

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 31, 2022

+ W.P.(C) 1735/2020, CM No. 6020/2020

SUCHETA MAHAJAN & ANR Petitioners

Through: Mr. Maanav Kumar and
Ms. Nupur, Advs.

versus

JAWAHARLAL NEHRU UNIVERSITY THROUGH: ITS VICE
CHANCELLOR & ORS Respondents

Through: Ms. Monika Arora, Adv. for JNU
Mr. Jivesh Tiwari, Adv. for R-4
Mr. Rajeev Saxena, Adv. &
Mr. Manya Saxena, Adv. for R-5

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioners with the following prayers:

“In the facts and circumstances of the instant case and the grounds above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

(i) Issue an appropriate writ quashing the Impugned Lists dated 07.02.2020 which contains a short-list of candidates for Post Nos. 67, 68, 69 and 70 as per Diluted Criteria;

(ii) Issue an appropriate writ quashing the Interview Process and any decisions taken pursuant thereto, to conclude the recruitment/selection/appointment process as per Advt.No. RC/59/2019 dated 29.03.2019;

(iii) Issue an appropriate writ directing that the Respondents to issue a fresh Advertisement for the posts of Assistant Professors, for the Centre of Historical Studies;

(iv) Award the Petitioner costs related to the filing of the present Petition;

Pass such other further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstance of the present case."

2. The petitioners in this writ petition has raised a challenge against the lists dated February 07, 2020 ('impugned lists' hereinafter) of shortlisted candidates for the post of Assistant Professor at the Centre for Historical Studies, School of Social Sciences ('CHS', for short) at the respondent No.1 University. On the first date of hearing this Court directed vide Order dated February 14, 2020, that the subject post shall not be filled till the next adjourned date, which position continues as of now. On March 09, 2021 and August 03, 2021 this Court allowed the impleadment applications filed by Umesh Kumar Khute and Dr. Navendu Shekhar and they have been made respondent Nos. 4 and 5, respectively.

3. The petitioners have assailed the impugned lists published by the respondent University which contains the names of the shortlisted candidates for the posts of Assistant Professors at the CHS at Serial Nos. 67-70 in the Advertisement bearing No. RC/59/2019 ('the advertisement', hereinafter). The petitioner No.1 is a professor at the respondent No.1 University since 2005, and was the Chairperson of CHS from August 2017 to August 2019. She was the head of the Screening Committee for recruitment to the said posts and it was also

during her tenure as Chairperson, CHS that the advertisement was published and the selection process had commenced. The petitioner No.2 is also a professor at CHS and has been teaching there since 1999. It is the case of the petitioners that the original criteria for recruitment in the advertisement was the following:

- i. A Master's degree in History
- ii. UGC-NET/JRF or NET exemption
- iii. Specialisation outlined against each post, being, Modern Indian History, Medieval Indian History, Contemporary History with sub-specialisation in Economic History and
- iv. Modern and Contemporary Indian History

4. The final shortlisting of candidates and issuance of the impugned lists was done on the basis of the first two criteria alone and the specialisation requirement was discarded altogether. As per the petitioners, by removing the criterion of specialisation, the underlying character of the posts was completely changed.

5. Mr. Maanav Kumar, learned counsel appearing for the petitioners stated that the respondent University has acted illegally by altering the selection criteria for the said posts after the selection process had already commenced and such a change is prohibited by law. Therefore, this petition ought to be allowed on this ground alone. He has placed reliance on the judgement of the Supreme Court in ***Zonal Manager, Bank of India v. Aarya K. Babu & Ors., (2019) 8 SCC 587*** to state that if there is any change in the advertisement, the same can only be made if the University issues a fresh advertisement incorporating the desired changes. Further, he relied on the judgement

in the case of *Mohd. Sohrab Khan v. Aligarh Muslim University, (2009) 4 SCC 555* to argue that a prohibited change in criteria also includes relaxation / broadening of the same. While referring to the judgment of the Madhya Pradesh High Court in *Ramkhiladi Sharma and Others v. National Health Mission & Ors., 2020 SCC Online MP 2975*, Mr. Kumar stated that even a subsequent relaxation / broadening of the selection criteria cannot be made applicable to an ongoing recruitment.

6. Mr. Kumar contended that the CHS is divided into three units for, Ancient History, Medieval History and Modern and Contemporary History. These three units function as distinct areas of specialisation with distinct subject matters of expertise. Three separate Master's programs based on specialisation are offered by the respondent No.1 University. Even the prospectus of the respondent No.1 University distinguishes between the three different Master's Programs based on specialisation. The qualifications, research experience, focus of the past and present research, etc., that a candidate must possess in order to be considered as an expert in these specialisations are different.

7. It is the case of the petitioners and so contended by Mr. Kumar that the number of faculty members in CHS was reduced from 27 in 2015 to just 20 as on date. He also stated that the number of faculty members in the Modern History Unit was reduced disproportionately from 13 in the year 2015 to just 7 when the advertisement was issued in the year 2019. It was for these reasons that there was a necessity to induct Assistant Professors in the Modern History Unit. The petitioner No.1 then sent a letter to the Officer on Special Duty at the respondent

No.1 University, Mr. Yashwant Singh, clearly specifying the specialisations to be mentioned for each of the posts so advertised. The advertisement and the specialisations mentioned were issued on the basis of the existing vacancies and the academic requirements within the CHS at the time. The Director of the Internal Quality Assessment Cell sent an email dated May 01, 2019 to Chairpersons of the Centres asking them to constitute a Screening Committee in light of the advertisement for the post of Assistant Professor and the subject specialisation so mentioned. Mr. Kumar argued that the specialisations so mentioned in the advertisement were based on the actual requirement at the CHS and formed an integral part of eligibility criteria. According to him, this would go to show that the respondent No.1 University was aware and in agreement with the need for specialisations, which were going to be mentioned in the advertisement. The respondents started sending letters to the petitioner No.1 and the Screening Committee asking them to broaden the specialisation and desirable qualifications. However, in view of the academic needs and vacancies at CHS, the Screening Committee reiterated that the candidates must be shortlisted on the basis of the specialisations. The Recruitment Cell and the Internal Quality Assessment Cell repeatedly requested that the eligibility criteria be broadened which resulted in the Screening Committee / Modern History Unit holding a meeting on July 10, 2019. He pointed to the Minutes of the Meeting to state that the Modern History Unit took a decision that the post was advertised with specialisation in Contemporary History specifying sub specialisation in Economic

History, since it was considered to be a need of the department. He stated that even after the impugned lists were illegally issued by the respondent No.1 University, the Screening Committee wrote to the Assistant Registrar on February 10, 2020 stating that, since the degree is awarded in Ancient, Medieval and Modern History, the specialisation of faculties in the said fields is required for teaching and research supervision.

8. As per Mr. Kumar, with the removal of the specialisation requirement, the respondents have changed the underlying character of the posts altogether. The needs of the Centre are such that someone outside the required specialisation is not in a position to effectively fulfil the advertised role. For instance, an expert in Medieval or Ancient History does not have the requisite expertise to teach and supervise students in Modern History. It is the case of Mr. Kumar that removal of the specialisations is not a mere relaxation but a complete change of the post. He contended that the effect of removing the specialisation which is an integral part of the selection criteria is evident from the appointments made by the respondent No.1 University for posts at Serial No. 69 and 70, i.e., of respondent Nos. 5 and 4 respectively.

