

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 05, 2021

+ W.P.(C) 952/2020, CM APPL. 26478/2020

M. EHTESHAM-UL-HAQUE

..... Petitioner

Through: Mr. Akhil Sibal, Sr. Adv. with
Mr. AbhikChimni, Mr. Mobashshir
Sarwar, Ms. Nitya Gupta, Ms. Sonali
Malik and Mr. Lakshay Garg, Advs

versus

UOI AND ORS

..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr.
Kirtiman Singh, CGSC with Mr. Amit
Gupta, Mr. Vinay Yadav, Mr. Akshay
Gadeock, Mr. Sahaj Garg, Mr. R.V.
Prabhat, Mr. Waize Ali Noor and Mr.
Rohan Anand, Advs. for R1.
Mr. Vikramjit Banerjee, ASG with
Mr. Fuzail Ayyubi, Standing Counsel
JMI with Mr. Pritish Sabharwal, Ms.
Shruti Agarwal, Ms. Tanvi, Mr. Ibad
Mushtaq and Ms. Akanksha Rai,
Advs. for R2 and R5.
Mr. Ravinder Aggarwal and Mr.
Girish Pande, Advs. for R3.
Mr. Apoorv Kurup and Ms. Nidhi
Mittal, Advs. for respondent
UGC/R4.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed with the following prayers:

“In light of the abovementioned circumstances, it is most humbly and respectfully prayed that this Hon'ble Court may be pleased to:

A. Calling the official record from Respondent No. 1 pertaining to the impugned appointment of Dr. Najma Akhtar (Respondent No. 3) as the Vice Chancellor of the Respondent University including the denied Vigilance Clearance Certificate vide Office Memorandum bearing No. Conf.3657/12 dated 10.01.2019;

B. Issue an appropriate writ, order, direction and/or declaration in the nature of quo warranto declaring the appointment of Dr. Najma Akhtar (Respondent No. 3) in flagrant violation / contravention and total non-compliance of the statutory provisions and regulations of Statute 2(1) of the Jamia Millia Islamia Act, 1988 read with clause 7.3.0 of the UGC Regulations, 2010' as amended from time-to-time, as the Vice Chancellor of the Respondent University illegal, arbitrary, void ab initio and non est in law.

C. Pass such other or further order(s) and/or directions

as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. At the outset, I may state that vide order dated January 27, 2020, initial respondent Nos.2, 7 to 9 were deleted and an amended memo of parties was filed. The parties herein after shall be referred as per the amended memo of parties.

3. The petitioner herein is an alumnus of Faculty of Law, Jamia Millia Islamia University (respondent No.5) and has filed the present petition challenging the appointment of Dr. Najma Akhtar (respondent No. 2) to the post of Vice Chancellor of the respondent No. 5/University.

4. Respondent No.5/University is a Central University as per The Jamia Millia Islamia Act, 1988 ('JMI Act', for short), represented through its Registrar. Respondent No.4, the University Grants Commission ('UGC', for short) was established by an Act of Parliament (Act No. 10 of 1956) to make provisions for the coordination and determination of standards in Universities and to ensure that the available resources are utilized to the best possible effect and for determining and allocating of funds to Universities made available by the Central Government, giving UGC the unique distinction of being the only grant-giving agency in the country vested with two responsibilities: that of providing funds and that of coordination, determination and maintenance of standards in institutions of higher education.

5. The case of the petitioner as noted from the petition and contended by the Mr. Akhil Sibal, learned Senior Counsel, appearing on behalf of the petitioner is that consequent to the

acceptance of the resignation of the then serving Vice-Chancellor of the respondent No. 5/University by the Visitor/ The President of India, the Department of Higher Education, Ministry of Human Resource and Development (respondent No. 1) advertised the post of the Vice-Chancellor of the respondent No.5/University, with last date of receipt of application as September 9, 2018 ('Advertisement', for short). The eligibility requirements were as per the UGC (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the maintenance of standards in Higher Education) Regulations, 2010 which stood superseded by the UGC (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the maintenance of standards in Higher Education) Regulations, 2018 thereof ('UGC Regulations', for short).

6. The Advertisement as noted from the petition reads as under:

"Government of India"

Ministry of Human Resource Development

Department of Higher Education

Appointment of Vice-Chancellor of Jamia Millia Islamia (A Central University)

Jamia Millia Islamia is an Institution of National Importance.

The Vice-Chancellor, being the academic as well as administrative head, is expected to be:

- *A visionary with proven leadership qualities, administrative capabilities as well as teaching and research credentials.*

- *Having outstanding academic record throughout and a minimum of 10 years' experience as a Professor in a University system or in an equivalent position in a reputed research and/or academic administrative organisation.*

- *Preferably not more than 65 years of age as on the closing date of receipt of applications of this advertisement.*

Salary and Service Conditions

- *The post carries a pay of Rs. 2,10,000/- (Fixed) per month with Special Allowance of Rs. 5000/- and other usual allowances.*

- *The terms and conditions of the services will be those as set forth in the Act, Statutes and Ordinances of the University.*

Procedure for appointment

- *Appointment will be made from a panel of names recommended by a Committee constituted under the provisions of Jamia Millia Islamia Act.*

- *The advertisement and the format of application are available on the websites <http://mhrd.sov.in> and www.imi.ac.in*

- *The applications in the prescribed proforma should reach within 30 days from the date of the publication of this advertisement, by Registered/Speed Post to:*

*Deputy Secretary (CU-I/II),
Department of Higher Education, Ministry of HRD,
Room N0.429, 'C' Wing, Shastri Bhawan, New
Delhi-110115.*

7. It is submitted by Mr. Sibal that the UGC Regulations possess statutory force under Section 26(1) of the UGC Act, 1956 and in view of Clause 1.2 said Regulations and even the Executive Council as well as the Academic Council of the respondent No. 5/University has through its various meetings accepted the UGC Regulations. Clause 1.2 of the UGC Regulations read as under:

"They shall apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution holding a constituent or an affiliated college recognized by the Commission, in consultation with the University concerned under Clause (f) of Section 2 of the University Grants Commission Act, 1956 and every institution deemed to be a University under Section 3 of the said Act "

8. The relevant clause of the UGC Regulations, Clause 7.3 titled as 'VICE CHANCELLOR', reads 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 a distinguished academician, with a minimum of ten years' of experience as Professor in a University or ten years' of experience in a reputed research and / or academic administrative organisation with proof of having demonstrated academic leadership.

