
(1992) 09 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Appeal No. 18 of 1991

Mahender Kumar @ M.K. Saini

APPELLANT

Vs

Vice Chancellor, Jamia Millia Islamia University and Others

RESPONDENT

Date of Decision : 09-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 24 DRJ 193

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : P.N. Lekhi, M.K. Garg, Lokesh Kumar, M. Qamaruddin and Shailen Bhatia, for the Appellant;

Judgement

C.M. Nayar, J.

(1) This petition is directed against the selection of respondents 3.4 and 5 for the post of Professor, in the Academy of Third World Studies in the Jamia Millia Islamia University. The petitioner himself was a candidate for the post of Professor and on his non selection has impugned the same.

(2) The Academy of Third World Studies has been sponsored and financed by the University Grants Commission and it is an important national facility assigned to the Jamia Millia Islamia for building a new institution for research and enquiry. The aim and object is to promote an understanding amongst Third World countries and bring to limelight related researches carried into in India and abroad. The petitioner has further submitted that all these activities are aimed at enhancing cooperation between India and third world countries. An advertisement bearing No. 1/1990-91 was published by the Assistant Registrar, Jamia Millia Islamia University, inviting applications for the post of Professor/Reader/Research Associates in the Academy of Third World Studies at Jamia Millia Islamia. The present petition in fact has impugned the selection of the Professors and, Therefore, it will not be necessary for me to give any finding with regard to the appointment of Readers and Research Associates. The relevant

portion in the advertisement, concerning the selection of Professors, may be reproduced as follows:

"APPLICATIONS on prescribed form are invited for the following posts so as to reach the Assistant Registrar (Recruitment) by 01:00 p.m. on 24.7.1990. Application forms can be obtained from the Recruitment Cell, Registrar's office on any working day between 10:00 a.m. and 12:00 noon on the payment of Rs.7.00 (Rs.2.00 for SC/ST candidates) non refundable through Indian Postal Order/ Bank Draft/ Cash receipt or by sending a self-addressed stamped Rs.2.00 envelope of 10x23 cms. along with the above payment. Seven copies of Bio-data/ research experience/ published work be given on the proforma attached with the prescribed application form. Ability to teach in Hindustani ,particularly Urdu is a desirable qualification for all teaching posts. D.A..C.C.A., H.R.A., P.P. Gratuity, Pension and other benefits will be given as per Jamia Rules. Relaxation in any of the desirable qualifications may be made on the recommendation of the Selection Committee. Reservation exists for SC/ST candidates as per rules. However, where the candidates under the reserved categories are not available, the posts will be filled in from the general category candidates. 1. Three Professors (Rs. 4500-7300), Third World Studies. An eminent scholar with published work of high quality and actively engaged in Research. About ten year's experience of teaching and/or research experience of guiding research at doctoral level. The Majlis-i-Talimi (Academic Council)- (1) The Majlis-i-Talimi (Academic Council) shall be the principal academic body of the University and shall, subject to the provisions of this Act, the Statutes and Ordinances, coordinate and exercise general supervision over the academic policies of the University. (2) The constitution of the Majlis-i-Talimi (Academic Council), the term of office of its members and its powers and duties shall be prescribed by the Statutes. The Head of the Department concerned, if he is a Professor. Jamia Millia Islamia University & Others (ii) One Professor to be nominated by. the Shaikh-ul-Jamia Vice Chancellor). (iii) Three persons not in the (service of the (University, nominated by (the Majlis-i-Muntazimah (Executive Council) out (of a panel of names (recommended by the Maj (lis-i-Talimi (Academic (Council) for their (special knowledge of, or (interest in, the subject (with which the Professor (will be concerned. Reader/Lecturer (i) The Head of the Department concerned. (ii) One Professor to be (nominated by the Shaikh-(ul-Jamia (Vice Chancel (for). (iii) Two persons not in the (service of the (University, nominated by (the Majlis-i-Muntazimah (Executive Council) out (of a panel of names (recommended by the (Majlis-i-Talimi (Academic (Council), for their (special knowledge of, or (interest in, the subject (with which the Reader or (Lecturer will be concerned. (3) The Shaikh-ul-Jamia (Vice Chancellor) or in his absence, the Naib Shaikh-ul-jamia (Pro-Vice-Chancellor) shall preside at the meetings of the Selection Committee. (4) The meetings of the Selection Committee shall be convened by the Shaikh-ul-Jamia (Vice Chancellor) or in his absence by the Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor). (5) The procedure to be followed by a Selection Committee in making recommendations shall be laid down in the Ordinances. (6) If the Majlis-i-

Muntazimah (Executive Council) is unable to accept the recommendations made by the Committee, it shall record its reasons and submit the case to the Visitor for final orders.

