

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2606 of 2017

Dr. Rajendra Kumar Bagherwal, S/o Late B.C. Bagherwal, Aged about 58 years, Professor, Incharge Medicines, Department of Medicines Veterinary Medicines, College of Veterinary Science & AH, Mhow (M.P.)

---- Petitioner

Versus

1. Chhattisgarh Kamdhenu Vishwavidyalaya, HQ : Anjora, Durg. Through its Registrar, Camp Office, College of Dairy Science & Food Technology, Near 36 Mall, G.E. Road, Raipur (C.G.)
2. Chancellor, Chhattisgarh Kamdhenu Vishwavidyalaya, Anjora, Durg (C.G.)
3. Secretary, Department of Veterinary & Animal Husbandry, Government of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt. Raipur (C.G.).
4. Dr. Umesh Kumar Mishra, Aged about 65 years, Vice Chancellor, Chhattisgarh Kamdhenu Vishwavidyalaya, Camp Office, Near 36 Mall, G.E. Road, Raipur (C.G.)
5. Dr. P.D. Juyal, Aged about 63 years, Vice Chancellor, Nanaji Deshmukh Veterinary Science University, Jabalpur (M.P.)
6. Dr. A.K. Mishra, Vice Chancellor, Maharashtra Veterinary and Fisheries Vishwavidyalaya, Nagpur

---- Respondents

For Petitioner: Mr. Abhishek Sinha, Advocate.
For Respondent No.1: Mr. R.N. Singh, Senior Advocate with Mr. Arpan Pawar, Mr. A.S. Kachhawaha and Ms. Aishwarya Singh, Advocates.
For Respondent No.2: Mr. A.S. Kachhawaha, Advocate.
For Respondent No.3 / State: -
Mr. Dilman Rati Minj, Deputy Govt. Advocate.
For Respondent No.4: Mr. Abhishek Vinod Deshmukh, Advocate.
For Respondent No.5: Mr. Manish Nigam, Advocate.
For Respondent No.6: Mr. Chandresh Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/02/2018

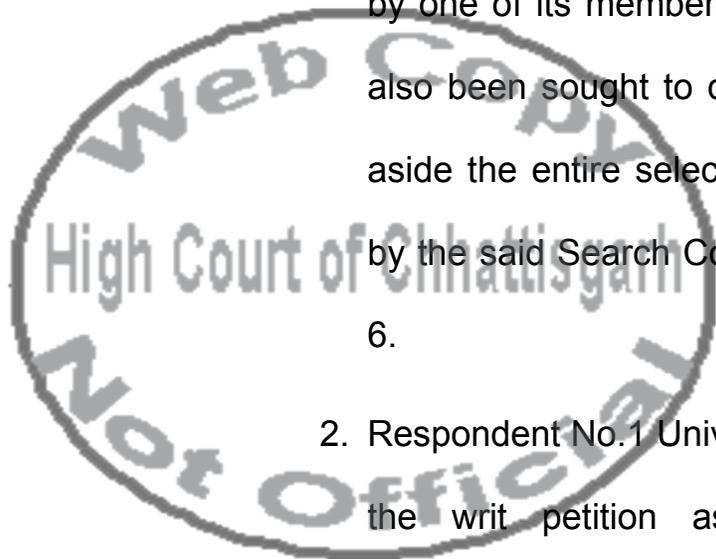
1. The Chancellor of the Chhattisgarh Kamdhenu Vishwavidyalaya (for short, 'the University') in exercise of power conferred under Section 9(1) of the Chhattisgarh Kamdhenu Vishwavidyalaya Act, 2011 (for short, 'the Act of 2011') constituted a Search Committee consisting of three members namely (1) Mr. Sarjais Minj, Chairman of the Committee being the nominee of Chancellor; (2) Dr. A.K. Mishra – respondent No.6 herein, Member as a nominee of the State Government; and (3) Dr. P.D. Juyal – respondent No.5 herein, Member as a nominee of the Executive Council of the University, by order dated 12-4-2017 and it was amended on 17-4-2017. The petitioner as well as respondent No.4 apart from other candidates made their candidature for the post of Vice-Chancellor. Formal advertisement was also issued for the post of Vice-Chancellor. Thereafter, on 14-6-2017, the petitioner herein filed this writ petition alleging that respondent No.5 is disqualified to act as a member of the Search Committee constituted under Section 9(1) of the Act of 2011 on the ground that he has been appointed as a nominee of the Executive Council of the University in a meeting of the Executive Council chaired by respondent No.4 herein. On 16-6-2017, the writ petition was entertained and interim order restraining further proceeding on the post of Vice-Chancellor was passed by this Court. Thereafter, parties have filed their counter-affidavits. Meanwhile, on 22-5-2017, respondent No.6 was appointed as Member of the Executive Council of the respondent University by the Chancellor of the University which was notified by the University on 7-6-2017 and thereafter, application for



amendment was filed on 18-8-2017 challenging the appointment of respondent No.6 as Member of the Search Committee as well as seeking declaration that the selection and recommendation made by the Search Committee comprising of respondents No.5 and 6 to be void and illegal on the ground that the appointment of respondent No.6 as a Member of the Search Committee is in teeth of the provisions contained in the proviso to Section 9(2) of the Act of 2011, as the Search Committee constituted is not competent to make legal recommendation on account of disqualification suffered by one of its members i.e. respondent No.6 herein. A prayer has also been sought to declare the appointment as illegal and to set aside the entire selection process and the recommendation made by the said Search Committee consisting of respondents No.5 and 6.

