laid down in the case of ***Lila Dhar (supra)***, in the following words:-

“21. ...This Court indicated that in matters such as these, which reflect matters of policy, judicial wisdom is judicial

restraint. Generally matters of policy have little adjudicative disposition.”

27. In *Secy. (Health) Deptt. of Health & F.W. v. Anita Puri (Dr)*, (1996) 6 SCC 282, the Supreme Court held as under:-

“9. ... It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation. Thus considered, we are not in a position to agree with the conclusion of the High Court that the marks awarded by the Commission was arbitrary or that the selection made by the Commission was in any way vitiated.”

28. In this context it would be useful to refer to the judgement of the Supreme Court in *The Chancellor v. Bijayananda Kar (Dr.)*, (1994) 1 SCC 169. In the said case, Dr. Prafulla Kumar Mohapatra was selected for the substantive post of Professor of Philosophy by the Selection Committee constituted by the concerned University in Orissa. His appointment was challenged by Dr. Bijayananda Kar who filed a writ petition before the Orissa High Court. The Division Bench allowed the writ petition setting aside the selection and appointment of Dr. Mohapatra

and directed appointment of Dr. Kar. The decision was challenged by the University and Dr. Mohapatra. The challenge essentially was on the ground that the selected candidate did not possess the required qualifications for the post in question. The Supreme Court after analyzing the issue before it observed as under:-

“9. This Court has repeatedly held that the decisions of the academic authorities should not ordinarily be interfered with by the courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection committees which invariably consist of experts on the subjects relevant to the selection. In the present case Dr Kar in his representation before the Chancellor specifically raised the issue that Dr Mohapatra did not possess the specialisation in the ‘Philosophical Analysis of Values’ as one of the qualifications. The representation was rejected by the Chancellor. We have no doubt that the Chancellor must have looked into the question of eligibility of Dr Mohapatra and got the same examined from the experts before rejecting the representation of Dr Kar.”

29. From a reading of the law as enunciated by the Supreme Court, which is a binding dicta, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, sitting in judicial review, to enter into the merits of a selection process, a task which is the prerogative of and in the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malafide or violation of statutory rules, Courts can intervene. It is not the decision but only the decision making process which is open to judicial scrutiny of the Courts.

30. In my view, the law so enunciated shall equally apply to the threshold stage of shortlisting the candidates for the purpose of interview/interaction. Shortlisting on the basis of eligibility and other objective criteria requires expertise and thus once the exercise is undertaken by the selection committee, principle of judicial restraint must be applied.

31. In the present case, the constitution of the Search-cum-Selection Committee is envisaged both under Act & Regulations. Relevant portion of the UGC Regulations being Regulation 7.3(ii) has been extracted in the earlier part of the judgement. The provision stipulates that the Members of the Search-cum-Selection Committee shall be persons of eminence in the sphere of higher education. The procedure for selection to the post of Vice Chancellor envisages preparing of a panel of 3-5 persons by the Committee through a public notification or nomination or a talent search process or a combination thereof. It further mandates that while preparing the panel the Committee shall give proper weightage to a candidate's academic excellence, exposure to higher education system in the country and abroad and adequate experience in academic and administrative governance. The recommendations are then sent to the Visitor/Chancellor for appointment of the Vice Chancellor from amongst the said panel. Sub-Sections (2) and (3) of Section 20 of the NLUD Act, 2007 prescribe the procedure of appointment of the Vice Chancellor and are as under:-

“(2) The Vice-chancellor shall be appointed by the Chancellor on the recommendations of the governing, Council from out of a panel of not less than three persons recommended (the names being arranged in the alphabetical

order) by a selection committee constituted under sub-section (3);

Provided that if the Chancellor does not approve of any of the person so recommended, he may call for fresh recommendations.

(3) The Selection Committee referred to in sub-section (2) shall consists of three members of whom one shall be nominated by the executive Council, one by the Chairman, University Grants Commission and one by the Chancellor from among the retired or serving Judges of the High Court of Delhi. The person nominated by the Chancellor shall be the Convenor of the Committee:

Provided that no person who is an employee of the University shall be nominated s the member of the selection committee.”

