

Case :- WRIT - A No. - 19427 of 2023

Petitioner :- Prof. (Dr.) Mujahid Beg

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Kunal Shah, Sankalp Narain, Sr.
Advocate

Counsel for Respondent :- A.S.G.I., Dhananjay

Awasthi, Shashank Shekhar Singh, Shyamal Narain, Siddharth
Khare, Siddharth Nandan, Syed Imran Ibrahim, Syed Shahnawaz
Shah, Vivek Kumar Singh

Connected with

Case :- WRIT - A No. - 16348 of 2024

Petitioner :- Professor ret'd Dr Muzaffar Uruj Rabbani And
Another

Respondent :- Union Of India And 5 Others

Counsel for Petitioner :- Syed Shahnawaz Shah, Udayan Nandan

Counsel for Respondent :- A.S.G.I., Abrar Ahmad, Dhananjay
Awasthi, Shashank Shekhar Singh

AND

Case :- WRIT - A No. - 21023 of 2023

Petitioner :- Syed Afzal Murtaza Rizvi

Respondent :- Union Of India And 7 Others

Counsel for Petitioner :- Arvind Srivastava, Saquib Mukhtar

Counsel for Respondent :- A.S.G.I., Abrar Ahmad, Dhananjay
Awasthi, Pratik Chandra, Shashank Shekhar Singh, Siddharth
Nandan, Udayan Nandan

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Donadi Ramesh, J.

(Per: Ashwani Kumar Mishra, J.)

1. These three petitions arise out of a common cause and are heard together. Consequently, they are being disposed of by this judgment. The appointment of Professor Naima Khatoon as Vice Chancellor of Aligarh Muslim University (hereinafter referred to as 'the University') is the subject matter of challenge in all the three petitions.

Factual Matrix

2. Professor Tariq Mansoor was appointed as Vice-Chancellor of the University for a period of five years w.e.f. 17.5.2017. Although his term was to end in May, 2022, however, the Visitor on 25.3.2022 extended his term for a further period of one year or till a new Vice-Chancellor was appointed. During his extended term as Vice-Chancellor, Professor Tariq Mansoor, in exercise of his powers vested in him under sub-section (3) of Section 19 of the Aligarh Muslim University Act, 1920 (hereinafter referred to as 'the Act of 1920'), appointed Professor Mohd. Gulrez as Pro-Vice-Chancellor of the University. Thereafter, on 2.4.2023, Professor Tariq Mansoor resigned as Vice-Chancellor of the University. A communication came to be issued by the Registrar of the University on 4.4.2023 stating that by virtue of Statute 2(7) of the First Statutes of the University, Professor Mohd. Gulrez would perform the duties of the Vice-Chancellor until a new Vice-Chancellor assumes office. It is during the continuance of Professor Gulrez as officiating Vice-Chancellor that his wife Professor Naima Khatoon got appointed as the Vice-Chancellor of the University.

3. Process for appointment of the new Vice-Chancellor commenced with circulation of an agenda of the Registrar on 23.10.2023, whereby Members of the Executive Council of the University were asked to assemble for a special meeting convened on 30th October, 2023 at 12.00 Noon for the purposes of drawing a panel containing name of five candidates to be recommended to the University Court, for the purposes of appointment of Vice-Chancellor. It is on record that 33 recommendations came up for consideration for such purpose. These persons either submitted their bio-data in the office of Registrar or were otherwise recommended by the members of

the Executive Council.

4. Since shortlisting of five names to be recommended to the Court was based upon the votes secured by them, in the meeting of Executive Council and, therefore, Professor Mirza Asmer Beg was appointed as the Election Officer, while two other persons, namely Professor Mohd. Altamush Siddiqui and Professor Mohd. Shameem were named the teller.

5. The Election Officer published schedule of election, according to which, filing of nomination papers was to be held between 1.00 pm to 1.30 pm; scrutiny of nominations 1.30 to 2.00 pm; list of nominated candidates to be displayed by Election Officer at 2.00 pm; withdrawal of nominations at 2.10 pm; final list of valid nominations to be announced by the Election Officer at 2.20 pm; casting of votes at 2.45 pm; counting of votes (after closure of voting) and declaration of results (after counting concludes).

6. At the meeting of the Executive Council, out of 33 recommendations received, the list of nominated candidates was settled at 20. Then nominated Professor Naima Khatoon, who happens to be the wife of Professor Mohd. Gulrez, who was acting as the Vice-Chancellor by virtue of Statute 2(7) of the First Statutes of the University. All petitioners were included in the list of 20 nominated candidates.

7. Twenty members existed in the E.C. Meeting of 30th October, 2023. Professor Naima Khatoon since was herself an applicant did not vote. Accordingly, 19 candidates were left in the fray. Each of these 19 members of Executive Council could cast five votes. Thus a total number of 95 votes could be cast in the election.

8. After the votes were cast in a secret ballot, Professor Faizan Mustafa received 9 votes; Professor Naima Khatoon and Professor Qayyum Husain obtained 8 votes, each. Five persons, namely Professor Abdul Alim; Professor Baharul Islam; Professor Furqan Qamar; Professor Mujahid Beg and Professor Muzaffar Uruj Rabbani received 7 votes, each. Other persons received lesser votes.

9. Professor Faizan Mustafa; Professor Naima Khatoon and Professor Qayyum Husain having secured 9 and 8 votes, respectively, were shortlisted. The Executive Council had to prepare panel consisting of five names; whereas only three persons were shortlisted on the strength of votes received by them. Remaining two recommendations had to be chosen from five names, all of whom received 7 votes, each.

10. In order to resolve the situation a second poll was conducted. Professor Muzaffar Uruj Rabbani and Professor Furqan Qamar were shortlisted in the second poll. The panel, therefore, consisted of Professor Faizan Mustafa; Professor Naima Khatoon; Professor Qayyum Husain; Professor Muzaffar Uruj Rabbani and Professor Furqan Qamar.

