
(2015) 10 AHC CK 0038
In the Allahabad High Court
Case No : Writ - C No. 60363 of 2014

Syed Abrar Ahmad

APPELLANT

Vs

University Grants Commission and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

University Grants Commission Act, 1956 — Section 13, 14, 16, 16(3), 19

Citation : (2015) 10 ADJ 725 : (2015) 6 AWC 6242 : (2016) 1 ESC 208 :
(2015) 4 UPLBEC 2798

Hon'ble Judges : Dilip Gupta and Vinod Kumar Misra, JJ.

Bench : Division Bench

Advocate : Rishi Chadha, for the Appellant; Shashi Nandan, Ikram Ahmad, Rizwan Ali Akhtar, S.C. and Shams Khwaja, for the Respondent

Final Decision : Dismissed

Judgement

1. This petition, which is in the nature of a writ of quo-warranto, has been filed in regard to the appointment of the Vice-Chancellor of the Aligarh Muslim University¹. The issue that has been raised in the petition is that the Vice-Chancellor of the University, who has been arrayed as respondent No. 3 in this petition, does not possess the requisite qualifications provided for in the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010² which have been framed in exercise of the powers conferred under clauses (e) and (g) of sub-section (1) of section 26 of the University Grants Commission Act, 1956³. It has been stated that though clause 7.3.0 of the UGC Regulations which deals with Vice-Chancellor provides that the Vice-Chancellor to be appointed should be a distinguished academician with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organisation but respondent No. 3 does not possess this essential qualification and, therefore, is holding the post of Vice-Chancellor of the

University without any authority.

2. What is, therefore, in issue in this petition is whether the aforesaid clause 7.3.0 of the UGC Regulations would at all be applicable to the University. To examine this it would be necessary to refer to the provisions of the Act, the Statutes and the Ordinances of the University as also the provisions of the UGC Act and the UGC Regulations.

3. The University was established under the provisions of the Aligarh Muslim University Act, 1920. Section 3 of the Act deals with incorporation and provides that the Chancellor, Pro-Chancellor, Vice-Chancellor and the members of the University Court, the Executive Council and the Academic Council shall be a body corporate by the name of Aligarh Muslim University and shall have perpetual succession and a common seal and shall sue and shall be sued by that name. Section 13 provides that the President shall be the Visitor of the University. Section 16 deals with the Officers of the University and amongst others, the Chancellor, the Pro-Chancellor and the Vice-Chancellor are stated to be Officers of the University. Sub-section (1) of section 19 deals with the Vice-Chancellor. It provides that the Vice-Chancellor shall be appointed by the Visitor in such manner as may be prescribed by the Statutes. Sub-section (2) of section 19 provides that 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. Sub-section (3) of section 19 deals with a situation in which the Vice-Chancellor can exercise any power conferred on any authority of the University. It would be appropriate to reproduce section 19 of the Act which is as follows:

"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."

4. Section 22 deals with the authorities of the University. The Court and the Executive Council are some of the authorities which have been enumerated in section 22 of the Act. Sections 23 and 24 of the Act deal with the Court and the Executive Council of the University. Section 28 deals with the framing of the Statutes of the University.

5. Statute 2 of the Statutes deals with the Vice-Chancellor and is as follows:

"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.

(2) Omitted.

(3) The Vice-Chancellor shall be a whole-time salaried officer of the University.

(4) The Vice-Chancellor shall hold office for a term of five years from the date on which he enters upon his office.

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

Provided further that the Visitor may direct that a Vice-Chancellor, whose term of office has expired, shall continue in office for such period, not exceeding a total period of one year, as may be specified in the direction.

(5) Notwithstanding anything contained in clause (4), a person appointed as Vice-Chancellor shall, if he completes the age of seventy years during the term of his office or any extension thereof, retire from office.

(6) The emoluments and other terms and conditions of service of the Vice-Chancellor shall be such as may be prescribed by the Ordinances.

(7) If the office of the Vice-Chancellor becomes vacant due to his death, resignation or otherwise or if he is unable to perform his duties owing to absence, illness or any other cause, the Pro-Vice-Chancellor shall discharge the duties of the Vice-Chancellor until a new Vice-Chancellor or the Vice-Chancellor, as the case may be, assumes office:

Provided that if the Pro-Vice-Chancellor is not available, the senior most Dean among the members of the Executive Council in the category of Deans of the

Faculties shall discharge the duties of the Vice-Chancellor until a new Vice-Chancellor or the Vice-Chancellor, as the case may be, assumes office.