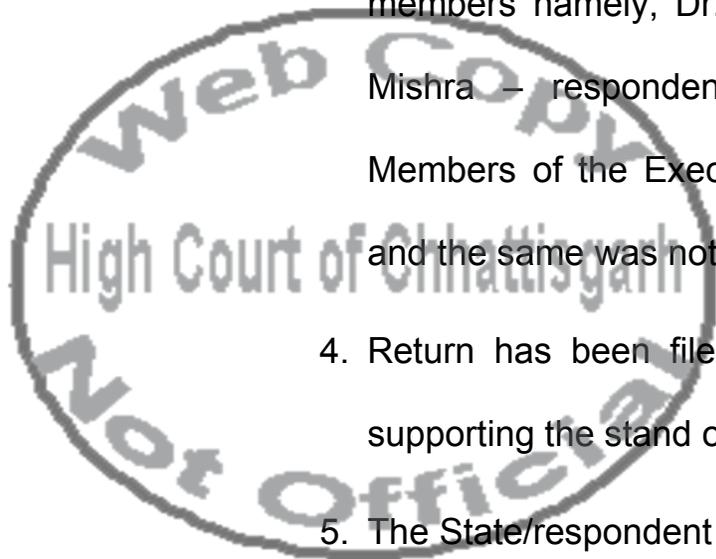
2. Respondent No.1 University has filed its return stating inter alia that the writ petition as framed and filed is premature, only recommendations have been made and the petitioner is at liberty to make objections to the recommendations so made to the Chancellor and the constitution of Search Committee has not been questioned. The petitioner has no locus standi to file writ petition, he has also participated in the selection process and respondent No.6 has been appointed as Member of the Executive Council much after his nomination in the Search Committee constituted under Section 9(1) of the Act of 2011 and, therefore, the writ petition as framed and filed deserves to be dismissed.

3. Return has also been filed on behalf of respondent No.2 stating



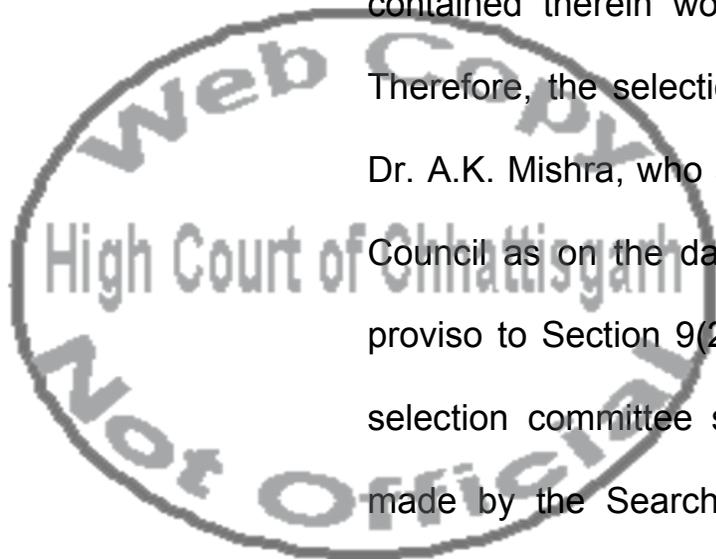
inter alia that a three-member Search Committee has been constituted by order dated 12-4-2017 in accordance with Section 9(1) of the Act of 2011 and the Committee has thereafter, sent a panel of three names in accordance with Section 9(1) of the said Act for consideration of the Chancellor in a sealed envelope and in the additional affidavit filed on 25-10-2017, it has been stated that the Committee has submitted a panel of three names on 15-6-2017 and the Chancellor has made nomination of members of the Executive Council vide notification dated 22-5-2017 wherein three members namely, Dr. V.K. Taneja, Dr. A.K. Gahlot and Dr. A.K. Mishra – respondent No.6 herein, have been appointed as Members of the Executive Council of respondent No.1 University and the same was notified on 7-6-2017.

4. Return has been filed on behalf of respondents No.4, 5 and 6 supporting the stand of the University.
5. The State/respondent No.3 has filed return stating that no relief has been claimed by the petitioner against it.
6. Rejoinder has been filed on behalf of the petitioner.
7. Mr. Abhishek Sinha, learned counsel appearing for the petitioner, would vehemently submit that the Selection Committee as on the date of submission of its recommendation i.e. on 15-6-2017 was not duly constituted, as the Search Committee so constituted was in breach of the provisions contained in the proviso to Section 9(2) of the Act of 2011. He would further submit that the intent and purpose of the scheme behind the enactment of Section 9(2) of the Act of 2011 and the proviso appended to it is to ensure selection to



the high ranking pivotal office of Vice-Chancellor by a committee having unflinching character, the members of which are not associated with the University, so as to exclude any likelihood of bias in the normal course of human conduct to prevent miscarriage of justice to take just and fair decision, avoid conflict of interest and duty and it is based on the principles of fairness. Elaborating his submission, he would also submit that the legislative intent provided in the proviso to Section 9(2) of the Act of 2011 is mandatory, couched in a manner, non-compliance of requirement contained therein would invalidate the whole selection process. Therefore, the selection committee consisting of respondent No.6 Dr. A.K. Mishra, who stood appointed as Member of the Executive Council as on the date of making recommendation, is hit by the proviso to Section 9(2) of the Act of 2011, therefore, not only the selection committee so constituted but the recommendations so made by the Search Committee consisting of respondent No.6 deserve to be quashed and the Chancellor be directed to make appointment strictly in accordance with Section 9(1) of the Act of 2011 tabula rasa.