11. As per the procedure laid in the rules, these five names were then placed before the Court. In the meeting of the Court, Professor Muzaffar Uruj Rabbani secured 61 votes; whereas Professor Faizan Mustafa secured 50 votes; Professor Naima Khatoon could get 50 votes. Two other candidates apparently received 47 votes, each. The Court accordingly forwarded names of Professor Muzaffar Uruj Rabbani; Professor Faizan Mustafa and Professor Naima Khatoon to the Visitor for their consideration for appointment as Vice-Chancellor.

12. The Visitor of the University, who happens to be the President of India, in exercise of her powers under Clause 2(1) of the Statutes of the University appointed Professor Naima Khatoon as Vice-Chancellor of the University. A communication to this effect has been issued by the Government of India, Ministry of Education on 22nd April, 2024, which is under challenge in the present writ petition.

Statutory Scheme Governing Appointment of Vice-Chancellor

13. The appointment on the post of Vice Chancellor of Aligarh Muslim University is regulated by the provisions of the Act of 1920. The parties are *ad idem* on this issue. It would, therefore, be apposite to refer to the provisions of the Act of 1920 as well as the Statutes and Regulations framed thereunder in so far as it relates to the appointment of Vice Chancellor of the University.

14. Section 16 of the Act specifies the Officers of the University in following terms:-

- (1) The Chancellor;*
- (2) The Pro-Chancellor;*
- (3) The Vice-Chancellor;*
- (3A) The Pro-Vice-Chancellor, if any;*
- (3B) The Honorary Treasurer;*
- (3C) The Registrar;*
- (3D) The Finance Officer;*
- (3E) The Deans of the Faculties; and*
- (4) Such other officers as may be declared by the Statutes to be officers of the University.*

15. Section 19 provides for the Vice-Chancellor and is reproduced:-

"19. The Vice-Chancellor.—(1) The Vice-Chancellor shall be appointed by the Visitor in such manner as may be

prescribed by the Statutes.

(2) The 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 decisions of all the authorities of the University.

(3) The 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:

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

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

16. Section 19, therefore, makes it explicit that the Vice-Chancellor is to be appointed by the Visitor in such manner as may be prescribed by the Statutes.

17. Exercising the powers conferred under Section 28(1) of the University, the Statutes of the University have been formulated. Statute 2(1), specifies the procedure in which the Vice-Chancellor is to be appointed by the Visitor from a panel of at least three persons, recommended by the Court from a panel of five persons, recommended by the Executive Council. The proviso, however, leaves it to the discretion of the Visitor not to approve any of the names recommended by the Court and may call for fresh recommendations. The term of the Vice-Chancellor is five years. Statute 2(1) of the Statutes, which provides such manner for appointment of Vice-Chancellor is reproduced

hereinafter:-

*"2. The Vice -Chancellor - (1) The Vice -Chancellor shall be appointed by the Visitor from a ** panel of at least three persons recommended by the Court from a panel of five persons recommended by the Executive Council:*

Provided that if the Visitor does not approve of any of the persons recommended by the Court, he may call for fresh recommendations."

18. Section 22 provides for the Authorities of the University. It includes the Court and the Executive Council, apart from others.

19. The composition of Court is specified in Statute 14(1). The composition of the Court and its authority in the matter of governance are specified in Section 23 of the Act. Sub-section (1) and sub-section (2) of Section 23 are relevant for the present purposes and are reproduced:-

"(1) The Court shall consist of the Chancellor, the Pro-Chancellor, the Vice-Chancellor and the Pro-Vice-Chancellor (if any), for the, time being, and such other persons as may be specified in the Statutes.

(2) The Court shall be the supreme governing body of the University and shall exercise all the powers of the University, not otherwise provided for by this Act, the Statutes, the Ordinances and the Regulations and it shall have power to review the acts of the Executive and the Academic Councils (save where such Councils have acted in accordance with powers conferred on them under this Act, the Statutes or the Ordinances)."

20. The composition of the Executive Council is specified in Statute 16. The quorum for the Executive Council by virtue of of Statute 16(3) is fifteen members. The composition of the Executive Council is statutorily prescribed as that of, Vice-Chancellor; Pro-Vice-Chancellor; Honorary Treasurer; Five Deans of Faculties by rotation according to seniority; One Director of Centres, by rotation according to seniority; Two Principals of Colleges, other than the Principal of the Women's

College, by rotation according to seniority; Principal, Women's College; One Provost, by rotation according to seniority; Proctor; Six members of the Court, none of whom shall be an employee of the University, to be elected from amongst themselves; Two representatives of Professors and Readers to be elected from amongst themselves; Two representatives of Lecturers to be elected from amongst themselves; Three persons to be nominated by the Visitor; One person to be nominated by the Chief Rector.

21. The Executive Council is the principal executive body of the University and has been created under Section 24 of the Act, which is reproduced hereinafter:-

"24. The Executive Council.—The Executive Council shall be the principal executive body of the University. Its constitution and the term of office of its members and its powers and duties shall be prescribed by the Statutes."

22. The powers and functions of Executive Council are then specified in Statute 17. By virtue of Clause (xvii), to exercise such other powers and perform such other duties as may be conferred or imposed on it by the Act or the Statutes in addition to the powers specified under Statute 17(i) to 17 (xvi).

