

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,  
CHIEF JUSTICE**

**&**

**HON'BLE SHRI JUSTICE VIVEK JAIN**

**WRIT APPEAL No. 36 of 2019**

***THE STATE OF MADHYA PRADESH AND OTHERS***

***Versus***

***DR. SHAHDEV PRASAD GUPTA AND OTHERS***

**With**

**WRIT APPEAL No. 596 of 2018**

***M.P. BHOJ OPEN UNIVERSITY AND OTHERS***

***Versus***

***THE STATE OF MADHYA PRADESH AND OTHERS***

**WRIT APPEAL No. 597 of 2018**

***M.P. BHOJ OPEN UNIVERSITY AND OTHERS***

***Versus***

***THE STATE OF MADHYA PRADESH AND OTHERS***

**WRIT APPEAL No. 602 of 2018**

***M.P. BHOJ OPEN UNIVERSITY AND OTHERS***

***Versus***

***THE STATE OF MADHYA PRADESH AND OTHERS***

**WRIT APPEAL No. 603 of 2018**

***M.P. BHOJ OPEN UNIVERSITY AND OTHERS***

***Versus***

***THE STATE OF MADHYA PRADESH AND OTHERS***

**WRIT APPEAL No. 625 of 2018**

***M.P. BHOJ OPEN UNIVERSITY AND OTHERS***  
*Versus*  
***THE STATE OF MADHYA PRADESH AND OTHERS***

**WRIT APPEAL No. 626 of 2018**

***M.P. BHOJ OPEN UNIVERSITY AND OTHERS***  
*Versus*  
***THE STATE OF MADHYA PRADESH AND OTHERS***

**WRIT APPEAL No. 627 of 2018**

***M.P. BHOJ OPEN UNIVERSITY AND OTHERS***  
*Versus*  
***THE STATE OF MADHYA PRADESH AND OTHERS***

**WRIT APPEAL No. 629 of 2018**

***M.P. BHOJ OPEN UNIVERSITY AND OTHERS***  
*Versus*  
***THE STATE OF MADHYA PRADESH AND OTHERS***

**WRIT APPEAL No. 638 of 2018**

***M.P. BHOJ OPEN UNIVERSITY AND OTHERS***  
*Versus*  
***THE STATE OF MADHYA PRADESH AND OTHERS***

**WRIT APPEAL No. 32 of 2019**

***THE STATE OF MADHYA PRADESH AND OTHERS***  
*Versus*  
***DR. HEMLATA BAGHEL AND OTHERS***

**WRIT APPEAL No. 34 of 2019**

***STATE OF MP***  
*Versus*  
***DR. IFFAT KHAN AND OTHERS***

**WRIT APPEAL No. 38 of 2019**

***THE STATE OF MADHYA PRADESH***  
*Versus*  
***DR. YASMIN GANI KHAN AND OTHERS***

**WRIT APPEAL No. 41 of 2019**

***THE STATE OF MADHYA PRADESH***  
*Versus*  
***DR. MONIKA SINGH AND OTHERS***

**WRIT APPEAL No. 42 of 2019**

***THE STATE OF MADHYA PRADESH***  
*Versus*  
***DR. DIWAKAR SINGH AND OTHERS***

**WRIT APPEAL No. 54 of 2019**

***THE STATE OF MADHYA PRADESH***  
*Versus*  
***VINOD KUMAR ARGAL AND OTHERS***

**WRIT APPEAL No. 1991 of 2019**

***M.P. BHOJ OPEN UNIVERSITY RAJA BHOJ MARG KOLAR ROAD***  
***BHOPAL AND OTHERS***  
*Versus*  
***DR. NAEMA QAMAR AND OTHERS.***

**WRIT APPEAL No. 1993 of 2019**

**M.P. BHOJ OPEN UNIVERSITY AND OTHERS**  
*Versus*  
**DR. ANUSHKA M. NAYAK AND OTHERS**

.....  
**Appearance:**

*Shri Amit Seth - Additional Advocate General with Shri Anubhav Jain, Government Advocate on behalf of the Appellant/State.*

*Smt. Shobha Menon - Senior Advocate with Shri Rahul Choubey – Advocate and Shri Jagdish Prasad Sharma - Advocate for the Appellant/M.P. Bhoj University.*

*Shri R.K. Verma - Senior Advocate with Miss Preeti Khanna, Shri Ashish Datta and Shri Ram Murti Tiwari - Advocates, Shri Arpan Pawar - Senior Advocate with Shri Rahul Pathak -Advocate, Shri Manoj Sharma - Senior Advocate with Qazi Fakhruddin and Shri Asif Ali Khan - Advocates and Shri Jagdish Prasad Sharma, Shri Anshul Tiwari, Shri Aditya Pachori, Shri Shubham Manchani, Shri Martand Paliwal, Shri Vasu Waswani and Shri Somesh Rai - Advocates for the Respondents in their respective cases.*