9. Mr. Kumar argued that respondent No. 5 who was selected for the post at Serial No. 69 required a specialisation in Contemporary History and Economic History; whereas he himself has admitted that his dissertation at the time of M.Phil was titled “*Aspects of Indo Persian Gulf Trade in 17th and 18th Century*” and his Doctoral research was based on “*India’s Commercial Litigation with Persia and Central*

Asia – Comparative Studies of Overland and Maritime Commerce from the 17th till the 19th Century”. It is his case that the period relating to Contemporary History starts after the independence of India / the end of the Second World War, respondent No.5 ought to have been aware of the same as it has been specified in the University prospectus. According to him even the respondent No. 1 University does not consider him to meet the specialisation for the post at Serial No. 69. He stated that the shortlist dated January 31, 2020 issued against the post at Serial No. 69 was prepared on the basis of the specialisation as well as Ph.D, and did not include his name. Had the respondent No.1 University considered his Ph.D to be a relevant specialisation, his name would have formed a part of the list of shortlisted candidates dated January 31, 2020. Mr. Kumar stated that the impugned lists were published devoid of the specialisation requirement and name of the respondent No.5 was included in the same.

10. Similar is the case with respondent No. 4 who has been selected for the post at Serial No. 70, the requirement in the advertisement had mentioned a specialisation in “*Modern and Contemporary Indian History*”, whereas the credentials of respondent No.4 do not fall under the specialisation so mentioned. Therefore, the removal of the specialisation from the posts has resulted in the selection of candidates who do not possess the required specialisations.

11. Ms. Monika Arora, learned counsel appearing on behalf of the respondent No.1 University stated at the very outset that the University follows the guidelines prescribed by the University Grants Commission 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 Educations, 2018 ('UGC Regulations, 2018', hereinafter) and its subsequent amendments. She referred to point No.19 of the advertisement to state that the respondent No.1 had reserved its rights to modify/ withdraw / cancel any communication made to the candidate(s) at any stage in the process of selection. She further pointed to the counter affidavit filed on behalf of the respondent No.1 University wherein it has been stated that as per the UGC's, essential qualifications, a candidate must have a Master's Degree in the concerned / relevant / allied subject. As per the UGC's, National Eligibility Test ('NET', for short) subject list, 'History' is the main subject and not the sub-classifications such as Ancient, Medieval or Modern History. Hence the selection process was done on the basis of essential qualifications as per the UGC Regulations, 2018, and the impugned lists were published on the basis of minimum qualifications as required by the UGC Regulations, 2018.

12. It is her case that the Selection Committee consists of three eminent scholars from the subject field, the Vice Chancellor of the University, the Visitor's nominee and the Dean of the School who recommends the names of the suitable candidates for appointments to the posts. She stated that in the case of the posts listed at Serial Nos. 69 and 70, the names were recommended after looking into all the aspects including the subject specialisation of the candidate, research performance, assessment of domain knowledge, teaching skills and interview performance. For the posts listed at Serial Nos. 67 and 68, the findings of the Selection Committee came back as 'none found

suitable’ and these posts were to be re-advertised. It is for these reasons that the arguments of the petitioners that quality of the academic standards have been compromised due to the impugned lists is untenable. Even more so when the process of shortlisting candidates is done only for the purpose of calling suitable candidates for the interview. These posts are then filled on the basis of interview wherein a candidate is assessed on individual merit. The assumption that the quality of the academic standards have been compromised without giving due regard to the interview process, must give way. As per Ms. Arora, the change in the criteria was made on the basis of recommendations of the Chairperson, CHS.

13. Ms. Arora has argued that in the cases of other centres as well, the respondent No.1 University has recruited personnel after relaxing the specialisation requirement and made the said appointments for the post of Assistant Professor on the basis of essential qualifications alone. She has mentioned the centres where this relaxation has taken place:

- a. Centre for Portuguese, Spanish, Italian and Latin American Studies (CSPILAS). SLL&CS
- b. Special Centre for National Security Studies, SIS
- c. Special Centre for Disaster Research
- d. School of Engineering
- e. Centre for Canadian, US and Latin American Studies, SIS
- f. Centre for Russian Studies, SLL&CS
- g. Centre for German Studies, SLL&CS
- h. Centre for Korean Studies, SLL&CS

14. It is the case of Ms. Arora that the present petition has not been filed by the candidates challenging the relaxation of criteria in any department regarding recruitments of the Assistant Professor. She argued that none of the affected parties have approached the Courts and she has also questioned the *locus standi* of the petitioners in approaching this Court. In this regard she has relied on the following judgements:

- i. ***Uma Shankar v. Jawahar Lal Nehru University & Ors. W.P.(C) 6851/2003*** decided on February 13, 2006;
- ii. ***Ashish Kumar v. State of Uttar Pradesh & Ors. (2018) 3 SCC 55;***
- iii. ***Kalyani Mathivanan v. K.V. Jeyaraj & Ors. (2015) 6 SCC 363; and***
- iv. ***Dalpat Abasaheb Solunke & Ors. v. B.S. Mahajan & Ors. (1990) 1 SCC 305.***

15. Mr. Jivesh Tiwari appearing for the respondent No.4 has argued that the first list for the interview of candidates was uploaded on the website of the respondent No.1 on January 24, 2020. Various grievances were received by respondent No.1 from many candidates since only a few candidates were called for the interview and it was contended that the short-listing of candidates was not done as per the UGC Regulations, 2018. He stated that in short listing of candidates, only specialisation was considered instead of following UGC Regulations, 2018 where the minimum eligibility criteria is a Master's Degree and NET/Ph.D and this ought to have been followed. According to him, the Internal Quality Assessment Cell requested the Screening Committee of CHS to look into this matter and to follow the Minimum Eligibility Criteria as per the UGC Regulations, 2018. Then

the Chairperson of the CHS and the Head of the Screening Committee (CHS) Prof. Umesh Ashok Kadam on February 06, 2020 recommended to the Internal Quality Assessment Cell to call all the candidates for the interview who are fulfilling the UGC Regulations, 2018 regarding the Minimum Eligibility Criteria.

16. It is his case that since the criteria was modified as per the UGC Regulations, 2018 which was not made restrictive, so as to not deny any candidate from getting an opportunity to sit for the interview. As the earlier criterion was restrictive, it would have been unfair for the majority of the aspiring candidates. He submitted that the Selection Committee has in its collective wisdom made the selections after weighing all the factors.

17. He argued that the respondent No.4 has completed MA, M.Phil, and Ph.D in History from the respondent No.1 University and has recently been appointed as Assistant Professor in the respondent No.1 University at the CHS. He received a call for the interview on February 07, 2020 and he appeared along with 49 other candidates on February 12, 2020. It was thereafter on February 14, 2020 he was selected for the post at Serial No. 70 which remained reserved for an SC candidate.