23. Regulations of the Executive Council are also framed. Clause (8) specifies that all questions considered at the meetings of the Executive Council shall be decided by a majority of the votes of the members present including the Chairman. If the votes be equally divided, the Chairman shall have a casting vote. Chapter II of the Regulations of the Executive Council specifies that no member, who is likely to be affected personally by any motion, whether favourably or adversely, shall be entitled to vote on it. In case of a doubt, the

Chairman shall give his ruling with reasons which shall be recorded. Clause (8) of the Regulations of the University as well as Clause (27) of Chapter II prescribing the Rules of Debate, are reproduced:-

"(8) All questions considered at the meetings of the Executive Council shall be decided by a majority of the votes of the members present including the Chairman. If the votes be equally divided, the Chairman shall have a casting vote.

(27) No member, who is likely to be affected personally by any motion, whether favourably or adversely, shall be entitled to vote on it. In case of a doubt, the Chairman shall give his ruling with reasons which shall be recorded."

24. Within the broad conspectus of above referred statutory scheme the appointment of Vice-Chancellor is to be made.

25. Petitioners in the writs have assailed the selection and appointment of Professor Naima Khatoon primarily on the ground that her husband Professor Mohd. Gulrez was acting as Vice-Chancellor and had presided over the crucial meetings of Executive Council and the Court, wherein his wife was recommended for appointment to the post. It is asserted that this is not just a case of likelihood of bias on part of Professor Mohd. Gulrez, but the proceedings have been manipulated to secure selection and appointment of Professor Naima Khatoon. Submissions at length are advanced on behalf of petitioners to contend that the composition of Executive Council and Court was changed just 10 days before the selection by Professor Mohd. Gulrez without any justifiable cause. These changes were intended to facilitate the selection of Professor Naima Khatoon. It is also urged that the proceedings of executive committee were manipulated with material irregularity committed in the counting of votes; the election officer changed the rules of the game midway by holding second election to choose two

candidates out of five who secured equal votes, even though the election schedule did not contemplate such an exigency; Professor Mohd. Gulrez rejected the objection of members of Executive Council and Court questioning his participation and presiding of the proceedings due to conflict of interest. It is also argued that the principles of natural justice were breached when Professor Mohd. Gulrez ruled in favour of his presiding over the meeting of Executive Council and the Court after rejecting the objection of various members thereby becoming a Judge in his own cause.

26. On behalf of petitioners, it is also argued that the appointment of Vice-Chancellor was based on selection and the voting of the members of the Court and the Executive Council was merely to ascertain the views, which did not change the nature of proceedings from selection to election. The petitioners, therefore, contend that principles of natural justice are clearly breached and fairness, which is the cardinal stone of any valid selection is compromised. It has, therefore, been prayed that selection and appointment of Professor Naima Khatoon be quashed and fresh proceedings be undertaken for appointment to the post of Vice-Chancellor of the University.

27. On behalf of respondents, the submissions are countered stating that the shortlisting of candidates in the Executive Council and the Court was based upon the votes secured by candidates, which was a process of election in which the concept of bias has no role to play. It is asserted that the Executive Council and the Court has to be presided by the Vice-Chancellor in the statute and since Professor Mohd. Gulrez was the Acting Vice-Chancellor, there was no other option for him but to preside over such meetings.

28. The doctrine of necessity is pressed into service by the respondents for such purpose. It is also argued that Professor Mohd. Gulrez was in chair of the proceedings and any objection raised had to be ruled by him, and therefore, his decision to reject the objection of members questioning the propriety of his presiding over meetings of the Executive Council and the Court did not violate principles of natural justice. Only the functions of chair were performed by him, which otherwise had the support of other members and the decision was based upon due deliberation. It is also submitted that allegation with regard to manipulation in the cast of votes and conduct of second ballot are misconceived arguments. Since five candidates had secured equal votes and the decision otherwise under the regulations were to be by the rule of majority the holding of second election was inevitable. It is also submitted that the holding of second election has otherwise not been questioned or doubted, and therefore, the plea of manipulation in the holding of election for recommendation is as a result of afterthought. On behalf of respondents, it is submitted that the petitioners in Writ-A No. 16348 of 2024 raised no objection when they too got recommended by the Executive Council and the Court and it is much after the appointment of Professor Naima Khatoon that a belated challenge is raised to her appointment. It is urged that petitioners have not approached this Court with clean hands and the writs have been filed for oblique reasons.

29. Respondents also defend the appointment of the Vice-Chancellor on the ground that the selection ultimately was by the Visitor of the University. It is contended that Professor Naima Khatoon was not only the person recommended for appointment to the post of Vice-Chancellor, in-fact, five persons, who were recommended by the Executive Council

whereas three recommendations were made by the Court to the Visitor. It is urged that all three candidatures were ultimately placed before the Visitor, who had exercised her discretion under the statutes to appoint Professor Naima Khatoon. It is also urged that by the respondents that Professor Naima Khatoon possessed requisite qualification for appointment to the post of Vice-Chancellor and is the first woman to have been so appointed in the history of the university. It is further urged that out of three recommendations made by the university court to the visitor the visitor had chosen to appoint Dr. Naima Khatoon as the Vice-Chancellor. It has been urged before us that visitor in the present case happens to be the President of India and her discretion in choosing Professor Naima Khatoon ought not be interfered by this Court, likely, when no allegation of bias or mala-fide is attributed to the visitor. Reliance is placed upon the judgment of the Supreme Court in *Km. Neelima Misra vs Dr. Harinder Kaur Paintal And Ors*, (1990) 2 SCC 740, to contend that in matters of appointment in the academic field the court should be slow to interfere. Only when statutory provisions are contravened or ordinances are violated that interference of the court would be permissible. Reliance is placed upon paragraph 32 of the judgment in *Km. Neelima Misra (supra)* to state that appointments made by the visitor based upon the recommendation of the Executive Council and the University Court need not be interfered with, particularly when the selected candidate possesses requisite qualification and is otherwise the first woman Vice-Chancellor of the University.

