



2024:DHC:4165



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

%

Judgment reserved on: 24.04.2024

Judgment delivered on: 22.05.2024

+ **W.P.(C) 15161/2023 & CM APPL. 60625/2023, CM APPL. 66105/2023, CM APPL. 2240/2024, CM APPL. 7296/2024, CM APPL. 12040/2024**

MD SHAMI AHMAD ANSARI & ANR

..... Petitioner

Versus

JAMIA MILLIA ISLAMIA & ORS

..... Respondents

+ **W.P.(C) 16421/2023, CM APPL.66103/2023, CM APPL.2242/2024, CM APPL.2243/2024, CM APPL.7269/2024 & CM APPL. 12003/2024**

MOHD ANWAR KHAN

.....Petitioner

versus

JAMIA MILLIA ISLAMIA & ORS

..... Respondents

+ **CONT.CAS(C) 4/2024, CM APPL. 76/2024 (Exemption)**

MOHD ANWAR KHAN

..... Petitioner

versus

EQBAL HUSSAIN

..... Respondent

Advocates who appeared in this case:



For the Petitioner : Mr. Jayant Mehta, Senior Advocate with Mr. Ankit Jain, Mr. Shailesh Tiwari, Mr. Aditya Tyagi and Ms. Tanisha Gopal, and Ms. Nikita Sethi, Advocates for Petitioner No.2.

For the Respondents : Mr. Sanjay Ghose, Sr. Advocate alongwith Mr. Shoaib Khan, Mr. Fahim Khan and Mr. Advait Ghosh, Advocates for R-1 & 3.

Mr. Ankur Chhibber, Advocate for R-2.

Ms. Monika Arora, CGSC alongwith Mr. Subhrodeep Saha, Ms. Jyoti Tiwari and Ms. Radhika K., Advocate for UOI/ R-4 & 7.

Dr. Amit George, Mr. Mobashshir Sarwar and Mr. Adhishwar Suri, Advocates for R-5 & 6.

Mr. Apoorv Kurup and Ms. Gauri Goburdhun, Advocates for UGC/R-8.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

1. The petitioners have filed the instant writ petition seeking the following prayers:-

Prayers in W.P.(C) – 15161/2023

A. Issue an appropriate writ, order, direction in the nature of quo warranto declaring the impugned appointment of Prof. Eqbal Hussain (Respondent no. 2) as Pro-Vice Chancellor, Jamia Millia Islamia dated 14.09.2023 and consequently, Officiating Vice-Chancellor, Jamia Millia Islamia with effect from 13.11.2023 in flagrant violation and total non-compliance of statutory provisions of the Jamia Millia Islamia Act, 1988;



B. Calling the official record from Respondent No.1 pertaining to the impugned appointment of Prof. Eqbal Hussain as the Pro-Vice Chancellor and subsequent Officiating Vice-Chancellor of the Respondent University.

C. Issue an appropriate writ, order, direction and/or declaration in the nature of quo warranto declaring the appointment of Prof. Eqbal Hussain (Respondent No. 2) as the pro-vice chancellor and Officiating Vice-Chancellor in flagrant violation/contravention and total non-compliance of Statute 4(1) of the statutory provisions of Jamia Millia Islamia Act, 1988 read with clause 7.2 of the UGC regulations on minimum qualifications for appointment of teachers and other academic staff in universities and colleges and measures for the maintenance of standards in higher education, 2018 as amended from time to time, as the Pro-Vice Chancellor and subsequently as Officiating Vice-Chancellor of the Respondent No.1 University illegal, arbitrary, void ab initio and non est in law.

D. Pass any other order as this Hon'ble Court may deem fit in the interest of justice.

Prayers in W.P.(C) – 16421/2023

A. Issue an appropriate writ, order, direction in the nature of the nature of mandamus directing and commanding the Registrar, Jamia Millia Islamia to cancel the order dated 14.09.2023 appointing respondent no. 2 as Pro-Vice Chancellor and his subsequent appointment dated 12.11.2023 as Officiating Vice-Chancellor, Jamia Millia Islamia in compliance of statutory provisions of the Jamia Millia Islamia Act, 1988;

B. Calling the official record from Respondent No.1 pertaining to the impugned appointment of Prof. Eqbal Hussain as the Pro-Vice Chancellor and subsequently as the Officiating Vice-Chancellor of the Respondent University;

C. Issue an appropriate writ, order, direction and/or declaration in the nature of mandamus for the appointment of senior most professor who has not attained the age of superannuation of 65 years to discharge the duties of Vice-Chancellor as per Proviso to Statue 2(6) of the Jamia Millia Islamia Ac, 1988;

D. Pass any other order as this Hon'ble Court may deem fit in the interest of justice.

Prayers in CONT.CAS(C) – 4/2024



a) *Convict and punish the contemnors in accordance with law for noncompliance and wilful disobedience of the order dated 20.12.2023 passed by this Hon'ble Court in W.P.(C) No. 16421/2023 titled as Mohd. Anwar Khan vs. Jamia Millia Islamia & Ors. and;*

b) *Pass any other order as this Hon'ble Court may deem fit in the interest of justice.*

2. The facts germane to the dispute shorn off all unnecessary details are as under:-

2.1 On 14.09.2023, the then Vice Chancellor (hereinafter referred to as the “VC”), Jamia Millia Islamia University (hereinafter referred to as the “University”) appointed respondent no. 2/ Prof. Eqbal Hussain, as the Pro Vice Chancellor (hereinafter referred to as the “PVC”) in terms of Section 11(3) read with Statute 4(1) of the Statutes of Jamia Millia Islamia Act, 1988 (in short “JMI ACT”), vide Office Order No. F. Gen. -1 02/RO/Estt. -T/JMI/2023/PB-46.

2.2 Thereafter, on 15.09.2023, a Notification was issued by the Office of the Registrar notifying that respondent no. 2 has assumed charge of Pro Vice Chancellor w.e.f. 14.09.2023, in pursuance of the said appointment.

2.3 Subsequently, on 26.09.2023, an Office Order was issued stating that in continuation of the Office Order dated 14.09.2023, in case the office of Vice Chancellor becomes vacant due to her resignation or otherwise or if she is unable to perform her duties owing to absence, illness or any other cause, respondent no. 2 shall discharge the duties of the Vice Chancellor as Officiating Vice Chancellor until a new Vice



Chancellor assumes office or the existing Vice Chancellor attends to the duties of the office.

2.4 In the meanwhile, the then Vice Chancellor of University was visiting abroad *w.e.f.* 27.09.2023 to 08.10.2023 and respondent no.2, in her absence, was appointed to act as the Officiating Vice Chancellor in terms of Statute 2(6) of the Statutes of the University.

2.5 Pursuant thereto, on 26.09.2023, an Office Order was issued by the Office of the Registrar, JMI, designating the respondent no. 2 as the Officiating Vice-Chancellor of the University as per the Statute 2(6) of the JMI Act, in the absence of Vice Chancellor. Consequently, respondent no. 2 acted as the Officiating Vice Chancellor from 27.09.2023 to 08.10.2023 when the Vice Chancellor was visiting abroad.

2.6 Subsequently, on 03.11.2023, the Secretary, Ministry of Education, Government of India was intimated by the then Vice Chancellor about the handing over of the charge of the Vice Chancellor to the Pro-Vice Chancellor in terms of Statute 2 Clause (6) and Statute 4 (2) of the JMI Act, upon her superannuation on 12.11.2023.

2.7 In pursuance thereof, on 12.11.2023, the Office of the Registrar issued an Office Order in accordance with Statute 2 (6) and Statute 4 (2) of the JMI Act, thereby handing over the charge of Officiating Vice Chancellor to respondent no. 2 consequent to the completion of tenure



of the Vice Chancellor *w.e.f.* 13.11.2023 (Forenoon), till a new Vice Chancellor, JMI, assumes the charge of the office of Vice Chancellor. All necessary documents *qua* handing over the charge of office of Vice Chancellor were also executed.

2.8 Consequently, on 13.11.2023, a Notification was issued by the Office of the Registrar *qua* respondent no.2 assuming the charge of Officiating Vice Chancellor.

2.9 Aggrieved by such actions, the petitioners have filed the present petitions.

3. This Court has been called upon to resolve a conundrum arising out of the action taken by the then Vice Chancellor/ Prof. Najma Akhtar of the Jamia Millia Islamia University in exercise of certain powers bestowed under the Statutes, Ordinances and provisions of the Jamia Millia Islamia Act, 1988.