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

9. It is submitted by Mr. Sibal that in view of Section 24 of the JMI Act, the Executive Council vide its meeting dated August 31, 2018 resolved to nominate Justice (Retd.) MSA Siddiqui and Prof. Ramakrishna Ramaswamy, as members of the Search-cum-Selection Committee ('Search Committee', for short) for the appointment of the new Vice-Chancellor of the respondent No.5/ University as per Statute 2(1) of the JMI Act and requested respondent No. 1 to take necessary action for completing the panel by obtaining the name of the nominee of the Hon'ble Visitor, who shall be the Chairman of the Search Committee. In this regard, Mr. Sibal has drawn the attention of this Court to Minutes of the Meeting held on August 31, 2018 as well as the letter dated September 05, 2018 sent by the Office of Registrar of respondent No. 5/University to The Secretary of Ministry of Human Resource Development, Deptt. of Higher Education. Statute 2(1) of the JMI Act reads as under:

“2. THE SHAIKH-UL-JAMIA (VICE-CHANCELLOR):

(1) The Shaikh-ul-Jamia (Vice-Chancellor) shall be appointed by the Visitor from a panel of at least three persons recommended by a Committee consisting of three person: two to be nominated by the Majlis-i-Muntazimah (Executive Council) and one, who shall be the chairman of the Committee to be nominated by the Visitor.

Provide that no member of the above Committee shall be connected with the University:

Provide further that if the Visitor does not approve of any

of the persons so recommended, he may call for fresh recommendations.”

10. Subsequent thereto, it is submitted by him that respondent No. 1 vide communication dated October 11, 2018 through its Joint Secretary apprised the Visitor of the nomination of two members by the Executive Council of the respondent No.5/ University and contrary to Statute 2(1) of the JMI Act, the Minister of Human Resource Development (‘Minister’, for short) recommended that the President of India, in his capacity as Visitor of the respondent No.5/ University may nominate his nominee from a panel of names, to be the Chairman of the Search Committee, for making recommendation for the appointment of the Vice Chancellor. To this extent, it is submitted by Mr. Sibal that the panel recommended by the Minister consisted of two names viz. (1). Prof. D. P. Singh, Chairman, UGC and; (2) Prof. (Retd.) K. K. Aggarwal, former Vice Chancellor, Guru Govind Singh Indraprastha University, Delhi. The President of India, went ahead and approved the name of Prof. D.P. Singh, Chairman, UGC as Chairman of the Search Committee.

11. Mr. Sibal vehemently submitted that Statute 2(1) of the JMI Act empowers only the Visitor to nominate one person as the Chairman of the Search Committee (as mandated by the JMI Act, 1988 and Statute(s) therein) by applying his mind independently and to take a decision objectively, without being influenced by the recommendation of the Minister. The same cannot be stretched by respondent No. 1 to confer authority on, or to empower, the Minister to exercise direct or indirect control over

the process or procedure under the JMI Act. According to him, the JMI Act being sacrosanct, is binding on the respondent No.5/University and all its functionaries, including respondent No. 1 and the Visitor and no provision in the JMI Act empowers the Minister to recommend a panel of names for the nomination by the Visitor. Mr. Sibal, thus stated that the action of the Minister in recommending the panel of two names tantamount to *de facto* nomination of the Chairman of the Search Committee by restricting the Visitor's discretion and therefore the purported nomination of Prof. D.P. Singh, Chairman, UGC as Chairman of the Search Committee is void *ab initio* being *ultra vires* Statute 2(1) of the JMI Act.

12. On the appointment of Justice (Retd.) MSA Siddiqui, it is submitted on behalf of the petitioner that even though he has also served as the former Chairman, National Commission for Minority Educational Institutions, New Delhi, he is not '**a person of eminence in the sphere of higher education**', and therefore his nomination as a member of the Search Committee is void *ab initio* and in clear infringement of Clause 7.3 of the UGC Regulations.

13. It is submitted by him that inspite of the Search Committee, consisting of i) Prof. D. P. Singh, Chairman, UGC, as the Chairman of the Committee ii) Hon'ble Justice (Retd.) MSA Siddiqui and iii) Prof. Ramakrishna Ramaswamy, being marred by illegalities, the Search Committee held its first meeting on November 06, 2018 and shortlisted thirteen candidates out of 107 applications for further consideration. In this regard, he has

drawn the attention of this Court to the Minutes of the Meeting dated November 06, 2018.

14. It is further submitted by Mr. Sibal that the Search Committee, out of the 13 shortlisted candidates, vide a completely non-speaking order, without recording reasons, recommended a panel consisting of three names viz. a) Prof. Furqan Qamar, AIU, New Delhi; b) Prof. Najma Akhtar, NIEPA, New Delhi, and; c) Prof. Saiyed Muzaffar Ishtiaque, IIT-Delhi, New Delhi; subject to Vigilance and other clearances. According to Mr. Sibal, the Search Committee passing a non-speaking order without recording reasons for recommending the panelists is in itself a clear violation of Clause 7.3 (ii) of the UGC Regulations read with Statute 2(1) of the JMI Act. This in turn makes the appointment of respondent No.2 *non-est* in law.

15. On merits, it is submitted by Mr. Sibal that the Central Vigilance Commission ('CVC', for short) / respondent No. 3 initially *vide* its O. M. bearing no. Conf.3657/12 dated January 10, 2019, had explicitly denied Vigilance Clearance / Certificate to Dr. Najma Akhtar /respondent No. 2 stating, *inter alia*, '***not to consider Dr. Najma Akhtar for any post-retirement assignment / re-employment in the organizations / institutions / Universities falling within the administrative control of MHRD***'. This, in itself, according to him demonstrates that Dr. Najma Akhtar/respondent No.2 was clearly 'ineligible' for being considered, leave alone being recommended, by the Search Committee. Further, it is submitted by him that in a complete departure from the mandate entrusted to it by the Search

Committee, the Vigilance Section of respondent No. 1/MHRD took up the matter with respondent No. 3/CVC to revise its stand in the matter which ultimately resulted in the respondent No.3/CVC revising its previous advice vide O. M. dated March 05, 2019 issued by the Vigilance Section, respondent No. 1/MHRD. The relevant portion of the said O.M reads as ***‘in agreement with CVO, MHRD, the Commission (CVC) has reviewed the case (of Dr. Najma Akhtar) and has decided to revise its advice issued vide OM dated 10th January 2019’***. Mr. Sibal contended that the decision of respondent No. 3/CVC to revise its original decision and that too at the instance of the respondent No. 1/MHRD, whose participation in the process was not contemplated by the JMI Act and/or the Statute or UGC Regulations, is legally unsustainable