30. We have heard Sri Amit Saxena, learned Senior counsel assisted by Sri Kunal Shah, learned counsel for the petitioner in Writ Petition No.19427 of 2023, Sri Saquib Mukhtar, learned

counsel for the petitioner in Writ Petition No.21023 of 2023, Sri Shashi Nandan, learned Senior counsel assisted by Sri Udayan Nandan, learned counsel for the petitioners in Writ Petition No.16348 of 2024, Ms. Aishwarya Bhati, learned Additional Solicitor General of India assisted by Sri Vivek Kumar Singh, Sri Abrar Ahmad, learned counsels for Union of India; Sri Manish Goyal, learned Additional Advocate General assisted by Sri Shashank Shekhar Singh, learned counsel for Aligarh Muslim University, Sri Ashok Khare, learned Senior counsel assisted by Sri Siddharth Khare, learned counsel for Professor Mohammad Gulrez, Sri Shyamal Narain, learned counsel for the Vice-Chancellor, whose appointment is under challenge, Sri Dhananjay Awasthi, learned counsel for U.G.C. and have also perused the material on record.

31. On the previous occasion, we also directed the University to produce the original records relating to proceedings of shortlisting of names to be recommended to the court by the Executive Council and such original records have also been produced before the Court. We have also examined such records.

32. It is undisputed that Professor Naima Khatoon, who has been appointed as Vice-Chancellor of the University is the wife of Professor Mohd. Gulrez. She was otherwise the member of Executive Council but did not participate in the proceedings for shortlisting of the candidates, as she was herself a candidate. Husband of Professor Naima Khatoon namely Professor Mohd. Gulrez was acting as Vice-Chancellor when the process of shortlisting of names took place. In the two meetings of the Executive Council and the Court where names were shortlisted for being sent to the visitor, it was Professor Mohd. Gulrez, who had presided. The petitioners, therefore, argue that nature of

proceedings adopted for the purposes of preparing the panel to be recommended to the visitor for appointment of Vice-Chancellor contravened the rule against bias. It is also urged that proceedings were tweaked by Professor Mohd. Gulrez to suit the convenience of his wife and that it was not just a case of likelihood of bias but in fact the proceedings are vitiated on account of bias attributed to the Acting Vice-Chancellor, who maneuvered the appointment of his wife as Vice-Chancellor.

33. On the basis of submissions advanced by the rival parties, we find that following questions arise for our determination in the facts of the present case:-

(i) Whether shortlisting of candidates for their recommendation to visitor by the Executive Council and then the Court involves process of selection or election?

(ii) Whether the shortlisting of five names by the Executive Council based upon the cast of votes is vitiated on account of any manipulation?

(iii) As a sequel, it has to be seen as to whether the concept of likelihood of bias would be attracted in the facts of the present case due to active participation of Professor Gulrez in the shortlisting of candidates by the Executive Council and the University Court, and its effect if it is found so?

(iv) Whether discretion exercised by the visitor in selecting Professor Naima Khatoon from the panel of three candidates requires interference?

34. Parties are at issue on the question of shortlisting of candidates for their recommendation to Visitor by Executive Council and the Court as being a part of selection or election.

Admittedly, the shortlisting of candidates is on the basis of votes secured by candidates on the strength of secret ballot.

35. Sri Ashok Khare and Sri Manish Goyal, learned Senior Counsels as well as Sri Shyamal Narain appearing for the Professor Naima Khatoon submit that the process of shortlisting is based on the votes secured by the candidates available for consideration to the post of Vice-Chancellor, it is case of election. Sri Shashi Nandan and Sri Amit Saxena, learned Senior Counsels appearing on behalf of the petitioner, however, submit that casting of vote is merely with an intent to ascertain the decision of the house since all decisions are to be taken by majority. It is, therefore, submitted that the recommendation is a part of selection. Sri Shashi Nandan has highlighted the Act and Statutes in order to submit that selection and election both are separately specified in the statute and that the appointment of Vice-Chancellor is by way of selection.

36. In order to examine the submission, we have carefully gone through the various provisions of the applicable statute. Sri Shashi Nandan has placed before us the statutory scheme in order to urge that the Vice-Chancellor of the University is to be appointed, and not elected. Various officers of the University have been specified in Section 16 of the Act, which includes the Chancellor; the Pro-Chancellor; the Vice-Chancellor, etc. Section 17 provides for the Chancellor. Sub-section (1) of Section 17 is relevant and is reproduced:-

"17(1) The Chancellor of the University shall be elected by the Court in such manner and for such term as may be prescribed by the Statutes."

37. Similarly, Section 18 provides for the Pro-Chancellor. Sub-section (1) of Section 18 is also relevant and is reproduced:-

"18(1) The Pro-Chancellor shall be elected by the Court in such manner and for such term as may be prescribed by the Statutes."

38. Similarly, Statute 1(1) prescribes the manner in which the election of Chancellor is to take place. Statute 1(1) is reproduced:-

*"1(1) The Chancellor shall be elected ** by the Court by a simple majority."*

39. Similar to the above provision Statute 1A prescribes the manner in which Pro-Chancellor is elected and is reproduced:-

*"1A. The Pro-Chancellor - (1) The Pro-Chancellor shall be ** elected by the Court by a simple majority.*

(2) The Pro-Chancellor shall hold office for a term of three years and shall be eligible for re-election.

***(3) Any casual vacancy in the office of the Pro-Chancellor shall be filled by the Chancellor on the recommendation of the Executive Council and the person so appointed shall hold office until the next annual meeting of the Court.*

(4) The Pro-Chancellor shall, in the absence of the Chancellor, perform the functions of the Chancellor."