Provided further that if the senior most Dean among the members of the Executive Council in the category of Deans of the Faculties is not available or he/she declines to accept the responsibility, the next available Dean, in order of seniority, among the members of the Executive Council in the category of Deans of the Faculties shall discharge the duties of the Vice-Chancellor until a new Vice-Chancellor or the Vice-Chancellor, as the case may be, assumes office."

6. The powers and duties of the Vice-Chancellor are contained in Statute 3 and are as follows:

"3. Powers and Duties of the Vice-Chancellor-(1) The Vice-Chancellor shall be the Ex-Officio Chairman of the Court, the Executive Council, the Academic Council and the Finance Committee and shall, in the absence of the Chancellor and the Pro-Chancellor, preside at the Convocation held for conferring degrees. He shall be entitled to be present at, and to address, any meeting of any authority or other body of the University, but shall not be entitled to vote there at unless he is a member of such authority or body.

(2) It shall be the duty of the Vice-Chancellor to see that the Act, the Statutes, the Ordinances and the Regulations are duly observed, and he shall have all powers necessary to ensure such observance.

(3) The Vice-Chancellor shall have the power to convene or cause to be convened meetings of the Court, the Executive Council, the Academic Council and the Finance Committee."

7. The term of the earlier Vice-Chancellor of the University was coming to an end on 17 January 2012. The Ministry of Human Resource Development (Department of Higher Education) in the Government of India sent a communication dated 10 August 2011 to the Registrar of the University to start the process of selection of the next Vice-Chancellor. The letter contains the direction of the Visitor of the University that the University should call a meeting of the Executive Council to draw the requisite panel of names and then to submit a formal proposal to the Ministry for seeking the permission of the Visitor to hold a meeting of the University Court for preparing a panel for appointment of the Vice-Chancellor as provided for in Statute 2(1) of the Statutes of the University.

8. As noticed above, Statute 2(1) requires the Executive Council of the University to submit a panel of five names to the University Court which shall then recommend a panel of at least three persons to the Visitor for appointment of the Vice-Chancellor of the University.

9. Pursuant to the aforesaid directions issued by the Visitor of the University, it was notified that the Executive Council of the University shall meet on 12 April 2012. In the meantime, on 28 March 2012, the Supreme Court in a Petition for Special Leave to Appeal (Civil) No. 10222 of 20125 also issued directions that

there should not be any further deferment of the meeting of the Executive Council and it should positively be held on 12 April 2012 as scheduled so that it could recommend a panel of five names under Statute 2(1) of the Statutes to the University Court which would then recommend a panel of three names to the Visitor of the University for appointment of the Vice-Chancellor of the University. The order of the Supreme Court is reproduced below:

"7. We have been informed that the meeting of the Executive Council was scheduled for 10th April, 2012 at 11 A.M. It has now been deferred to 12th April, 2012 at 11 A.M.

8. We hope and trust that there should not be any further deferment of the meeting of the Executive Council and it would be held positively on 12th April, 2012 as scheduled. It would then recommend to the University Court a panel of five names under Statute (2)(1) of the Statutes of the University for the appointment of the Vice Chancellor. Once this exercise is completed by the Executive Council, the University Court would consider the appropriate three names and would send a panel of three names to the Visitor, who in turn would appoint one of them at the earliest.

9. Till such time some interim arrangement is to be made so that University continues to function and its working may not come to a standstill.

10. However looking to the facts and features of the case, we deem it fit and proper that neither Respondent No. 1 nor Respondent No. 2 would function as Vice Chancellor or Pro Vice Chancellor of the University respectively, until the regular appointment is made as mentioned hereinabove at the earliest.

11. This arrangement, we have to work out as we had to keep in mind the interest of the students, who are prosecuting their courses in the University.

12. For the aforesaid period, the functioning of the University will be carried out by the Executive Council and would be implemented by the Registrar of the University.

13. With the aforesaid directions, this Special Leave Petition stands disposed of."

10. The meeting of the Executive Council of the University was held on 12 April 2012. A panel of five names including that of Lt. Gen. (Retd.) Zameer Uddin Shah, who has been arrayed as respondent No. 3 to the writ petition and who was subsequently appointed as a Vice-Chancellor of the University by the Visitor of the University, was sent to the University Court.