4. The consideration being, whether the exercise of power under Statute 2(4), 2(6) read with Statute 4 (2) and subsequently Section 11(3) of the JMI Act are in consonance with the Regulation 7 of the UGC Regulations of Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 (hereinafter referred to as the “*UGC Regulations*”). The question also being as to whether the appointment of respondent no.2 as the PVC at the first instance and appointment of the same respondent no.2 as Officiating VC in the second instance are as per the



Statutes, Ordinances, provisions of the JMI Act and in consonance with the Regulations of the UGC Regulations, 2018.

5. The present petition challenges the appointment of respondent no.2 as the PVC and subsequently, as Officiating VC on the grounds of violation of the Statutes, Ordinances, provisions of the JMI Act and being contrary to the Regulations of the UGC Regulations, 2018 and hence, has invoked writ jurisdiction of this Court seeking issuance of a writ of *Quo Warranto*.

CONTENTIONS OF THE PETITIONER:-

6. Mr. Jayant Mehta, learned Senior Counsel appearing for the petitioner in his opening statement submits that this is a gross case where the Statutes, Ordinances and the provisions of JMI Act have been blatantly violated prompting the petitioner to approach this Court. His submissions are very clear and precise, in that, the appointment of respondent no.2 in the first instance, by the then VC purportedly in exercise of powers under Section 11(3) of the JMI Act read with Statute 4(1) of the Statutes made thereunder, as PVC, itself is bad in law. He submits that the emergent power stipulated in Section 11(3) of the JMI Act did not contemplate usage of such emergent provisions at a time when there was no situation as covered under Statute 2(6) of the Statutes of the University. To clarify, Mr. Mehta refers to Clause (6) of Statute 2 to demonstrate that power contemplated therein could be exercised only if the events or situation covered therein arose and not otherwise. To buttress further, he submits that the office of the VC did not become vacant due to death, resignation or otherwise or a situation where VC is unable to perform his duties owing to illness or any other cause. He submits that as on



that date, none of the aforesaid situations had arisen, thus the exercise of powers to appoint respondent no.2 as PVC was in violation of the Act, Statute and the UGC Regulations. Learned Senior Counsel also argues that even otherwise, the VC could not have overlooked the proviso to Clause (6) of Statute 2, which provides for appointment of the “*Senior Most Professor*” as PVC. He submits that petitioner no.2 is the Senior Most Professor of University and if the Statute was correctly invoked, then it could have been only the petitioner no.2 who was eligible, which could not have been overlooked.

7. Learned Senior Counsel, at the outset, took this Court through various relevant Statutes of the JMI to set the tone for his eloquent arguments.

8. The next limb of the argument of learned Senior Counsel is regarding the power of VC under Section 11(3) of the Act. He submits that the said power is to be exercised only in an emergent situation, however, subject to the approval of the Executive Council (hereinafter referred to as the “*EC*”). According to learned Senior Counsel, since no approval had been obtained from the EC by the VC till date, the very appointment and continuation of the respondent no.2, firstly as PVC and subsequently as Officiating VC is against the Statute and ought to be quashed. Learned Senior Counsel submits that even if it is assumed that the VC had to exercise the emergent powers on behalf of the EC, the EC being the appointing authority of the PVC, the 1st proviso thereto, stipulated that the said decision ought to have been placed before the EC and approval taken. Since, there is no document showing any such approval from the EC, either at the relevant time or even thereafter, the



appointment of the respondent no.2 as PVC is liable to be quashed and set aside.

9. Learned senior counsel had also argued that in any case, as per the Statute 4 (2), the tenure of the PVC was co-terminus with that of the VC and when the VC demitted office on 12.11.2023, the term of the PVC, in the present case, of the respondent no.2, too came to an end. He submits that the continuation of the respondent no.2 further was in itself blatant violation of the Statutes. Thus, according to the learned Senior Counsel, the appointment and continuation of respondent no.2 as PVC is bad in law.

10. Learned Senior Counsel, as an example of the past practice of how the PVC were appointed, referred to the document dated 14.09.2023 purporting to be an appointment of PVC, to submit that even in the past, Section 11(3) was not invoked, rather, it was Statute 2(6) & 4(2), subject to approval of the EC. He submits that in the present case, only to evade the rigors of the Statutes, the provisions therein were circumvented to appoint the respondent no.2 as PVC.

11. Learned Senior Counsel next shifted his focus to the appointment of respondent no.2, while purportedly discharging functions as PVC, as an Officiating VC, that too by the outgoing VC. He submits that the then VC was demitting office by efflux of the period as stipulated and not on any emergent ground or grounds as stipulated in 2(6) of the Statute. Since the then VC was demitting office in the ordinary course of the expiry of the period of appointment as VC, there did not arise any emergent situation warranting appointment of respondent no.2 as the officiating VC. He submits that the provisions of Statute 2(6) cannot be read in a manner so as to perpetuate an



illegality in the appointment of respondent no.2 as officiating VC. In that, learned Senior Counsel submits that once the term of the VC came to an end, then by operation of Statute 4(2), the appointment of the respondent no.2 as PVC too came to an end. He could not have been considered for further appointment as officiating VC by resorting to Statute 2 (6) with the aid of Statute 11(3). In his submissions, the whole exercise was misreading of the Statutes and thus, patently illegal. It is contended by learned Senior Counsel that yet again, none of the emergent situations contemplated in Clause (6) of Statute 2 arose at all. The then VC was demitting office on account of expiry of her tenure and not on account of any emergent reasons. He submits that respondent no.1 ought to have proceeded to initiate steps for appointment of a regular VC as provided in Statute 2. Thus, according to learned Senior Counsel, there was neither any occasion nor any reason available with the outgoing VC to invoke Section 11(3) of the Act. That having been done contrary to the Statutes, appointment of respondent no.2 as officiating VC was *non est* in law. He reiterates that in any case, the VC ought to have appointed the Senior Most Professor as per the proviso to Clause (6) of Statute 2 before demitting office. Violation of the proviso too would render the invocation of powers under Section 11(3) susceptible to judicial review.

12. Learned Senior Counsel next invited attention of this Court to the Regulation 7.0 of the UGC Regulations which regulates the appointments to the post of PVC and VC. He submits that even the Regulations stipulate that PVC shall hold office for a period which is co-terminus with that of the VC. Thus, in his submission, the moment VC demitted office, the status of



respondent no.2 either as PVC came to an end. He submits that if this is to be complied with, then the appointment of VC according to the Statute 2 ought to have been followed. That having not been done, the appointment of respondent no.2 as Officiating VC was illegal and violative of Regulation 7 of the UGC Regulations. He also submits that there was no emergent situation arising out of the normal expiry of the office of the VC, which was known to everyone, and on that basis, submits that the exercise of powers under Statute 11(3) by the outgoing VC was an exercise not contemplated by the Statutes, hence illegal and *non est*.

13. Furthermore, learned Senior Counsel also adverted to another aspect that Section 11(3) is a power that is available to be exercised during an emergent situation where the actual decision-maker, in terms of the JMI Act or the Statutes thereunder, is unable to take a decision in the required time. In other words, what learned Senior Counsel seems to suggest is that the exercise of powers under Section 11(3) cannot be interpreted nor can the same render the power of EC or the Visitor a dead letter. It can surely not mean that what cannot be done in a particular manner will be permissible to be done in a manner unknown to law or contrary to statutes.

14. Learned Senior Counsel also extends the aforesaid submission by arguing that the only meaningful reading of Statute 2(6) would be that it would apply in situations where the vacancies are either temporary or unforeseen. According to learned Senior Counsel, if the VC is unable to attend or is travelling for a considerable duration or in the worst case scenario, dies in office, in such circumstances alone, the powers under Statute 2(6) would be



exercised. He submits that it cannot be read that powers under Statute 2(6) would nullify or render nugatory the provisions of Statute 4(2), if read so, it would mean that PVC would take over the powers available with VC. This cannot be the meaning given to the Statutes.

15. Learned Senior Counsel submits that the Statutes having been violated as narrated above, this Court may issue a writ of *quo warranto* and declare the appointment of respondent no.2, firstly as the PVC and subsequently as Officiating VC as illegal and *non est* and set aside and quash the same.

CONTENTIONS OF RESPONDENT NO. 1 AND 3:-

16. Mr. Sanjoy Ghosh, learned Senior Counsel appears for the respondent no. 1 & 3/University and submits that the present writ petitions have been falsely foisted by the petitioners only to create difficulties in the exercise of administrative powers of the VC, which is the respondent no.2 at the moment. He submits that due care has been taken to ensure that for the appointment of respondent no.2 as PVC at the first instance and as officiating VC in the second instance, the appropriate Sections of JMI Act and Statutes framed thereunder have been fully complied with. Learned Senior Counsel had submitted that the exercise of powers under Statute 2(6) read with Section 11(3) of the JMI Act had been correctly exercised and that too, in an emergent situation as a pure stopgap arrangement. He submits that the relevant Statutes provide for such an action to be undertaken by the University and there is no violation of any of the Sections of the Act, Statutes of the University or any of the Regulations of UGC Regulations, 2018.