8. Mr. R.N. Singh, learned Senior Counsel appearing for respondent No.1 University (on 6-2-2018), would submit that the constitution of Scrutiny Committee by the Chancellor of the University does not suffer from any illegality or vice of favouritism so as to disqualify respondents No.5 and 6 from being Member of the Search Committee / Scrutiny Committee to suggest to the Chancellor, panel of names for appointment to the office of Vice-Chancellor of



the Chhattisgarh Kamdhenu University. He would further submit that merely because respondent No.5 was nominated as Member of the Executive Committee of the University of which respondent No.4 happens to be the Vice-Chancellor, it cannot be said that respondent No.5 incurs any disqualification under the law or from any other disqualification on alleged personal or close association in the field of educational activity. He would also submit that respondent No.4 alone had not taken decision to nominate respondent No.5 as Member of the Executive Committee, therefore, inclusion of respondent No.5 in the Search Committee does not invalidate the constitution of the Committee. In so far as respondent No.6 is concerned, he was nominated as Member of the Search Committee / Scrutiny Committee on 12-4-2017 and on that date, he did not hold any office in any of the authorities of the respondent University much less any employment. His subsequent nomination as Member of the Executive Committee of the University is not in teeth of the disqualification provided under the proviso to sub-section (2) of Section 9 of the Act of 2011, because according to him, there is no corresponding disqualification clause in the statute and the provision would require literal interpretation leaving no room for including any disqualification clause. Mr. Singh would rely upon the judgments of the Supreme Court in the matters of **Unique Butyle Tube Industries (P) Ltd. v. U.P. Financial Corporation and others**¹, **B. Premanand and others v. Mohan Koikal and others**² and **Sree Balaji Nagar Residential**

1 (2003) 2 SCC 455

2 (2011) 4 SCC 266

Association v. State of Tamil Nadu and others³.

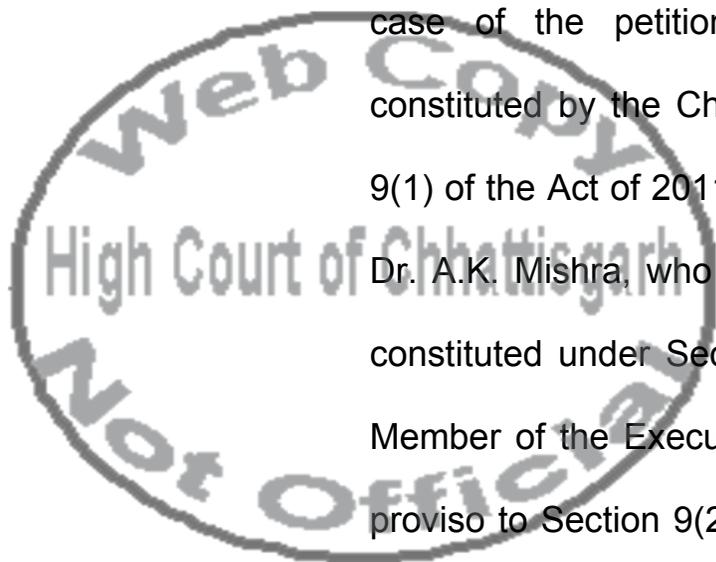
9. Mr. A.S. Kachhawaha, learned counsel appearing for respondent No.2, would submit that the Chancellor has constituted the committee as provided in Section 9(1) of the Act of 2011 which is strictly in accordance with law.
10. Learned counsel appearing for other respondents would adopt the submissions of Mr. R.N. Singh, learned Senior Counsel.
11. I have heard learned counsel for the parties, considered their rival submissions and gone through the record with utmost circumspection.
12. Before dealing with the merits of the matter, it would be appropriate to consider the plea raised by respondent No.1 University that the writ petition as framed and filed is not maintainable, as only recommendation has been made by the Search Committee and the petitioner is free to raise objection to the Chancellor with regard to the recommendation so made including that of the constitution of Selection Committee.
13. It is true that the scope of challenge to selection is extremely limited and law in this regard is no longer undetermined and it stands settled. Their Lordships of the Supreme Court in the matter of **Dalpat Abasaheb Solunke and others v. Dr. B.S. Mahajan and others**⁴ have held that the scope of judicial review in selection is quite limited and it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize

3 (2015) 3 SCC 353

4 (1990) 1 SCC 305

the relative merits of the candidates. The Supreme Court further held that the decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc..

14. Following the principle of law flowing from the aforesaid decision of the Supreme Court in **Dalpat Abasaheb Solunke** (supra), applying to the factual score of the present case, it is quite vivid that it is the case of the petitioner herein that the Selection Committee constituted by the Chancellor in exercise of power under Section 9(1) of the Act of 2011 stands vitiated as soon as respondent No.6 Dr. A.K. Mishra, who is also a Member of the Search Committee constituted under Section 9(1) of the Act of 2011, is inducted as Member of the Executive Council of the University, in view of the proviso to Section 9(2) of the Act of 2011 which prohibits that any authority of the University cannot be a Member of the Search Committee constituted under Section 9(1). Thus, the point raised goes to the root of the matter, as it relates to constitution of Selection Committee in which respondent No.6, who is Member of the Search Committee under Section 9(1) of the Act of 2011, is subsequently nominated in the Executive Council of the respondent No.1 University and falls within the parameters laid down by the Supreme Court in **Dalpat Abasaheb Solunke** (supra). Therefore, I am of the opinion that the preliminary submission raised on behalf of respondent No.1 that the writ petition as framed and filed is



premature and the submission that the petitioner can raise objection / make representation to the Chancellor, holds no ground. The judgment of the Supreme Court cited by learned Senior Counsel in the matter of **Registrar General, High Court of Madras v. R. Gandhi and others**⁵ is not applicable to the present case, as in that case the question raised was quite different and in that case, the eligibility of the candidates recommended by the Collegium was questioned by filing writ petition before the High Court. In that context, it was held by Their Lordships that complaint / objection can be raised at appropriate level by the person concerned and the writ petition was held to be not maintainable. Therefore, the plea raised on behalf of the petitioner deserves consideration on merit.

15. The aforesaid determination would take me to the main plea as to whether the Search Committee constituted under Section 9(1) of the Act of 2011 was duly constituted and the recommendation made was in accordance with Section 9(1) of the Act of 2011.