11. The University Court met on 15 April 2012 and recommended the names of three persons including that of respondent No. 3, to the Visitor under Statute 2(1) of the Statute of the University. The relevant portion of the minutes of the meeting of the University Court held on 15 April 2012 are as follows:

"On the basis of the result of the election conducted through secret ballot, the Court resolved to recommend the following panel of three persons to the Visitor

under Statute 2(1) of the Statutes of the University for appointment as Vice-Chancellor:-

12. The aforesaid three names were forwarded to the Government of India by the Registrar of the University and thereafter a communication dated 11 May 2012 was received from the Ministry of Human Resource Development (Department of Higher Education) informing the University that the President of India, as Visitor of the University, had been pleased to appoint Lt. Gen. (Retd.) Zameer Uddin Shah, PVSM, SM, VSM (Retd.) Member, Armed Forces Tribunal, West Block-8, Sector-1, R.K. Puram, New Delhi as Vice-Chancellor of the University for a period of five years or his attaining the age of 70 years, whichever is earlier.

13. The appointment of respondent No. 3 as Vice-Chancellor of the University is sought to be assailed in this petition on the ground that though clause 7.3.0 of the UGC Regulations which have been framed in exercise of the powers conferred under clause (e) and (g) of sub-section (1) of section 26 of the UGC Act contains a mandatory requirement that the Vice-Chancellor to be appointed should be a distinguished academician with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organisation, the said respondent does not have a minimum of ten years of experience as Professor in a University.

14. The provisions of clause 7.3.0 of the UGC Regulations are, therefore, reproduced below:

"7.3.0. Vice-Chancellor:

i. Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice-Chancellors. The Vice-Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization.

ii. The selection of Vice-Chancellor should be through proper identification of a Panel of 3-5 names by a Search Committee through a public Notification or nomination or a talent search process or in combination. The members of the above Search Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the search committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in the academic and administrative governance to be given in writing along with the panel to be submitted to the Visitor/Chancellor. In respect of State and Central Universities, the following shall be the constitution of the Search Committee.

a) a nominee of the Visitor/Chancellor, who should be the Chairperson of the Committee.

b) a nominee of the Chairman, University Grants Commission.

c) a nominee of the Syndicate/Executive Council/Board of Management of the University.

iii. The Visitor/Chancellor shall appoint the Vice Chancellor out of the Panel of names recommended by the Search Committee.

iv. The conditions of service of the Vice Chancellor shall be prescribed in the Statutes of the Universities concerned in conformity with these Regulations.

v. The term of office of the Vice Chancellor shall form part of the service period of the incumbent concerned making him/her eligible for all service related benefits."

15. Clause 7.4.0 of the UGC Regulations is also relevant and is reproduced below:

"7.4.0 The Universities/State Governments shall modify or amend the relevant Act/Statutes of the Universities concerned within 6 months of adoption of these Regulations."

16. The Regulations, as noticed above, have been framed under clauses (e) and (g) of sub-section (1) of section 26 of the UGC Act. The said provisions are reproduced below:

"26(1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder--

.....

(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction;

.....

(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities."

17. University has been defined under section 2(f) of the UGC Act to mean a University established or incorporated by or under a Central Act, a Provincial Act or a State Act.

18. Sri Gopal Krishna, learned counsel appearing for the petitioner submitted that:

(i) the UGC Regulations dated 30 June 2010 which have been framed in exercise of the powers conferred under section 26 of the UGC Act came into force with immediate effect and are binding on the University;

(ii) under clause 7.3.0 of the UGC Regulations, the Vice-Chancellor of the University has to be a distinguished academician with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organisation and since respondent No. 3 does not possess these requirements, he was not eligible to be appointed as Vice-Chancellor of the University and in support of his contention, learned counsel has placed reliance upon the decision of the Supreme Court in Kalyani Mathivanan Vs. K.V. Jeyaraj and Others ;

(iii) other Universities had issued advertisements for appointment of the Vice-Chancellor in accordance with the aforesaid requirements contained in the UGC Regulations and there is no plausible reason as to why the University did not follow the procedure contemplated in clause 7.3.0 of the UGC Regulations for making the appointment of the Vice-Chancellor of the University in 2012;

(iv) there was no requirement for the University to amend the relevant Acts/ Statutes within six months of adoption of the Regulations and in any case the University had adopted the Regulations on 6 December 2010 and, therefore, also it was absolutely necessary for a person to have possessed the requisite qualification under clause 7.3.0 of the UGC Regulations.