40. Unlike Section 17 & 18, extracted above, which specifies that Chancellor and Pro-Chancellor are to be elected by the Court in such manner and for such terms as may be prescribed by the Statutes, the Act contemplates a different scheme in respect of Vice-Chancellor. Sub-section (1) of Section 19 clearly specifies that Vice-Chancellor shall be appointed by Visitor in such manner as may be prescribed. Statute 2 of the Statutes also provides that Vice-Chancellor shall be appointed by the Visitor from a panel of at least three persons recommended by the Court from a panel of five persons recommended by the Executive Council.

41. Sri Shashi Nandan has also emphasized from the statutory scheme that the term election and appointment is

differently used in respect of the officers of the University which clearly indicates the statutory intent of maintaining distinction between appointment based on selection and election. Section 20 provides for Pro-Vice-Chancellor to be appointed in such manner as may be prescribed by the Statutes. However, in case of Honorary Treasurer, he has to be elected by the Court in such manner as may be prescribed by the Statutes. Quite contrary to Section 20-A, Section 20-B provides that the Registrar shall be appointed in such manner as may be prescribed by the Statutes.

42. In cases where Officer is to be appointed and not elected the Statute prescribes the manner of appointment. Apart from the Vice-Chancellor, the Pro-Vice-Chancellor is to be appointed by the Executive Council on the recommendation of the Vice-Chancellor. Here also the decision of the Executive Council has to be by way of the majority in view of Regulation 8 of the regulations regulating the business of the Executive Council. Similarly, the Registrar has to be appointed on a recommendation of a Selection Committee by the Executive Council. Here also the ultimate decision of the Executive Council will have to be on the strength of majority. Where the decision is not unanimous the casting of votes to determine the majority is inevitable.

43. The process of appointment of Vice-Chancellor commences with submission of application alongwith Bio-Data for its consideration and recommendation by the Executive Council to the Court. In the present case, 33 persons had either applied or were recommended for consideration. Out of these 33 persons, the Executive Council found 20 nominations to be valid and out of these 20 candidates, five were recommended by the Executive Council to the Court. The shortlisting of these

five candidates for recommendation to the Court was on the basis of casting of vote by the Members of the Executive Council in order to ascertain the majority opinion of the house. Similarly, out of five recommended candidates, the Court also shortlisted three persons for recommendation to the Visitor by ascertaining the views of the house based on cast of votes. The selection process then consisted of the consideration of three candidates recommended by the Court to the Visitor who appointed Professor Naima Khatoon.

44. On behalf of petitioners reliance is placed upon the judgment of the Supreme Court in Andhra Pradesh Public Service Commission Vs. B. Sharat Chandra, (1990) 2 SCC 669 to contend that selection cannot be held to be the final act of appointment alone. Every step in the process of selection is a part of it. In para 7, the term selection has been held to mean as under:-

"7.....If the word 'selection' is understood in a sense meaning thereby only the final act of selecting candidates with preparation of the list for appointment, then the conclusion of the Tribunal may not be unjustified. But round phrases cannot give square answers. Before accepting that meaning, we must see the consequences, anomalies and uncertainties that it may lead to. The Tribunal in fact does not dispute that the process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment."

45. The typical attributes of election are otherwise distinct. In a case of election the constituency of voters ultimately choose its representative for espousing its interest. The person who is seeking election may also exercise the right of vote. Usually,

the electorate votes in favour of the person who would promote their interest. Since promotion of the cause of electorate is the object, therefore, objective assessment of merit may not be the dominant criteria in election. Unlike it (election) when the cast of vote is in the process of selection the voter is supposed to exercise his vote in favour of the most meritorious candidate.

46. In the case of the present kind the members of executive council were expected to choose five best candidates out of those available for their recommendation to the University Court. Such shortlisting is by cast of votes. As observed earlier the strict principles of election are not applicable in the facts of the present case as recommendation is expected to be based upon the merits of the candidate.

47. The selection for the post of Vice-Chancellor is essentially segregated into two parts. The first part consists of recommendation by the Executive Council and the Court to the Visitor while the second part relates to consideration of such recommendation by the Visitor. The Visitor is not bound by the recommendation made by the Executive Council and the University Court and has the discretion under Statute 2, not to approve any of the persons recommended by the Court and call for fresh recommendation.

48. Going by the scheme of appointment the Visitor has to consider appointing the Vice-Chancellor from the panel of three persons recommended by the Court, from a panel of five persons recommended by the Executive Council. The appointment of Vice-Chancellor, therefore, cannot be said to be by way of election.

49. The recommendation of five persons by the Executive

Council and thereafter recommendation of three out of those recommended by the Executive Council to the Chancellor is a part of the selection for appointment. The mere fact that at the stage of recommendation voting is done to ascertain the decision by majority of the house, the appointment based on selection cannot be construed as election. The first issue is answered accordingly.

50. Much arguments are advanced on behalf of the writ petitioners on the aspect of irregularity and manipulation in shortlisting of five candidates by the Executive Council. Shri Amit Saxena, learned Senior Counsel appearing for petitioners argued that the process of shortlisting was manipulated as 99 votes were actually cast while only 95 votes were available to be cast. He also submitted that the election schedule indicated only one election whereas a subsequent poll was also held to shortlist two candidates when it was found that five persons had scored equal votes. It is suggested that printing of ballot papers for the second poll was not possible in such short time and the proceedings of shortlisting are manipulated.

51. The submission on this count, by the petitioners, is strongly opposed by the counsel for the University and other respondents. It is argued on their behalf that holding of subsequent election was necessitated as five candidates had scored 6 votes each and only two of them could be shortlisted. It is also urged that no doubts were ever raised regarding holding of the subsequent election to choose two persons out of five who had secured equal votes.

52. Noticing the arguments of the writ petitioners we, on the previous occasion, directed the University to produce original records. Accordingly, original records relating to shortlisting of

candidates by the Executive Council are produced before us. We have gone through the records. The original records containing ballots etc. have been perused by us. It is found that only 95 votes were cast and the allegation that 99 votes were actually cast is not borne out from the records.