16. In order to consider the plea, it would be appropriate to notice Section 9(1) of the Act of 2011. At this stage, it would be profitable to notice sub-sections (1) and (2) of Section 9 of the Act of 2011 which provide as under: -

“9. The Vice-Chancellor.—Every appointment of the Vice-Chancellor shall be made by the Chancellor from out of a panel of three names of eminent persons who possess master degree in the field of veterinary and allied sciences with minimum ten years experience as educationist or researcher or administrator in the university system as recommended by the committee referred to in sub-section (2) and such panel shall not

5 (2014) 11 SCC 547

contain the name of any member of the said Committee :

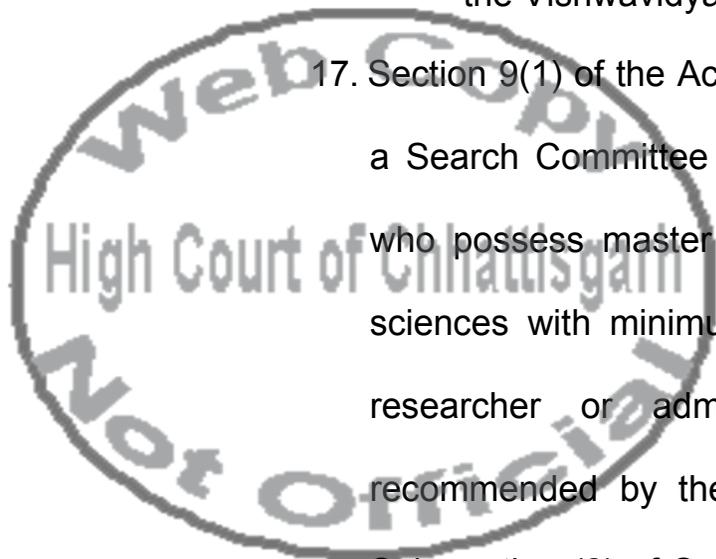
Provided that preference will be given to a person who possesses doctorate qualification in veterinary and allied sciences with minimum ten years experience as educationist or researcher or administrator in the university system.

(2) For the purpose of sub-section (1), the Committee shall consist of three persons from whom one shall be nominated by the Executive Council and one shall be nominated by the State Government and one shall be nominated by the Chancellor :

Provided that the persons so nominated shall not be an employee of, or a member of any of the authorities of, or any contractor or service provider of the Vishwavidyalaya.”

17. Section 9(1) of the Act of 2011 obliges the Chancellor to constitute a Search Committee / panel of three names of eminent persons who possess master degree in the field of veterinary and allied sciences with minimum ten years experience as educationist or researcher or administrator in the university system as recommended by the committee referred to in sub-section (2). Sub-section (2) of Section 9 of the Act of 2011 mandates that the Search Committee shall consist of three persons, one nominated by the Executive Council, one nominated by the State Government and one nominated by the Chancellor. The proviso appended to sub-section (2) of Section 9 of the Act of 2011 is extremely important and the dispute revolves around the construction of the said proviso.

18. A focused glance of the proviso to sub-section (2) of Section 9 of the Act of 2011 would clearly mandate that the persons relatable to sub-section (2) of Section 9 of the Act of 2011 i.e. nominee of the



Executive Council, nominee of the State Government and nominee of the Chancellor, shall not be (i) the employees of, or (ii) members of any of the authorities of, or (iii) any contractor or service provider of the University. Thus, the aforesaid categories of persons have been specifically held to be disqualified to be the member of the Search Committee by the legislative mandate contained in the proviso to sub-section (2) of Section 9 of the Act of 2011. Therefore, a member of the Search Committee is also a member of any authority of the University, then according to proviso to sub-section (2) of Section 9 of the Act of 2011, he is not qualified to be the member of the Search Committee.

19. The next question would be, whether the proviso to sub-section (2) of Section 9 of the Act of 2011 is mandatory or is directory in nature.

20. The object of the proviso to sub-section (2) of Section 9 of the Act of 2011 is only to ensure the nomination of a person who may act impartially and without any bias and favouritism as member of the committee which is constituted for discharging an important function of preparing a panel for selection of Vice-Chancellor of the University, by the Chancellor. Further object is to see that an independent member who will not have any connection with the University and in order to maintain the purity of the high office of the Vice-Chancellor ship to recommend as a member of the Search Committee.

21. Similar question relating to Section 11(2) of the Jabalpur University Act, 1956 came to be considered by a Division Bench of the

Madhya Pradesh High Court in the matter of **Dr. S.C. Barat and another v. Hari Vinayak Pataskar and others**⁶ in which Their Lordships while considering the provisions contained in Section 11(2) of the Jabalpur University Act, 1956, which requires and obliges the Chancellor to appoint a committee of three persons to be members of the Search Committee from amongst the persons (not connected with the University or a college), held that the provisions of Section 11(2) of the Jabalpur University Act, 1956 are mandatory and not directory and non-compliance of Section 11(2) would vitiate the selection / recommendation so made. It was further held that Section 11(2) of the Jabalpur University Act, 1956 is not only advisory in nature and it is not open to the Chancellor to ignore its recommendations, the panel of names submitted by the Committee is binding on the Chancellor. It has been observed as under: -

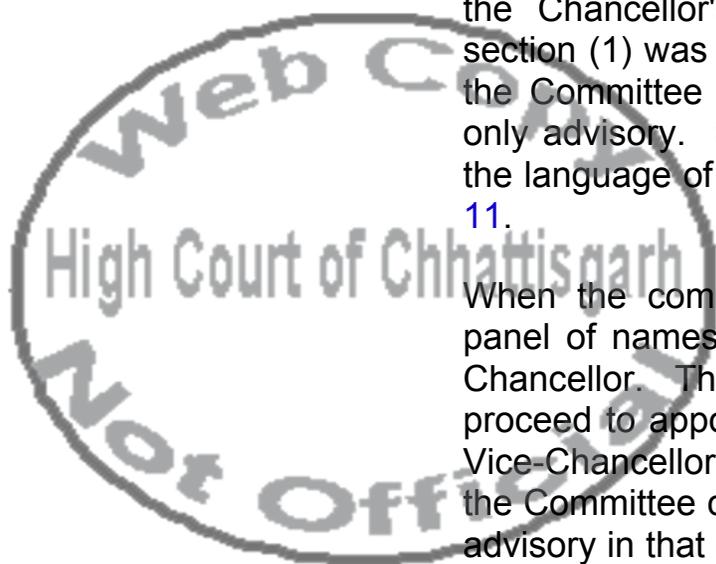
“11. Now, turning to the actual language used in the aforesaid provisions, **Section 11(1)** says that the Vice-Chancellor shall be appointed by the Chancellor from a panel of not less than three names recommended by the committee constituted in the manner laid down in sub-section (2). There cannot be any real doubt as to the meaning of the language used in this sub-section. It unmistakably shows that in making the appointment of the Vice-Chancellor, the Chancellor has to follow in the first instance the procedure of constituting the Committee spoken of in sub-section (2) and that the Chancellor has not the liberty of appointing any person whom he deems fit to be the Vice-Chancellor; but his choice is limited to the persons included in the panel submitted by the Committee. **Section 11(1)** admits of no exceptions. It provides in no uncertain terms that the Chancellor must first follow the mode of appointment laid down in that sub-section and make the appointment on the basis of the panel of names recommended by the Committee constituted in the