18. Mr. Tiwari argued that the respondent No.4 is a hardworking professional and had been selected after duly complying with the UGC Notificaftion and his joining letter had been kept on hold. It is argued that he fulfils all the requirements and has obtained the employment legitimately. According to him there has been no alteration of any selection criteria and the final list of candidates has been made in strict

compliance of the UGC Notification dated July 18, 2018 which clearly mentions the Minimum Qualification for the post of Assistant Professor. It is his case that the candidates had in fact been selected on the basis of Master's Degree in "History" and UGC-NET. The specialisations for the posts other than the post at Serial No. 68 are similar to Modern and Contemporary History. As per the UGC, the essential qualification a candidate must have is Master's Degree in a subject and as per the UGC-NET subject list, the main subject is 'History' and there is no subclassification of the subject History into Ancient, Medieval and Modern History. He argued that the selection was done on the basis of essential qualifications as per UGC with Master's Degree in History.

19. He argued that the Assistant Registrar sent a letter dated May 01/03, 2019 stating that the respondent No.1 University had advertised the faculty positions as per the letter of the CHS dated March 28, 2019. The letter of the Assistant Registrar mentioned that the School / Centre should make the specialisations and desirable qualifications as broad as possible in all cases, irrespective of the reservation status of the post to be advertised. The short listing of candidates by the Screening Committee was in gross violation of the UGC Notification as well as the letter of the Assistant Registrar regarding the selection criteria of such posts. It was the Recruitment Cell which returned the Screening Committee list for the perusal of the candidates mentioned therein for selection at the post mentioned at Serial No. 70. Mr. Tiwari stated that the applications received for the faculty positions are verified at three levels i.e.; (i) the Screening Committee of the concerned centre,

thereafter; (ii) Recruitment Cell of the University and; (iii) Internal Quality Assessment Cell of the respondent University.

20. Mr. Tiwari has opposed the contention of the petitioners that the UGC regulations were not followed, by stating that it is wrong to make such assertions as the shortlisting and the appointment have been done according to the UGC Regulations, 2018. He also argued that the stand of the petitioners in their petition that there was a dilution of the eligibility criteria for shortlisting, also does not survive since as per the UGC Regulations, 2018 all the candidates with MA with NET or NET exemption were called for the interview. Mr. Tiwari has also referred to an RTI reply by the UGC to state that the specialisation criterion is not an essential criterion for the shortlisting and appointment of an Assistant Professors. He also referred to the reply filed by the respondent No.1 University to counter the argument that the decision of the department's Screening Committee for the final shortlisting was overruled by the Internal Quality Assessment Cell by stating that this is a false claim because the second shortlisting named 50 candidates which was signed and proposed by the Chairperson of the Department and only only it was forwarded by the Internal Quality Assessment Cell for final call of the candidates. However, as per the UGC rules, the Internal Quality Assessment Cell has the power to make a final judgement on the screening of candidates.

21. Another argument advanced by the learned counsel for the petitioners is that the appointments are on the basis of MA and NET only and the same would lead to the depreciation of the quality of education at the department. He argued that this this claim is false

because the UGC has decided the norms under UGC Regulations, 2018 which have already decided the minimum qualification for appointments which is on the basis of MA with NET qualification. There are 9 other appointments which have been successfully done in the same recruitment process at the respondent No.1 University.

22. The criteria was modified as per the UGC Regulations, 2018 to ensure that a candidate was not barred from getting an opportunity to sit for an interview. If these criteria were restricted then it would have been unfair to the candidates such as the respondent No.4 himself. The respondent No.1 University in its advertisement stated that the Academic score as specified in Appendix II (Table 3A) for Universities of UGC Regulations, 2018 shall be considered for shortlisting of the candidates for interview only, and the selections shall be based only on the performance in the interview. Another argument that has been taken by the learned counsel for the petitioner is that the specialisation mentioned with the subject was ignored and all the MA+NET / Ph.D candidates were called for the interview. On this aspect Mr. Tiwari submitted as follows:

- i. There is no mention of specialisation at entry level in the direct selection of Assistant Professor in UGC Regulations, 2018.
- ii. The minimum eligibility criteria for the recruitment is Masters and NET / or Ph.D as per the UGC regulations 2018.
- iii. The respondent No.1 University has replied that as per the UGC Subject list for NET Exam there is mention of only 'History', it is not mentioned with a prefix of Ancient / Medieval / Modern, so they consider History as a single

subject.

- iv. Reliance has been placed on a judgment of a Coordinate Bench of this Court in the case of ***Suresh Chandra v. Union of India W.P.(C) 10002/2016*** decided on November 30, 2018 to argue that any part of the advertisement which is contrary to the statutory rules has to give way to the statutory provisions and if there is a variance between the two, the statutory rules will take precedence.
 - v. He also placed reliance on the judgement in ***N.G. Desai v. Govt. of NCT of Delhi & Ors. W.P.(C) 9046 / 2007*** decided on July 03, 2008 to state that the purpose of the Screening Committee is to screen and scrutinise the applications so as to make it convenient for the Selection Committee.
23. Mr. Rajeev Saxena appeared on behalf of respondent No.5 and argued that the answering respondent was selected for the appointment for the post of Assistant Professor (Unreserved) at the CHS against post at serial No. 69 with “*Specialisation in Contemporary History, sub-specialisation in Economic History*”, by the Selection Committee duly constituted under Section 27 sub sections (1) and (2)(E) of the Jawaharlal Nehru University Act, 1966 (‘JNU Act’, hereinafter) and Clause 5 of Ordinance Relating To Appointment And Career Advancement of Teachers (‘ORACAT’, for short) on his own merit, based on essential qualifications as per UGC Regulations, 2018 as mentioned in the advertisement.
24. The respondent No.5 was appointed vide Appointment Letter dated February 14, 2020 to the post of Assistant Professor in CHS in

the Academic Pay Level-10 (₹57,700-₹1,82,400) which the respondent No 5 accepted in terms of the mail dated February 14, 2020. As per Mr. Saxena respondent No.5 was shocked to receive a letter dated February 17, 2020 from the respondent No.1 University informing him about the order of injunction dated February 14, 2020 and it was after this factum was known that he filed the application CM 23815/2021 and was impleaded as a party on August 03, 2021.

25. Mr. Saxena argued that the petitioners do not have any *locus standi* to challenge the appointments made by a duly constituted Selection Committee of the respondent No.1 University based on the selection criteria and essential qualifications as per the UGC Regulations, 2018. The petitioner No.1 was one of the members of the Screening Committee constituted for screening of applications for the appointment against the advertisement of the respondent No.1 University to various vacant positions at the level of Assistant Professor in various Centres. The advertisement specifically mandated that the essential qualifications / pay level for these positions will be as per the UGC Regulations, 2018. The essential qualifications as per the UGC Regulations, 2018 were part of the advertisement as filed by the petitioners before this Court. However, for the post of Assistant Professor (Unreserved) at CHS, advertised post at Serial No. 69 the advertisement included a condition that a candidate ought to have a specialisation in Contemporary History, with a Sub-specialisation in Economic History. He argued that the petitioner No.1 was the chairperson of the CHS till August 15, 2019 and in the said capacity the petitioner No.1 was also member Screening Committee whereas

the petitioner No.2 was the only faculty member at the CHS who was preferred by the petitioner No.1.