53. The petitioners' plea that 99 votes were cast is based upon some newspaper reports wherein the votes cast in favour of each candidate was reported and its total worked out to 99 in place of 95 votes available. This is so as 19 members were present in the meeting of Executive Council dated 30.10.2023 and since all members could exercise five votes, therefore, total votes available were only 95.

54. This objection of the petitioners cannot be accepted, inasmuch as the basis of petitioners' claim is only the newspaper report. Such report cannot be relied upon when the original record produced before the Court shows existence of 95 ballots. When votes cast in favour of all candidates are calculated the number works out to 95 and not 99. Such newspaper reports are otherwise in the nature of hearsay evidence and in the absence of it being backed by cogent evidence it cannot be relied upon. [See: S.A. Khan Vs. Ch. Bhajan Lal and others, (1993) 3 SCC 151]. The original records otherwise shows existence of 95 ballots. In such circumstances, plea of manipulation in cast of votes cannot be sustained.

55. So far as question of subsequent poll in the same meeting dated 30th October, 2023 is concerned, we find that none had raised any objection either at the time of election or even later. Since five candidates had obtained seven votes each and two of them only could be recommended, therefore, second poll was inevitable when the shortlisting was based on the votes cast.

56. It is undisputed that Professor Faizan Mustafa secured 9 votes in the meeting of Executive Council dated 30th October, 2023. Professor Naima Khatoon and Professor Qayyum Husain obtained eight votes, each. Thereafter, five candidates namely Professor Abdul Alim, Professor Baharul Islam, Professor Furqan Qamar, Professor Mujahid Beg and Professor Muzaffar Uruj Rabbani secured seven votes, each.

57. Candidates with nine and eight votes were thus shortlisted upon cast of votes. Professor Faizan Mustafa, Professor Naima Khatoon and Professor Qayyum Husain stood shortlisted. The remaining two candidates had to be shortlisted from the five candidates who had secured seven votes, each. Since the shortlisting either had to be unanimous or based on majority of votes cast, therefore, the second poll was conducted. Original records in respect of the second poll held on 30.10.2023 are also produced. The submission that election schedule did not specify second poll does not appear to have substance as at the time of drawing election schedule it may not be known that a second poll would be needed. The further argument that preparation of ballot, etc., would have taken time is also not material in these advanced technological ape. This is so as holding of second poll is otherwise not disputed.

58. Though, objections are taken doubting the proceedings of Executive Council, but in the absence of any cogent material we are not inclined to accept the objections. The original records produced before the Court do not support the allegations levelled. We also find that none had disputed the second poll nor the rationale of its holding is questioned. In that view of the matter, we do not find any substance in the accusation made by the petitioners that the shortlisting of candidates for recommendation to the university court was manipulated. The

second issue is answered against the petitioners.

59. The third issue arises in view of the fact that the meeting of Executive Council and University Court was chaired by Professor Mohd. Gulrez while his wife got recommended for appointment as Vice-Chancellor to the Visitor. Change in the composition of Executive Council about ten days prior to proceedings of shortlisting is also relied upon as being illustration of such bias.

60. On the aspect of bias the parties are at issue. The respondents contend that as shortlisting of names for recommendation was based upon cast of votes as such it was a case of election wherein plea of bias would be unavailable.

61. We have already held on the first issue that appointment on the post of Vice-Chancellor was based on selection and not election. Once that be so, the defence of respondents/State that concept of bias would not be attracted cannot be accepted. Sri Ashok Khare has placed reliance upon the constitution bench judgment of the Supreme Court in Central Organization for Railway Electrification Vs. ECI SPIC SMO MCML (JV) A joint venture company, (2024) SCC OnLine SC 3219 to submit that concept of bias will not arise in the facts of this case.

62. So far as appointment based on selection is concerned, the concept of bias would clearly be applicable. [See: A.K. Kraipak and others Vs. Union of India and others, (1969) 2 SCC 262; Ashok Kumar Yadav Vs. State of Haryana, AIR 1987 SC 454; Board of Control for Cricket in India Vs. Cricket Association of Bihar, (2015) 3 SCC 251; Dr. V.K. Sharma Vs. State of U.P., 2006 (6) AWC 6263].

63. In A.K. Kraipak (supra), the person included in the selection board was himself a candidate for selection. The Court held that it was improper for the person to have been included in the selection board when he was also applicant. Even though, the person concerned had not participated, yet his presence in the selection board was held to constitute bias. The Court observed as under in para 16:

"16. The members of the selection board other than Naqishbund, each one of them separately, have filed affidavits in this Court swearing that Naqishbund in no manner influenced their decision in making the selections. In a group deliberation each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of selection board functioned like computers. At this stage it may also be noted that at the time the selections were made, the members of the selection board other than Naqishbund were not likely to have known that Basu had appealed against his supersession and that his appeal was pending before the State Government. Therefore there was no occasion for them to distrust the opinion expressed by Naqishbund. Hence the board in making the selections must necessarily have given weight to the opinion expressed by Naqishbund."

64. In Ashok Kumar Yadav (supra), the Supreme Court reiterated the principle that one should not be a judge in his own cause. This was held to violate principles of natural justice. Similar views are expressed in Board of Control for Cricket in India (supra).

65. The respondents, on the other hand, contend that the decision of Executive Council and University Court regarding shortlisting of candidates was premised on the principles of

election, rather than it being a case of selection, since all decisions were taken based on cast of votes. It is, therefore, suggested that even if it is treated to be a case of selection, yet it has substantial trappings of election which excludes it from the mischief of bias.