(v) the subsequent office memo dated 26/30 November 2011 of the University keeping the adoption of clause 7.3.0 of the UGC Regulations regarding the selection of the Vice-Chancellor of the University in abeyance till the matter was examined and deliberated in detail by the Executive Council and the University Court, would not be of any help to the University as the Vice-Chancellor did not have the power to issue the office memo and even otherwise a part of the UGC Regulations alone could not have been kept in abeyance; and

(vi) the respondents are not justified in raising any grievance about the locus of the petitioner and the delay in filing the writ petition because these factors have not to be taken into consideration in a quo-warranto writ petition in view of the decisions of the Supreme Court in Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and Others, ; Dr. Kashinath G. Jalmi and another Vs. The Speaker and others, and Rajesh Awasthi Vs. Nand Lal Jaiswal and Others, .

19. Sri Shashi Nandan, learned Senior Counsel appearing for the University has, however, submitted that:

(i) as the appointment of the Vice-Chancellor of the University had been made in accordance with the provisions of the Act and the Statutes of the University, a writ of quo-warranto would not be maintainable;

(ii) the UGC Regulations do not automatically apply to the University in view of the provisions contained in clause 7.4.0 of the UGC Regulations and the University has necessarily to first adopt the UGC Regulations and then modify or amend the relevant provisions of the Act and Statutes dealing with the appointment of Vice-Chancellor within six months of the adoption of the

Regulations;

(iii) the UGC Regulations had earlier been adopted by the University on 6 December 2010 but subsequently the provisions of clause 7.3.0 were kept in abeyance by the Vice-Chancellor of the University which decision was duly notified by office memo dated 26/30 November 2011.

(iv) even otherwise, the consequences of failure of the Universities to comply with the recommendations of the Commission are contained in clause 3 of the Regulations which in turn refer to section 14 of the UGC Act and only these consequences and no other can flow if the Regulations are not complied with by the University;

(v) the University Act and Statutes provide for a detailed procedure for appointment of the Vice-Chancellor of the University and that having been followed and in the absence of any amendment of the definition of "teachers" as contained in section 2(k) of the Act and in the definition of "officer" as contained in section 16(3) of the Act, the UGC Regulations cannot be implemented;

(vi) even otherwise, the Supreme Court in its order dated 28 March 2012 had directed the University to complete the process of appointment of the Vice-Chancellor in accordance with the provisions of Statute 2(1) and that having been done, the petitioner cannot assail the appointment of the Vice-Chancellor on the ground that instead of following the provisions of Statute 2(1), the provisions of clause 7.3.0 of the UGC Regulations should have been followed;

(vii) the Ministry of Human Resource Development (Department of Higher Education) in the Government of India had also directed the University Court to recommend the names of three persons to the Visitor in accordance with the provisions of the Statutes of the University for appointment of the Vice-Chancellor of the University; and

(viii) there has been a considerable delay in filing the writ petition as the Vice-Chancellor of the University was appointed by the Visitor of the University by a communication dated 11 May 2012 and the petition was presented before the Court only on 10 November 2014, almost after a period of more than two years and six months.

20. Sri Shams Khwaja, learned counsel appearing for respondent No. 3 made the following submissions:

(i) the petitioner has no locus to file the present petition;

(ii) the petition has been filed with inordinate delay and should, therefore, be dismissed;

(iii) the petitioner had an alternative remedy of filing an appeal before the Executive Council of the University; and

(iv) there can be no plausible reason for the University Grants Commission to

introduce a requirement in the UGC Regulations that a person to be appointed as Vice-Chancellor of a University should have 10 years of experience as a Professor in the University.

21. Sri R.A. Akhtar, learned counsel appearing for the University Grants Commission has submitted that the UGC Regulations are binding on the University and since they had come into force with immediate effect, the Vice-Chancellor of the University had necessarily to possess the qualifications contained in clause 7.3.0.