17. Learned senior counsel also submitted that this Court may read and interpret the various provisions of the Sections of the Act, the Statutes framed thereunder as also the UGC Regulations in a manner so as to ensure that the objective behind those Statutes and other provisions are fulfilled and the said objective achieved. He submits that there could be varied fact situations requiring the authorities to take decisions only for the purpose of ensuring that the administrative machinery of a University or an institution does not crumble or come to a standstill.

18. Mr. Ghosh at the outset, drew attention of this Court to Section 11(3) of the Act to submit that the sub-Section 3 confers wide powers upon the VC to take immediate action as would be necessary on any matter and exercise any power conferred on any other authority of the University subsequent whereto the VC is under an obligation to report such matter to such authority regarding the action taken by him. He submits that it is this power which was exercised by the then VC to appoint the respondent no.2 as PVC on 14.09.2023 as the post was lying vacant and VC was going to superannuate on 12.11.2023. He substantiates the said argument by submitting that the post of PVC is crucial since in the absence of VC, the PVC becomes responsible for discharging the duties as the officiating VC. He thus submits that it was essential to invoke the powers under Section 11(3) of the Act to appoint respondent no. 2 as PVC.

19. In order to buttress his arguments, learned senior counsel referred to a series of previous office orders of the years 2013, 2016, 2021 and 2022 to submit that such powers were invoked even on earlier occasions for such



appointments and the said office orders were further transmitted to the EC only for reporting the matter.

20. Learned senior counsel also referred to the further exercise of powers by the VC *vide* the office order dated 26.09.2023 in terms of Section 11(3) of the Act read with Statute 4(2) and Statute 2(6) to approve that as and when the office of the VC becomes vacant due to death, resignation or otherwise or if she is unable to perform her duties owing to absence, illness or any other cause, the respondent no. 2/PVC would discharge functions of the Officiating VC, until a new VC assumes office or the existing VC attends to the duties of her office, as the case may be. According to learned Senior Counsel, this exercise of power is provided for in the aforesaid Sections as also the Statutes and having been exercised in a manner known to law, the petitioners cannot have any grievance.

21. He submits that it is not disputed that the then VC had infact travelled abroad and *vide* the office order dated 27.09.2023, the respondent no.2-PVC had been directed to perform the routine duties of the VC in the capacity of an officiating VC. According to learned Senior Counsel, this was in terms of Statute 2(6).

22. On facts, Mr. Ghosh draws attention to the meeting of the EC held on 09.11.2023 convened by the then VC, namely, Prof. Nazma Akhtar, wherein petitioner no.2 had also participated and yet did not protest or object to the respondent no.2 also attending the same meeting as a PVC. He submits that in any case, if the petitioner no.2 was aggrieved by any such decision, then by virtue of second proviso to sub-Section (3) of Section 11 of the Act, he could



have filed an appeal to the EC within three months from the dates on which the decisions were taken, that is, 14.09.2023 and 26.09.2023, when respondent no.2 was appointed as PVC and as an officiating VC, respectively. Such action not having been taken by the petitioner no.2, the present writ petitions would not be maintainable since an alternate and efficacious remedy under the Act was available yet not availed of.

23. To the query of this Court as to how respondent no.2 could continue beyond term of the VC since according to Statute 4(2), the term of the PVC was co-terminus with that of the VC, learned Senior Counsel referred to the second proviso to Statute 4(2) read with Statute 2(6) to submit that the respondent no.2 could infact continue in such situation till the new VC would assume office. Relying on the same, learned senior counsel submits that there has been no illegality or any violation of any Statute whatsoever.

24. On the issue of maintainability, learned Senior Counsel submits that the present writ petition reeks of *malafide* inasmuch as the original petitioners had neither any interest in the said post nor in the exigencies of the situation or even in the administrative requirements of the University. Moreover, the original petitioners were not even candidates who purported to be eligible for the said post. Mr. Ghosh also vehemently opposed the arguments rendered by petitioner no.2 on the ground that the said petitioner no.2 never objected to the appointment of respondent no. 2 as PVC in the first instance or as officiating VC in the second instance. He further submits that petitioner no. 2 never objected to the presence of respondent no.2 as PVC in the meeting dated 11.09.2023 convened by the then VC. In such circumstances, according to



learned Senior Counsel, petitioner no.2 is a mere fence sitter and is now attempting to interfere and interdict the smooth administration of the University. Petitioner no.2, as per the learned Senior Counsel, has been resurrected only for the purpose of maintaining the present petition. On the above basis, learned Senior Counsel submits that the present writ petitions be dismissed as not maintainable.

25. Learned senior counsel relies upon the following judgments for the following propositions:-

a) Past Conventions And Practices Lead To Binding Precedents:-

Suresh Nathan and Another. vs. Union of India & Ors. 1992 Supp (1) SCC 584 @ Para 5.

T. Valsan & Others. vs. K. Kanagaraj & Others (2023) 7 SCC 614. Para 23 & 24.

Shailendra Dania & Others Vs. S.P. Dubey & Others (2007) 5 SCC 535 @ Para 36

b) The words used in a statute must be plainly construed and must be given its ordinary meaning:-

Tata Consultancy Services vs. State of Andhra Pradesh. (2005) 1 SCC 308 @ Para 67,68,69.

Union of India & Anr. vs. Hansoli Devi & Ors. (2002) 7 SCC 273 @ Para 9.

c) The use of the word “notwithstanding” in a Statute implies the understanding that the particular provision of law stands on a higher footing than other contrarian provision in the same Statute:-

Union of India & Anr. vs. G.M. Kokil & Ors. 1984 (Supp) SCC 196 @ Para 11.



***Orient Paper and Industries Ltd. Vs State of Orissa & Ors. 1991 Supp
(1) SCC 81@ Para 12.***

**CONTENTIONS ON BEHALF OF RESPONDENT NOS. 5 & 6
(NOMINEES OF THE VISITOR)**

26. Dr. Amit George, learned counsel appeared on behalf of respondent nos. 5 and 6 who claimed to be the Nominees of the Visitor. Dr. George, learned counsel, precisely had the following aspects to put across:-

- a) That the appointment of PVC vests only and only with the EC. It cannot be disputed that the EC alone under Statute 4 has the exclusive authority and power to appoint the PVC upon recommendations of the VC.
- b) The question of ratification of a statutory appointment under the Statutes does not arise nor is it discernible from any of the Statutes of the University. The authority to appoint vesting purely with the EC, the question of VC appointing the PVC and getting *post facto* ratification of such appointment is not conceived either in the provision of JMI Act, the Statutes thereunder or the UGC Regulations. Such being the position, the appointment of respondent no.2 is contrary to statutory Rules and is therefore vitiated. It is trite that there is no estoppel against the Statute. Past practices, if contrary to the Act or Statutes, would not render such illegalities into a valid practice.
- c) The actions taken by the then VC being contrary to the UGC Regulations which necessarily govern all Central Universities apart from other institutions of higher education including the present JMI



University, the appointment of the respondent no.2 cannot withstand the scrutiny of law. He relies upon the judgment of the Supreme Court in ***Kalyani Mathivanan v. K. V. Jeyaraj & Ors. (2015) 6 SCC 363.***

Relevant portion quoted as under:-

“62.2. The UGC Regulations being passed by both the Houses of Parliament, though a subordinate legislation has binding effect on the universities to which it applies.