66. We have already noticed that Clause 8 of the Regulations of University specify that all questions to be considered at the meeting of Executive Council shall be decided by the majority of the votes of the members present. Decision of Executive Council to shortlist names for recommendation has to be on the strength of cast of votes.

67. Clause 27 of Chapter II prescribing the rules of debate, however, provide that no member, who is likely to be effected personally by any motion, whether favourably or adversely, shall be entitled to vote on it. In case of a doubt, the Chairman shall give his ruling with reasons which shall be recorded.

68. Professor Mohd. Gulrez was acting as Vice-Chancellor when the Executive Council and the University Court took up the issue of recommending names to the Chancellor for appointment of Vice-Chancellor.

69. Upon commencement of meeting of the Executive Council and University Court an objection was raised by several members that Professor Gulrez Ahmad ought not to preside the meetings since his wife is a candidate. This objection has been rejected by Professor Gulrez Ahmad. According to petitioners, Professor Gulrez Ahmad became a judge in his own cause and contravened the principles of natural justice.

70. Per-contra, respondents contend that being the acting

Vice-Chancellor it was inevitable for Professor Gulrez Ahmad to preside over these meetings. The doctrine of necessity is also pressed into service. The respondents also rely upon a directive issued by the Ministry of Human Resource Development, Government of India, dated 12 March 2015 limiting the conflict of interest only to the candidate himself/herself and to none else.

71. Undisputedly, the appointment of Vice-Chancellor in the present case was required to be made in accordance with the Act, Statutes and the Ordinances. Under the statutory scheme regulating the appointment of Vice-Chancellor none of the directives of the Ministry is shown to have any applicability. The directive of the Ministry provided that *'in case, the Vice-Chancellor or any other Member(s) of the Executive Council who are desirous to be the candidates for the post of the Vice-Chancellor, attend such meeting of the Executive Council, they shall be deemed to be disqualified as candidates for the post of the Vice-Chancellor'*.

72. The aforesaid circular/directive, dated 12.3.2015, dealt with a different exigency all together. It was intended to exclude the members of Executive Council from participation in a meeting where such member is himself a candidate. It does not deal with the exigency at hand where objection is to the participation of husband in a meeting where his wife is also in the reckoning for recommendation. This circular is also not shown to be applicable upon the University where appointment process is distinct and is regulated by the Act, Statutes and the Ordinances. The circular of the Ministry, dated 12.3.2015, therefore, does not come to the aid of the respondents.

73. Clause 27 of Chapter II, prescribing the rules of debate

clearly provide that no member who is likely to be effected personally by any motion, favourably or adversely, shall not be entitled to vote on it. In the facts of the case, it was clearly desirable that Professor Gulrez Ahmad abstained from presiding the crucial Executive Council and the University Court meetings when his own wife was to be considered for recommendation for appointment. It cannot be said that a husband will not be effected personally by any motion adopted by the house concerning his wife. Even if it is so the perception of house is quite likely to be otherwise. Even if we accept the respondents argument that Professor Gulrez and Professor Naima are distinct academicians of repute, yet fairness would have been better reflected if Professor Gulrez had not presided over these meetings.

74. Since, the quorum of Executive Council is 15 whereas 19 members were present and had participated, therefore, no difficulty would have otherwise arisen if Professor Gulrez Ahmad had abstained and allowed the next man in command as per the statute to preside such proceedings. This course would have obliterated any apprehension of bias in the process of recommendation. Chairing and participation of Professor Gulrez in the process of recommendation is thus held improper.

75. We deem it appropriate, in such circumstances, to issue a directive to the University to resolve, henceforth, not to allow any spouse or close family member to preside and participate any crucial meeting concerning his/her close relative.

76. Having said so, we are required to examine as to whether the proceedings of Executive Council or the University Court in shortlisting Professor Naima Khatoon and recommending her name to the Visitor is vitiated on account of participation of

Professor Gulrez Ahmad?

77. The Executive Council and the University Court are multi member bodies. 19 members of Executive Council had participated in its meeting held on 30th October, 2023, whereas 84 members of the University Court exercised their right to vote in the meeting of the Court held on 6.11.2023.

78. All the 19 members of Executive Council had voted. 3 candidates had scored 8 and above votes. This included Professor Naima Khatoon. The Executive Council in the same meeting shortlisted two more persons for their recommendation to the University Court. Similarly, in the meeting of University Court 84 members casted their votes. Professor Muzaffar Uruj Rabbani secured 61 votes; Professor Faizan Mustafa secured 53 votes and Professor Naima Khatoon secured 50 votes.

79. The role of Professor Gulrez in the process of selection is required to be examined in the scheme for appointment of Vice-chancellor under the Act and the Statutes.

80. In order to determine as to whether participation of Professor Gulrez Ahmad in the meeting of the Executive Council or the University Court has vitiated such proceedings, we shall have to understand the concept of bias and its applicability in a case of the present kind where decisions at both the meetings were arrived at on the strength of votes cast by the members of the multi member body. The role of Professor Gulrez in the process of selection is required to be understood in the scheme for appointment of Vice-Chancellor.

81. In Central Organization for Railway Electrification (supra), the Supreme Court considered the principle governing the

doctrine of bias after referring to the judgments in A.K. Kraipak (supra) and Ashok Kumar Yadav (supra). In para 88 & 89 the constitution bench held as under:-

"88. The principle governing the doctrine of bias is that a member of a judicial body with a predisposition in favour of or against any party to a dispute or whose position in relation to the subject matter or a disputing party is such that a lack of impartiality would be assumed to exist should not be a part of a tribunal composed to decide the dispute. This principle is applicable to authorities who have to act judicially in deciding rights and liabilities and bodies discharging quasi-judicial functions. A quasi-judicial authority empowered to decide a dispute between opposing parties "must be one without bias towards one side or the other in the dispute." A member of a tribunal which is called upon to try issues in judicial or quasi-judicial proceedings must act impartially, objectively, and without bias.