22. We have considered the submissions advanced by learned counsel for the parties.

23. The objections about delay in filing the petition and the locus of the petitioner need to be first addressed. The objection that has been taken by the respondents is that this petition has been filed after a delay of more than two and half years from the date of appointment of the Vice-Chancellor by the Visitor of the University in May 2012, particularly when the appointment is for a period of five years only and that too without furnishing any satisfactory explanation for the delay. Learned counsel for the petitioner has, however, contended that in regard to petitions filed in the nature of quo-warranto, neither delay nor the locus is material since the basic purpose of a writ of quo-warranto is to confer jurisdiction on Constitutional Courts to ensure that public office is not held by a usurper without any legal authority and such continuance has to be prevented by the Courts. Learned counsel has, however, pointed out that as an ex-student of the University and a follower of the ideology of the founder of the University Sir Syed Ahmad, the petitioner is deeply concerned with the functioning of the University and it is his duty to ensure that the appointment of the Vice-Chancellor of the University is in accordance with law.

24. The issue as to whether locus standi or delay and laches should be examined in a writ of quo-warranto, was considered by the Supreme Court in Central Electricity Supply Utility of Odisha and while dealing with these issues, the Supreme Court observed as follows:

"21. From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.

22. While dealing with the writ of quo warranto another aspect has to be kept in view. Sometimes a contention is raised pertaining to doctrine of delay and laches

in filing a writ of quo warranto. There is a difference pertaining to personal interest or individual interest on the one hand and an interest by a citizen as a realtor to the Court on the other. The principle of doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the Court. The Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds."

(emphasis supplied)

25. The same views were expressed earlier by the Supreme Court in Dr. Kashinath G. Jalmi and Rajesh Awasthi.

26. In view of the position of law explained by the Supreme Court, the objections that have been taken regarding the locus of the petitioner and the laches in filing the writ petition deserve to be rejected and are rejected.

27. This would bring us to the main submission that was advanced by learned counsel for the respondents regarding the appointment of the Vice-Chancellor of the University that he does not possess the requisite minimum qualification provided for in clause 7.3.0 of the UGC Regulations.

28. Clause 7.3.0 of the University Regulations, which have earlier been reproduced, provides that a person to be appointed as the Vice-Chancellor of a University should be a distinguished academician with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organisation.

29. Before advertng to this issue, it would be necessary to refer to the relevant provisions of the Act and the Statutes dealing with the appointment of the Vice-Chancellor of the University. Sub-section (1) of section 19 of the University Act provides that the Vice-Chancellor shall be appointed by the Visitor in such manner as may be prescribed by the Statutes. The Statutes which have been framed under section 28 of the University Act provide, in Statute 2, a procedure for appointment of the Vice-Chancellor of the University. Statute 2 stipulates that the Vice-Chancellor shall be appointed by the Visitor of the University (who is the President of India) from a panel of at least three persons recommended by the University Court from a panel of five persons recommended by the Executive Council of the University but if the Visitor does not approve any of the persons recommended by the University Court, he may call for fresh recommendations. Statute 2(5) provides that a person appointed as a Vice-Chancellor shall, if he completes the age of 70 years during the term of his office or any extension thereof, retire from service. Statute 2(6) provides that the emoluments and other terms and conditions of service of the Vice-Chancellor shall be such as may be prescribed by the Ordinances. The emoluments and terms and conditions of the Vice-Chancellor are contained in Chapter III of the Ordinances (Executive) of the University. It deals with the pay of the Vice-Chancellor; the entitlement to use of

furnished residence; entitlement to various kinds of leave; choosing of a retirement benefit scheme; option, with the consent of the previous employer, to carry over his previous services to the University and entitlement to other benefits such as medical attendance, leave travel allowance, group insurance scheme and like matters. The aforesaid provisions of the Act, Statutes and the Ordinances (Executive) have been referred to emphasize that there is no provision in the Act, the Statutes or Ordinances of the University which deal with the qualifications which a person should possess for being appointed as a Vice-Chancellor of the University. On the other hand under section 16 of the Act the Vice-Chancellor is considered to be an officer of the University. However, the qualifications required in regard to the appointment of "teachers" in the University have been provided. In fact section 2(k) of the University Act defines "teachers" to mean, professors, readers, lecturers and such other persons as may be appointed for imparting instructions in the University or a hall and are designated as teachers by the Ordinances.