16. That apart, it is submitted by Mr.Sibal that even a member of the Search Committee namely Prof. Ramakrishna Ramaswamy vide a letter dated March 08, 2020 addressed to the Visitor had in fact specifically put on record the fact that the developments surrounding Vigilance Clearance are matters which would have significant bearing on the decision of the Search Committee to recommend respondent No. 2 (Dr. Najma Akhtar) and also pointed out that the Committee had in the process of arriving at a short list, otherwise meritorious candidates were passed over by the Search Committee on account of even the remotest vigilance clearance issues. Thus, it is his submission, that it is evident that if the developments surrounding the Vigilance Clearance had been brought to the notice of the

Committee, the decision to recommend respondent No. 2 (Dr. Najma Akhtar) would never have been made. Hence, the failure of the respondent No. 1/MHRD to refer this issue to the Committee once again for its consideration becomes all the more glaring and the patent unsustainability of the respondent No. 2 aided by the motivated collaboration by the respondent No, 1/MHRD becomes evident.

17. Thus, it is contended by Mr.Sibal that in proceedings seeking a writ of *quo warranto*, judicial review is concerned not only with the question whether the incumbent possessed qualification for appointment, but also the manner in which the appointment came to be made and procedure adopted thereof is fair, just and reasonable and whether the selection is as per law and procedure in this behalf.

18. On the maintainability of the present petition, according to Mr. Sibal, the real test is to see whether the person holding the office is authorized to hold the same as per law. In this regard has relied upon the following judgments:

1. ***R.K. Jain v. Union of India, (1993) 4 SCC 119;***
2. ***The University of Mysore v. C.D. Govinda Rao and Anr., AIR 1965 SC 4914;***
3. ***B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employee's Association, (2006) 11 SCC 731 (2);***
4. ***Hari Bansh Lal v. Sahodar Prasad Mahto & Ors., (2010) 9 SCC 655;***
5. ***Rajesh Awasthi v. Nand Lal Jaiswal, 2013 1 SCC 501;***

6. ***Central Electricity Supply Utility of Orissa v. Dhobei Sahoo (2014) 1 SCC 161;***

19. On the requisites for a writ of quo warranto to be issued, Mr. Sibal has relied upon a Full Bench judgment of this Court in ***P. L. Lakhanpal v. Ajit Nath Ray, AIR 1975 Del 66***, wherein it was held that “(1) the office must be held under the State or must have been created by a statute (2) it should be an office of a substantive character, (3) its duties must be of a public nature and (4) it should have been usurped by some person”. It is submitted by that the Court therein also went on to hold that “The inquiry extends to ascertainment of the fact whether the holder of the office has been appointed in accordance with law or not” and that “if the law requires that the appointment is to be made after fulfilling certain conditions and if such conditions are incapable of being fulfilled there is no option or alternative but to issue a writ of quo warranto.”

20. On the scope of issuing writs in nature of specified writs, such as a declaration of invalidity, when the process leading up to the appointment of a person to a constitutional or statutory post is arbitrary or violative of Article 14, Mr. Sibal has relied upon:

1. ***N. Kannadasan v. Ajoy Khose, (2009) 7 SCC 1;***
2. ***Kumar Padma Prasad v. Union of India, (1992) 2 SCC 428;***
3. ***Centre for PIL v. Union of India and Ors., (2011) 4 SCC 1.***

21. Counter-Affidavit has been filed by the respondent No.1. The same was in fact adopted by respondent No.3/CVC as noted in order dated December 11, 2020. Similarly, respondent No.2

also adopted the counter-affidavit filed by respondent No.5/University vide order dated November 19, 2020. Respondent No. 4/UGC filed a short affidavit stating that in the present case the role of the UGC is only to the limited extent of having made the relevant binding UGC Regulations. Rejoinders to the counter-affidavits filed by respondent No.1 and respondent No. 5 was also filed by the petitioner. I have perused the pleadings.

22. It is the case of respondent No.1 as stated in reply and also contended by Mr. Chetan Sharma, ASG, appearing on its behalf that vide the meeting dated November 06, 2018, the Search Committee was duly constituted by the Visitor's Nominee and Chairman of the Committee and the Executive Council Nominees in terms of Statute 2 (1) of the JMI Act. Further, the duly constituted Search Committee carried out the process of scrutinizing the applications based on (a) academic achievements (b) administrative experience (c) research contributions and (d) contribution in the corporate life of the institutions and thereafter shortlisted 13 candidates for personal interaction on November 28, 2018.

23. According to Mr. Sharma, the Search Committee, after personal interaction with the shortlisted candidates, unanimously recommended a panel of three names (as reproduced in paragraph 14) for the consideration of the Visitor.

24. Further, it is submitted by Mr. Sharma that the standard procedure followed by the answering respondent for appointment of the Vice-Chancellor of the respondent No.5/University is,

vigilance report of the recommended candidates is sought from the concerned stakeholders, in the case of respondent No.2 from (i) National Institute of Educational Planning and Administration ('NIEPA', Deemed to be University) and (ii) Vigilance Section of the Ministry. It is submitted that the NIEPA informed the answering respondent that no vigilance case is either pending or contemplated against respondent No.2.

25. On the O.M. dated January 10, 2019 relating to the observation/advice of the CVC/respondent No.3, it is stated by Mr. Sharma that the same was tendered in reply to a report furnished by the Chief Vigilance Officer of respondent No.1 to consider closure of the complaint against the regularization of respondent No.2 as a Senior Fellow of NIEPA. However, in the meantime the above observation/advice of CVC received under OM dated January 10, 2019 advising MoE not to consider respondent No. 02 for post-retirement assignment was conveyed by CVO, respondent No. 1 to the administrative Bureau of Central Universities in MoE that had then sought Vigilance Clearance from CVO, MoE in relation to her name figuring in the selection Panel of Vice Chancellor, Jamia Milia Islamia. It is further stated that, thereafter, in the backdrop of advice of respondent No.3/CVC, the matter relating to the complaint was again examined by the O/o CVO, MoE and the respondent No.3/CVC was once again requested to reconsider its advice dated January 10, 2019 elaborating Recruitment Rules for the post of Senior Fellow in NIEPA.