32. It is pertinent to mention at this stage that the learned counsel for Respondent No.2 had accentuated and underscored the constitution of the Selection Committee in the present case, comprising of persons of high integrity, having held high offices and having the necessary expertise for shortlisting and recommending a panel for the post of Vice Chancellor, NLUD. The Committee, in its wisdom and after perusing the provisions of law, the requirements of the post in question as well as the minimum eligibility requirements under the Notification dated 11.10.2019, UGC Regulations and the relevant provisions of the NLUD Act, short-listed candidates for interview/interaction and finally recommended a panel for the Chancellor to make appointment to the post of Vice Chancellor, in accordance with Section 20 of the NLUD Act. It is uncontroverted that neither is there any allegation of malafide or bias against any Member of

the Selection Committee nor a challenge to any Rule or Regulation and Petitioner's grievance is limited to not inviting him for the interactive session. It is also required to be noticed that the representation was made by the Petitioner nearly 4 months after the process of interaction was concluded. The contentions of the Petitioner would have to be examined in the background of these facts and the judgements, some of which have been alluded to above and keeping in mind that the canvass is clear of allegations of bias or malafide against any member of the Selection Committee.

33. The principal contention of the Petitioner is that being eligible for the post of Vice Chancellor he had a right to be called for an interview/interaction and therefore, the selection process is vitiated. The first question that begs an answer is whether it is a mandate in law and/or do the provisions of the Act & Regulations prescribe that all candidates who apply for the post must be called for interaction and the second question is whether the Petitioner was eligible so as to even lay a challenge to the selection process.

34. Coming to the first question, in my view, the answer can only be in the negative. An applicant who applies for appointment does not have a vested right, leave alone a fundamental right, to be called for an interview/interaction. Learned Senior Counsel for the Petitioner has neither asseverated nor established that there is any provision in the Act & Regulations that necessitated the Committee to call every applicant for an interview. In fact contrary to the assertion of the Petitioner, Courts have repeatedly observed and held that the right to apply for a post and

the right to be considered for a post cannot be extended to claim a right to be called for interview. Settled law is that in any selection, by interview, all applicants may not be interviewed and a conscious decision of a Committee to shortlist and not call a few, does not amount to non-consideration of the applications of those not called, if the elimination is by a due process. Thus the law as developed by judicial pronouncements does not vest a right to be called for interview even when a candidate fulfills the eligibility criteria.

35. In this context, I may usefully allude to a judgement of Division Bench of High Court of Karnataka in ***Ramanagouda Hanumantha Patil v. High Court of Karnataka, 1996 SCC OnLineKar136***. Significantly, the petitions filed before the Karnataka High Court were by applicants who had applied to the posts of District Judges in response to a Notification by the High Court under Article 233 of the Constitution of India read with provisions of Karnataka Judicial Services (Recruitment) Rules, 1983, by direct recruitment. The contention of the petitioners is relevant and needs to be extracted as follows:-

“2. The petitioners claim that they fulfil the eligibility criteria specified in the said notification. They, therefore, contend that they ought to have been called for interview. Their common grievance is that while several other applicants have been called for interview, they have not been called for interview. They contend that once they fulfil the criteria specified in the notification, their applications cannot be ignored or rejected; nor can they be eliminated from the process of selection without being subjected to an interview which is the only method/procedure specified for selection in the notification; and that if other criteria had

been applied for eliminating them, such a process would be illegal as such criteria were neither notified nor intimated to the applicants. It is also contended that the authority entrusted with selection cannot prescribe any condition other than those prescribed in Article 233 and the Rules. Hence, they have filed these petitions seeking a direction to the respondent to consider their applications by calling them for interview for selection to the post of District Judges. The petitioner in Writ Petition No. 4962/1996 has also sought a declaration that non-consideration of his application is arbitrary and illegal.

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5. The petitioners contend that as the eligibility criteria in accordance with Article 233 and the Rules were already prescribed in the notification dated 5.9.1995, the applicants could not be required to meet the two additional criteria, that they should be income-tax assesseees and have a minimum of ten years practice, that too by a subsequent decision of the Committee and such additional criteria violated Articles 233 and the Rules. It is contended that no condition other than those provided in the Rules, can be the basis for elimination of any applicant from the interview process, unless such condition or criteria is specified either in the Rules or at least in the Notification calling for applications. It is next contended that note in the Rules enabling the High Court to adopt such procedure as it deems fit does not confer any power to prescribe any conditions of eligibility or norms for elimination, but only enables the High Court to regulate the procedure and process of selection from out of the eligible applicants by prescribing written test or viva-voce or interview or a combination of all or some of them for the purpose of selection. It is alternatively contended that the two requirements relating to payment of Income tax and ten years practice have no nexus or relevance to the selection of District Judges and are irrational and violative of Articles 14 and 16 and also violative of Article 233; and therefore

non-compliance with those requirements will not render them ineligible for interview.”