(3) The first contention raised by the petitioners is that the selected respondents did not fulfill the requisite qualifications and, Therefore, were not eligible for the post of Professor. The qualifications prescribed in terms of the advertisement were not satisfied and in particular respondent no.3 Dr. Vinod Bhatia did not possess the requisite qualifications and experience and his selection is void ab initio. The petitioner has also contended that he was amply qualified for the post of Professor and he has been deprived of the same due to bias and malafide conduct of the respondents. The petitioner had acquired the qualification for the said post and has written several books and Articles. Besides that he had experience of guiding one student of Ph.D and two for M.Phil. The averments of the petitioner have been denied by the respondents and it is reiterated that the selected Professors were qualified in terms of the advertisement and if the petitioner was not selected it was due to his performance, interview and rating by the Selection Committee.

(4) The question now arises, as to whether, this Court has any power to scrutinise the relative merits of the candidates: whether a candidate is fit for particular post or not, has to be decided by the duly constituted Selection Committee, which has the expertise on the subject. The Court has no such expertise. The Committee, which is usually consisting of experts selects the candidates after going through all the relevant material before it. This Court, Therefore, cannot sit in appeal over the selection so made and has no jurisdiction to set aside the same on the ground of so called comparative merits of the candidates, as assessed by the Court. The petitioner, as well as the selected candidates did possess the desired qualifications and were amply qualified for the posts. The comparative merit of each candidate is beyond the jurisdiction of the Court and the law is well settled that this Court cannot assess the comparative merits and hear appeals over the decision of the Selection Committee and to scrutinise the relative merits of the candidates. (Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, In view of the above, I will refrain from holding that the petitioner was better qualified than the respondents and the selected candidates did not possess the relative merits in comparison. The Selection cannot, as a consequence, be vitiated on this ground.

(5) The next point, which is urged by the Learned counsel for the petitioner is that the selection is vitiated on the ground of malafide and bias. In this context the following instances are cited:

"respondent No. 1. Vice Chancellor, Jamia Millia Islamia University, who was the Chairman of the Selection Committee is related to respondent no.3. Dr. Vinod Bhatia and ought not to have participated in the selection process. Dr. Vinod Bhatia, respondent no.3 herein, does not possess the requisite qualification and experience and, Therefore, his selection is void ab initio. Dr. Ashwani Kumar Ray,

another member of the Selection Committee (for the post of Professor and Reader) is the husband of Dr. Vanita Ray who was selected for the post of Reader. It is submitted that the selection for the post of Professor and the Reader was held on the same day, one after the other and, Therefore, both selections are vitiated."

(6) The respondent no. 1 in reply to these averments has stated as follows:

"respondent No.1's wife's sister was the late wife of Prof. Nunil Hasan. Prof. Nunil Hasan was "humzulf" or Sarhoo (brother-in-law) of Respondent no. 1 as long as his wife was alive but the relationship ceased in 1967 when Prof. Nunil Hasan's wife, who was sister-in-law of Respondent no. 1, died. After the death of his sister-in-law which happened 24 years ago. Respondent no.1 does not have any relationship with his sister-in-law's husband's paternal side. Jamia Millia Islamia University & Others Respondent no.3 Dr. Vinod Bhatia possesses all the requisite qualification and experience for the post of the Professor. His selection is valid and legal. After the advertisement for the posts are made, as per the requirements, a Screening Committee screens and selects the applications of the candidates to be called for the interview. The Screening Committee forwards the has of only those candidates who strictly fulfill the qualifications laid down in the advertisement. In the present case, a meeting of the screening committee took place on 3.9. 1990 at 11.00 a.m. at J.M.T. under the Chairmanship of Prof. Rasheeduddin Khan, Hony. Director of the Academy and Prof Mushirul Hasan of Jamia Millia Islamia, as member. The Screening Committee examined all 46 applications received for the post of Professor and it carefully scrutinised the qualifications and credentials of all candidates. It is admitted to the extent that Prof. Ashwani Kumar Ray, is the husband of Dr. Vinita Ray, who was selected for the post of Reader. It is totally denied that Ashwani Kumar Ray was ever involved at any stage of the interview for the post of the Reader. The Advt. No. 1/1990-91 contained advertisement for 29 posts in total. While the post of the Professor was first on the advertisement list, the post of Reader was separately mentioned as post no.2 (Annexed as annexure L) The two posts, the Professor and the Reader are separate and different in qualifications, grade, emoluments and all other respects. For this purpose it required separate interviews. The interviews were held on the same day to facilitate expeditious appointments to the Academy. Prof. Ashwani Kumar Ray was not even a member of the selection committee for the post of Reader. Hence, he was neither associated with the interview for the post of Reader nor he interviewed any candidate for the post of Reader. It is added that Dr.Vanita Ray has all the requisite qualifications."