62.3. The UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central universities and colleges thereunder and the institutions deemed to be universities whose maintenance expenditure is met by UGC.”

d) Dr. George relied upon the judgment of ***Marathwada University v. Seshrao Balwant Rao Chavan (1989) 3 SCC 132.*** Relevant portion quoted as under:-

“19. The Vice-Chancellor in every university is thus the conscience keeper of the University and constitutional ruler. He is the principal executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs. For these purposes, the Act confers both express and implied powers on the Vice-Chancellor. The express powers include among others, the duty to ensure that the provisions of the Act, statutes. Ordinances and Regulations are observed by all concerned [Section 11(3)]. The Vice-Chancellor has a right to regulate the work and conduct of officers and teaching and other employees of the University [Section 11(6)(a)]. He has also emergency powers to deal with any untoward situation [Section 11 (4)]. The power conferred under Section 11(4) is indeed significant. If the Vice-Chancellor believes that a situation calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action. He must however, report to the concerned authority or body who would, in the ordinary course, have dealt with the matter. That is not all. His pivotal position as the principal executive officer also carries with him the implied power. It is the magisterial power which is, in our view, plainly to be inferred. This power is essential for him to maintain domestic discipline in the academic and non-academic affairs. In a wide variety of situations in



the relationship of tutor and pupil, he has to act firmly and promptly to put down indiscipline and malpractice. It may not be illegitimate if he could call to aid his implied powers and also emergency powers to deal with all such situations.

xxx

xxx

xxx

25. *By this resolution, we are told that the Executive Council has ratified the action taken by the Vice-Chancellor. Ratification is generally an act of principal with regard to a contract or an act done by his agent. In Friedman's Law of Agency (5th Edn.) Chapter 5 at p. 73, the principle of ratification has been explained:*

“What the ‘agent’ does on behalf of the ‘principal’ is done at a time when the relation of principal and agent does not exist: (hence the use in this sentence, but not in subsequent ones, of inverted commas). The agent, in fact, has no authority to do what he does at the time he does it. Subsequently, however, the principal, on whose behalf, though without whose authority, the agent has acted, accepts the agent's act, and adopts it, just as if there had been a prior authorisation by the principal to do exactly what the agent has done. The interesting point, which has given rise to considerable difficulty and dispute, is that ratification by the principal does not merely give validity to the agent's unauthorised act as from the date of the ratification: it is antedated so as to take effect from the time of the agent's act. Hence the agent is treated as having been authorised from the outset to act as he did. Ratification is ‘equivalent to an antecedent authority’.”

27. *These principles of ratification, apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified.”*

e) Dr. George also relied upon the judgment of **Professor (Dr.) Sreejith P.S. vs. Dr. Rajasree M.S. & Ors. 2022 SCC OnLine SC 1473.**

Relevant portion is extracted hereunder:-

“24. In view of the above two binding decisions of this Court, any appointment as a Vice Chancellor made on the recommendation of the



Search Committee, which is constituted contrary to the provisions of the UGC Regulations shall be void ab initio. If there is any conflict between the State legislation and the Union legislation, the Union law shall prevail even as per Article 254 of the Constitution of India to the extent the provision of the State legislation is repugnant. Therefore, the submission on behalf of the State that unless the UGC Regulations are specifically adopted by the State, the UGC Regulations shall not be applicable and the State legislation shall prevail unless UGC Regulations are specifically adopted by the State cannot be accepted.”

- f) Dr. George also submitted that the UGC Regulations having been promulgated by the Parliament as per Union List, Entry No.66, shall prevail over the Sections of the Act as also the Statutes of the University. Thus, the second proviso to Statute 4(2) cannot be read to mean that the PVC, now acting as officiating VC can continue beyond the term of the then VC.
- g) Apart from that, he also relies upon the judgements of **Krishna Kumar Singh v. State of Bihar, (2017) 3 SCC 1** and **University of Mysore v. C.D. Govinda Rao, AIR 1965 SC 491** and referred to following paras in University of Mysore(supra):-

“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.”

- h) Learned counsel also relies upon the judgement of the coordinate bench of this Court in ***Nazar Mohamed Mohaideen S. v. Jawaharlal Nehru University, 2024 SCC OnLine Del 1050***, on the following paras:-

“14. I have repeatedly queried of Mr. Saha on this point. Mr. Saha, while being unable to cite any provision which requires a Ph.D candidate to find a supervisor for himself or herself, seeks to submit that this was the past practice which was being followed by the JNU. Mr. Saha also desired to refer to the dictionary definitions of “past practice”.

15. I do not see how, in a university governed by Statutes, Rules and Ordinances, any procedure foreign to their provisions can be adopted, on the tenuous plea of “past practice”. If any such past practice is being followed, which is not sanctioned by the Rules, Regulations, Ordinances and Statutes governing the JNU, it would be well that such a practice is jettisoned at the earliest.”



27. On the basis of the above, Dr. George, learned counsel submits that the entire procedure followed by the University and its then VC is vitiated and as a consequence thereto, this Court may issue a writ of *quo warranto* to its full effect.

CONTENTIONS OF RESPONDENT NO. 2:-

28. Mr. Ankur Chhibber, learned counsel appears for respondent no.2, the present officiating VC against whom the petitioners seek issuance of a writ of *Quo Warranto*. At the outset, Mr. Chhibber draws attention of this Court to the provisions of Statute 4 providing for the appointment of PVC.

29. Learned counsel after taking this Court to the said provisions, referred to Section 11(3) of the Act and Statute 4(1) to submit that it is only in an emergent situation that the VC had exercised the powers conferred by the Statute and Act before appointing respondent no.2 as PVC in the first instance and as officiating VC in the second instance. Learned counsel also read through the provision of Statute 2(6) and second proviso to 4(2) to submit that in varied circumstances, the power of the VC could be exercised. In that, where the office of the VC becomes vacant due to his death, resignation or otherwise or if he is unable to perform his duties owing to absence, illness or any other cause, the PVC could discharge the duties of VC. He submits that in one instance when the then VC was proceeding for a visit abroad, the respondent no.2 was directed to officiate as VC under Statute 2(6), which is in consonance with the Statute.

30. Learned counsel also refers to the second instance where the office of the VC was to end on 12.11.2023. Since, it was known that the VC's office is



going to become vacant on 12.11.2023, the respondent no.2 was appointed as the officiating VC. To buttress his arguments, learned counsel referred to the office order dated 12.11.2023 whereby in accordance with Statute 2(6) read with 4(2), till a new VC would assume the office of VC, the respondent no.2 was appointed as the officiating VC. He submits that the second proviso to Statute 4(2) clearly stipulated that the PVC while discharging duties of VC under Statute 2(6) could continue in office notwithstanding the expiration of the term of office of the VC until a new VC assumes office.

31. On the aforesaid basis, Mr. Chhibber submits that the continuation of respondent no.2 as officiating VC beyond the term of the then VC is perfectly within the ambit and scope of the Statutes and hence, such appointment is well within the Statute as also the exercise of such powers.

32. He further submits that it would be pertinent for this Court to consider that in none of the petitions before this Court have the petitioners challenged either the provisions of JMI Act or the Statutes framed thereunder. In that view of the matter, according to learned counsel, so long as the Statute stands and is not declared *ultra vires* by the Court of competent jurisdiction, the appointment of respondent no. 2 cannot be held to be violative of any statutory provision. In other words, these petitions lack in merit and may be dismissed with costs.

33. Mr. Chhibber vehemently submits that there is no repugnancy between the Regulation 7.0 of the UGC Regulations and the Act and Statutes of the University. He submits that the Regulation 7.2 stipulates that the term of PVC would be co-terminus with that of VC. He submits that the Statute of the



University also provides for the same. However, according to him, it is a stopgap arrangement between the arising of vacancy in the office of the VC till the next incumbent is appointed as VC is the period and situation covered by second proviso to 4(2). Thus, there is no repugnancy at all. Rather, the Statute conceives of a situation which would further the administration of the University at the highest office without which it is possible that the administration may come to a standstill.

34. Mr. Chhibber contends that in case the petitioner no.2 was really and genuinely aggrieved by the appointment of respondent no.2 as PVC or even as officiating VC, there was no reason why (i) the petitioner no.2 did not file any statutory appeal as provided in Section 11(3); and (ii) did not approach any Court of law for resurrection and vindication of his right. He submits that there was no reason either for why the petitioner no.2 did not object to the appointment or presence of the respondent no.2 as PVC in the meeting dated 09.11.2023. That apart, he submits that even if the arguments of the petitioners, that the EC ought to have approved the appointment, is taken at its face value, though without admitting, as and when the EC shall convene, it shall take a decision as deemed fit. Merely because no such approval has been obtained, will not *ipso facto* conclude that the appointment of the respondent no.2 as PVC and officiating VC is violative of the Statutory Rules. He, thus prays for dismissal of the present petition.

REBUTTAL ARGUMENTS OF THE PETITIONERS:-

35. Mr. Ankit Jain appeared on behalf of the petitioners and in rebuttal, raised the following arguments:-



- a) He reiterates that even for the Office Order dated 12.11.2023, the powers under Statute 2(6) were used, which is absolutely an arbitrary exercise of power by the then VC, as the retirement of the then VC was actually an ascertainable and a fixed event and not an emergent/unforeseeable eventuality.
- b) Learned counsel relied upon the Note Sheet dated 14.09.2023, annexed with the present petition as Annexure P-3 to C.M. APPL. 2240/2024, to submit that, in the said Note Sheet, the mention of exercise of powers under Section 11(3) is conspicuous by its absence, which suddenly crops up in the consequent Office Order dated 14.09.2023, appointing the Respondent No.2 as the PVC, which appears to have been inserted to cover up the statutory violation.
- c) He relies upon the judgments of ***Presidential Poll, In re, (1974) 2 SCC 33*** ; ***Kamlesh Kumar Sharma vs. Yogesh Kumar Gupta, (1998) 3 SCC 45*** to submit that the word “otherwise” stipulated in Statute 2(6) has to be read *ejusdem generis* with the words “death” and “resignation”, which clearly attribute finality to the tenure. In other words, the word “otherwise” cannot be read to mean a temporary absence of the VC for any reason as stipulated in the second part of 2(6).
- d) The petitioner no.2 could not have filed an statutory appeal as provided in proviso to Section 11(3) before the said EC, since the respondent no.2 was the Chairperson of the said EC in his capacity



as an Officiating VC, lest the same would suffer the vice of the Officiating VC being a judge in his own cause.