36. The High Court held as under:-

*“7. It is no doubt well settled that every eligible person is entitled to apply for and to be considered for selection, provided he satisfies the prescribed qualifications vide Krishan Chande Nayar v. The Chairman, Central Tractor Organisation [AIR 1962 SC 602.] and J.K. Public Service Commission etc. v. Dr.Narinder Mohan [(1994) 2 SCC 630 : AIR 1994 SC 1808.] . **It is equally well settled that there is no obligation to call for interview all candidates who satisfy the minimum eligibility requirement.** Where the number of applicants is high, unless any Statute or Rule specifically provide otherwise, the number of candidates to be called for interview, has necessarily to be in a reasonable proportion to the number of vacancies to be filled in and all the candidates should not be called for interview, vide - Ashok Kumar Yadav v. State of Haryana [(1985) 4 SCC 417 : AIR 1987 SC 454.] and the decision of the Punjab & Haryana High Court in SubashChander v. State of Haryana [1984 (1) SLR 165.].*

*8. Where there are a large number of candidates eligible for selection to a few posts, a process of elimination, to shortlist the candidates for interview, is permissible. In fact such process of shortlisting is necessary to avoid waste of public time and in the interests of effective and meaningful interviewing and to avoid selection by interview becoming a farce. **This process of shortlisting is a matter to be settled by the selection Committee, which can evolve any rational and reasonable method, to effectively reduce the number of candidates to be interviewed to manageable and well accepted limits, so that the interviews can be held effectively.** The criteria for such shortlisting will depend on the number of applications received, the number of applicants to be called for interview in reasonable proportion to the number of posts to be filled and the nature*

of posts for which selection is to be made. In the absence of Rules governing the matter, such procedure for shortlisting may be evolved by the Selection Committee, after ascertaining the number of applications received or after initial scrutiny of the applications. In fact, only after knowing the total number of applications received, the Committee will be in a position to devise a suitable procedure for shortlisting. Hence, it is not necessary to specify the criteria for shortlisting, in the notification inviting applications. Nor is it necessary to notify such criteria for shortlisting, to the candidates. The criteria adopted for shortlisting should, however, be rational and reasonable, having a clear nexus with the object sought to be achieved. They should also be non-arbitrary and non-discriminatory. **The right to apply for a post and the right to be considered for a post cannot be extended to claim a right to be called for interview. The provision that selection will be by interview, does not require that all applicants must necessarily be interviewed; nor does failure to call a candidate for interview amount to non-consideration of his application, if he has been eliminated by due process. So long as the criteria adopted for shortlisting the candidates to be called for interview is rational and reasonable, the exclusion of other applicants from the list of persons to be called for interview, cannot be attacked as being discriminatory or as amounting to denial of opportunity in relation to employment.** We are fortified in this view by the decision of this Court in *V. Srikantha v. State of Mysore* [1970 (1) Mys. L.J. 312.], and the decision of the Madhya Pradesh High Court in *Jayant Kumar Chauhan v. Public Service Commission MP* [1979 (1) SLR 316.] and the decision of the Rajasthan High Court in *Shashi Kumar Purohit v. State of Rajasthan* [1990 Lab. I.C. 1149.]. The principle is effectively stated by a Full Bench of the Madhya Pradesh High Court in *Omprakash v. State of MP* [1976 MP. L.J. 136.], extracted in *Jayant Kumar's case* [1979 (1) SLR 316.] :—

“Once the Public Service Commission is asked by the Government to make a Selection, it is entirely in the wisdom and discretion of the commission what mode or method it would adopt. This is subject to statutory provision, if any. Where minimum qualification for eligibility are prescribed by a statute or by the Government, the Public Service Commission cannot select a candidate who does not possess those qualifications. However, the Public Service Commission is free to screen the applicants, classify them in various categories according to their plus qualifications and/or experience and call for interview only those candidates who fall within those categories, eliminating others who do not satisfy those criteria. Such classification does not tantamount to any hostile discrimination. ...”