26. It is submitted by Mr. Sharma, pursuant thereto,

respondent No. 3 reviewed the case and decided to revise its advice and rejected the observation made in para 2(i) of the OM dated January 10, 2019 vide OM dated March 05, 2019. Owing to the withdrawal of observations made by respondent No.3/CVC, vigilance clearance in view of revised position was conveyed to administrative Bureau which acted in the light of the same. The respondent No.1 after completing all Secretarial procedure, placed the panel of three names recommended by the Search Committee for appointment of Vice-Chancellor with the recommendation of the Minister before the President of India in his capacity as Visitor of respondent No.5/University and thereafter respondent No.2 was appointed as the Vice-Chancellor of respondent No.5/University on April 11, 2019.

27. That apart, Mr.Sharma has taken an objection on the maintainability of the present petition seeking a writ of quo-warranto. He submitted that such a petition seeking the issuance of the said writ must *inter-alia* disclose that the ‘public office’ in question has been usurped by a person who lacks the eligibility criteria and that the alleged appointment is contrary to the Statutory Rules. In other words, it is his submission that a petition for issuance of a writ of quo-warranto must make out a case that the person adorning a ‘public office’ is ineligible and has been appointed illegally. In support of his contention, he has placed reliance upon *University of Mysore (supra)*, *B. Srinivasa Reddy (supra)*.

28. Mr. Sharma by relying upon a Coordinate Bench decision of this Court in *Parveen Kumar Vs. Union of India W.P. (C) No.*

5374/2002, delivered on February 02, 2018, wherein it was *inter-alia* held that ‘a petition seeking a writ of quo warranto cannot, therefore, challenge the process of selection; it has to be limited to questioning the legality of the selections, or appointments, made, on the ground that they contravene applicable statutory – whether plenary or subordinate – provisions’; submitted that the contours of quo-warranto are in limited in sense.

29. On the plea taken by Mr. Sibal that the inclusion of Justice (Retd.) M.S.A Siddiqui in the Search Committee is in violations of the Statutory Regulations (Regulation 7.3 of the UGC Regulations), it is contended by Mr. Sharma that the said Regulation does not mandate each person of the Search Committee to be a person of eminence from the field of higher education. According to him Justice (Retd.) M.S.A Siddiqui having a retired High Court Judge as well as having headed National Commission of Minority Educational Institution is fully and eminently suitable. Moreover, it is submitted by Mr. Sharma that the petitioner has failed to point out any statutory violation in the appointment process and has rather sought to enter upon apprehensions/imaginative allegations in the process of appointment, not on the basis of statutory non-compliance but on the basis of how the petitioner perceives an otherwise legal and normal process.

30. That apart, Mr. Sharma also submitted that the plea of the petitioner that the recommendation of the Minister is violative of Regulation 7.3 of the UGC Regulations is without merit as the said recommendation is merely suggestive and not mandatory,

with the final authority vested in the President of India in his capacity as the Visitor of the respondent No. 5/University.

31. Further, it is also submitted by Mr. Sharma that the reliance placed by the petitioner on paragraph 2 of the CVC OM dated January 11, 2019 is also clearly misconceived as the same has been admittedly withdrawn vide CVC OM dated March 05, 2019 and there is no challenge made towards the latter.

32. It is the case of respondent No. 2 and respondent No. 5 and as contended by Mr. Vikramjit Bannerjee, learned ASG, appearing said respondents that petitioner has failed to point out any single statutory violation in the appointment process of respondent No. 2. On this specific contention raised by the respondent No. 5 in its counter-affidavit, Mr. Banerjee stated that the petitioner failed to indicate in the rejoinder also any statutory violations, a sine qua non for the issuance of a writ of quo-warranto. In this regard he has again drawn the attention of the Court to Section 11(1) of the JMI Act, Statute 2 (1) of the JMI Act and sub-clauses (i), (ii), (iii) of Clause 7.3 of the UGC Regulations 2018. Section 11(1), which has not been reproduced above, reads as under:

“11. (1) The Shaikh-ul-Jamia (Vice-Chancellor) shall be appointed by the Visitor in such manner as may be prescribed by the Statutes.”

33. In addition to what has been submitted by Mr. Sharma on the maintainability of the present petition, Mr. Banerjee went ahead to deal with the scope of judicial review of this Court while

exercising its power to grant a writ of quo-warranto. It is submitted by Mr. Banerjee that the scope in this regard is limited to whether the incumbent holding the 'public office' is possessed of the necessary qualifications for the appointment made and secondly whether the appointment has been made in a proper manner as stipulated. It is further submitted by him that once the authorities concerned are satisfied with the eligibility qualifications of the person concerned, it is not for the Court to embark upon an investigation of its own to ascertain the qualifications of the incumbent person.

34. It is submitted by Mr. Banerjee that before a citizen can claim a writ of *quo warranto*, he must satisfy the court, inter alia, that the office in question is held by a usurper without legal authority and the appointment of the alleged usurper has been made illegally, not in accordance with law. In other words, the procedure of *quo warranto* confers jurisdiction and authority on judiciary to control executive action in the matter of making appointments to public offices against relevant statutory provisions. He submitted that the petition is in fact curiously silent on the above two aspects. In support of his contention, he also drew the attention of the Court to prayer clause A of the petition that sought *calling for official records pertaining to the appointment of Respondent No. 2*, to further state that the petitioner himself is not sure as to the existence of any statutory violations. He also sought aid of the following judgments viz. (i) ***University of Mysore (supra)***; (ii) ***P.L. Lakhanpal (supra)***; (iii) ***Dr. Duryodhan Sahu & Ors v. Jitendra Kumar Mishra &***

Ors (1998) 7 SCC 273; (iv) R.K Jain (supra); (v) B. Srinivasa Reddy (supra); (vi) Central Electricity Supply Utility of Odisha (supra); (vii) Jose Meleth v. UOI & Ors., 2014(ILR) 1 Delhu 416; (viii) S.N Sahu v. Chairman, Rajya Sabha & Ors., W.P.(C) No. 11146/2016 decided on December 05, 2016.