ANALYSIS AND CONCLUSIONS: -

36. This Court has heard the lengthy arguments of Mr. Jayant Mehta, learned Senior Counsel, Mr. Ankit Jain for the petitioners and Mr. Sanjoy Ghosh, learned Senior Counsel for respondent no.1 and 3, Mr. Ankur Chhibber, learned counsel for respondent no. 2, Dr. Amit George, learned counsel for respondent nos.5 and 6, carefully perused and considered the provisions of the JMI Act, 1988, the Statutes framed thereunder, the UGC Regulations 2018 and the judgements relied upon by the parties. Learned counsel were heard at length on 12.03.2024, 15.03.2024, 10.04.2024 and 24.04.2024, when the orders were reserved.

37. During the course of arguments, this Court found it appropriate to afford an opportunity of hearing to Respondent No.2/Prof Eqbal Hussain, the probable affected party, in his individual capacity to present his case before this Court. In pursuance thereto, the said opportunity was provided *vide* the Order dated 10.04.2024, which was sufficiently availed of by the respondent no.2 through his learned counsel, Mr. Ankur Chhibber.

38. Since this Court is called upon to examine whether the appointment of respondent no.2 as the PVC in the first instance and thereafter as officiating VC in the second instance is in accordance with the provisions of the JMI Act, 1988, the Statutes framed thereunder, the UGC Regulations 2018, it would be relevant to reproduce the relevant provisions hereunder:

“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 persons: 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.

- (2) *The Shaikh-ul-Jamia (Vice-Chancellor) shall be a whole-time salaried officer of the University.*
- (3) *The Shaikh-ul-Jamia (Vice-Chancellor) shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment for not more than another term:*

Provided that notwithstanding the expiry of the said period of five years, he shall continue in office until his successor is appointed and enters upon his office.

- (4) *Notwithstanding anything contained in clause (3), a person appointed as Shaikhul-Jamia (Vice-Chancellor) shall, if he completes the age of seventy years during the term of his office, retire from office.*
- (5) *The emolument and other terms and condition of service of the Shaikh-ul-Jamia (Vice-Chancellor) shall be such as may be prescribed by the Ordinances.*

- (6) **If the office of the Shaikh-ul-Jamia (Vice-Chancellor) becomes vacant due to his death, resignation or otherwise or if he is unable to perform his duties owing to absence, illness or any other cause, the Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor) shall discharge the duties of the Shaikh-ul-Jamia (Vice-Chancellor) and will be designated as Qaim Maqam Shaikh-ul-Jamia (Officiating Vice-Chancellor) until a new Shaikh-ul-Jamia (Vice-Chancellor) assumes office or the existing Shaikh-ul-Jamia (Vice-Chancellor) attends to the duties of his office as the case may be;**

Provided that if the Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor) is not available, the senior most Professor, who has not attained the age of superannuation of 65 years, shall discharge the duties of the



Shaikh-ul-Jamia (Vice-Chancellor) until a new Shaikh-ul-Jamia (Vice Chancellor) or the Shaikh-ul-Jamia (Vice-Chancellor), as the case may be, assumes office.”

(emphasis supplied)

Statute 2 of the Statutes of the University stipulates the manner in which the VC is to be appointed. Clause 1 thereof stipulates that the VC shall be appointed by the Visitor from a panel of at least three persons recommended by a Committee consisting of three persons; two to be nominated by the EC and one, who shall be the Chairman of such Committee by the Visitor. The 2nd proviso is relevant since if the Visitor does not approve any of the recommended candidates, he has the discretion to call for fresh recommendations. Clause 2 stipulates that the VC shall be a whole time salaried officer of the University; Clause 3 restricts the term of office of the VC to 5 years however he would be eligible for reappointment but for not more than another term. The proviso to Clause 3 stipulates that notwithstanding the expiry of 5 years, the VC shall continue in office until his successor is appointed and enters upon the office. Clause 4 restricts the tenure of the office of VC to not beyond completion of age of 70 years. Clause 5 relates to emoluments and other service conditions of the VC. Clause 6 provides that if the office of the VC falls vacant due to his death, resignation or otherwise or if he is unable to perform his duties owing to absence, illness or any other cause, the PVC shall discharge duties of VC and be designated as officiating VC until a new VC assumes office or the existing VC attends to his office, as the case may be. The next proviso to Clause 6 gathers significance too in the present case. The said proviso stipulates that if PVC is not available,



the senior most Professor who has not attained the age of superannuation of 65 years shall discharge the duties of VC until a new VC or the existing VC, as the case may be, assumes office.

39. It is pertinent to note that the Appointing Authority for the post of VC is the Visitor of the University subject to fulfillment of the conditions provided in Statute 2(1). It is also clear that such VC shall hold office for a period of 5 years ordinarily and would be eligible for reappointment, but for 1 more term. The VC holding office upon completion of his tenure shall hold the office further beyond 5 years until his successor is appointed so as to ensure there is no impediment in the administration of the University as also for the purposes of continuity of office. However, the VC shall not hold office beyond the age of 70 years in any case.

Clause 6 is the controversy. According to this Court, Clause 6 contemplates two situations in which the PVC would discharge the functions of the VC as officiating VC. One, where the office of the VC falls vacant due to his death, resignation or otherwise; and two, where the VC is unable to perform his duties owing to absence, illness or any other cause. It is clear that in either of the situations, the existing PVC shall discharge the functions of the VC as officiating VC until the new VC is appointed in terms of statute 2(1) on account of death, resignation or any other similar reason or the existing VC assumes office who hitherto before was unable to do so owing to absence, illness or any other cause. It is also clear that the first part of Clause 6 contemplates an instance where the office of the VC falls vacant on a permanent basis. This is clear from the words “death”, “resignation” and “or



otherwise”. The first two words clearly close the tenure of the VC without any doubt. The words “*or otherwise*” has to be read *ejusdem generis* with the other two words used in the same Clause. This could also mean and include expiry of the tenure of the VC by efflux of time apart from many other diverse reasons which cannot be contemplated. There cannot but be any other meaning to the said term. Reading “*or otherwise*” any differently would do violence to the meaning, purport and object of the Clause. As an example, if the tenure of the VC expires by efflux of time, ordinarily by virtue of proviso to Clause 3, the same VC shall continue in office until his successor is appointed and enters his office. However, suppose in a given case, the previous VC does not wish to continue for whatever reason, it cannot be countenanced that the VC’s office shall become vacant without continuation of the office. It is to avoid this type of situation that the words “*or otherwise*” has been employed in the said Clause. Similarly, in respect of the second situation, Clause 6 contemplates temporary vacancy of the office of the VC on account of “*absence*”, “*illness*” and “*any other cause*”. The first two words “*absence*” and “*illness*” *ex facie* portray temporary vacancy of VC’s office. However, the words “*any other cause*” would take within its fold varied situations, but of a temporary nature, which possibly cannot be curtailed nor contemplated by this Court. One of the examples of temporary vacancy of office of VC falling within the words “*any other cause*” could be in the nature of some disciplinary proceedings initiated against the sitting VC. In such a situation, it cannot be said that the relation of the VC with the University is severed. The post cannot be termed to be permanently vacant inasmuch as, in



case the disciplinary proceedings end up in exoneration, then the said VC shall be reinstated. Likewise, there could be many other situations.

40. It would now be relevant to examine Statute 4 of the Statutes of the University. The said Statute 4 is extracted hereunder:

“4. NAIB SHAIKH-UL-JAMIA (PRO-VICE-CHANCELLOR):

- (1) The Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor) shall be appointed by the Majlis-i-Muntazimah (Executive Council) on the recommendation of the Shaikh-ul-Jamia (Vice-Chancellor) on such terms and condition as may be laid down in the Ordinances:***

Provided that where the recommendation of the Shaikh-ul-Jamia (Vice-Chancellor) is not accepted by the Majlis-i-Muntazimah (Executive Council), the matter shall be referred to the Visitor who may either appoint the person recommended by the Shaikh-ul-Jamia (Vice-Chancellor) or ask the Shaikh-ul-Jamia (Vice-Chancellor) to recommend another person to the Majlis-i-Muntazimah (Executive Council):

Provided further that the Majlis-i-Muntazimah (Executive Council) may, on the recommendation of the Shaikh-ul-Jamia (Vice-Chancellor) appoint a Professor to discharge the duties of the Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor) in addition to his own duties as a Professor.