6 AIR 1962 MP 180

manner laid down in sub-section (2). It would indeed be difficult to conceive how the Legislature could more plainly have indicated the intention that it was absolutely essential for the Chancellor first to follow the mode of appointment laid down in sub-section (1) and that the appointment of the Vice-Chancellor was not entirely in his discretion but that he was bound by the recommendations made by the Committee. While contending that under sub-section (1) the Chancellor had absolute and unrestricted power to appoint the Vice-Chancellor and the Committee constituted under sub-section (2) or sub-section (3) was only intended to help the Chancellor in taking a decision as to the person to be appointed as the Vice-Chancellor and was of an advisory nature, Shri Chitale did not go so far as to say that it was open to the Chancellor to make the appointment even without constituting any Committee. Yet that is the logical conclusion of his argument that the Chancellor's power of appointment under sub-section (1) was not hedged in with any restrictions and the Committee constituted under sub-section (2) was only advisory. Such a conclusion is not warranted by the language of sub-sections (1), (2) and (3) of [Section 11](#).

When the committee is validly constituted, then the panel of names recommended by it is binding on the Chancellor. The Chancellor cannot ignore it and proceed to appoint whomsoever he thinks fit to be the Vice-Chancellor. It is, therefore, erroneous to say that the Committee constituted under sub-section (2) is only advisory in that it is open to the Chancellor to accept or ignore its recommendations. The panel of names submitted by the Committee is binding on the Chancellor. Learned counsel seemed to suggest that the Committee constituted under sub-section (2) was somewhat analogous to a Public Service Commission and that as the advice of the Committee was not binding on the Government, so also the recommendations of the Committee were not binding on the Chancellor. He referred us to (S) AIR 1957 SC 912 where it has been held that the requirement of consultation in [Article 320 \(3\)](#) does not extend to making the advice of the Commission binding on the Government. There is no analogy between the Committee constituted under sub-section (2) and a Public Service Commission.

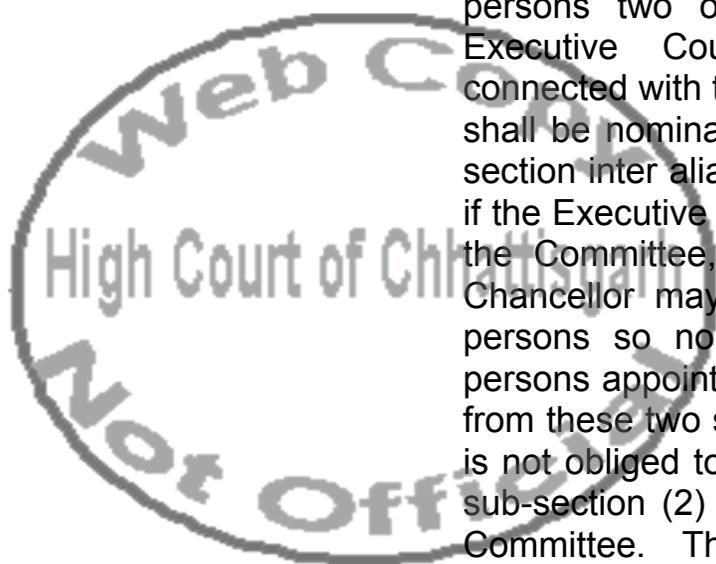
What [Section 11 \(1\)](#) provides is that the Vice-Chancellor shall be appointed by the Chancellor from a panel of names submitted by the Committee and not that in making the appointment the Committee



constituted under sub-section (2) shall be consulted by the Chancellor. On the language used in sub-section (1) it cannot be maintained that the Chancellor can disregard the recommendations of the Committee. It is true that under Sub-section (5) the Chancellor can appoint any person whom he deems fit to be the Vice-Chancellor. But that power is a contingent power and can be exercised only when the Committee fails to submit the panel. Therefore, the contention of the learned counsel for the Chancellor that sub-section (1) gives absolute and unregulated discretion to the Chancellor in the matter of making the appointment of the Vice-Chancellor, and that the Committee constituted under sub-section (2) is only of an advisory nature cannot be accepted.

12. Proceeding now to sub-section (2), it prescribes that the Chancellor shall appoint a Committee of three persons two of whom shall be appointed by the Executive Council from amongst persons not connected with the University or a College and the third shall be nominated by the Chancellor. The third sub-section inter alia deals with the situation that may arise if the Executive Council fails to choose its nominees on the Committee, and provides that in that event the Chancellor may nominate any two persons and the persons so nominated shall be deemed to be the persons appointed by the Executive Council. It is plain from these two sub-sections that the Executive Council is not obliged to avail itself of the opportunity given by sub-section (2) of appointment of two persons on the Committee. The Executive Council may or may not choose its nominees. But if it elects to choose, then its nominees must be persons who are not connected with the University or a college. The provision that the nominees of the Executive Council shall be "from amongst persons not connected with the University or a college" is one prescribing a qualification and as disqualifying persons connected with the University or a college from being appointed as nominees of the Executive Council. This provision is clearly mandatory. [Section 11\(2\)](#) does not say that the persons to be appointed by the Executive Council shall so far as possible be persons not connected with the University or a college. There is, therefore, no question of substantial compliance with the qualification prescribed. A person is either qualified or he is not. There can be no degrees of compliance in this respect.