35. That apart, Mr. Banerjee summed up the procedure/statutory requirement for appointing the Vice-Chancellor to the respondent No. 5/University by relying upon Statute 2 of the JMI Act as well as Clause 7.3 of the aforesaid UGC regulations, 2018, as follows:

- The appointment is to be made by the Visitor of the University i.e., his Excellency the President of India.
- The appointment shall be made by selection of one name from a panel of 3-5 names as suggested by the Search Committee, constituted for the said purpose.
- Such panel of 3-5 names for the consideration of the Visitor of the University shall be prepared by a separate Search Committee consisting of three members, two to be nominated by the *Majlis-i-Muntazimah* (Executive Council) and one, who shall be the chairman of the Committee to be nominated by the Visitor.
- If the Visitor does not approve of any of the persons so recommended, he may call for fresh recommendations.
- The Search 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.

- The person to be appointed as a Vice-Chancellor should be a *distinguished academician, with a minimum of ten years' of experience as Professor in a University or ten years' of experience in a reputed research and / or academic administrative organisation with proof of having demonstrated academic leadership.*

36. Based on the said procedure/statutory requirements, it is submitted by Mr. Banerjee that none of it have been flouted during the selection process and rather the appointment of respondent No. 2 has been made in strict compliance of the same by the President of India on the basis of the selection made by the Search Committee. Thus, according to him when respondent No. 2 has been evaluated by the Search Committee and has found him suitable for appointment to the relevant post, this Court cannot exercise its appellate jurisdiction over the decision of the expert body. He has anchored his submission on the judgments in ***Jai Singh Chauhan v. UOI & Ors., W.P.(C) 7267/2016***, decided on ***May 16, 2019*** (Delhi High Court) and ***T. Lokachari v. Government of India & Ors., (2013) SCC Online Mad 129.***

37. That apart, Mr. Banerjee also submitted that the

petitioner does not have *Locus Standi* to file the present petition, which can be clearly seen from inconsistent averments in the petition. In this regard it is submitted by him that not only has the petitioner failed to offer an averment on the nature of statutory violation but also has stated he “*has no personal interest in the present litigation*” and at the same time stated that he is “*deeply aggrieved*” by the appointment of respondent No. 2 as the Vice-Chancellor of respondent No. 5/ University. This according to Mr. Banerjee is devoid of any *bona fide* interest which is violative of the principles of law laid down by the Apex Court.

38. On merits, it is stated by Mr. Banerjee that

1. The petition is solely based on a RTI Reply dated May 20, 2019, received not even by the petitioner and in fact the petitioner has, for reasons best known to him, approached this Hon’ble Court only on January 22, 2020, after a lapse of eight months. It is also not the case of the petitioner that he has recently been made aware of the aforesaid RTI Reply dated May 20, 2019, rather it has been claimed that the petitioner himself had got the RTI application filed at the behest of his friend

2. The petition not only questions the discretion of the Visitor i.e., the President of India but also states that he has not taken the decisions, both, of selection of the chairman of the Search Committee and of selection of

respondent No. 2 from the panel of names suggested, “*independently*” and had been “*influenced by the recommendation of the Hon’ble Minister*”. In support of this allegation the petitioner has relied on the recommendation of the Minister on the *Summary Note for the President*. In this regard it is submitted that the petitioner, being unaware of the procedures followed in executive decision making as such summary notes for the President are routine affairs. A similar summary note, prepared for appointment of the VC of the University of Delhi has also been brought on record by respondent No. 5/ University.

3. Similarly, in face of the fact that while the document annexed (Annexure P-7 to the Writ Petition) is vigilance clearance holding that “*as per the Vigilance status in the prescribed proforma provided by CU Bureau and the records available with Vigilance Wing, MHRD there is no vigilance case either pending or contemplated against Prof. Najma Akhtar, NIEPA, New Delhi*”, unfounded allegations are being raised by the petitioner merely on one part of such document, which states that while there was an earlier advise not to consider Prof. Akhtar for post-retirement assignment in institutions within the administrative control of MHRD the same was reviewed and withdrawn after due consideration over a

month later.

39. I have heard the counsels appearing for the parties and perused the record. For convenience I shall encapsulate the submissions made on behalf of the parties.

40. Mr. Akhil Sibal, learned Senior Counsel for the petitioner has in substance submitted as follows:

1. Appointment of Justice (Retd.) MSA Siddiqui is in violation of Regulation 7.3 of the UGC Regulations as he is not '*a person of eminence in the sphere of higher education*';

2. The recommendation of the Minister under Statute 2(1) of the JMI Act, 1988, to the President of India, in his capacity as Visitor of the Respondent University to nominate as his nominee from a panel of two names, the Chairman of the Search Committee, and the consequent purported nomination of Prof. D. P. Singh, Chairman, University Grants Commission, New Delhi, it is *ultra vires* JMI Act;

3. The recommendation/order made by the Search Committee to the Visitor of a panel consisting of three names for the post of Vice-Chancellor was void of any plausible reasoning for selecting them;

4. Continuance of Dr. Najma Akhtar/respondent No.2 as the Vice Chancellor of respondent No.5/University is untenable in law as the Search Committee was itself in flagrant violation and total non-

compliance of the statutory provisions and regulations in as much as nomination of Justice MSA Siddiqui as a member of the Search Committee is *void ab initio* and in clear infringement of Clause 7.3 of the UGC Regulations, 2018, and the nomination of Prof. D. P. Singh, Chairman, University Grants Commission (UGC), New Delhi, as the Chairman of the Search Committee, is *ultra vires* Statute 2(1) of the JMI Act, 1988;

5. The recommendation made to the Visitor in respect of Dr. Najma Akhtar/respondent No.2, by the Minister from amongst the panel of three names recommended by the purported Search Committee, is *ultra vires* to the Scheme envisaged by the JMI Act, 1988 and the Statute for the appointment of the Vice Chancellor.

6. Reversal of respondent No.3/CVC's original decision, whereby it had recommended respondent No.2 stating, *inter alia*, "***not to consider Dr. Najma Akhtar for any post-retirement assignment / reemployment in the organizations / institutions / Universities falling within the administrative control of MHRD***", is completely without authority and jurisdiction and is liable to be declared as a nullity. Further, the involvement of respondent No.1 in the same whose participation in the process is not

contemplated by the Act and/or the Statute or Regulations is legally unsustainable being *ultra vires* of the Statute 2(1) of the JMI Act, read with Clause 7.3 of the UGC Regulations.

41. On the other hand, for brevity the submissions made by Mr. Chetan Sharma and Mr. Vikramjit Banerjee ('Counsels for respondents', for short), are dealt together, and the same are as follows:

1. The writ petition is not maintainable as no case made in terms of the respondent No.2 being ineligible and/or the relevant appointment was illegal. In other words, no statutory violations or illegality in the manner of appointment has been made out.