(7) The perusal of the above facts would indicate that the relationship of Dr. Vinod Bhatia, respondent no.3, with respondent no. 1 was not denied. However, it was indicated that the said relationship ceased to exist after the death of the late wife of Professor Nurul Hassan, who has been related to respondent no. 1. There is also no denial of the fact that the wife of Dr. Ashwani Kumar Ray, who was one of the members of the Committee for selection of the Professors, as well

as, for Readers, was a candidate for the post of Reader and, as a consequence, was selected for the same. It is, however, denied that the said Prof. Ashwani Kumar Ray was ever involved at any stage of the interview for the post of the Reader. The post of the Reader was separately mentioned in the advertisement and the same are separate and different in qualification. Grade, Emoluments and in every respect. Prof. Ashwani Kumar Ray was not even a member of the Selection Committee for the post of the Reader. He was neither associated with the interview for the post of the Reader nor he interviewed any candidate for the said post. It was reiterated that Dr. Vinita Ray possessed all the requisite qualifications and was rightly selected.

(8) Learned counsel for the petitioner has placed strong reliance on the judgment of the Hon'ble Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . The Supreme Court considered the question about the applicability of the principles of natural justice to administrative proceedings. The following paragraph of the said judgment may be reproduced as follows:

"THE aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (*nemo debet esse iudex propriae causae*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. The University of Kerala and others* the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been

contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

(9) Jamia Millia Islamia University & Others The Hon'ble Court, as a consequence, allowed the petition and set aside the selections made. Reference is also made to the judgment of the Supreme Court in Ashok Kumar Yadav and Others Vs. State of Haryana and Others, . The following paragraph may be reproduced in this regard (pages 440-441):

"WE agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likely hood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting." The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likely hood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likely hood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power strict sensu is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a Welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. This was the basis on which the applicability of this rule was extended to the decision- making process of a selection committee constituted for selecting officers to the Indian Forest Service in A.K.Kraipak v. Union of India. What happened in this case was that one Naqishbund, the acting Chief Conservator of Forests, Jammu and Kashmir was a member of the Selection Board which had been set up to select officers to the Indian Forest Service from those serving in the Forest Department of Jammu and Kashmir. Naqishbund who was a member of the Selection Board was also one of the candidates for selection to the Indian Forest Service. He did not sit on the Selection Board at the time when his name was considered for selection but he did sit on the Selection Board and participated in the deliberations when the names of his rival officers were considered for selection and took part in the deliberations of the Selection Board while preparing the list of the selected candidates in order of preference. This Court held that the presence of Naqishbund vitiated the selection on the ground that there was reasonable likely hood of bias affecting the process of selection. Hegde, J. speaking on behalf of

the Court countered the argument that Naqishbund did not take part in deliberations of the Selection Board when his name was considered, by saying (SCC p. 270, para 15) But then the very fact that he was a member of the Selection Board must have had its own impact on the decision of the Selection Board. Further admittedly he participated in the deliberations of the Selection Board when the claims of his rivals... was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the Selection Board there was a conflict between his interest and duty... The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that he was likely to have been biased... There must be a reasonable likely hood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. This Court emphasised that it was not necessary to establish bias but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likely hood of bias. The likely hood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likely hood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection."