30. What is important to note is that when a dispute had arisen regarding the appointment of the Vice-Chancellor and Pro-Chancellor of the University, since the regular Vice-Chancellor had proceeded on leave prior to the expiry of his term, the matter was considered by the Supreme Court in Special Leave to Appeal (Civil) No. 10222 of 2012. The Supreme Court, being concerned that a regular Vice-Chancellor should be appointed, directed that the meeting of the Executive Council of the University scheduled to be held on 12 April 2012 should positively be held so that it could recommend to the University Court a panel of five names under Statute 2(1) of the Statutes of the University for appointment of the Vice-Chancellor and once that exercise was completed by the Executive Council also directed that the University Court would also send a panel of three names to the Visitor, who in turn, would appoint one of them as the Vice-Chancellor of the University at the earliest.

31. In this connection it would also be pertinent to take notice of the fact that the Ministry of Human Resource Development (Department of Higher Education) had sent a communication dated 10 August 2011 to the Registrar of the University. The letter informs the University that since the term of the Vice-Chancellor of the University was coming to an end on 17 January 2012, the process of selection of the next Vice-Chancellor should be started by calling a meeting of the Executive Council to draw the requisite panel of names in terms of Statute 2(1) of the Statutes of the University and thereafter to hold a meeting of the University Court for preparing a panel for appointment of the Vice-Chancellor. The Executive Council of the University met on 12 April 2012 and recommended a panel of five names to the University Court including that of respondent No. 3. The University Court in its meeting held on 15 April 2012 recommended names of three persons including that of respondent No. 3 to the Visitor of the University so that one of them could be appointed as the Vice-Chancellor of the University. Respondent No. 3 obtained 97 votes while Dr. Noor Mohammad, IAS (Retd.) and Dr. Syed Khalid Rizvi, IPS (Retd.) obtained 85 and

83 votes respectively. The petitioner has annexed as Annexure No. 4 to the writ petition a brief profile of respondent No. 1. A perusal of the same shows that he had a distinguished career of 40 years in the Army and that he was awarded the Param Vishisht Seva Medal, Sena Medal and Vishisht Seva Medal for his exemplary service to the country. It also mentions that before assuming the office of the Deputy Chief of Army Staff on 6 October 2006, he had commanded Army Corps and that he had served in a diplomatic assignment as Defence Attache in Saudi Arabia from 1994-97. The profile also mentions that during his service in the Army, he did M.Sc. in Defence Studies and Management from the Madras University in 1980 and M.Phil. from Indore University in 1983.

32. The provisions of clause 7.3.0 of the UGC Regulations and their applicability to the University in regard to the appointment of the Vice-Chancellor have now to be examined.

33. The University Act and the UGC Act are referable to Entries 63 and 66 of the Seventh Schedule to the Constitution. The UGC Regulations dated 30 June 2010 on minimum qualifications for appointment of teachers and other academic staffs in the Universities and measures for the maintenance of standards in higher education have been framed under clauses (e) and (g) of sub-section (1) of section 26 of the UGC Act. The UGC was conscious of the fact that the Act and the Statutes of Universities would be governing the appointment of Vice-Chancellors of the Universities and, therefore, the necessity to first adopt and then amend the Act/Statutes of the Universities was made an essential requirement. It, therefore, in clause 7.4.0 provided that the Universities/State Governments shall modify or amend the relevant Act or Statutes of the University concerned within six months of the adoption of these Regulations.

34. The coming into force of the UGC Regulations with immediate effect as provided for in clause 1.3 of the UGC Regulations would not mean that they would automatically apply to Universities dehors the provisions of clause 7.4.0 of the UGC Regulations. Clause 7.4.0 clearly requires that the Universities should first adopt the Regulations and then modify or amend the relevant Act/Statutes of the University within six months of the adoption. Thus, the UGC Regulations would not automatically apply to Universities. The consequences of failure of the Universities to comply with the recommendations of the University Grants Commission have also been provided in clause 3. It provides that if any University contravenes the provisions of any Regulations made under clause (e) or clause (g) of sub-section (1) of section 26, the Commission after taking into consideration the cause, if any, shown by the University for such failure or contravention, may withhold from the University the grants proposed to be made out of the funds of the Commission.