26. Mr. Saxena has also argued that the shortlisted candidate for the post of Assistant Professor (Unreserved) (Post at serial No. 69) at the CHS, notified on or about January 30, 2020 on the respondent No.1 University website depicted the following short-listing criteria:

- i. Master's Degree in History;
- ii. UGC-NET / JRF or NET Exemption
- iii. Ph.D awarded specialisation in Contemporary History sub specialisation in Economic History

27. Mr. Saxena argued that being aggrieved by their exclusion from the said list of candidates shortlisted for interview, the respondent No.5 had sent a representation by way of an email the Vice Chancellor of the respondent No.1 University along with its copies to the Recruitment Cell, Rector and Director, Internal Quality Assessment Cell challenging the said short-listing on the ground that some of the candidates who have been shortlisted either did not have the specialisation in Contemporary History with sub-specialisation in Economic History or some of the candidates do not fulfil the basic criteria in accordance with the advertisement. The Recruitment Cell through its letter dated May 13, 2019 had requested the Screening Committee to broaden the specialisation and desirable qualifications as much as possible in all cases, irrespective of the reservation status of the post to be advertised. Being dissatisfied with the initial shortlisted candidates against the various posts, the Recruitment Cell returned to the Screening Committee (of which the petitioner No.1 was part),

which refused to review or revise the considerations.

28. Mr. Saxena has argued that the refusal of the Screening Committee to review or revise or broaden the selection criteria in compliance with the UGC Regulations and ORACAT, the Director of the Internal Quality Assessment Cell again returned the initial shortlist to the Screening Committee with the request that the Reviewing Committee revisit and screen applications by broadening the minimum essential qualifications, to ensure equal opportunity and prevent litigations. Similarly, for the post at Serial No. 69 against which the respondent No.5 has been appointed, the Recruitment Cell had returned the initial list of shortlisted candidates to the Screening Committee seeking revision of the same with the Director of the Internal Quality Assessment Cell directing that the “*Centre may screen candidate minimum essential qualification*”. However the Screening Committee again refused to reopen the list of candidates who had been rejected for not fulfilling the specified requirement of the sub-specialisation of Economic History. Being dissatisfied with the response of the Screening Committee, the Director of the Internal Quality Assessment Cell again called upon the Screening Committee for reconsideration and broadening the minimum essential qualifications. He argued that the Screening Committee, with the petitioner No. 1 as one of its members, vehemently opposed the same and ignored the merit and qualifications, as per the UGC Regulations, 2018 and JNU Regulations/Ordinance.

29. Later, Prof. Umesh Ashok Kadam, was appointed Chairperson and Head of the Screening Committee of CHS as on August 16, 2019

and taking note of the representations of the candidates who were aggrieved by the first shortlist and the comments and the Director of the Internal Quality Assessment Cell, relaxed the short-listing criteria and further widened the base of the candidates by including the minimum essential qualification as prescribed under the UGC Regulations, 2018 with an inclusive approach and then invited the other candidates for the interview as per schedule. The Director of the Internal Quality Assessment Cell made a note of the grievances received from the applicants and a perusal of the note dated February 03, 2020 states that the Director of the Internal Quality Assessment Cell may be requested to send the list of the additional candidates for all the three posts of Assistant Professor listed at serial Nos. 67, 69 and 70, so that, interview letters may be timely sent for the interviews fixed at February 12, 2020. It is his case that it was during this process that the impugned list dated February 07, 2020 was notified for shortlisted candidates against various posts including the post at serial No. 69 wherein the respondent No.5 was ultimately selected. The process of drawing of the impugned list, according to the respondent No.5, was necessitated on account of arbitrary and illegal criteria as adopted by the then screen committee, which despite repeated request declined to review the short-listing criteria and it is evident that only four of the ten members of the Screening Committee were present at the meeting scheduled on July 10, 2019.

30. Mr. Saxena has referred to the impugned advertisement and Table 3A of the UGC Regulations, 2018 to state that the respondent No.5 fulfils not only the essential qualifications but also scored 76

marks out of 100 in terms of the shortlisting criteria for the interview for the recruitment of Assistant Professors. Mr. Saxena has rebutted the allegations of the petitioners that the impugned list dated February 07, 2020, the interview process, etc., are contrary to the advertisement, by stating that these allegations are baseless and wrong since the listing criteria has not been changed but rather the Screening Committee headed by Prof. Umesh Kadam has ensured a strict compliance of the essential qualifications as mandated by the UGC Regulations, JNU Act and ORACAT.

31. Mr. Saxena has argued that it is not the case of the petitioners that any person selected by the process adopted by the Selection Committee does not fulfil the essential qualification or specialisation as mentioned in the impugned advertisement. Once the essential qualifications combined with the specialisation criteria mentioned in the advertisement have been considered by the Selection Committee, the petitioner is neither a candidate nor a member of the Selection Committee who could have dissented to the selection of a particular candidate. The petitioners are not privy to the final Screening Committee for shortlisting the candidate for the interview process. The challenge by the petitioners to the selection process is unsustainable since the petitioners do not have any *locus standi* to challenge the same. He has also argued that there have been no allegations of *mala fide* against the members of the Selection Committee, Screening Committee, Internal Quality Assessment Cell or any official of the Recruitment Cell. He further argued that no allegations have also been levelled regarding the constitution of the Selection Committee or the

decision taken by them.

32. Mr. Saxena stated that alleged second criteria as mentioned by the petitioners, too is part of the essential qualifications as prescribed by the UGC Regulations, 2018 and strictly complied with by the respondent No. 1 both in the process of screening as well as the selection. He has argued that the same is in no way in contradiction with the terms and conditions contained in the impugned advertisement. It is his case that the essential qualification had already been incorporated specialisation against the post listed at Serial No. 69.

33. The respondent No. 5 is M.A. in History (JNU), and had Contemporary History; Capitalism and Colonialism; State, Society and Economy: 18th Century; India, Pakistan and Great Powers, as the optional papers during the course of study in his Post Graduation at JNU. Thereafter the respondent No.5 while pursuing the M.Phil. from Centre for West Asian Studies had opted for 'Contemporary Period' as a specialisation and 'West Asia in World Affairs' as a sub-specialisation, and his dissertation was on 'Aspects of Indo Persian Gulf Trade in 17th and 18th Century', which dealt with India's Trade with Persia which is essentially a part of Economic History. In the year 2017 the respondent No. 5 had been awarded the Ph.D. degree which mentions his exemplary research in 'India's Commercial Linkages with Persia and Central Asia: - A Comparative Study of Overland and Maritime Commerce from the 17th till 19th Century', which as per the respondent No. 5 is again an integral part of Economic History, which is a requirement for the post of Assistant Professor. It is submitted that the respondent No.5 over the years has taught Contemporary History,

Modern East Asia, History of China, Japan and Korea; and History of India 1700-1950, etc.; in addition to all of this he has also authored and presented various research papers and attended seminars all of which pertain to the subject of economic history.

34. On January 30, 2020 the impugned lists for the post at Serial No. 69 was uploaded by the Recruitment Cell of the Respondent University on its website wherein the selection criteria was not in consonance with either the mandate of the UGC as contained in the impugned advertisements against which the respondent No.5 applied and was appointed. Mr. Saxena has argued that after the arbitrary change in the selection criteria post submission of applications, the respondent No.5 and several other candidates sent their representations to the respondent No.1 University stating that the rules of the game had been changed without any just cause or reason.