2. Regulation 7.3 of the UGC Regulations does not mandate that each persons of the search-cum-selection committee must be a person of eminence from the field of higher education and in any case, the discharge of duties by a Judge cannot be said to be completely alien to the sphere of education.

3. It is respectfully submitted that the recommendation of the Minister, as per the summary note, a panel of names for the Chairman of Search Committee, is just a 'recommendation' and the final authority or decision-making lies with the Hon'ble President of India in his capacity as the Visitor of the University as is apparent from a reading of the

summary note itself.

4. The CVC/respondent No.3 reviewed the case of respondent No.2 and decided to revise its advice and deleted the observation made in para 2(i) of its OM dated 10.01.2019 vide OM dated 05.03.2019. The OM dated March 05, 2019 is not challenged either.

5. The court cannot sit in appeal over a collective decision taken by a legally and duly formed Search Committee. That is to say procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions.

6. The petitioner does not have any locus standi as its clear from the inconsistent stand in the pleadings.

7. No case has been made out merits either.

42. Having noted the broad submissions of the counsels, the first issue which needs to be decided is the objection taken by the Counsels for respondents on the maintainability of the petition on the ground that a petitioner seeking a writ of quo warranto has to make out a case, that the public office in question has been usurped by a person who lacks the eligibility criterion and the alleged appointment is contrary to the statutory rules. In this regard they have relied upon the Supreme Court judgments in the case of *University of Mysore (supra)* and *B. Srinivas Reddy (supra)*. I may note here that both these Judgments have also been relied upon by Mr. Akhil Sibal. I have also closely perused

the said judgments. In the case of *University of Mysore (supra)*, the Supreme Court has in Para 6 held as under:

“6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.

As Halsbury has observed [Halsbury's laws of England, 3rd Edn. Vol., II, p. 145] :

“An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.”

Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the

public from usurpers of public office; in some cases, persons, not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

43. A perusal of *University of Mysore (supra)* would reveal that the Supreme Court has held that for seeking a writ of quo warranto, the petitioner must state that the person holding the public office does not have the eligibility for the said post. This judgment was relied upon in *B. Srinivas Reddy (supra)*, wherein the Supreme Court has held that a writ of quo warranto cannot be issued unless there is clear violation of law in appointment. Even the process followed for making an appointment to the public office must be in conformity with the statutory rules (**Reference: Rajesh Awasthi (supra)**). In other words, the eligibility and the process for appointment to the public office would be within the scope for seeking a writ of quo warranto.

44. Mr.Sibal is justified in relying upon the Full Bench judgment of this Court in *P.L. Lakhanpal (supra)*, wherein the Court *inter alia* laid down the perquisites for the issuance of a

writ of quo warranto as “(1) the office must be held under the State or must have been created by a statute (2) it should be an office of a substantive character, (3) its duties must be of a public nature and (4) it should have been usurped by some person”. The Full-Bench also held that inquiry for issuance of writ of quo warranto shall extend to ascertainment of the fact whether the holder of the Office has been appointed in accordance with law or not.

45. Similarly, in *Central Electricity Supply Utility of Orissa (supra)*, the Apex Court by relying upon its earlier judgments in *R.K Jain (supra)*, *Centre for PIL (supra)* and *University of Mysore (supra)*, *inter-alia* held that a writ of *quo warranto* can only be issued when the appointment is contrary to the statutory rules. The relevant paragraphs read as under: -

17. Before we advert to the aforesaid submissions and the legal substantiality of the order passed by the High Court, we may refer to certain authorities that throw light on the duty of the Court while dealing with a writ of quo warranto.

18. In University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491] Gajendragadkar, J. (as His Lordship then was) speaking for the Constitution Bench, has stated thus: (AIR p. 494, para 7)

“7. ... Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public

office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the Court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry

as to whether the appointment of the said alleged usurper has been made in accordance with law or not.”

19. *In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat [(2003) 4 SCC 712 : 2003 SCC (L&S) 565] S.B. Sinha, J., in his concurring opinion, while adverting to the concept of exercise of jurisdiction by the High Court in relation to a writ of quo warranto, has expressed thus: (SCC pp. 730-31, paras 22-23)*

“22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact on the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India [R.K. Jain v. Union of India, (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] , SCC para 74.)

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory

rules. (See Mor Modern Coop. Transport Society Ltd. v. State of Haryana [(2002) 6 SCC 269])”

20. In Centre for PIL v. Union of India [(2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609] a three-Judge Bench, after referring to the decision in R.K. Jain [R.K. Jain v. Union of India, (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] , has ruled thus: (Centre for PIL case [(2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609] , SCC p. 29, para 64)

“64. Even in R.K. Jain case [R.K. Jain v. Union of India, (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] , this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction.”

21. From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the

public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.

(Emphasis Supplied)

46. There is no iota of doubt that for issuance of writ of quo warranto, it is to be seen whether the procedure as laid down under the statutory rules has been followed. In fact, the case of the petitioner is not on the eligibility of the respondent No.2 for being considered for the appointment to the post of Vice-Chancellor of respondent No.5/University but that the procedure followed is in violation of the Regulations issued by the UGC and the JMI Act, which are statutory in nature. Hence, this objection of Mr. Sharma need to be rejected.

47. In so far as the submissions of Mr. Sibal on merits are concerned, the first one is that the constitution of Search Committee is in violation of statute 2(1) of the JMI Act and Clause 7.3 of the UGC Regulations. I have already reproduced the aforesaid provisions in paragraphs 8 & 9 above. The objection of Mr. Sibal primarily is, in view of statute 2(1) of the

JMI Act that the Chairman of the Search Committee was to be appointed by the Visitor in his independent capacity without there being any input / recommendation by any other authority. In this regard, he has submitted that recommendation of two names was made by the Minister, out of which one name was of Prof. D.P. Singh, whose name was approved by the Visitor to be the Chairman of the Search Committee, which according to him is illegal. I am not in agreement with this submission made by Mr. Sibal for the simple reason that statute 2(1) of the JMI Act only contemplates that the Chairman of the Search Committee to be nominated by the Visitor which requirement has been fulfilled in this case inasmuch as Prof. D.P. Singh was nominated as the Chairman of the Search Committee by the Visitor. The other requirement / eligibility for a person to be the Chairman of the Search Committee, as noted from the relevant Clause in UGC Regulations and Statute 2(1) of the JMI Act, is that he should not be connected with the respondent No.5/University. This requirement is also fulfilled as Prof. D.P. Singh, when appointed, was the Chairman of the UGC and nothing has been shown to me that he was in any manner connected with the respondent No.5/University. Moreover, there is no challenge in so far as the competency of Prof. D.P. Singh to be the Chairman of the Search Committee. So, it follows Statute 2(1) of the JMI Act has not been violated. The recommendation by the Minister, can at the most be construed as an input on the competency of a person to be nominated as the Chairman of the Search Committee. The final decision in that regard was that of the Visitor and the

decision to nominate Prof. D.P. Singh to lead the Search Committee cannot affect the empanelment and subsequent appointment of respondent No.2.