13. Learned Counsel for the Chancellor did not dispute that so far as the Executive Council was concerned the provision that the two persons to be



appointed by it should be unconnected with the University or a college was mandatory and that the Executive Council could not appoint on the Committee any person who was connected with the University or a college. His contention upon these sub-sections was that they were really intended for securing that two members of the Committee were persons unconnected with the University or a college, and their appointment by the Executive Council was an immaterial matter. Learned counsel sought to reinforce this argument by demonstrating that under sub-section (3) the Chancellor could nominate any two persons if the Executive Council failed to make the appointments. We are unable to assent to this argument. The effect of sub-section (2) is plainly to provide that two persons not connected with the University or a college shall be appointed by the Executive Council. The Chancellor's nominee under sub-section (2) may be any one.

It is true that if the Executive Council fails to choose its nominees then under sub-section (3) the Chancellor can make two nominations. But the persons so nominated are deemed to be the persons appointed by the Executive Council. The provision in sub-section (3) that "the persons so nominated shall be deemed to be the persons appointed by the Executive Council" is very significant and shows that the persons nominated by the Chancellor under sub-section (3) sit on the Committee not as the Chancellor's nominees but as 'fictional' nominees of the Executive Council, and that being so they must also be persons not connected with the University or a college. The words "any two persons" in sub-section (3) do not mean any two persons whether connected or unconnected with the University or a college. They take their colour from the deeming provision in sub-section (3) and from the provision in sub-section (2) about the persons disqualified to be appointed by the Executive Council and mean "any two persons not connected with the University or a college." The provision that two persons not connected with the University or a college should be members of the Committee as appointed by the Executive Council whether in reality under sub-section (2) or by fiction under sub-section (3) is one of substance and not of form which might be waived or a matter in which irregularity may be excused. As representatives of the Executive Council, the two unconnected members are in a better position to make recommendations in the best interests of the University than they would be otherwise.

The object behind sub-sections (2) and (3) of making



the unconnected members as nominees of the Executive Council is to make them feel that they are University representatives, and to secure that the Executive Council through its representatives shares a responsibility in the panel of names, recommended by the Committee. If sub-sections (2) and (3) are construed as the learned counsel for the Chancellor desired, then the whole object of having on the Committee two persons unconnected with the University or a college qua nominees of the Executive Council would be altogether defeated. In our opinion, under sub-sections (2) and (3) it is not sufficient that two members of the Committee should be unconnected with the University or a college. It is also essential that they should be members of the Committee as persons appointed by the Executive Council. The fact that sub-sections (3) and (5) provide for the contingency of the failure of the Executive Council to choose its nominees and of the failure of the Committee to submit the panel gives additional weight to the conclusion that the requirement in sub-section (2) that two unconnected members must sit on the committee as nominees of the Executive Council is a mandatory requirement.

14. Having reached this conclusion, it is not necessary for us to enter into a detail examination of the further contention of the learned counsel for the Chancellor that even if Shri Shriman Narayan was not qualified to be appointed by the Executive Council under sub-section (2) the Committee constituted was a valid one as it included two unconnected persons, namely, Dr. Siddhanta and Dr. Parija and the composition of the Committee was no different from that which would have been if the Chancellor had exercised his powers under sub-section (3) of nominating any two persons on the failure of the Executive Council to choose its nominees. This contention must also be rejected. It is sufficient to point out that if for the purposes of sub-section (3) the Executive Council can be regarded as having failed to choose its two nominees under sub-section (2) if it appoints one qualified and the other disqualified, then the Chancellor has to nominate two other persons in place of the two appointed by the Executive Council. He cannot make the appointment of only one person under sub-section (3) in place of the person who was appointed by the Executive Council but who was connected with the University or a college. Here on such failure of the Executive Council no nomination of any kind was made by the Chancellor under sub-section (3).



Again, in the notification issued on 11th May 1961 (Annexure-III to the Return) announcing the constitution of the Committee, Dr. Siddhanta was shown as having been nominated by the Chancellor and the other two persons were shown as having been elected by the Executive Council. It is not as if the power under sub-section (3) was exercised by the Chancellor and Dr. Siddhanta and Dr. Parija were appointed to the Committee as persons "deemed to be persons appointed by the Executive Council". The argument that as the Chancellor could have resorted to his powers under sub-section (3) and the composition of the Committee would have been no different from that of the Committee which actually submitted the panel and that he could have also appointed any person to be the Vice-Chancellor under sub-section (5), therefore the panel submitted by the Committee was valid and the appointment of the respondent No. 4 was also valid is clearly insupportable. Sub-section (2) provides for a special action in special circumstances. The Chancellor having acted upon a panel submitted by the Committee constituted under sub-section (2) sub-section (3) could not be called in aid when no action of any kind was taken under that sub-section. Further sub-section (5) does not override sub-section (1) and cannot be invoked unless and until a valid committee constituted under sub-section (2) or sub-section (3) fails to submit the panel within the time specified in sub-section (4)."

22. The principle of law laid down in **Dr. S.C. Barat** (supra) was followed with approval by a Division Bench of the Gujarat High Court in the matter of **Prof. Ramanlal P. Shah and another v. State of Gujarat and others**⁷ and Section 10(2)(a)(i) of the Gujarat University Act, 1949 has been held to be mandatory. Relevant portion of the report reads as follows: -

"25. ... In order to see that an independent member who will not have any connection with any of these institutions over which the Vice-Chancellor may have control, the Legislature thought it fit, in order to maintain the purity of the high office of the Vice-Chancellor ship to recommend two out of three members of the Search Committee to be a member who is not a person connected with the University or

⁷ AIR 1989 Guj 61

with affiliated college, recognised institution or approved institution. The argument of the learned Advocate General that if the said provision is read as mandatory and the constitution of such committee is questioned on that basis, the performance of the duty by the said Committee would be set aside and thereby inconvenience and injustice would be caused to persons and public who have no control over them, cannot be countenanced for the simple reason that the damage that would be caused by the decision of such an illegal committee in spoiling the purity of the high office of the Vice-Chancellor will be greater.