35. It has been submitted by Mr. Saxena that although the respondent No. 5 did not receive any reply to his representations, however on February 7, 2020 a revised list of shortlisted candidates for the post listed at serial no. 69 (unreserved) of Assistant Professor at CHS was uploaded by the Recruitment Cell on the website of the respondent No.1 University which contained the name of the respondent No.5. According to him, the said revised list had confirmed the essential qualifications as prescribed by the UGC Regulations, 2018. It was through an e-mail dated February 7, 2020 that the respondent No.5 was called for an interview and the same was held on February 12, 2020, after which the respondent No. 5 was selected for appointment.

36. As per Mr. Saxena the allegations of the petitioners that the respondent No.1 University had diluted / ignored the specialisation criteria for shortlisting of candidates are baseless inasmuch as the reply to the RTI application sought by the respondent No.5 confirmed that the specialisation criteria is not an essential criteria for shortlisting of candidates for appointment to the post of Assistant Professor. He argued that the submissions made by the petitioners stating that the decision of the Screening Committee for final shortlisting was overruled by the Internal Quality Assessment Cell was negated by the reply of the respondent No.1 University more specifically in paragraph 19 of its counter-affidavit wherein it was mentioned that the list of shortlisted candidates for the post listed at Serial nos. 69 & 70 was uploaded only after the final verification done by the UGC.

37. Mr. Saxena has argued that the petitioner has taken contradictory pleas as on one hand it is stated in paragraph 30 of the petition that the petition is limited and confined for assurance of technical compliance of the governing rules and regulations, whereas the petitioners themselves have failed to comply with the repeated requests of the Director, Internal Quality Assessment Cell for broadening the scope of screening for the short-listing of candidates which was seen to be compliant of the governing rules and regulations. He argued, the Screening Committee of which the petitioner No.1 claims to be a member was only tasked with the verification of documents & certificates, issuance of NOCs from present employers etc., and other such administrative work. The Screening Committee of which the petitioner No.1 was a member itself abrogated the authority

and challenged the recommendations made by a duly constituted Selection Committee.

38. He has rebutted the argument of the petitioners that there has been a dilution of academic standards within the CHS as being frivolous, since in the context of the appointments made upon the recommendations of the Selection Committee. The petitioners were members of the Screening Committee only and have taken on the power to determine the eligibility criteria, after ignoring the established rules and regulations as per the JNU Act. The Screening Committee does not have the power to substitute or challenge the recommendation of the Selection Committee. He pointed out to the fact that it was after the deliberations of the Selection Committee that the names of candidates for appointment against posts listed at serial Nos. 69 & 70 were advanced and as for the posts listed at serial Nos. 67 & 68, the Selection Committee found none of the candidates suitable and recommended re-advertisement of the posts. Not only were the candidates as recommended by the Selection Committee in possession of the specialisation, but had qualifications beyond the limits set by the Screening Committee and no question of the faculty members being aggrieved by the selection arises. He has also argued that it is the Selection Committee ultimately which is vested with the powers to make appointments and not the Screening Committee.

39. The allegation of the petitioners that a number of potential candidates did not apply for the posts advertised through the impugned advertisement as they were not eligible as per the original criteria has only been done to favour some candidates who were not selected for

the advertised posts. The present petition has been filed only as a means of vendetta since the candidates favoured by the petitioners could not be selected. Mr. Saxena has sought dismissal of the writ petition.

40. Mr. Kumar in his rejoinder submissions has argued that once the recruitment process has commenced the criteria once advertised cannot be changed without issuing a fresh advertisement. He stated that the mandate of law is clear on this aspect regardless of the fact who seeks such changes. Therefore, he stated that it is irrelevant that the new Chairperson of the Selection Committee approved the said changes. He stated that the petitioner No.1 did not have the powers to make such a change without issuing a fresh advertisement. It is also his case that the respondent No.1 University's submission that the advertisement empowered them to make alterations in points 8 & 19 is legally untenable. Even if, it were to be assumed that the impugned advertisement permitted such a change, any such alteration to the selection criteria during the recruitment process is barred by law as upheld through various judgments of the Supreme Court. According to him the respondent No.1 University cannot indirectly give itself the power to do something which it cannot do directly. The petitioners have submitted that the submission advanced on behalf of the respondent No.1 University is misleading since the impugned advertisement does not give them this power. Point 8 reads that relaxation in educational qualifications, age, experience would be permissible to the 'reserved category' candidates, as per the UGC rules. He argued that the post listed at serial no. 69 is an unreserved

post and therefore is not covered by this condition. It is the case of the petitioners that the respondent No.1 has failed to show which rule they are relying on that permit such a change during an ongoing recruitment. Point No. 19 only pertains to inadvertent errors and not substantive changes to the selection criteria and hence protection of this condition cannot be taken.

41. Mr. Kumar has argued that the respondent's case is that they have removed the specialisation and broadened the essential qualifications in terms of UGC Regulations, 2018. However, the specialisation requirements are consistent with the UGC Regulations, 2018 as it only provides for minimum qualification for a particular post. He has referred to the Regulation 1 (Coverage) to state that this regulation prescribe minimum qualifications and not the maximum qualifications required. These Regulations do not in any way prohibit or preclude universities from imposing additional qualifications for selection of candidates and there has been a consistent practice in the respondent No.1 University to specify a certain specialisation for posts where necessary as deemed by the Screening Committee. He has also relied upon the impugned advertisement to state that it is a common practice to indicate a specialisation against a post / vacancy. Since the recruitment of Assistant Professors was at the graduate level and not at the undergraduate level, the faculties are required to possess a significant subject area expertise as they themselves are required to teach specialised fields and supervise research. It is for this case that an expert in Modern History (the time period before Second World War and Independence of India) is in no position to supervise students who

are conducting research in Contemporary History, i.e., the era after independence. In this regard he has relied upon the Judgment of this Court in the case of ***Monalisa Joshi v. Jawaharlal Nehru University & Anr., WP(C) No.5476/2020*** dated September 3, 2020.

42. The respondents had in their counter-affidavit stated that the impugned lists were published with broader / relaxed criteria with the approval of Chairperson, CHS, Recruitment Cell and Internal Quality Assessment Cell. However, the Recruitment Cell and the Internal Quality Assessment Cell (respondent Nos. 2 & 3 respectively) have no power to decide / modify / relax the selection criteria. This signifies a clear division of power between the CHS and the respondents. He has referred to statute 7(2) to state that the CHS and its members are responsible for the conduct and standard of teaching at the CHS, and while they are required to comply with the minimum qualifications prescribed by the UGC the particular specialisations required for certain posts is for the CHS and Screening Committee to decide. Clause 6 (VI) of Ordinance 2 (Appointments of Teachers) clearly specifies that the Internal Quality Assessment Cell shall act as a documentation and record keeping cell for the institution. It is clear from the above that the respondent Nos. 2 and 3 have no power / role whatsoever in deciding questions of academic and substantive importance including the selection criteria, which is the domain of the individual centres and Screening Committees. Had the respondents being correct that the respondent Nos. 2 and 3 have the power to unilaterally alter selection criteria there would have been no need for them to seek permission / consent of the Screening Committee.