(10) Adverting back to the facts of the present case, it can be said that the respondent no.3 Dr. Vinod Bhatia did have some sort of relationship with respondent no. 1, who was a member of the Selection Committee. However, one has to consider the reasonable likely hood of bias on the ground of alleged relationship.

"THE questions would always be as to how, close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection." The relationship in the present case of respondent no.3 with the respondent no. 1 cannot, on the facts of the present case, be held to be so close that it will introduce the elements of bias to invalidate the selection process on this short ground. The relationship of Prof. Ashwani Kumar Ray with Dr. Vinita Ray of course is rather close and the common panel of Experts for the selection of Professors and Readers would certainly raise a strong element of bias in favor of the wife of the person, who was a member of the Selection Committee. which was common for both the posts. It is true that Prof. Ashwani Kumar Ray was not even a member of the Selection Committee for the post of Reader and he was neither associated with the interview nor he interviewed any candidate for the said post. There is, however, no doubt that there would be a reasonable element of bias, which could arise on account of personal reasons. The Selection Committee was constituted of three Experts including Professor Ashwani Kumar

Ray and this Committee functioned for selection of the posts of Professors, as well as, for the post of Readers. The Committee functioned separately and independently for the said posts. It is reiterated that Prof. Ray was not at all associated with the selection of the Readers. It may have been proper if he had declined to be a member of the Committee particularly when his wife was participating in the selection for the post of Reader when his two other colleagues Prof. Satish Chandra and Prof. M.M.Puri were members of the Committee, which interviewed the candidates and one of the selected candidates was Dr. Vinita Ray. I do not propose to dwell too much on this aspect of the matter except to highlight that it is always safer to avoid participation as a member of the Committee where one's own wife is a candidate even though it may be stated that the member did not participate in the selection for the said post. The petition does not impugn the selection of Dr. Vinita Ray nor she is a party to the present proceedings and, as a consequence, I have no hesitation to hold that her selection cannot be set aside merely on the ground that her husband Prof. Ashwani Kumar Ray was a member of the Committee, particularly when it is reiterated that the said Prof. Ray did not participate in any selection for the post of Reader. The last question, which survives for consideration of this Court is that the constitution of the Selection Committee is vitiated as the same is not in accordance with the statutory provisions and in particular violate the provisions of Statute 25 of the University. The said Statute has already been reproduced in the preceding paragraphs. It was alleged that the Academic Council, in the meeting held on September 6, 1990, approved and recommended a panel of 15 Experts for selection of Professors/ Readers, as required in Statute 25 (2) (ii). Respondent no. 1 submitted a supplementary panel of 7 persons on his own and it is contended that he was not entitled to do so. The petitioner has averred that the respondent no. 1 usurped the powers of the Academic Council to himself and made the entire exercise futile. The said respondent on September 19, 1990, i.e. two weeks after the meeting of the Academic Council, approved three Experts from the supplementary list, as framed by him. On the contrary, respondent has contended that the Selection Committee has been constituted strictly in accordance with the requirements of Statute 25 (2). It is also denied that the respondent no. 1 was not entitled to suggest the names to Majlis-i-Talimi (Academic Council). Respondent no. 1, the Vice Chancellor, is the Principal Executive and Academic Officer of the University. In the present case, the Hon'ble Director Prof. Rasheeduddin Khan suggested 15 names for panel of Experts. The respondent no. 1, in consultation with the other academicians suggested names of 7 more Experts. The 15 names earlier submitted, were considered along with the 7 names, submitted by the Vice Chancellor, respondent no. 1, and the same were recommended on September 6, 1990, by Majlis-i-Talimi (Academic Council) which were approved on September 19, 1990, by the Majlis-i-Muntazimah (Executive Council). The panel of Experts was approved by the Executive Council, vide resolution No. Xv (7) dated October 1, 1990. The respondents further contend that the Statute 25 (2) requires that the Majlis-i-Muntazimah (Executive Council) has to nominate three persons out of a panel of

names, recommended by the Majlis-i-Talimi (Academic Council). "This power of nominating three experts out of the recommendations of the Academic Council was delegated to the Vice Chancellor, the respondent no. 1, by the Executive Council itself, by its resolution passed in the meeting on June 8, 1989. It was in exercise of its delegated power the respondent no. 1 nominated on 19th September, 1990, three names out of the panel of names suggested by the Academic Council."