37. In this regard I may also refer and rely on a judgement of the Division Bench of Punjab and Haryana High Court in ***Subhash Chander Sharma v. State of Haryana, 1983 SCC OnLine P&H 795***. The issue before the Court in that case was the large number of candidates who had been called for an interview and the vires of Rule 9(1) of the Punjab Civil Service (Executive Branch) Rules, 1930, which enjoined the holding of a competitive examination in accordance with the Regulations. Regulation 3 thereof provided that no candidate shall be eligible to appear in the viva voce test unless he obtained 45% marks in aggregate in the subjects in the written examination. On an interpretation of this Regulation, the Respondents therein had taken an ambivalent stand that the Rules required the Authority to interview all such candidates who had crossed the minimum threshold de hors the large number of such candidates. The Court observed as under:-

“36. On a plain reading of this provision in the larger context of the rules for the holding of the examination, it seems to follow that this is merely with regard to the minimum marks in the written test which would render the candidate eligible for interview. It cannot possibly be misread to mean that all candidates who obtain 45 per cent marks acquire any indefeasible right to be called for interview. The aforesaid regulation 3, as is manifest is couched in negative terms and fixes the floor level below which the candidates stand debarred and cannot be called for interview even if the Commission was inclined to do so. However, the converse thereof is certainly not true. The impossible construction that every candidate obtaining 45 per cent marks has an indefeasible right to appear in the viva voce can only lead to disastrous results. One can visualise that in an examination of this kind, even for 10 to 15 vacancies, as many as 5,000 persons may qualify by obtaining 45 per cent marks in the written examination. Are all of them to be necessarily called for the viva voce test? We certainly do not think so. Consequently, the respondents somewhat ambivalent stand that the rules required the interview of all the 1,300 candidates must be rejected out of hand.

37. We are of the view that it is well-settled that unless the statutory provisions specifically provide otherwise the number of candidates to be called for interview has necessarily to be in a reasonable proportion to the number of vacancies to be filled in. Herein, as held already, there was no statutory requirement to call every candidate acquiring pass marks. ...”.

38. In the light of this position of law, there is no force in the contention of learned Senior Counsel for the Petitioner that the Petitioner has a vested right to be called for a personal interaction by the Selection Committee. The Committee shortlisted candidates on the basis of their

respective profiles and eligibility criteria under the provisions of the Notification and the Act & Regulations, as argued by Respondent No.2. Petitioner was not shortlisted as according to the learned counsel he was found ineligible for the post. The assessment was purely in the domain of the Committee and this Court cannot substitute its wisdom and interfere in the considered decision. Additionally, the Court has no reason to question or doubt the assessment of the Committee in the absence of any allegations of malice. Even otherwise, assuming for the sake of argument that the Petitioner was eligible in all respects, there is no provision in the Act & Regulations or the Notification mandating the Committee to call all applicants for the interaction and thus in view of the settled law no fault or infirmity can be found with the decision in not inviting the Petitioner for interaction.

39. A somewhat similar situation had arisen before a coordinate Bench of this Court in the case of *Puneet Sharma vs. Union of India, 2019 SCC OnLine Del 8629*, where the Petitioners had challenged the process of selection to the post of member of Income Tax Appellate Tribunal. The Search-cum-Selection Committee resolved to call for interview 24 most experienced applicants and decided to hold an interview of the shortlisted candidates. The contention of the Petitioners was that the procedure of shortlisting for the interview was arbitrary and violative of Article 14 of the Constitution of India. No communication was received by the applicants with regard to any benchmark or criteria for initial scrutiny to prepare the shortlist for the interviews.

40. The Court relying on the judgement of the Supreme Court in ***Madhya Pradesh Public Service Commission v. Navnit Kumar Potdar, (1994) 6 SCC 293*** dismissed the petition after observing that it is open to the Selection Committee to short list applicants on a rational and reasonable basis and the decision cannot be held to be arbitrary. The relevant para relied upon from the judgement in the case of ***Madhya Pradesh Public Service Commission (supra)*** is as follows:-

“9. ...Once the applications are received and the Selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences. If with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience. ...”

41. Reliance was also placed by the Court for the same proposition on ***Union of India v. T. Sundararaman, (1997) 4 SCC 664*** and ***Arun Tewari v. Zila Mansavi Shikshak Sangh, (1998) 2 SCC 332***.

42. The next contention of the Petitioner is that no reasons were communicated to the Petitioner for not calling him for interaction and even the order rejecting his representation is devoid of reasoning to exclude the Petitioner, despite being eligible for the post. While the Learned Senior Counsel for the Petitioner was emphatic in his argument, yet was unable to point out any Rule or Regulation or judgement

requiring the Selection Committee to communicate or even record any reason.