43. On the aspect that whether the petitioners have the *locus standi* to file the present petition, Mr. Kumar has argued that both the petitioners are faculty members at CHS and have direct interest in its smooth functioning. The academic and teaching standards at CHS are dependent on each unit having the required faculty members and unless the correct specialisations are possessed by the new appointee, the CHS would not be in a position to effectively offer the Master's Courses or supervise research undertaken by M.Phil. and Ph.D. students. It is their case that the removal of specialisation would impact the petitioners' ability to supervise students and fulfil their research commitments. Ultimately, it is the students who would suffer the greatest if faculties based on necessary specialisations are not recruited. It is the argument of Mr. Kumar that not only are the petitioners aggrieved personally but have also filed the present petition in the capacity of trustees of the CHS, students and University at large. In this regard, he has relied upon the following Judgments:

I. Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed, (1976) 1 SCC 671;

II. Chakravarti & Ors. v. Union of India, Civil Writ Appeal No. 119/1972 dated September 18, 1974;

44. Having heard the learned counsel for the parties and perused the record, two issues arise for consideration in this petition, (i) whether the selection / appointment of respondent Nos. 4 & 5 as Assistant Professors in CHS is justified and (ii) whether the petitioners have any *locus standi* to challenge the selection / appointment of respondent Nos. 4 and 5.

45. Since both the issues are inter-related, I proceed to decide the issues in *seriatim*.

46. At the outset, I must state that the petitioner No.1 was the Chairman of CHS till August 15, 2019. Thereafter, Prof. Umesh Ashok Kadam was appointed as the Chairperson and Head of the Screening Committee of CHS on August 16, 2019. Petitioner No.2 is a faculty in CHS.

47. The grievance of the petitioners is primarily that pursuant to the advertisement issued by the University for making certain appointments in the CHS, prescribing specialisation in Modern Indian History, Medieval Indian History, Contemporary History sub-specialisation in Economic History and Modern and Contemporary Indian History, the applications having been shortlisted on the basis of specialisation prescribed in the advertisement, the screening process could not have been enlarged on the basis of minimum qualifications prescribed by the UGC.

48. It must be stated that out of four posts of Assistant Professors advertised with four different specialisations, only candidates with specialisation in Contemporary History with sub-specialisation Economic History and Assistant Professor in Modern and Contemporary History have been found fit for being appointed to the said posts. To put it differently, as regards the post listed at serial nos. 67 and 68, the findings of the Selection Committee was that since no candidate was found suitable, no appointments have been made against them.

49. Having noted the challenge of the petitioners, the stand of the

respondent University is that the screening could not have been done on the basis of specialised qualifications when the UGC Regulations, 2018 prescribed the essential qualifications of a candidate must be a Masters Degree in concerned / relevant / allied subject. As per UGC National Eligibility Test subject list, History is the main subject and not the sub-classifications such as Modern History, Medieval History or Contemporary History, and hence the selection process has been done on the basis of essential qualifications as per UGC Regulations, 2018.

50. The facts as noted above would reveal that the Screening Committee headed by the petitioner No.1 shortlisted the candidates on the basis of specialisation, but the candidates who were excluded from the screening list of candidates shortlisted for interview sent representation by way of a mail to the Vice-Chancellor along with copies to other authorities in the University challenging the shortlisting on the ground that some of the candidates who have been shortlisted either did not have specialisation in Contemporary History with sub-specialisation in Economic History or did not fulfil basic criteria in accordance with the advertisement. On this, the Recruitment Cell through its letter dated May 13, 2019 had requested the Screening Committee headed by the petitioner No.1 to broaden the specialisations and desirable qualifications as much as possible in all cases irrespective of the reserve status of the post to be advertised. The Screening Committee refused to review or revise the consideration. It was only after the new Chairperson and Head of the Screening Committee, i.e., Prof. Umesh Ashok Kadam was appointed, who after

taking note of the representation of the candidates who were aggrieved by the first shortlist and comments of the Director of the Internal Assessment Cell that the shortlisting criteria was relaxed and the essential qualification were widened by including the minimum essential qualification as prescribed under the UGC Regulations with an inclusive approach, and other candidates were invited for the interview as per schedule. So, it is seen that the screening of the applications was initially done by a committee headed by petitioner No.1. The said committee did not agree for broadening the zone of consideration of the candidates commensurate with the qualifications prescribed by the UGC, i.e., Master's Degree in History / NET / Ph.D without any specialisation. The said regulations does not prescribe any specialised subject to be the basis for making appointment. In any case, the Screening Committee headed by Prof. Kadam has broadened the zone of consideration in conformity with the UGC Regulations. It is pursuant to the decision of this Screening Committee that the selection committee considered the names of the candidates so screened by the selection committee for interview and pursuant thereto respondent Nos. 4 and 5 were found successful and selected.

51. So, the challenge made by the petitioners that the selection needs to be carried out on the basis of the candidates screened by the committee as headed by the petitioner No.1 is clearly untenable as such decision has been taken by a properly constituted Screening Committee headed by Prof. Kadam which increased the zone of consideration to be in conformity with the UGC Regulations, 2018. Hence, the petitioner No. 1 cannot contest the decision.

52. It is not the case of the petitioners that the Screening Committee headed by Prof. Kadam was not a duly constituted committee or the decision of the Screening Committee is actuated by malafide. Hence, it must be held that the decision of the screening committee to revise the zone of consideration is justified in terms of the due process as laid down under the ordinances / statutes.

53. One of the submissions of Ms. Arora was that respondent No.1 University has recruited personnel after relaxing specialised requirements and made appointments to the four post of Assistant Professors on the basis of essential qualifications alone. In this regard, the details of Centres where such relaxation has taken place have been given in paragraph 13 above. No doubt, such appointments have been made on the basis of essential qualifications, but at the same time, it is also seen that in certain centres appointments have been made based on specialised qualifications. It is not understood why and for what reason the University has used different yardsticks for selection to different posts advertised through a common advertisement. It is expected of the University to follow a consistent policy to avoid any confusion or even litigation for the larger interest of the institution. I must also state that it is not the case of the petitioners that respondent Nos. 4 and 5 do not have specialised qualification for which they have been selected / appointed. It is also not their case that the respondent Nos. 4 and 5 have not applied against the advertisement. So, it follows that the respondent Nos. 4 and 5 have applied for the post in terms of the advertisement.

54. The larger question which needs to be answered is whether the

University is required to follow the mandate of the UGC Regulations, 2018 calling all the candidates who fulfil the minimum qualification prescribed under the said Regulations. The answer has to be in affirmative in view of the law settled by the Supreme Court in *Kalyani Mathivanan (supra)*, wherein it has held that the UGC Regulations are mandatory to teachers and other academic staff in all the Central Universities and Colleges therein. Even the plea of Mr. Tiwari and Mr. Saxena that (i) there is no mention of any specialisation at the entry level in direct selection of Assistant Professors in UGC Regulations, 2018, (ii) minimum eligibility criteria for recruitment is Masters and NET or Ph.D as per UGC Regulations, 2018, (iii) as per the UGC sub list for NET Exam, Indian History is mentioned without being prefixed by Ancient / Medieval / Modern and as such they consider history as a single subject and (iv) any decision which is contrary to the statutory rules have to give way to the statutory provisions; and (v) if there is any variance between the advertisement and the statutory rules, it is the statutory rules that would take precedence, are all appealing.