35. Insofar as the adoption of the UGC Regulations by the University is concerned, it is seen that an office memo dated 6 December 2010 was issued by the Registrar of the University. The office memo mentions that the Vice-Chancellor, in exercise of the powers vested in him under section 19(3) of the

University Act has on behalf of the Academic Council/Executive Council approved the adoption/implementation of certain letters including that containing the UGC Regulations. However, an office memo dated 26/30 November 2011 was subsequently issued by the Registrar of the University in continuation of the earlier office memo dated 6 December 2010 that the Vice-Chancellor had ordered to keep the adoption of clause 7.3.0 of the UGC Regulations regarding the selection of the Vice-Chancellor of the University in abeyance till the matter was examined and deliberated in detail by the Executive Council and the University Court. Thus, the adoption of clause 7.3.0 relating to the selection of the Vice-Chancellor of the University was kept in abeyance by the University. The meeting of the Executive Council of the University was held on 12 April 2012 after the issuance of the office memo dated 26/30 November 2011. There is nothing on the record to indicate that the University subsequently adopted clause 7.3.0 of the UGC Regulations or that the Act/Statutes of the University had been amended to give effect to the provisions of clause 7.3.0 of the UGC Regulations. The Act and the Statutes of the University were necessarily required to be amended as is also contemplated in clause 7.4.0 of the UGC Regulations.

36. Learned counsel for the petitioner, however, submitted that the Vice-Chancellor of the University had no authority to keep the adoption of clause 7.3.0 in abeyance. As noticed above, it was the Vice-Chancellor of the University who had adopted the UGC Regulation. It cannot, therefore, be said that the Vice-Chancellor of the University did not have the authority to keep the adoption of clause 7.3.0 of the UGC Regulations in abeyance till such time as the matter was examined in detail by the Executive Council and the University Court.

37. There is also no merit in the submission of learned counsel for the petitioner that only a part of the UGC Regulations, namely that contained in clause 7.3.0 dealing with Vice-Chancellor could not have been kept in abeyance. It was open to the University to adopt all or part of the UGC Regulations and even otherwise the UGC Regulations do not contain such a bar.

38. The contention of learned counsel for the petitioner that since some of the Universities had followed the procedure provided for in clause 7.3.0 of the UGC Regulations, the University should also have undertaken that exercise, cannot also be accepted. As discussed above, the University was not bound to follow the provisions of clause 7.3.0 of the UGC Regulations and merely because some Universities have followed that procedure cannot be made a ground to assail the appointment of the Vice-Chancellor of the University if the provisions of the Act and the Statutes of the University have been followed while making the appointment.

39. The contention of Sri Shams Khwaja, learned counsel appearing for respondent No. 3 that there was no reason for the University Grants Commission to require in clause 7.3.0 of the UGC Regulations that the Vice-Chancellor should have 10 years experience as a Professor in the University is not required to be examined in this petition, more particularly when the Vice-Chancellor of the

University or the University have not challenged this provision.

40. Reliance has been placed by learned counsel for the petitioner on the decision of the Supreme Court in Kalyani Mathivanan. In the said case the High Court had set aside the appointment of the appellant Kalyani Mathivanan as Vice-Chancellor of the University on account of non-fulfillment of eligibility criteria contained in clause 7.3.0 of the UGC Regulations and rejected the plea that they were not mandatory. The Supreme Court found that the UGC Regulations had not been adopted or implemented by the State Government nor the University Act had been amended in terms of the UGC Regulations nor any action was taken by the University Grants Commission under section 14 of the UGC Act as a consequence of failure of the University to comply with the recommendation of the University Grants Commission. In such circumstances, the Supreme Court upheld the appointment of the Vice-Chancellor and set aside the order of the High Court.

41. It is not the case of the petitioner that the procedure as contemplated in Statute 2(1) were not followed or that any illegality was committed in the implementation of the procedure. It cannot, in such circumstances, be said that respondent No. 3 has usurped the office of the Vice-Chancellor of the University.

42. We have, therefore, no difficulty in holding that in the absence of any adoption by the University of clause 7.3.0 of the UGC Regulations and in the absence of any amendment having been made in the University Act or the Statutes to give effect to the provisions of clause 7.3.0 of the UGC Regulations, the qualifications as prescribed for under clause 7.3.0 of the UGC Regulations in relation to the appointment of the Vice-Chancellor of the University would not be applicable to the University and the appointment of the Vice-Chancellor of the University would continue to be governed by the provisions of Statute 2(1) of the Statutes of the University.

43. The appointment of the Vice-Chancellor of the University, therefore, does not suffer from any illegality.

44. Thus, for all the reasons stated above, this petition, which has been filed in the nature of quo-warranto, deserves to be dismissed and is dismissed.

1the University

2UGC Regulations

3UGC Act

4the University Act

5Aligarh Muslim University Through Registrar Vs. Qazi Afzal Hussain & Ors.