- (2) The term of office of the Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor) shall be such as may be decided by the Majlis-i-Muntazimah (Executive Council), but it shall not in any case exceed five years or until the expiration of the term of office of the Shaikh-ul-Jamia (Vice-Chancellor) whichever is earlier, and he shall be eligible for re-appointment:***

Provided that the Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor) shall retire on attaining the age of sixty-five years:

Provided further that the Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor) shall, while discharging the duties of Shaikh-ul-Jamia (Vice-Chancellor) under clause (6) of Statute 2, continue in office notwithstanding the expiration of the term of office until a new Shaikh-



ul-Jamia (Vice-Chancellor), or the Shaikh-ul-Jamia (Vice-Chancellor), as the case may be, assumes office.

- (3) *The emoluments and other terms and condition of service of the Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor) shall be such as may be prescribed by the Ordinances.*
- (4) *The Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor) shall assist the Shaikh-ul-Jamia (Vice-Chancellor) in respect of such matters as may be specified by the Shaikh-ul-Jamia (Vice-Chancellor) from time to time in this behalf and shall also exercise such powers and perform such duties as may be assigned or delegated to him by the Shaikh-ul-Jamia (Vice-Chancellor)."*

(emphasis supplied)

Statute 4 stipulates the manner and the conditions in which the PVC is appointed. As per Clause 1, the PVC is to be appointed by the EC on the recommendations of the VC, provided that where the recommendation of the VC is not accepted by the EC, the matter may be referred to the Visitor who may appoint the person so recommended or ask the VC to recommend another person to the EC. As per the 2nd proviso, the EC may, on the recommendation of the VC, appoint a Professor to discharge the duties of the PVC in addition to his own duties as a Professor. Clause 2 relates to the term of office of PVC which shall be such as may be decided by the EC, but it shall not, in any case, exceed 5 years or until the expiration of the term of office of the VC, whichever is earlier and he would be eligible for re-appointment. The 1st proviso stipulates that the PVC shall retire on attaining the age of 65 years. As per the 2nd proviso, the PVC shall while discharging the duties of VC under Clause (6) of Statute 2, continue in office notwithstanding the expiration of the term of office until a new VC or the existing VC, as the case may be,



assumes office. The other Clauses are not relevant or germane to the present *lis* and are therefore, not referred to.

It is clear from the provisos of Statute 4(1) that the Appointing Authority for the post of PVC is only the EC, which on the recommendation of the VC, appoints such recommended person to such post. However, as per the 1st proviso, in case of disagreement with such recommendation, the matter is stipulated to be referred to the Visitor. The Visitor has the discretion either to appoint the incumbent recommended by the VC on his own or refer the matter back to VC for his fresh recommendation to the EC. In other words, it is the EC alone which has the right, authority and jurisdiction to appoint the PVC upon the recommendation of the VC. It is only when the EC does not agree with such recommendation that the Visitor then can either appoint the same person as PVC, meaning thereby that the Visitor may overrule the disagreement of the EC, or refer the matter back to the VC for a fresh recommendation of another person to the EC for appointing as PVC. What is clear from the above is that it is the EC alone which can appoint the PVC subject only to the Visitor exercising the powers conferred to override such disagreement and appoint the very same person rejected by the EC. In both the situations, the authority lies with the EC.

Clause 2 and its provisos are in controversy. It is clear from Clause 2 that the EC has been vested with the power to determine the tenure and term of the office of PVC, however, limiting the same to not exceeding 5 years or until the expiration of the term of office of the VC, whichever is earlier and grants eligibility for re-appointment. The 1st proviso stipulates that the PVC shall retire upon attaining the age of 65 years. As per the 2nd proviso, the PVC



discharging the duties of VC under Clause (6) of Statute 2 shall continue in office, notwithstanding the expiration of the term of office, until a new VC or the existing VC, as the case may be, assumes office.

41. The learned counsel for the respondents had strongly relied upon the 2nd proviso to Clause (2) of Statute 4 to contend that the continuation of respondent no.2, firstly as PVC during the temporary absence of the then VC and secondly, discharging of duties as officiating VC after the then VC demitted office upon expiry of her tenure by efflux of time, was fully justified under the said proviso. They also contended that under the provisions of Section 11(3) of the JMI Act, the then VC exercised her emergent powers and appointed respondent no.2, who was the PVC, as the officiating VC. This, according to them was in consonance with Statute 4(2) read with Statute 2(6). Hence, according to them, the entire procedure is within the situation as contemplated by the Statutes and action taken is within the confines of the same and cannot be faulted upon.

42. Just to complete the sequence, it would be apposite to reproduce Section 11 of the JMI Act hereunder:

- “11. (1) The Shaikh-ul-Jamia (Vice-Chancellor) shall be appointed by the Visitor in such manner as may be prescribed by the Statutes.*
- (2) The Shaikh-ul-Jamia (Vice-Chancellor) shall be the principal executive and academic officer of the University, and shall exercise general supervision and control over the affairs of the University and give effect to the decision of all the authorities of the University.*
- (3) **The Shaikh-ul-Jamia (Vice-Chancellor) may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and***



shall report to such authority the action taken by him on such matter.

Provided that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final:

Provide further that any person in the service of the University who is aggrieved by the action taken by the Shaikh-ul-Jamia (Vice-Chancellor) under this sub-section shall have the right to appeal against such action to the Majlis-i-Muntazimah (Executive Council) within three months from the date on which decision on such action is communicated to him and thereupon the Majlis-i-Muntazimah (Executive Council) may confirm, modify or reverse the action taken by the Shaikh-ul-Jamia (Vice-Chancellor).

- (4) The Shaikh-ul-Jamia (Vice-Chancellor) shall exercise such other powers and perform such other functions as may be prescribed by the Statutes or Ordinances.”

(emphasis supplied)

As per sub-section (1) of Section 11, the VC shall be appointed by the Visitor in the manner prescribed by the Statutes of the University. Sub-section (2) prescribes that the VC shall be the Principal Executive and Academic Officer and shall exercise general supervision and control over the affairs of the University and give effect to the decision of all the authorities of the University. Sub-section (3) relates to the emergency powers of the VC. In case VC is of the opinion that immediate action is necessary on any matter, he can exercise the powers conferred upon any authority of the University by or under the JMI Act and is prescribed to report the matter to such authority of the action taken by him on such matter. The 1st proviso stipulates that if such authority concerned is of the opinion that such action ought not have been taken, the said authority may refer the matter to the Visitor whose decision is to be treated as final. As per the 2nd proviso, if any person in the service of the



University is aggrieved by the action taken by the VC, he shall have a right to appeal against such action to the EC within three months from the date on which decision on such action is communicated to him, whereupon the EC has the discretion to confirm, modify or reverse the action taken by the VC.

It is clear that the Appointing Authority of the VC is the Visitor of the University, who is the President of India as per Section 8 of the JMI Act. The procedure prescribed for such appointment is contained in Statute 2 of the University. Under sub-section (3) of Section 11 of JMI Act, it is clear that the VC has been conferred extraordinary powers whereby the VC can assume, arrogate and exercise powers conferred upon any authority of the University subject to such powers being exercised only in emergent situations. Thus, it is apparent that in ordinary circumstances, the VC would not exercise such wide powers and only in extraordinary emergent situations, such powers to be exercised. It is clear from the provisions of sub section (3) that what such extraordinary emergent situations could be, have not been specified or clearly defined. In the opinion of this Court, rightly so. The powers conferred are clearly contingent upon such extraordinary situations arising in the first place. There could be myriad situations. This Court does not wish to define what such situations could be, lest this Court limits the same. It is not even called for in the present case.