55. The aforesaid must not be understood to mean that specialisation in subjects should not be given due consideration. In fact, it cannot be denied by the respondents that there are specialisations even in History like Ancient History, Medieval History and Modern History. But such specialisations would become relevant only at the time of actual consideration of candidates by the selection committee keeping in view the requirement of the institution and the qualification possessed by a particular candidate. It means, the University cannot at the threshold reject the candidature of a candidate

if he meets the minimum qualifications prescribed by the UGC, unless because of a huge number of applications received by the University, a need is felt to filter the applications based on defined criteria. It is not such a case here.

56. Now coming to the issue of *locus standi* of the petitioners to file the present petition the case of the petitioners as canvassed by Mr. Kumar is that the petitioners are the faculty members of CHS. They have a direct interest in the smooth functioning of the Centre and each unit is required to have faculty members with specialisation so as to effectively facilitate education or supervise research undertaken by M.Phil and Ph.D. Students. It would be the students, who would suffer if the faculty based on necessary specialisation are not recruited.

57. Suffice to state, respondent Nos. 4 & 5 have been appointed pursuant to the recommendations made by the Selection Committee consisting of the Vice-Chancellor, the nominee of the Chancellor and the Dean who are also the functionaries of the University and who also have equal responsibility and interest in ensuring the academic and teaching standards are maintained in the Centres. They are also equally interested in the effective supervision of the M.Phil and Ph.D. Students. The challenge being to the selection and appointment of respondent Nos. 4 & 5 as Assistant Professor in CHS and none of the candidates / applicants having challenged the said selection / appointment, and the petitioners being not the contenders to the said posts, could not have challenged the appointment of the respondent Nos. 4 & 5. The petition has not been filed for a Writ of Quo Warranto and moreover the respondent Nos. 4 & 5 have been shortlisted by a

duly constituted Screening Committee, surely the petitioners have no *locus standi* to challenge the list dated February 7, 2020, recommendations of the Selection Committee or the appointment of respondent Nos. 4 & 5.

58. Now I shall consider the judgments referred to by the counsel for the petitioners. He has referred to the judgment in the case of ***Jasbhai Motibhai Desai (supra)***, to contend that the petitioners have *locus standi* to file the present petition. The facts in the said case are that the respondent Nos.1 and 2 intending to construct a cinema theater applied for a no-objection certificate under Rule 3 of the Bombay Cinema Rules, 1954 to the District Magistrate. The District Magistrate notified the matter and invited objections from the public. Several persons objected but no objection was lodged by the appellant therein, who owned the only cinema in that area. The District Magistrate after completing all the formalities concluded against the grant of certificate. The State Government however did not agree with his recommendation and directed the grant of certificate.

59. Subsequently, the appellant filed a writ petition in the High Court under Articles 226 and 227 of the Constitution praying for the issuance of a writ of certiorari, mandamus, or any other appropriate writ or order directing the respondents to treat the no-objection certificate granted to respondent Nos.1 and 2 as illegal, void and ineffectual. The main ground was abdication of discretionary power by the District Magistrate. The District Magistrate in reply raised a preliminary objection that the appellant had no *locus standi* to file the writ petition. The High Court dismissed the writ petition on that

ground and as such the appeal was filed before the Supreme Court.

60. The Supreme Court was of the view that in India, in order to have *locus standi* to invoke extraordinary jurisdiction of the Court under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject matter of the application, though in the case of some writs like *habeas corpus* or *quo warranto*, this rule is relaxed or modified. So as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a *locus standi* in the matter.

61. The Supreme Court held the expression ‘ordinarily’ indicates that this is not an iron-cast rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule.

62. The Court was of the view that in the context of *locus standi* to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories:

- (i) “person aggrieved”
- (ii) “stranger”
- (iii) busybody or meddlesome interloper

The persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. The High Court should do

well to reject the applications of such busybodies at the threshold. The Supreme Court held the applicants whose legal rights have been infringed are undoubtedly stand in the category of persons aggrieved but where a person who has suffered legal wrong or injury in the sense that his interest, recognised by law has been prejudicially and directly affected by the Act or omission of the authority complaint of or is he a person suffered a legal grievance inasmuch as a decision has been pronounced are wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to some or a person who has a special or substantial grievance or his own beyond some grievance or inconvenience suffered by him in common with the rest of the public. The question would be whether such a person would be entitled to object and be heard by the authority before it took impugned action. Such persons can be distinguished from strangers.

63. The Supreme Court held the Court should not interfere at the instance of the stranger unless there are exceptional circumstances involving a grave miscarriage of justice having adverse impact on public interest. It held, the appellants stand is that setting up of a rival cinema house in the town will adversely affect his monopolistic commercial interest, causing pecuniary harm and loss of business from competition. Such harm or loss is not wrongful in the eye of law, because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity. The Court also held, the appellant has not been denied or deprived of legal rights. He has not suffered injury

to any legally protected interest. As such the Supreme Court dismissed the appeal.

64. Insofar as the judgment in the case of ***Chakravarti and Ors.*** (*supra*) is concerned, this Court was concerned with the facts that petitioners, respondent Nos.5 and 6 therein were displaced persons from Pakistan. They were occupying property which was evacuee (salable). The petitioners asked for allotment of the same by the department or its sale by auction. Respondent No.5 filed a petition against order of sale, which was dismissed. The auction took place and the bid of respondent No.6 was the highest. Subsequently, the Asst. Settlement Commissioner, accepted objections that there was a material irregularity in sale and substantial injury took place. Petitioner Nos.1 and 2, respondent No.5 filed a writ petition against the auction. In reply affidavit, Chief Settlement Commissioner had stated that the Asst. Settlement Commissioner had set aside the sale and as such the writ petition had become infructuous. During Court proceedings, the Government had offered to transfer property jointly to petitioners and respondent Nos.5 and 6. The petition was dismissed as having become infructuous. The Asst. Settlement Commissioner then gave final shape to his earlier order and rejected bid of respondent No.6. Respondent No.6 appealed against this claiming amongst other grounds, the Asst. Settlement Commissioner was not authorised to accept or reject bids. The appeal was rejected by the Settlement Commissioner. Respondent No.6 then filed a revision petition to the Government under Section 33 of Displaced Persons (C & R) Act 1954, which was accepted not

on the ground that the Asst. Settlement Commissioner was not authorised but that the Settlement Commissioner had not found that objector had suffered any substantial injury. Sale offer made in Court was followed by letter offering transfer for ₹1,10,000/- which was accepted. However, the price was raised to ₹1,20,000/- subsequently. It was also accepted. In the revision order the Joint Secretary to the Government did not advert to the facts of offer and acceptance. The petitioners filed the writ petition against this order.