43. It is no longer *res integra* that while selecting a candidate, Selection Committee is not required to record reasons for preferring one candidate to the other or non-selection of a candidate and much less while shortlisting for interaction and thus the action of the Committee cannot be faulted with. This being the position of law, the Petitioner can hardly have a grievance with the non-communication of the reasons. Learned Senior Counsel has pitched the argument on a high pedestal of violation of Article 14 of the Constitution of India and Principles of Natural Justice, but suffice would it be to quote passages from a few judgements by the Supreme Court in this context. In ***B.C. Mylarappa v. Dr. R. Venkatasubbaiah*, (2008) 14 SCC 306**, the Court observed as follows:-

“29. It is not in dispute that there is no rule or regulation requiring the Board to record reasons. Therefore, in our view, the High Court was not justified in making the observation that from the resolution of the Board selecting the appellant for appointment, no reason was recorded by the Board. In our view, in the absence of any rule or regulation requiring the Board to record reasons and in the absence of mala fides attributed against the members of the Board, the selection made by the Board without recording reasons cannot be faulted with.”

44. In ***National Institute of Mental Health and Neuro Sciences v. K. Kalyana Raman (Dr)*, 1992 Supp (2) SCC 481**, the Court observed as follows:-

“7. We will first consider the second point. In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with. The High Court in support of its reasoning has however, referred to the decision of this Court in Union of India v. Mohan Lal Capoor [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : (1974) 1 SCR 797] . That decision proceeded on a statutory requirement. Regulation 5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil Service. The decision in Capoor case [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : (1974) 1 SCR 797] was rendered on September 26, 1973. In June 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil Services. The Capoor case [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : (1974) 1 SCR 797] cannot, therefore, be construed as an authority for the proposition that there should be reason formulation for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in R.S. Dass v. Union of India [1986 Supp SCC 617 : (1987) 2 ATC 628] in which Capoor

Case [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : (1974) 1 SCR 797] was also distinguished.”

45. The said law has been very recently affirmed by the Apex Court in ***Baidyanath Yadav vs. Aditya Narayan Roy and Ors., 2019 SCC Online SC 1492*** and the relevant paras are as under :-

“9.2 Moreover, we find ourselves in disagreement with the conclusion of the High Court that the decision of the State Screening Committee was arbitrary for non-disclosure of reasons. A catena of decisions of this Court has established that even the principles of natural justice do not require a duly constituted selection committee to disclose the reasons for its decision, as long as no rule or regulation obliges it to do so. In this regard, we may refer to the decision of this Court in National Institute of Mental Health (supra), which has also been subsequently affirmed in several cases, including Union Public Service Commission v. Arun Kumar Sharma (supra). In National Institute of Mental Health (supra), the Court, following the decision in R.S. Dass v. Union of India, (1986) Supp SCC 617, observed as follows:

“7. ... In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative... Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in R.S. Dass v. Union of India [1986 Supp SCC 617 : (1987) 2 ATC 628] in which Capoor Case [(1973)

2 SCC 836 : 1974 SCC (L&S) 5 : (1974) 1 SCR 797] was also distinguished.

8. ... we may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirements of procedural fairness. The procedural fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration..."

9.3 As there is no such requirement mandating the disclosure of reasons in the relevant rules, regulations and guidelines, there is no doubt in our minds that the procedure adopted by the State Screening Committee cannot be faulted.

10. Having thus found that the State Screening Committee was correct in considering only the two names recommended by the departmental Selection Committee, we now turn our attention to the crucial question of whether Respondent No. 1's name was wrongly excluded by the departmental Selection Committee itself, on account of any bias, malice or arbitrariness."

46. In so far as the alleged violation of principles of natural justice is concerned, it is settled by various judicial pronouncements that rules of natural justice are not rigid rules and are flexible in their application depending upon the background of the statutory provision, the rights that are affected and the consequences that they entail. All situations cannot be painted with the same brush. In this context, I may quote a passage

from the judgement authored by Justice Krishna Iyer in ***Chairman, Board of Mining Examination v. Ramjee, (1977) 2 SCC 256*** as under:-

“13. ...Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of such situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. ... ”

47. I may also allude to a passage from the judgement in ***R.S. Dass v. Union of India, 1986 Supp SCC 617*** as under:-

“25. It is well established that rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and the background of statutory provision, nature of the right which may be affected and the consequences which may entail, its application depends upon the facts and circumstances of each case. These principles do not apply to all cases and situations. Applications of these uncodified rules are often excluded by express provision or by implication. In Union of India v. Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] a Constitutional Bench of this Court considered the scope and extent of applicability of principles of natural justice to administrative actions. Madon, J. summarised the position of law on this point and observed as follows: [SCC p. 479, SCC (L&S) p. 753, para 101]

“So far as the audialterampartem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and

an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi case [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : AIR 1978 SC 597 : (1978) 2 SCR 621].”