48. In so far as the submission relating to the nomination of Justice MSA Siddiqui (Retd.) being in violation of Regulation 7.3 of the UGC Regulations is concerned, the said regulations only contemplate that the members of the Search Committee shall be *persons of eminence in the sphere of higher education and shall not be connected with the University concerned or its Colleges*. It is a conceded case of Mr. Sibal that Justice MSA Siddiqui (Retd.) was nominated by the Executive Council of the respondent No.5 / University pursuant to the meeting held on August 31, 2018. The only objection being Justice MSA Siddiqui (Retd.) is not a person of eminence in the sphere of higher education. Suffice it to state that the words '*persons of eminence*' or '*higher education*' have not been defined in the UGC Regulations. But there is no denial to the fact that Justice MSA Siddiqui is a retired Judge of this Court and had also held the position of Chairman, National Commission for Minority Educational Institutions. From the official website of National Commission for Minority Educational Institutions accessed by me it is noted that the Commission has been established by the Central Government in the year 2004 to enhance opportunity for education for the welfare of minorities. Additionally, the following are the functions for which the Commission has been established:

“2. The Commission is mandated to look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice. Protection of rights of minorities are enshrined in Article 30 of the Constitution which states that “all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice.

3 Thus, the Commission can look into any complaints relating to violation and deprivation of rights of minorities to establish and administer educational institutions of their choice.

4 This Commission is a quasi-judicial body and has been endowed with the powers of a Civil Court. It is to be headed by a Chairman who has been a Judge of the High Court and three members are to be nominated by Central Government. The Commission has 3 roles namely adjudicatory function, advisory function and recommendatory powers.

5. So far as affiliation of a minority educational institution to a university is concerned, the decision of the Commission would be final.

6.The Commission has powers to advise the Central Government or any State Government on any

question relating to the education of minorities that may be referred to it.

7. The Commission can make recommendations to the Central Government and the State Governments regarding any matter which directly or indirectly deprives the minority community of their educational rights enshrined in Article 30.

8. The empowerment of the Commission has provided a much needed forum for the minority educational institutions to highlight their grievances and to get speedy relief. The subject matter of a petition / complaint include non issue of No Objection Certificate (NOC) by the State Governments, delay in issue of NOC, refusal / delay in issue of minority status to minority educational institutions, refusal to allow opening of new colleges / schools / institutions by minorities, refusal to allow additional courses in minority educational institutions, delay / refusal in the release of grants in-aid, refusal to give financial assistance, denial of permission to create new posts of teachers in minority educational institutions even though there is increase in the number of students, approval of appointment of teachers being denied, non equality in pay scales of minority schools teachers as compared to Government school teachers denial of teaching aids and or other facilities like computers,

library, laboratory etc. to minority educational institutions on par with Government institution, non availability of books in Urdu in all subject for students of Urdu school, non appointment of Urdu knowing teachers, in adequate payment to Madrasa employees, non-release of grants to Madrasa, non-payment of retirement benefits to teachers and non-teaching staff of minority schools, extension of SarvaShikshaAbhiyan facilities to minority educational institution especially in the deprived rural areas etc.”

49. A perusal of the above functions clearly reveal that the Commission performs adjudicatory, advisory / recommendatory functions with regard to the rights of minority community to establish educational institutions in terms of the rights enshrined in Article 30 of the Constitution of India. These educational institutions definitely include institutions for higher education/learning. Justice Siddiqui having served as the Chairman of the Commission can be, therefore, said to be a person of eminence in the sphere of higher education and clearly meets the requirement under Regulation 7.3 of the UGC Regulations to be part of the Search Committee for considering distinguished academicians for appointment to the post of Vice-Chancellor of the respondent No.5/University. In any case, it was the subjective satisfaction of Executive Council of respondent No.5/University to nominate Justice Siddiqui on an understanding that Justice Siddiqui is a person of eminence in the sphere of higher education.

The Executive Council while taking such a decision must have had all the relevant material before it to come such a conclusion. Nevertheless, this Court cannot substitute the decision of the Executive Council by its own decision and come to a conclusion otherwise, unless it is palpably perverse / arbitrary. Insofar as reliance placed by Mr.Sibal on the judgment in ***Kumar Padma Prasad (supra)*** and ***N. Kannadasan and Ors. (supra)***, is concerned, the same are not applicable in the facts of this case and in view of my finding above.

50. One of the submissions of Mr. Sibal was that Central Vigilance Commission/respondent No.3 vide its Office Memorandum dated January 10, 2019 explicitly denied vigilance clearance / certificate in favour of respondent No.2 by stating ***“not to consider Dr. Nazma Akhtar for any post-retirement assignment / re-employment in the Organization / Institution / University falling within the administrative control of MHRD.”*** Thereafter, the vigilance section/CVO of respondent No.1 on January 11, 2019 citing CVC/respondent No.3 advise denied vigilance clearance to the respondent No.2 but later, the vigilance section took up the matter with the CVC/respondent No.3 for revising its stand in the matter, and pursuant to which the CVC vide its memorandum dated February 26, 2019 had reviewed the case and decided to revise its advise in favour of respondent No.2. This, according to Mr.Sibal, is unsustainable. In this regard, he has drawn my attention to a communication dated March 8, 2020 of Prof. Ramakrishna Ramaswamy, one of the members of the

Search Committee, addressed to the Visitor of the JMI, wherein Prof. Ramaswamy has inter alia stated as under:

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

According to Mr. Sibal, Prof. Ramakrishna Ramaswamy has through his letter expressed, that the review of advice by CVC/respondent No.3 is a grave matter and on similar grounds (non-clearance) various, otherwise meritorious, candidates were passed over by the Search Committee and requested the Visitor to exercise caution in the case of JMI and remedial action be taken as in view of the adverse CVC clearance respondent No.2 would not have been recommended.