65. The issue before the Supreme Court was the *locus standi* of the petitioners to challenge the impugned order passed by the Government. The Supreme Court decided the matter from the perspective whether the petitioner had a personal interest in the subject matter of the petition, and held as under:

“(14) The discussion in this case is limited to a private situation, as distinct from a public one. The kind of "special interest" in the proceedings which the petitioner should possess when he claims to represent the public interest, a requirement suggested in some decisions, does not fall for decision in this case. But it is necessary to notice that a remedy under administrative law, of an individual aggrieved asking for a writ of certiorari or any other writ or direction to issue is a remedy of public rather than private law. The need for resorting to these remedies arises, even in a private context, because the remedies of private law are either inadequate or useless for the purpose. Articles 226 of the Constitution is not limited to the enforcement of any of the rights conferred by Part III; it is so worded as to take in the issue of writs etc. "for any other purpose" as well. It may be for the enforcement of any other right of the petitioner which does not fall under Part III. In exceptional

circumstances, as Subba Rao, J. pointed out in *Gadde Venkateswara Rao*, a person who has been "prejudiced" by the impugned order can file a petition under Article 226. The question, Therefore, is not whether the petitioners in the present case can enforce the offer of the property to them and respondents 5 and 6 against the Government or not. They are entitled to say that but for the impugned order the Govt. would have been willing to proceed with the said offer, and may still proceed with the said offer. As would be noticed presently the said order was made, as the Government was entitled to make. under the provisions of the Displaced Persons (Compensation & Rehabilitation) Act, 1954; it was within the competence of the Government to do so Under Rule 87 of the Displaced Persons (Compensation & Rehabilitation) Rules. 1955 any property forming part of the compensation pool may be sold by public auction or by inviting tenders or in such other manner as the Chief Settlement Commissioner may by general or special order direct. There is no reason to think that the Government having made the offer to the persons concerned in this case about the property which was admitted by the Government to form part of the compensation pool will go back on the said offer. The petitioners, Therefore are really persons aggrieved by the impugned order and if there is any illegality in the said order or other circumstances vitiating the said order the petitioners could invoke the jurisdiction of this Court under Article 226 and they cannot be merely put off on the ground that the offer of the property by the Government to them and respondents 5 and 6 in this case is something which they could not legally enforce against the Government The officials of the Rehabilitation Department constituted under the Act have processed the offer to sell the property for Rs. 1,20,000.00 jointly to the petitioners and

respondents 5 and 6. The concerned files were sent for and perused. Even the 6th respondent who was agitating his rights as a purchaser of the property under the earlier auction sale and who had filed an appeal against the said decision, which was then pending had- said on 3.5. 1971 that he also was willing to purchase the property jointly with the others as per the offer made to them subject only to the result of the appeal. This offer was itself made after not only the Government, but also the present sixth respondent had stated not only in the returns but also during the hearing of the writ petition before Rajinder Sachar, J. that the earlier auction sale in which the 6th respondent was the highest bidder had been set aside and after the writ petition was dismissed as having been unnecessary in view of this stand, the said offer to all the petitioners and respondents 5 and 6 jointly was made in respect of this very property, on the footing that the prior auction sale in favor of 6th respondent had been set aside and that the property was part of the compensation pool.

(15) Quite contrary to the stand taken by the Government itself and by the 6th respondent the latter had moved the Government under section 33 of the Act to set aside the order rejecting the auction sale in his favor. The question whether the Government was justified in setting aside the impugned order under section 33 of the Act is one which will be discussed later when I discuss point (2). The petitioners are clearly interested in the property by reason of the same having been of.”

66. Suffice to state, both the judgments cited by Mr. Kumar in support of his submission that the petitioners have *locus standi* are distinguishable on facts.

67. At this juncture, I may refer to the decision of the Supreme Court in the case of ***R.K. Jain v. Union of India & Ors., AIR 1993 SC 1769***, wherein the Court reiterated the settled law that in service jurisprudence, it is only for the aggrieved person, i.e., the non-appointee, to challenge the legality of the impugned selection. Relevant portion of the judgment is reproduced as under:

“74..... In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person.”

68. In the case of ***Zonal Manager, Bank of India (supra)***, relied upon by Mr. Kumar to contend that even if there is any change in qualification and criteria after the notification is issued but before the completion of selection process and the employer/recruiting agency has adopted the change, it will be incumbent on the employer to issue a corrigendum incorporating the changes to the notification. Suffice to state that such plea cannot be raised by the petitioner. This grievance could only be raised by a person who though eligible could not apply pursuant to the advertisement issued. The petitioners are only faculty in CHS, and are not contenders to the post nor persons who were otherwise eligible to apply pursuant to the advertisement. Hence, the judgment has no applicability in the facts of this case. There is no legal right of the

petitioners that has been infringed or prejudicially and directly affected by the action of the University. Merely saying that the petitioners have an interest, as they are faculty of CHS is not appealing, more so as it is not their case that the enlargement of the zone of consideration is not in conformity with the UGC Regulations, 2018.

69. Even the judgment in the case of ***Mohd. Sohrab Khan (supra)***, relied upon by the learned counsel for the petitioner shall have no applicability. The said judgment is for proposition that the recruitment process has to be in accordance with the qualifications prescribed. By calling all the applicants who were eligible as per the UGC Regulations, 2018, the respondent No.1 University had ensured the selection process is in accordance with the regulations prescribed. Insofar as the plea that some candidates might not have applied by considering themselves ineligible according to the advertised qualification, suffice to state the same can be the grievance of those candidates who could not apply, and not the petitioners herein. Hence, this judgment has no applicability in the present case.

70. The judgment in ***Ramkhiladi Sharma and Others (supra)*** sets out the proposition that once the process of recruitment has commenced upon issuance of advertisement, no changes in the essential qualification can be made during the subsistence of the said recruitment. There is no dispute on the proposition. But *vide* the impugned action, the selection has been brought in conformity with the statutory rules. The judgment is distinguishable.

71. Similarly, insofar as reliance placed by the learned counsel for the petitioners on *Avinash Samal v. State of Chhattisgarh and Ors.*, MANU/CG/0302/2018, is concerned the said judgment has no applicability to the issue which arises for consideration in the present case. Rather, I find the decision relied upon by the respondent Nos.4 and 5 in the case of *Suresh Chandra (supra)* is applicable on all force in the present matter, wherein the Coordinate Bench of this Court has in paragraphs 16 and 17 held as under:-

“16. If advertisement is contrary to Regulations of UGC in that situation, the Supreme Court in case of Ashish Kumar v. State of Uttar Pradesh and others: (2018) 3 SCC 55 held that any part of the advertisement which is contrary to the statutory rules has to give way to the statutory provisions and when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence. In the above mentioned judgment passed by the Supreme Court, para 21 of the judgment passed in Malik Mazhar Sultan v. UP Public Service Commission: (2011) 13 SCC 122 which reads as under:

“21 The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was

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erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.”

17. *It is not in dispute that as per UGC Regulation, 2010, a minimum of 10 years of teaching experience in University/College is required for the direct recruitment at the post of Professor, which the respondent No. 4 possessed, therefore, I find no merit in the present writ petition.”*

72. In view of my above discussion on merits, and the petitioners not having *locus standi*, the petition is dismissed. No costs.

CM No. 6020/2020 (on behalf of petitioners for interim stay)

Since I have already heard the parties and decided the writ petition, this application does not survive and the same is dismissed.

V. KAMESWAR RAO, J

OCTOBER 31, 2022/jg/aky

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