Iii. Test of real likelihood of bias

a. Automatic disqualification

89. Bias is generally classified under three heads : (i) legal interest, which means a judge is "in such a position that a bias must be assumed"; (ii) pecuniary interest; and (iii) personal bias. A pecuniary or proprietary interest, however small, automatically disqualifies a person. A person who has an interest in the outcome of an issue that is to be resolved would be acting as a judge in their own cause. The question is not whether a judge has some link with parties involved in a cause before the judge but whether the outcome of that cause could realistically affect the judge's interest. This principle has been authoritatively stated by the House of Lords in Dimes v. Grand Junction Canal. In that case, the Lord Chancellor decreed in favour of a canal company in which he held substantial shares. The House of Lords observed that the principle that no person should be judge in their own cause "is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest."

82. The doctrine of bias is strictly applied in judicial proceedings or the proceedings of a Tribunal which are entrusted with the task of adjudication. In selection proceedings also the members of selection committee adjudge the merits of a candidate for appointment to a post and,

therefore, concept of bias is attracted. Even where the selection committee is a multi member body and its decision is based on consultation and discussion amongst the members it would be obvious that the principles of bias would come into play if any of the member is shown to be closely related to the candidate concerned.

83. The appointment process of Vice-Chancellor of University requires recommendation of five names by the Executive Council to the University Court, whereafter University Court recommends three candidates out of those five recommended by the Executive Council to the Visitor. The ultimate selection of Vice-Chancellor is by the Visitor from amongst the three names forwarded by the University Court.

84. As per the appointment procedure specified in the Act and Statutes Visitor is not bound to appoint one of the persons recommended by the University Court as the Vice-Chancellor of the University. The Visitor has the discretion of not approving any of the persons recommended by the Court and may call for fresh recommendations. The discretion of the Visitor in appointing the Vice-Chancellor is not limited or conditioned. The act ultimately reposes trust in the Visitor for making appointment of the Vice-Chancellor.

85. The scheme of appointment under the Act confers limited authority upon the Executive Council and the University Court. Its role is limited to recommending names of three persons by the University Court out of five names suggested by the Executive Council. The Executive Council and the University Court are multi member bodies and their decisions are by majority on the strength of votes cast by them.

86. Although we have held that appointment of Vice-Chancellor is by selection and not election, yet, we have to keep in mind the provisions of the Act and Statutes of the University wherein role of Executive Council and University Court is at best recommendatory in nature. The recommendation is also based upon the cast of votes by multi member body. Considering it, the concept of bias may not entirely get attracted when Professor Gulrez presided over the Executive Council and the University Court meetings only to shortlist and recommend names which were not required to be necessarily accepted by the Visitor, whose discretion is not questioned. In determining the applicability of concept of bias one will have to understand the role entrusted to the person against whom bias is alleged. If such person has a decisive role to play in it then the concept of bias will get attracted. However, where role of such person is limited to chairing the body which has to make recommendation of a panel and the ultimate authority to choose from the shortlisted panel vests in the Visitor, against whom no allegation of bias is made, the proceedings of selection cannot be held to be vitiated on account of participation of Professor Gulrez.

87. The Visitor under the Statute is not obligated to accept the recommendation of the Executive Council and the University Court and has the authority not to accept it and call for fresh recommendation. Presumption in law would be that at the level of the Visitor the proceedings and records would be examined. At the crucial stage of selection before the Visitor neither the proceedings are shown to have any shortcoming nor any bias is alleged. Consequently, the selection of Vice-chancellor by the Visitor cannot be questioned.

88. Though, we are of the opinion that Professor Gulrez

Ahmad ought not to have presided and participated in the meeting of Executive Council and the University Court, yet, considering the nature of appointment process and the limited recommendatory role of Executive Council and University Court in making of appointment of Vice-Chancellor, we are of the considered view that participation of Professor Gulrez Ahmad in such proceedings has not vitiated the selection proceedings. We, accordingly, answer the third issue. The change of one member of the Executive Council soon before the holding of meeting dated 30.10.2023 is also not decisive for such reason.

89. Coming to the last issue framed for our consideration, it is worth noticing that Professor Naima Khatoon undisputedly possesses qualification for appointment to the post of Vice-Chancellor. We are informed that in the history of the University for well over a century no women has ever been appointed as Vice-chancellor. Appointment of woman as Vice-Chancellor of a premier institution of higher learning sends a message that the constitutional objective of advancement of cause of women is being promoted. In such circumstances, the question is as to whether this Court would unseat the first woman Vice-Chancellor of Aligarh Muslim University only because her husband had presided over the meeting of Executive Council and University Court, which included her name in the panel to be send to the Visitor?

90. The answer has to be a definite no. We have already noticed that qualification of Professor Naima Khatoon to be appointed as the Vice-Chancellor is not in issue. Her ultimate selection is by the Visitor against whom no allegation of bias is made. She was erstwhile Principal of Women's College of the University. Merely because her husband was acting as Vice-Chancellor and had presided and participated in the meetings of

Executive Council and University Court which also recommended her name, in addition to others, for appointment as Vice-Chancellor cannot be a ground to interfere with her appointment as the first woman Vice-Chancellor of the University.

91. For the reasons and deliberations held above, we hold that discretion exercised by the Visitor in appointing Professor Naima Khatoon as the first woman Vice-Chancellor of Aligarh Muslim University from a panel of three names recommended by the University Court merits no interference.

92. Writ petitions are, accordingly, dismissed. Costs made easy.

Order Date:- 17.5.2025
Ranjeet Sahu/Anil

(Donadi Ramesh, J.)

(Ashwani Kumar Mishra, J.)