51. I am not impressed by this submission of Mr. Sibal. This I say so, firstly for the reason that no doubt there was an advice against respondent No.2 but on a request made by the vigilance section of respondent No.1, which request is permissible under the instructions issued by the CVC, the CVC on a re-consideration decided to revise its advise and deleted the observation made by it on January 10, 2019, which decision, as conceded by Mr. Sibal cannot be challenged nor has been challenged in this petition. Thus, it must be construed, there was no adverse advice against the respondent No.2. Secondly, the denial of vigilance clearance pertains to the issue of regularization of respondent No.2 in NIEPA. But later, on reconsideration her regularization, keeping in view the recruitment rules, was found to be proper and vigilance clearance was granted. So, the reliance placed by Mr. Sibal on the communication of Prof. Ramakrishna Ramaswamy to the Visitor has no impact on the appointment, as there is no adverse opinion of CVC against the respondent No.2. Hence, this plea of Mr. Sibal needs to be rejected.

52. That apart, it is also one of the submissions of Mr.Sibal that the Search Committee has out of 13 names shortlisted / recommended 3 names without recording reasons, which is in violation of clause 7.3 (ii) of the UGC regulations read with statute 2(1) of the JMI Act. I am not in agreement with this submission of Mr. Sibal. It is not the case of the petitioner that the Search Committee while considering the 13 shortlisted names did not have before it the applications / relevant data/supporting material of the candidates for making assessment. The Selection

Committee has recorded at paragraph 3 in the Minutes of the Second Meeting of the Committee dated November 28, 2018 that *'Having regard to their academic credentials, professional and administrative experience and also their performance during the personal interaction, the Committee recommends panel of three names in alphabetical order for appointment to the post of Vice-Chancellor of JMI, subject to the Vigilance Clearance etc. for a term as specified in Jamia Millia Islamia Act, 1988'*. The above recommendation itself suggests that there has been a due application of mind by the Search Committee on the competency / suitability of the names recommended. It is not the case of the petitioner that the candidates recommended are / were not eligible or they lack credentials with regard to academic / professional / administrative experience to be recommended for being appointed as Vice-Chancellor in respondent No.5 University.

53. That apart, Clause 7.3(ii) of the UGC Regulations only suggest that the Search Committee consisting of persons of eminence in the sphere of higher education while preparing the panel, *must 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*. The said requirement has been fulfilled by the Search Committee, inasmuch as while recommending the panel of three names which included the name of the respondent No.2, the Search Committee has given due weightage to the academic credentials, professional and

administrative experience of all the names recommended by it in writing along with the panel.

54. I may state here that it is a settled law of the Supreme Court in the case of ***National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman and Ors., (1992) Suppl.2 SCC 481***, wherein the Supreme Court in para 7 has held as under:

“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.”

55. From the law as laid down by the Supreme Court in ***National Institute of Mental Health and Neuro Sciences (supra)***, it is clear that it is not necessary for a selection committee to give reasons of its conclusion unless the rule governing the appointment to a particular post stipulates so. In the case in hand, Clause 7.3 (ii) of the UGC Regulations does not contemplate reasons to be given against each name, so recommended. The requirement is, the screening Committee shall in writing based on the academic / professionals and administrative experience recommend the panel. The requirement is that the names so recommended fulfill the requirement of academic excellence, exposure to the higher education in the country and abroad and having adequate experience in academic and administrative governance.

56. That apart, one of the submissions of Mr. Sibal is that the decision of the Visitor approving the name of the respondent No.2 as the Vice-Chancellor for appointment to the post of Vice-Chancellor of respondent No.5/University, is pursuant to the

recommendation made by the Minister which procedure is *ultra vires* to the Statute 2(1) of JMI Act and as such illegal, is also not appealing. This I say so as there is no express provision in Clause 7.3 UGC regulations or Statute 2 (1) of JMI Act that such a procedure cannot be followed. Suffice it to state that the appointment of respondent No.2 was made by the Visitor from the names recommended by the Search Committee. In other words, the Visitor has not gone beyond the panel recommended by the Search Committee. That apart, it is the case of the respondent No.1 that as a practice, the *Summary Note*, which is sent to the Visitor by the Minister/Ministry contains the recommendation(s) from among the names selected by Search Committee, as has been done while appointing the Vice-Chancellor of the University of Delhi as well. The plea of Mr. Sibal is also unsustainable in law inasmuch as there is nothing on record nor has been contended by Mr. Sibal that the Visitor while appointing the respondent No.2 had only relied upon the recommendation of the Minister. In fact, such a plea would mean that the Visitor was biased / influenced in accepting the recommendation of the Minister while appointing respondent No.2, which allegation cannot be gone more so when the Visitor is not made a party respondent in his personal capacity to enable him to answer the allegation made by the petitioner. In any case, the petitioner has not been able to show that any express provision of either the UGC Regulations or the JMI Act has been flouted while making the appointment of respondent No.2 as the Vice-Chancellor of respondent No.5/University.

57. Before parting, I must highlight the position of law that Court cannot sit in appeal over the decision taken by the Search Committee. Rather the scope is limited to judicial review of the decision whereby the Court is only concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable (**Reference: R.K Jain (supra)**). The above discussion shows the appointment of respondent No.2 is justified.

58. I do not see any merit in the petition. The petition is dismissed.

CM APPL. 26478/2020

This is an application filed by the petitioner with the following prayers:

“It is, therefore, most humbly prayed that this Hon'ble Court may kindly be pleased to

a) Pass an appropriate order directing the Respondent No. 3 to not to take any step at all for appointment of any nature whatsoever, or incur any financial expenditure other than those imperative for the academic matters and to function in a limited manner with respect to the academic matters, incur routine expenditure, and routine payment of salary and post-retiral benefits;

pending hearing and final disposal of the captioned writ petition.

b) Pass any such further order or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favor of the Petitioner and against the Respondent.”

The prayers in this application are premised on a letter written by Prof. Ramakrishna Ramaswamy to the Visitor on March 08, 2020 (Annexure-P12). In the course of deciding the writ petition I have duly considered the said letter. However, in view of the decision in the writ petition, the application is dismissed.

V. KAMESWAR RAO, J

MARCH 05, 2021/aky