In the instant cases statutory regulations do not expressly or by implication apply the rule of audi alteram partem in making the selection. On the other hand the scheme contained under the regulations exclude the applicability of the aforesaid rule by implication. Select List is prepared each year which ordinarily continues to be effective for a year or till the fresh Select List is prepared. If during the process of selection a senior officer is proposed to be superseded by virtue of not being included in the Select List, and if opportunity is afforded to him to make representation and only thereafter the list is finalised, the process would be cumbersome and time consuming. In this process it will be difficult for the Committee to prepare and finalise the Select List within a reasonable period of time and the very purpose of preparing the Select List would be defeated. Scheme of the Regulations therefore clearly warrants exclusion of principle of audi alteram partem. No vested legal right of a member of the State Civil Service who after being considered, is not included in the Select List, is adversely affected. Non-inclusion in the Select List does not take away any right of a member of the State Civil Service that may have accrued to him as a government servant: therefore no opportunity is necessary to be afforded to him for making representation against the proposed supersession.”

48. The contention of the Petitioner that reasons or justification must be provided by the Committee for not calling him for the interaction fails in view of the judgements referred to above as no provision has been brought to the notice of the Court which ordains the Committee to provide reason for not shortlisting a candidate for interaction, in the present case.

49. Learned Senior Counsel for the Petitioner vehemently rebutted the stand of learned counsel for the Respondent that the Petitioner is ineligible and thus the Committee was justified in not calling him for the interaction. He argued that the Petitioner fulfills the minimum eligibility conditions as per the requirements of the Notification dated 11.10.2019, Act & Regulations, in as much as he is a 'Distinguished Academician' teaching for the past 17 years and having experience of ten years in a reputed research and/or academic administrative organisation with proof of demonstrated academic leadership and is also a 'Scholar in Law' and an 'Eminent Jurist'. It was also argued that eminent jurist 'has not been defined' under the Act & Regulations and it is not necessary to be a scholar in law for anyone to be an eminent jurist. This, according to learned Senior Counsel, has to be looked at in the background of the inter-disciplinary thrust of modern academic thinking and the inter-disciplinary character of NLUD. In any case, it is emphasized that the Petitioner has added new areas of research, scholarship and thinking in the field of law and has published several papers and is well versed with dimensions like law and culture, law and language, linguistic justice, etc.

50. I have already observed in the earlier part of the judgement that it is not for the Court to reassess the shortlisting by or the recommendations of a Selection Committee. Petitioner is calling upon the Court to substitute the opinion of a Selection Committee and re-examine whether the Petitioner fulfills the criteria of eligibility by determining and interpreting the terms ‘distinguished academician, eminent jurist or a scholar in law’, which is impermissible. This domain and realm is beyond the scope of power of judicial review of this Court under Article 226 of the Constitution of India and the Court cannot substitute its wisdom for that of the Selection Committee.

51. The issue of eligibility of the Petitioner has been perspicuously addressed by the counsel for the Respondent. It is pointed out that as per Section 20 (1) of the NLUD Act, the Vice Chancellor shall be an academic person, an outstanding scholar in law and an eminent jurist. The requirement is in line with the fact that the NLUD Act sets up a law school and not a general University. It is also brought out that as per the Black’s law dictionary eminent jurist is a legal scholar skilled in law, who has distinguished himself by his writings in legal subjects or a Judge. Yet another Author describes a jurist as a person ‘learned in law with the abilities and desire to contribute to – to care for – the good of law’. It is argued that the Petitioner does not fit into these descriptions and is ineligible in terms of the Act & Regulations.

52. Respondent No.2 has also succinctly brought out that Petitioner does not teach any law subject and only heads the Centre for ‘Linguistic Justice and Endangered Languages’. Petitioner has been teaching English

and Linguistics at NLUD and has about 4 years of experience as a Professor. His application as per the Respondent demonstrates that he has worked on the intersection of Law and Language and English and Linguistics are at best means of expressing law but cannot amount to core study of law and its principles. Respondent contended that Petitioner does not fit into the eligibility criteria of a Professor with 10 years' experience under the Notification, having been appointed as a Professor only on 01.07.2015. The claim of the Petitioner that he falls in second category i.e 10 years of experience in a reputed research and/or academic administrative organisation, as per Respondent cannot be isolated from the provisions of the NLUD Act which mandate outstanding scholarship in law. It is highlighted by the Respondent that the application of the Petitioner, instead of demonstrating academic leadership in law, for ten years, only lists out routine administrative tasks and publications on intersection of Language and Law, including his current post-doctoral specialization on 'Infusing Literature and Linguistics Into Legal Action'.