(11) The facts are not in dispute that the respondent no. 1 exercised his power as vested in him by delegation of powers, as stated above. The relevant paragraph in respect of this delegation as granted to him on June 8, 1989 may be reproduced as follows:

"VIII. Delegation of power to the Shaikhul Jamia for nomination of experts on the Selection Committees of Teachers. The Majlis considered the proposal that Shaikhul Jamia be delegated the authority of the Majlis-i-Muntazimah to nominate expert (s) on the selection Committees of Teachers from the panel approved by the Majlis-i-Talimi (Academic Council) as provided under para 2 of the Statute 25 and approved it."

(12) The petitioner has impugned the said delegation, as arbitrary and illegal exercise of power of respondent no. 1. It is further stated that respondent no. 1 did not select anyone from the list, earlier submitted and approved by the Academic Council containing 15 names and only chose to select the three names from the subsequent list, which he himself framed. The Vice Chancellor, respondent no. 1, is vested with the delegated powers and the relevant sub clauses of Statute 14, as framed by the Act, may be reproduced as follows:

"(1) The Majlis-i-Muntazimah (Executive Council) shall have the management and administration of the revenue and property of the University and the conduct of all administrative affairs of the University not otherwise provided for. (2) Subject to the provisions of the Act, the Statutes and the Ordinances, the Majlis-i-Muntazimah (Executive Council) shall, in addition to all other powers vested in it, have the following powers, namely: (ii) to appoint such Professors, Readers, Lecturers and other academic staff, as may be necessary and Principals of Institutions on the recommendations of the Selection Committee constituted for the purpose under Statute 25 to fill up temporary vacancies therein: (xvi) to delegate any of its powers to the Shaikh-ul-jamia (Vice Chancellor), the Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor), the Musajjil (Registrar) or the Finance Officers or such other employee or authority of the University or to a Committee appointed by it as it may deem fit:"

(13) The above provision indicates that Majlis-i-Muntazimah (Executive Council) possesses the powers vested in it to delegate any of its powers to the Sheikh-ul-jamia (Vice Chancellor). The Statute only indicates that the powers can be delegated to the Vice Chancellor or such other employee or Authority of the University or to Committee, appointed by it as it may deem fit. The only ground

of attack, which has been made in this regard by the petitioner is, that the Majlis-i-Muntazimah (Executive Council) did not state anywhere the reasons for this delegation and, as to why, it was deemed fit to delegate such powers to the Vice Chancellor. The Majlis-i-Muntazimah (Executive Council), however, considered this aspect on June 8, 1989 and delegated the Authority of the Majlis-i-Muntazimah (Executive Council) to nominate Experts of Selection Committee of teachers from the panel approved by Majlis-i-Talimi (Academic Council), as provided under para 2 of Statute 25. The said delegation, as a consequence, was approved prior to the date of selection in the present case. I do not think it is necessary in this situation to state the reasons, as to why, the Majlis-i-Muntazimah (Executive Council) chose to delegate such power to the Vice Chancellor and there is no violation of the Statute as the discretion has been clearly vested in the Executive Council to delegate any of its powers to the Vice Chancellor.

(14) The panel of Experts was approved by the Executive Council in compliance of the provisions of the Statute 25 (2). The Selection Committee consisted of Shaikh-ul-Jamia (Vice Chancellor), Naib Shaikh-ul-Jamia (Pro Vice Chancellor), a nominee of the Visitor, Head of the Department concerned, one Professor nominated by the Vice Chancellor and three persons, not in the service of the University, nominated and approved by the Majlis-i-Muntazimah (Executive Council) from the panel of names recommended by the Majlis-i-Talimi (Academic Council). The meeting of the said Selection Committee was held on October 15, 1990. The Committee noted that 40 applications were received for the post of Professor and 23 candidates including the petitioner and some selected candidates were called for interview: the Committee interviewed 15 candidates, who attended the interview and the names of the respondents 3,4 and 5 were recommended. The petitioner unfortunately was not selected and he has impugned the selection on the grounds, which have already been referred to in the earlier part of this judgment. There is no doubt that there was some sort of conflict and disagreement between the Director, Academy of Third World Studies, Prof. Rasheeduddin Khan and the Vice Chancellor of the University. This is evident from the correspondence, which has been Filed by the petitioner as exchanged between them. Prof. Rasheeduddin Khan expressed his unhappiness with the selection and reiterated his view on October 29, 1990, stating that it would not be proper for the Executive Council to accept the recommendations of the Selection Committee and he suggested fresh advertisement to be made in this regard. The same view was expressed by another Member of the Selection Committee. Prof. Sarojini Regani, who was the visitor's nominee. The recommendations of the Selection Committee were considered for approval by the Majlis-i-Muntazimah (Executive Council) in the meeting of the council held on December 14, 1990. The Executive Council considered the matter and it may be relevant to refer to the following paragraph of the minutes:

"WHILE presenting the recommendations of the above mentioned Selection Committees, the Vice Chancellor mentioned about a letter which has been

circulated among most of the members of Executive Council regarding the selection of some Professors in the Academy of Third World Studies by the Selection Committee held on 15.10.1990. The Vice-Chancellor pointed out that the posts in question were duly advertised with approved qualifications. The applications received were screened by a Committee consisting of Prof. Mushirul Hasan and Prof. Rasheeduddin Khan. On the basis of the recommendations of the Screening Committee, the candidates were called for interview. The Selection Committee which included Prof. Rasheeduddin Khan also, unanimously recommended the appointment of three Professors in the Academy of Third World Studies. It was noted that disagreement, if any, by any member should have been recorded in the proceedings of the Selection Committee itself. It was, Therefore, not proper to circulate the said letter by a member of the Selection Committee after giving the names a full approval earlier. However, despite these clarifications. Dr. (Mrs.) Najma Heptulla and Mr. Salman Khurshid expressed their unhappiness about the selection of one of the three candidates recommended by the Selection Committee. Various aspects regarding the composition of the Selection Committee, nomination of experts, the procedure of Selection Committee etc. were discussed at length. It was noted that the Selection Committee was duly constituted and there was no legal flaw of any kind in the selection of all the candidates. In fact, the bio-data and the books and papers published by the candidates were made available in support of their selection. Majority of the members of the Majlis felt that the Selection Committee comprising the three outside experts and the Visitor's nominee were the best judge of the merit of the candidates it interviewed and the names it recommended. After careful scrutiny, the Majlis-i-Muntaziman approved the recommendations of the Selection Committee for the posts of Professors in the Academy of Third World Studies. It was also observed that the Vice-Chancellor might like to discuss further the matter of the circulation of the letter or any other details with the Hony. Director of the Third World Studies. The Majlis approved the recommendations of the above referred Selection Committee placed before it."

(15) Therefore, the matter was duly considered by Majlis-i-Muntazimah (Executive council) and the recommendations of the Selection Committee were approved after taking note of various objections. The Executive Council, it is reiterated, approved the recommendations of the Selection Committee for the post of Professors, after careful scrutiny and it will not be open for this Court to repudiate their findings.

(16) The nomination of the three Experts by the Vice Chancellor was also approved by the Academic Council, as well as, by the Executive Council. There is likely hood of some irregularity, as is sought to be contended by the petitioner that only names, as suggested by the Vice Chancellor, were approved and the earlier names, suggested, were discarded. There may also be suspicion that some merited candidates may have been ignored in view of the Constitution of the Committee. However, suspicion cannot take the place of proof. The said

Committee, as is stated earlier, was duly approved in terms of the Act and the Statute and the ultimate recommendations were made by the Committee of 8 persons, including Prof. Rasheeduddin Khan. The same were duly approved by the Executive Council and it will not be proper for this Court to set aside those selections, which have already been made.

(17) I accordingly hold that there is no illegality and impropriety in the Constitution of the Selection Committee and the same is duly constituted under Statute 25 (2) of the Statutes as framed under the Act. It will not be open for this Court to hear appeals over the decisions of the Selection Committee and to scrutinise the relative merits of the candidates, as stated in the earlier part of the judgment. The law is clear on this subject and has been reiterated in the judgment of the Supreme Court in *Dalpat Abasaheb Solunke and others v. Dr. B.S. Mahajan and others* (supra).

(18) For the aforesaid reasons, this writ petition fails and is dismissed. There shall be no order as to costs.