26. In view of the aforesaid principles and considering the legislative intent in the present case, as also the manner and method in which Section 10(2)(a) (i) is couched, it is amply established that the direction contained therein for the purpose of selecting two members is mandatory in character.”

23. In the matter of **Dr. G. Sarana v. University of Lucknow and**

others⁸, the question was with regard to selection on the post of Professor of Anthropology. Two candidates applied for the same and for the purpose of selection, a committee was appointed. The committee selected one of the candidates for the post. The candidate who had not been selected came forward with a writ petition alleging that two of the members of the selection committee, who were co-opted as experts, were biased against him. Considering the allegations made by the petitioner therein, the Supreme Court even though dismissed that writ petition, observed as under: -

“9. It is needless to emphasize that the principles of natural justice which are meant to prevent miscarriage of justice are also applicable to domestic enquiries and administrative proceedings. (See *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262 = (1970) 1 SCR 457 = (AIR 1970 SC 150)). It cannot also be disputed that one of the fundamental principles of natural justice is that in case of quasi-judicial proceedings, the authority empowered to decide the dispute between opposing

parties must be one without bias by which is meant an operative prejudice, whether conscious or unconscious towards one side or the other in the dispute. (*See Nageswara Rao v. A.P. State Road Transport Corporation*, (1959) Supp 1 SCR 319 = AIR 1959 SC 308 and *Gullapalli Nageshwar Rao v. State of A.P.*, (AIR 1959 SC 1376) = (1960) 1 SCR 580.”

24. In **Dr. G. Sarana** (supra), a reference has been made by the Supreme Court to **A.K. Kraipak** (supra), AIR 1970 SC 150, where the Supreme Court has observed as follows: -

“11. ... the real question is not whether a member of an administrative Board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to prove the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. In a group deliberation and decision like that of a Selection Board, the members do not function as computers. Each member of the group or board 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.”

25. Thus, the Legislature in enacting Section 9(1) of the Act of 2011, took care of the above-stated aspect and provided that a person who is member of any of the authorities of the University is not qualified to be the member of Search Committee constituted as per the Act of 2011.

26. Following the principle of law laid down by the M.P. High Court in **Dr. S.C. Barat** (supra) and **Dr. G. Sarana** (supra), it is held that the proviso to Section 9(2) of the Act of 2011 is mandatory in nature and a member of any authority of the University cannot act as a member of the Search Committee constituted under Section 9(1) of the Act of 2011.

27. At this stage, it would be appropriate to notice the submission of learned Senior Counsel that the proviso would operate *in praesenti* and once the nomination is made, subsequent appointment of respondent No.6 as member of the Executive Council would not make the constitution of committee illegal and respondent No.6 would also not incur any disqualification so as to attract Section 9(2) of the Act of 2011.

28. As observed herein-above, the object of the proviso to sub-section (2) of Section 9 of the Act of 2011 is to ensure that the Member of the Search Committee should be an independent person and should not be associated with the affairs of the University, as the Search Committee has to recommend a panel of three names for Vice-Chancellor of the University, which is held to be a very high office in the field of education.

29. In the matter of **Marathwada University v. Seshrao Balwant Rao Chavan**⁹, Their Lordships of the Supreme Court have placed the Vice-Chancellor of a University in a very high pedestal and held as under: -

“19. The Vice-Chancellor in every university is thus the conscience keeper of the University and constitutional ruler. He is the principal executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs. ...”

30. Apart from this, in my considered opinion, the life of the Search Committee would remain in force till the recommendation is made by the Search Committee recommending three persons for the post of Vice-Chancellor and once the Search Committee / panel

⁹ (1989) 3 SCC 132

constituted under Section 9(1) of the Act of 2011 submits its recommendation to the Chancellor, the Committee becomes functus officio. In this regard, a decision of the Madhya Pradesh High Court in the matter of **N.P. Srivastaya v. Dr. Hari Vinayak Pataskar and others**¹⁰ may be profitably noticed herein-below. In **N.P. Srivastaya** (supra), Their Lordships have clearly stated that the life of the Committee would remain till the panel of names are submitted by the said Committee and pertinently observed as under: -

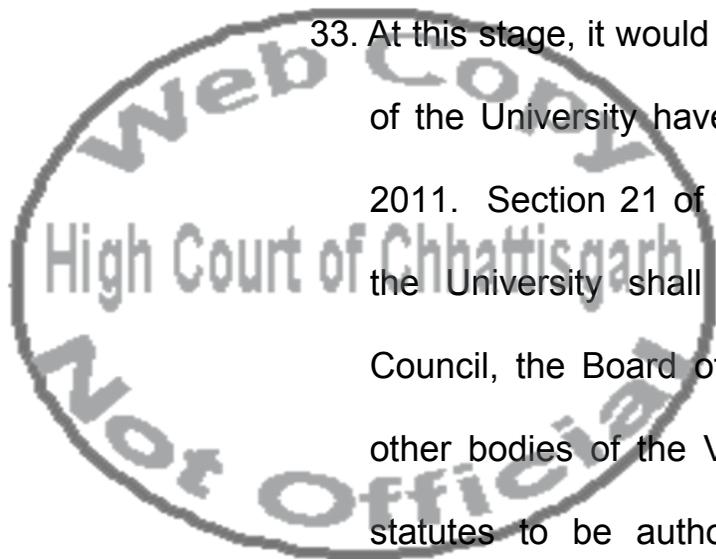
“7. The same matter can be considered from another point of view. The committee which the Chancellor had constituted earlier, though invalidly constituted, fulfilled the purpose of its creation when it submitted a panel of names to the Chancellor. The Committee, therefore, became functus officio. Having fulfilled the function of submitting a panel of names, it became of no further virtue or effect. There could, therefore, be no question of remedying any defect in the constitution of this committee and of that committee being asked to submit a fresh panel. The old Committee having ceased to exist, a fresh panel of names under Section 11 (4) can be submitted only by a new committee constituted under Section 11 (2). The composition of the new committee may not substantially differ from that of the old one. None the less, it would be a new committee and the members sitting on it would function as members of the new committee and not of the old committee.”