53. It is evident that the Act & Regulations have left the assessment of a candidate possessing the specialized and academic qualifications for eligibility as well as recommendation of a panel for appointment to the expertise and wisdom of a high level expert Committee. Court has no expertise to delve into the interpretation or determination of these qualifications. A Selection Committee comprising of eminent persons has taken a conscious decision to short list candidates for the interview. It is for the Committee to determine which candidate fits into the description of an academician or eminent jurist or a scholar of law and it is not open

for the Court to make the said assessment. The Court therefore finds no reason to interfere in the well considered decision of the expert Committee and defers to their decision. Relevant would be to note passages from two judgements in this regard.

54. In *Dr. Ira Pandit v. University of Delhi & Ors., 1994 SCC Online Del 190* Court held as under:-

“11. These experts had satisfied themselves of the respondent No. 4 fulfilling the requisite eligibility criteria including the experience qualification basing their satisfaction on the certificate dated 16th October, 1993 quoted hereinabove and which was before them. It would be indeed, treading on thin ice for us if we were to venture in reviewing the decision of the educational experts like an appellate authority.

12. In National Institute of Mental Health & Neuro Sciences v. Dr. K. Kalyana Raman and Others AIR 1992 SC 1806 their Lordships of the Supreme Court have sounded a note of caution while dealing with such matters by laying down the law in the following terms:—

“When the Selection Committee consisted of experts in the subject for selection and they were men of high status and also of unquestionable impartiality, the Court should be slow to interfere with their opinion.”

13. Assuming it may be possible to take two views of the nature of experience contemplated by the relevant provision of university, we need remind ourselves of the law laid down by their Lordships in Dr. Uma Kant v. Dr. Bhika Lal Jain and Others AIR 1991 SC 2272.:—

“It is well settled that in matters relating to educational institutions, if two interpretations are possible, the courts would ordinarily be reluctant to accept that interpretation Which would upset

and reverse the long course of action and decision taken by such educational authorities and would accept the interpretation made by such educational authorities.”

14. In Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan AIR 1990 SC 434 their Lordships held:—

“The Committee consisted of experts and it selected the candidates after going through all the relevant materials before it. Therefore setting aside the selection on the ground of the so called comparative merits of the candidates, as assessed by the Court while sitting in appeal over selection so made would not be permissible.”

15. In J. Ranga Swamy v. Govt. of Andhra Pradesh and others AIR 1990 SC 535 their Lordships held that it was not for the Judge to decide or direct what should be the qualifications to be prescribed for a post unless there is something rendering the requirement prima facie preposterous.

16. To sum up, the confidence reposed in a body of experts, persons of high status and unquestioned competence, is not to be questioned lightly. Courts should be cautious in, and possibly avoid, assuming role of experts. If it is not the field of law, the interpretation placed or the view taken by experts or body of experts should be allowed to prevail, by giving benefit of doubt too, if need be. ...”

55. In V.K. Agrawal (Dr.) v. University of Delhi, 2005 SCC OnLine Del 1208, it was observed as follows:-

“14. On the facts of the case we find no merit in this appeal. It is not for this Court to say whether a teacher is a distinguished teacher or not. This Court does not consist of experts in the subject concerned, and the Court must ordinarily defer to the opinion of the experts. The advisory

committee consists of experts, who considered the case of the appellant and did not recommend grant of reemployment to him. We cannot sit in appeal over the decision of the advisory committee, which was accepted by the Vice-Chancellor.

15. In Reserve Bank of India v. CL Toora, (2004) 4 SCC 657 the Supreme Court held that the High Court should not set aside the selection held by a high power selection board. This is the view which has consistently been followed by the Supreme Court. This Court cannot ordinarily interfere with the decision of selection committees consisting of experts vide National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman, 1992 Supp (2) SCC 481. The advisory committee appointed by the Vice-Chancellor consists of experts, and we cannot sit in appeal over its decisions.

16. Learned Counsel for the appellant submitted that while reasons have to be recorded in granting re-employment no reasons are required in rejecting the prayer for re-employment. He submitted that this is arbitrary. We cannot agree with this contention in view of the aforesaid decision of the Supreme Court where it has been held that no reasons need be given by the selection committee unless required by the statute.

17. Learned Counsel for the appellant submitted that the Vice-Chancellor had to apply his mind himself instead of referring the matter to the advisory committee. We do not agree. The Vice-Chancellor, though no doubt a man of great academic distinction, cannot possibly be an expert in every subject. Hence he can certainly take the opinion of an advisory committee consisting of experts, particularly when guidelines have been framed for this purpose by the Executive Council.