43. Now to apply the aforesaid analysis to the facts arising in the present case.

44. The first document which needs to be examined is the Office Order dated 14.09.2023. From the arguments addressed by learned counsel for the



parties, it appears that this Office Order is the starting point for the *lis*. To appreciate the arguments and analyse the same, it would be apposite to extract the said Office Order dated 14.09.2023 hereunder:

23

ANNEXURE P/1(COLLY)

जामिया मिल्लिया इस्लामिया
(एन्डोव्ड विश्वविद्यालय) (नैक प्रत्यावित 'A++' ग्रेड)
मीनम मोहम्मद अली जौहर मार्ग, जामिया नगर, नई दिल्ली-110025

JAMIA MILLIA ISLAMIA
(A Central University) (NAAC Accredited 'A++' Grade)
Minam Muhammad Ali Jauhar Marg, Jamia Nagar, New Delhi-110025

मुख्यसचिव कार्यालय
No.F.Gen.-102/RO/Extt.-T/JMI/2023/PS-44

Phone : 26984975, 26985144
Tel. : 26981717, 26985176
Fax : 011-26980228
E-mail : registrar@jmi.ac.in
Web : http://jmi.ac.in

September 14, 2023

OFFICE ORDER

The Vice Chancellor, JMI, in terms of Section 11(3) of JMI Act, 1988 read with Statute 4(1) of the Statutes of Jamia Millia Islamia, has been pleased to appoint Prof. Eqbal Hussain, Faculty of Law, JMI, as Naib Shaukhat Jamia (Pro Vice Chancellor) with immediate effect till the expiry of the term of the present Vice Chancellor or till he attains the age of 65 years or till further orders, whichever is earlier.

(M. Nasim Haider)
Deputy Registrar

To:
Prof. Eqbal Hussain
Faculty of Law, Jamia Millia Islamia
New Delhi-110025

Copy for information & necessary action to:

1. The Secretary, Department of Higher Education, Ministry of Education, Shastri Bhawan, New Delhi-110001;
2. The Chairman, University Grants Commission, Bahadurshah Zafar Marg, New Delhi-110002;
3. The Secretary, University Grants Commission, Bahadurshah Zafar Marg, New Delhi-110002;
4. The Secretary General, Association of Indian Universities, 16 Conrade Indrajit Gupta Marg, Opposite National Bal Bhawan, Near I.T.O., New Delhi-110002;
5. The Hon'ble Chancellor, Jamia Millia Islamia, New Delhi
6. All Deans of Faculties/Heads of Departments/Directors of the Centres/ Dean Students' Welfare/Foreign Students' Advisor/Chief Practor/ Security Incharge/All Provosts (Boys/Girls)/Heads of Institutions/ Heads of Sections/ offices;
7. The Controller of Examinations, JMI;
8. The Finance Officer, JMI;
9. The Secretary to VC for kind information of the Hon'ble Vice Chancellor, JMI.
10. The AR, Registrar's Secretariat, R.O., JMI; for information of the Officiating Registrar, JMI;
11. The Executive Engineer, Building & Construction Department, JMI;
12. The Assistant Registrar (Council & Ordinance), for reporting the matter in the next Executive Council meeting, JMI;
13. Personal file of officer concerned /File folder/Dealing Asstt. For MIS entries.

(M. Nasim Haider)
Deputy Registrar



It is clear from the plain reading of the aforesaid Office Order that the then VC, in exercise of powers conferred by Section 11(3) of the JMI Act read with Statute 4(1) of the Statute of the University, appointed respondent no.2 as the PVC. Another contemporaneous document being letter no.F.G.102(i)/Estt.-T/R.O./JMI/2023 dated 14.09.2023 issued by the Establishment Section (Teaching) and filed by the petitioners alongwith their CM APPL. 2239/2024 would be relevant for consideration of this Court. The same is reproduced hereunder:

Establishment Section (Teaching)
R.O., JMI, New Delhi-110025

No.F.G.-102(i)/Estt.-T/R.O./JMI/2023 September 14, 2023

Sub: Appointment of Pro Vice Chancellor, JMI.

1. Statute 4 of the Statutes of the University contains the provision of the appointment of a Pro Vice Chancellor. As per this Statute, appointment of Pro Vice Chancellor shall be made by the Executive Council on the recommendation of the Vice Chancellor (Copy of the Statute 4 is enclosed).
2. As discussed with the Vice Chancellor, the appointment of Pro Vice Chancellor shall be made and placed before the forthcoming meeting of the Executive council. Accordingly, orders may be issued immediately and action taken may be reported in the forthcoming meeting of the Executive Council. The term of the office shall have also to be decided as per para 2 of the Statute 4 of the Statutes of the University.
3. Submitted for kind perusal, consideration and approval, please.

PVC - Prof Eaqbal Hussain
(Fac of Law)
14/9/23
Vice Chancellor

M. Nasim Haider
14/9/23
Deputy Registrar

As directed, an office order No.F.Gen.-102/RO/Estt.-T/JMI/2023 dated 26.9.2023 in the light of provision under Statute 2(6) of the Statutes of the University is placed below opposite side for kind perusal, consideration and approval, if deemed proper, to be issued in continuation of office order No.F.Gen.-102/RO/Estt.-T/JMI/2023/PR-46 dated 14.9.2023.

Respectfully,
26/9
Vice Chancellor

M. Nasim Haider
26/9/2023
Deputy Registrar



Reading of the said Note Sheet brings to fore the fact that the appointment of the respondent no.2 as PVC was recommended as per the procedure prescribed under Statute 4 and was to be placed before the EC for its decision in accordance with the Statutes. It was also noted that the term of office of PVC shall also to be decided as per Clause 2 of Statute 4. It is also apparent that there is no mention of any extraordinary emergent situation for invocation of Section 11(3) of the JMI Act. In the considered opinion of this Court, rightly so, since there was no such emergent situation having arisen on that date. This is so, since the then VC was to demit her office in the ordinary course by expiry of her tenure on 12.11.2023. This is also reiterated by the submission that the EC Meeting was convened by the then VC on 09.11.2023, three days prior to her tenure coming to an end. In any case, none of the learned counsel, for respondent nos.1 and 3 or respondent no.2 submitted so or placed any document on record to show any such emergent situation having arisen on 14.09.2023.

45. If this Court were to consider both, the aforesaid Office Order dated 14.09.2023 as well as the Note Sheet dated 14.09.2023 together in conjunction and harmoniously, then the only logical conclusion that can be reached is that the University contemplated appointing the respondent no.2 as PVC as on 14.09.2023 in terms of Statute 4(1). That is, the name of the respondent no.2 as a recommended candidate of the VC ought to have been placed before the EC for its decision or approval and then alone after the approval of the EC, could the EC itself appoint the respondent no.2 as the PVC. There is no prescribed procedure other than this. The only alternate to the above



prescribed procedure could have been in a situation where the EC disagreed with respondent no.2's candidature. The Visitor, in such situation, would have the final authority to override EC's disagreement and appoint respondent no.2 directly, or remit the case back to the VC for recommending a fresh name, but that too, only to the EC. And, in that eventuality, it would yet again be the EC which alone would have the jurisdiction to appoint the fresh incumbent, if the need so arises. Having regard to the above analysis and findings on facts, it is crystal clear that the mandate of Statute 4 of the Statutes of the University was not followed.

46. Another aspect linked to the above conclusion would be the reference to Section 11(3) mentioned in the Office Order dated 14.09.2023. It appears to this Court that mentioning of the said section was not appropriate and is surplussage. This is for the reason that despite lengthy arguments addressed by the learned counsel for the respondent nos.1 and 3 and respondent no.2, no document worth the name, demonstrating any extraordinary emergent situation contemplated under sub-section (3) to Section 11 of the JMI Act was placed on record. In that view of the matter and in absence of such vital information/document, this Court is constrained to observe that reference to Section 11(3) of JMI Act in the Office Order dated 14.09.2023 will not, *ipso facto*, convert the purport of the said Order from one within the confines of Statute 4(1) to one under emergent situation contemplated under Section 11(3) of the JMI Act.



In that view of the matter, this Court is of the considered opinion that the appointment of respondent no.2 as PVC *vide* the Office Order dated 14.09.2023 is in violation of the Statutes of the University.

47. Having held that the initial appointment of respondent no.2 is contrary to and in violation of the Statutes, particularly Statute 4, this Court shall now examine as to whether the subsequent appointment of respondent no.2 as officiating VC *vide* the letter dated 12.11.2023 is legally valid and in consonance with the Statutes. For the appointment of PVC as officiating VC, the conditions in Clause 6 of Statute 2 have to be met. In that, the office of the VC becoming vacant on account of his death, resignation or otherwise, would entail that PVC shall discharge the functions of the VC till the new VC is appointed. Assuming that the version of the respondents were to be believed that since the then VC was demitting office on 12.11.2023 and in exercise of powers under Clause 6 of Statute 2, the 2nd proviso to Statute 4(2) read with Section 11(3) of the Act, the respondent no.2 was appointed as Officiating VC, in view of the fact that the appointment of respondent no.2 as PVC has been held to be in violation of Statute 4, the said action also is unsustainable. In such a situation, the only recourse to the University could be the invocation of provisos to Clause (6) of Statute 2.