31. Therefore, the life of the Search Committee is till the recommendation / panel of three names are submitted by the Search Committee and if any of the members of the Search Committee suffers disqualification on account of his becoming the member of any authorities of the University (respondent No.1) before recommendation is made, then the proviso to sub-section

(2) of Section 9 of the Act of 2011 would apply with full vigour and force.

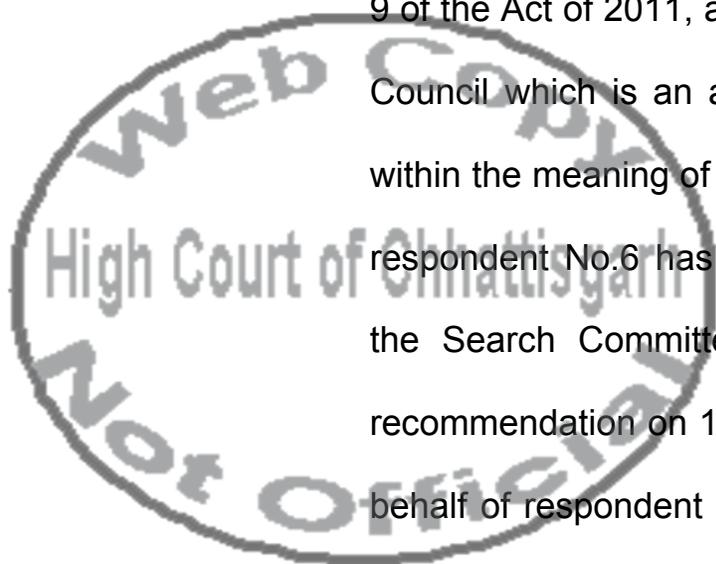
32. In the present case, respondent No.6 was appointed as Member of the Executive Council of the University on 7-6-2017 by a notification in the Official Gazette and according to the affidavit filed by respondent No.2, recommendation has been made thereafter on 15-6-2017 by the said Committee consisting of respondent No.6 as member of the Search Committee constituted under Section 9(1) of the Act of 2011.

33. At this stage, it would be appropriate to mention that the authorities of the University have been indicated in Chapter-IV of the Act of 2011. Section 21 of the Act of 2011 states that the authorities of the University shall be the Executive Council, the Academic Council, the Board of Studies, the Finance Committee and such other bodies of the Vishwavidyalaya as may be declared by the statutes to be authorities of the Vishwavidyalaya. Thus, the Executive Council is one of the authorities of the University mentioned in Section 22 of the Act of 2011 and respondent No.6 has been appointed as Member of the Executive Council under Section 22(2) under the clause of **Other Members** (ii) as a person from outside the Vishwavidyalaya in the field of veterinary and animals sciences to be nominated by the Chancellor, by order dated 22-5-2017 notified on 7-6-2017. Therefore, undoubtedly, respondent No.6 was member of one of the authorities of the University i.e. the Executive Council under Section 22 of the Act of 2011 on the date of making recommendation that is 15-6-2017.



34. Thus, on the basis of the aforesaid discussion, it is held that the Chancellor has constituted a three-member committee consisting of Mr. Sarjais Minj as Chairman; Dr. A.K. Mishra – respondent No.6 as Member; and Dr. P.D. Juyal – respondent No.5 as Member, by order dated 12-4-2017. Thereafter, the Chancellor has appointed respondent No.6 as Member of the Executive Council by order dated 22-5-2017 which has been notified by the University on 7-6-2017 and thereby, respondent No.6 has incurred disqualification in terms of the proviso to sub-section (2) of Section 9 of the Act of 2011, as he has become a Member of the Executive Council which is an authority of the University (respondent No.1) within the meaning of Section 22(1) of the Act of 2011 and thereby, respondent No.6 has become disqualified to act as a member of the Search Committee and the said Search Committee made recommendation on 15-6-2017, as indicated in the affidavit filed on behalf of respondent No.2. Therefore, the recommendation made by the Search Committee recommending three names for the post of Vice-Chancellor is in teeth of the proviso appended to sub-section (2) of Section 9 of the Act of 2011.

35. For the foregoing reasons, the nomination of respondent No.6 Dr. A.K. Mishra in the Executive Council of the University, who is one of the member of the Search Committee constituted under Section 9(1) of the Act of 2011, vitiates the whole proceeding of appointment of Vice-Chancellor and the recommendation made by the said Search Committee cannot be acted upon. Consequently, the present Search Committee as constituted by order dated 12-4-



2017 under Section 9(1) of the Act of 2011 and the recommendation so made are hereby quashed. However, respondent No.2 Chancellor is at liberty to make appointment of Vice-Chancellor of the University tabula rasa in accordance with the Act of 2011.

36. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2606 of 2017

Dr. Rajendra Kumar Bagherwal

Versus

Chhattisgarh Kamdhenu Vishwavidyalaya and others

Head Note

Selection process of appointment for the post of Vice-Chancellor of the Chhattisgarh Kamdhenu Vishwavidyalaya quashed being in breach of the proviso to sub-section (2) of Section 9 of the Chhattisgarh Kamdhenu Vishwavidyalaya Act, 2011.

छत्तीसगढ कामधेनु विश्वविद्यालय के कुलपति के पद हेतु नियुक्ति की चयन प्रक्रिया को छत्तीसगढ कामधेनु अधिनियम, 2011 की धारा 9 की उपधारा (2) के परन्तुक को भंग करने वाला होने के कारण खारिज किया गया।