18. Learned Counsel for the appellant submitted that the appellant is a person of great distinction. As already stated above it is not for this Court to decide whether a person is of distinction or not as that is a matter for experts to decide. This Court cannot interfere with such a decision of experts unless there is a violation of some statute or there is some shocking arbitrariness, which is not so in this case. It is well settled that in academic/educational matters Courts should be reluctant to interfere vide Rajendra Prasad Mathur v. Karnataka University, 1986 Supp SCC 740 : AIR 1986 SC 1448, J.P. Kulshreshtra v. Allahabad University, (1980) 3 SCC 418 : AIR 1980 SC 2141, State of Mysore v. Govinda Rao, AIR 1965 SC 491, etc.”

56. Learned Senior Counsel for the Petitioner, in order to highlight that a Vice Chancellor need not be a Professor in Law had structured his argument on the foundation of appointment of one Professor V.S. Elizabeth who was appointed as Vice Chancellor of Tamil Nadu NLU, with a background in History. In my view, the said argument is based on a foundation which cannot be sustained in law and therefore the edifice of the argument crumbles. This is so as Tamil Nadu NLU is a separate University, having an existence distinct from that of NLUD. The two have been established and incorporated by different, stand-alone Legislative enactments and the provisions of one have no nexus or connection with the other. As rightly pointed out by the learned counsel for the Respondent, the criteria laid down for the appointment of Vice Chancellor of NLUD are not *pari materia* with those laid down for the appointment of Vice Chancellor of Tamil Nadu NLU and Section 11 of the Tamil Nadu National Law School Act, 2012 imposes no such restriction.

57. Petitioner has also assailed the order dated 25.06.2020 passed by the Chancellor, deciding the representation of the Petitioner. Learned Senior Counsel had strenuously argued that the order records that the decision has been taken by the Committee based on its 'subjective satisfaction' which may lead to a dangerous situation whereby arbitrariness, bias and mala fide may seep in. In the opinion of this Court, the expression 'subjective satisfaction' used in the impugned order dated 25.06.2020 is being over emphasized by the Petitioner. A perusal of the order shows that it is noted that under Section 20 of the NLUD Act, there is no duty vested in the Selection Committee to call each and every candidate for an interaction. The use of the words 'subjective satisfaction' are only to highlight that it is the domain of Selection Committee to decide not only short listing of candidates for interview but also to draw out a panel based on the criteria laid down under the NLUD Act. Word 'Subjective' in the order does not connote personal whims or fancies as is sought to be made out by the Petitioner only to suit his convenience. The dictionary meaning of the words 'subjective satisfaction' is 'satisfying oneself' and the satisfaction as required is of a reasonable and prudent standard, arrived at, based on some material before the Authority. Court must always be mindful of the fact that it cannot substitute its objective opinion for subjective satisfaction of a Selection Committee. This argument thus does not further the case of the Petitioner.

58. In this regard, I may also allude to a judgement in the case of ***Union Public Service Commission v. I.P. Tiwari and Others, (2006) 12 SCC 317***, more particularly, paras 13 and 14 which are as follows:-

“13. Although, on behalf of the respondents it has been urged that there was no bar which precluded the Tribunal from looking into the original ACRs of the respective candidates, what we are required to consider is whether it was at all prudent on the part of the Tribunal to have adopted such a procedure which would amount to questioning the subjective satisfaction of the Selection Committee in preparing the select list.

14. From the submissions made and the materials on record, we are satisfied that the methodology which has been evolved and included in the Regulations for grading the eligible officers has been religiously followed by the Selection Committee which did not call for any interference by the Tribunal. The High Court has merely followed the decision of the Tribunal without independently applying its mind to the facts involved.”

59. I may also mention a pertinent aspect of the matter here. The decision to shortlist as well as the recommendations of the Selection Committee, after the interactions, dates back to February, 2020. Petitioner chose to file a representation only on 03.06.2020 and even after rejection of the representation, Petitioner waited for 2 months to file the present petition seeking relief of a direction to the Respondent to call him for interaction, conscious of the fact that the panel had been recommended. Court finds no justification to upset the apple cart at this stage, at the instance of the Petitioner and in this context the objection of the Respondent on delay and laches has merit.

60. For all the aforesaid reasons, the Court finds no reason to interfere in the impugned orders and the decision of the Selection Committee.

There is no merit in the petition and the same along with pending application is accordingly dismissed. No order as to costs.

JYOTI SINGH, J

SEPTEMBER 25th, 2020

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