48. The reference to the letters pertaining to the past practice where in emergent situations, the University through the VC had invoked provisions of Section 11(3) is concerned, this Court has perused the documents filed alongwith the counter affidavit which reveals that the said letters were in fact placed before the EC, apparently for its *post facto* approval, in view of the



extraordinary emergent situation which may have arisen. As an instance, in a similar situation, by the letter dated 11.08.2016, Prof. Shahid Ashraf was appointed as PVC, however, the said letter was placed before the EC for its approval. In the counter affidavit, this instance has been projected as if it emanated on account of emergent situation within Section 11(3) of the JMI Act. It has been sought to be projected that this communication to the EC was merely “for reporting”. However, the EC’s Minutes of the Meeting held on 18.08.2016 in pursuance to the letter dated 11.08.2016 speaks otherwise. The relevant extract of the Minutes of the Meeting of the EC dated 18.08.2016 particularly, Resolution no. 2.2 is as under:-

EC-2016 (II): Reso.-2

Matters for reporting/endorsement of actions already taken by the Shaikh-ul-Jamia (Vice-Chancellor) in anticipation of approval of the Executive Council.

The Majlis (EC) endorsed/ratified the following actions already taken by the Shaikh-ul-Jamia (Vice-Chancellor):

Appointment

- 2.1 Approval on the appointment of Prof. Sushant G. Ghosh, Centre for Theoretical Physics, as Hon. Director of the newly established ‘Multidisciplinary Centre for Advanced Research & Studies’ to look after the administrative and academic affairs of the said Centre with immediate effect i.e. 28.07.2016 until further orders.
- 2.2 Approval on the appointment of Prof. Shahid Ashraf, Department of Economics, JMI as Naib-Shaikhul Jamia (Pro-Vice-Chancellor) till expiry of the term of the present Vice-chancellor or till he attains the age of 65 years or until further orders whichever is earlier and appointment of Dr. Abdul Malik, Jr. Registrar as Officiating Registrar till the appointment of Registrar is finalized or till further orders w.e.f. 12.08.2016 in terms of Statute 4 of JMI Act 1996.

It is clear from the above that despite such stand taken by the University, the past practice too appears to have been of obtaining *post facto* approval of the EC over such appointments and not merely for “reporting”.



49. That apart, there is no explanation as to why the Office Order dated 14.09.2023 was not placed before the EC, being the Appointing Authority, for its approval and confirmation of the recommendation of the name of the respondent no.2 as PVC. There is nothing on record to show that as on 14.09.2023, there arose any extraordinary emergent situation for invocation of Section 11(3) of the Act. Equally, no such emergent situation was shown at the time of passing of Office Order dated 12.11.2023 appointing respondent no.2 as the officiating VC. It is to be kept in mind that the fact that the erstwhile VC was going to demit office due to expiry of her tenure by efflux of time was known to all and sundry. No explanation as to why steps in the ordinary course under Statute 2 of the Statutes of the University were not initiated well in time, has been placed on record. Moreover, the University in such situation was not powerless to appoint the senior most Professor as Officiating VC in terms of proviso to Clause (6) of Statute 2. This Court is acutely aware of the fact that the post of VC cannot be kept vacant having regard to the importance of the said post, both administratively and academically as well as for exercise of emergent powers, however, the appointments to such post have to be sacrosanct and above board.

50. In view of the aforesaid findings and conclusions, the arguments of Dr. George and other learned counsel on other issues and peripheral topics need not be gone into. For the same reason, since the Statutes have been interpreted by using the Golden Rule of Harmonious Interpretation, as also on the basis of documents on record, the judgements relied upon by the parties are also not



being considered by this Court. The aforesaid analysis is restricted only to the extent required upon the facts obtaining in the present writ petition.

51. Having said so, equally this Court cannot countenance a situation where the post of VC shall remain vacant, lest the University suffers in that context. In this regard, it would be of significance to consider the provisions of Section 8 of the JMI Act dealing with the Visitor of the University. As per sub-section (1) of Section 8, the President of India shall be the Visitor of the respondent no.1/University. In the considered opinion of this Court, sub-section (8) of Section 8 of the Act would be relevant for the proposed action. To make things clear, Section 8 (8) is reproduced hereunder:

“(8) Without prejudice to the foregoing provisions of this Section, the Visitor may, by order in writing, annul any proceeding of the University which is not in conformity with this Act, the Statutes or the Ordinances: Provided that before making any such order he shall call upon the University to show cause why such an order should not be made, and if any cause is shown within a reasonable time, he shall consider the same.”

It is pertinent to observe that sub section (8) opens with the words “without prejudice to” which would imply that apart from the powers conferred upon the Visitor contained in other sub sections of Section 8 of the Act, the Visitor could exercise powers conferred by sub section (8) and none of those provisions would limit such powers of the Visitor. Thus, the Visitor has the power also to, by order in writing, annul any proceedings of the University which is not in conformity with the Act, Statute or the Ordinances of the University.



52. This has to be necessarily read in consonance and conjunction with the 1st proviso to sub section (3) of Section 11 of the Act. It would be apposite to re-visit the said proviso. The same is brought out hereunder:

“(3) The Shaikh-ul-Jamia (Vice-Chancellor) may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him on such matter.

Provided that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final:

Provide further that any person in the service of the University who is aggrieved by the action taken by the Shaikh-ul-Jamia (Vice-Chancellor) under this sub-section shall have the right to appeal against such action to the Majlis-i-Muntazimah (Executive Council) within three months from the date on which decision on such action is communicated to him and thereupon the Majlis-i-Muntazimah (Executive Council) may confirm, modify or reverse the action taken by the Shaikh-ul-Jamia (Vice-Chancellor).”

(emphasis supplied)

From the records, it is apparent that by invoking this subsection, appointment of respondent no.2 at the first instance as PVC and in the second, as officiating VC was done. Considering the language employed in 1st proviso, it is clear that in case the concerned authority on whose behalf any action was taken by the VC, the said authority, if of the opinion that the said action ought not to have been taken, refer the matter to the Visitor, whose decision shall be final. Thus, it is apparent that the Visitor has the necessary power to annul any decision taken by the VC purportedly under Section 11 of the Act subject, of course, to the fulfilment of the conditions stipulated therein. This, *prima facie*, appears to be in consonance with the provisions of sub-section (8) of section 8



of the JMI Act which too confers power upon the Visitor to annul any proceeding which is not in conformity with the Act, Statutes and Ordinances of the University.

53. Thus, there is consonance in the powers of the Visitor under sub-section (8) of section 8 of the Act and 1st proviso to sub-section (3) of section 11 of the Act. This finds resonance in the provisions of Statute 2 and 4 of the Statutes of the University. In that, the Visitor appears to have a final say in the appointments, in the case of appointment of VC directly, and in case of PVC directly as well as through the EC, should the occasion, as stipulated, arise. Reading all the said provisions together, this Court safely concludes that in the extraordinary situation which has now arisen due to the above findings, analysis and conclusions, the Visitor must and shall exercise the powers cumulatively conferred upon a combined reading of the aforesaid provisions to invoke powers under sub-section (8) of section 8 read with sub section (3) of section 11 of the JMI Act, to immediately appoint, on an officiating capacity an eligible person as per the extant Statutes as VC (Officiating)/ Administrator (Temporary). This would ensure that the academic and administrative machinery of the University does not suffer or come to a complete halt. The Visitor, may in the meanwhile, simultaneously, in exercise of the powers conferred by the Statute direct the initiation of process of appointment of a VC on regular basis.

54. The appointment of the VC (Officiating)/ Administrator (Temporary) shall be done within a period of 1 week from the date of receipt of the present order. The initiation of appointment to the post of Vice Chancellor on regular



basis shall commence not later than two weeks of the appointment of Vice Chancellor (Officiating)/ Administrator (Temporary) and be completed within 30 days thereafter.

55. With the aforesaid directions, the writ petition is allowed, a writ of *Quo Warranto* is issued quashing the appointment of respondent no.2 at the first instance as Pro Vice Chancellor by Office Order dated 14.09.2023 and as Officiating Vice Chancellor by Office Order dated 12.11.2023. Since the respondent no. 2 has not been appointed in terms of Statute, his continuation in the office of Vice Chancellor as the Officiating Vice Chancellor cannot be permitted further.

56. The writ is disposed of along with all the pending applications, with no order as to costs.

W.P.(C) 16421/2023 & CONT CAS.(C) 4/2024

57. In view of the aforesaid order passed in W.P.(C) 15161/2023, no separate orders are required to be passed in W.P.(C) 16421/2023 and CONT CAS.(C) 4/2024.

58. Both the petitions along with pending applications, if any, stand disposed of accordingly.

TUSHAR RAO GEDELA, J

MAY 22, 2024/aj/rl