*Shri K.C. Ghildiyal - Senior Advocate with Miss Warija Ghildiyal - Advocate for the Respondent/Intervener in their respective case*  
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**J U D G M E N T**

(Reserved on : 20 / 03 / 2025)  
 (Pronounced on : 01 / 04 / 2025)

***Per: Hon'ble Shri Justice Vivek Jain.***

The present batch of writ appeals have been filed by the State of Madhya Pradesh and by the M.P. Bhoj (Open) University challenging the common judgment and order passed by the learned Single Judge in WP No.1910/2017 and batch of connected cases on 02.04.2018. By the aforesaid order, the learned Single Judge has allowed the writ petitions filed by the selected candidates against which the State Government and M.P. Bhoj

Open University (for short referred to as 'University') are in appeal before this Court.

2. As there is similarity of facts and common dispute is involved in the aforesaid appeals therefore, they are being decided by this common order. For the sake of convenience facts are being taken from WA No.36/2019.

3. It is argued by Ms. Shohba Menon, Sr. Advocate appearing on behalf of the University and Shri Amit Seth, learned Additional Advocate General and Shri Anubhav Jain, Govt. Advocate appearing on behalf the State Government that the order passed by the learned Single Judge is vulnerable in as much as learned Single Judge has not taken into account the provisions of the M.P. Bhoj (Open) University Adhiniyam, 1991 (for short referred to as 'Adhiniyam 1991') so also not considered in proper prospective that the initial reply filed by the University before the learned Single Judge was maliciously filed in view of the peculiar circumstances of the case and the same was thereafter followed by proper reply but the learned Single Judge by adopting hyper technical view that the second reply filed by the University though is on record but there is no application for withdrawal of the first reply, therefore, allowed the petitions on the basis of averments contained in the first reply. It is contended that such logic and reasoning adopted by the learned Single Judge cannot be said to be proper and therefore, pray for interfering with the order of learned Single Judge and to allow the present batch of writ appeals.

4. It is argued that it was contended by the University in the subsequent reply filed on 28.6.2017 (Document No.7635/2017) before the learned Single Judge, in the above selection process for selection of most of the post, no subjects experts have been included in the selection committee and for the selection of some of the subjects, the subjects experts were called from other disciplines, which is illegal and on the basis of the

recommendation of the aforesaid committee, appointment order cannot be issued. It is also contended that the selection committee of the subject post concerned has not followed the norms prescribed by the U.G.C. Regulations and API-statement have not been filled in the prescribed form and not properly disclosed. From the perusal of the summary of score of the selection committee of the concerned posts clearly demonstrate that the committee has not examined and scrutinized the academic records of each applicant minutely and the statement of summary of marks awarded by the committee are also in typed manner and some of the columns of marks are blank, without any explanation. It is also important to mention here that from the perusal of the above statement of the summary of marks it is clearly depicted therefrom that the proposed candidates have been favoured out of the way by awarding highest marks in interview by ignoring other deserving candidates having better academic record, and in this view it is clear that the selection committees have not-considered the merits of the candidates and the statement of the summary of score suffered from favoritism and cannot be accepted as fair selection therefore the whole selection process is liable to be cancelled and on the basis of defective selection process no appointment order can be issued to the writ petitioners.

5. It is contended that inspite of various complaints and State Govt. directions the matter was placed before the Board of Management and the Board of Management in its 66<sup>th</sup> meeting dated 27.10.2016 without examining the complaints itself has constituted a five members committee in which the name of Shri P.S. Chouhan has been introduced as a retired High Court Judge though he had never been a High Court Judge, similarly the other four members have also been included by pick & choose, who were all the retired persons.

6. It is further argued that the University had published two advertisements dated 09.02.2015 and dated 11.02.2015 for inviting applications for Professor/Associate Professor and Assistant Professors for the different departments of the University. In the above advertisement some posts have been sanctioned by the Higher Education Department Govt. of M.P. and some posts created by the Board of management for which no prior approval has been taken from the Government. It is further submitted that before the above two advertisement, the Government of M.P. Higher Education Department vide its order dated 11.12.2014 has directed that for the sanctioned teaching posts in the University the roster should be according to the University Grants Commission roster preparation rules and Madhya Pradesh Lok Seva (Anusuchi Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vergon Ke Liye Arakshan) Ashiniyam 1994. The roster should be prepared by ascertaining reservation according to the model form prepared by the Rani Durgavati University Jabalpur.

7. It is also argued that in the above two advertisements there is no reservation for the women and physically handicapped persons (PwD) and the reservation roster has also not been prepared in accordance with the direction given by the Higher Education Department Govt. of M.P. The roster prepared by the committee of the respondent University does not show the name of the person presently working on the post and similarly the roster included the posts sanction by the Government and posts created by the Board of management for which the Higher Education Department has taken objection. Thus it is clear that the reservation roster suffer from illegalities and the above two advertisement have become illegal and therefore further procedure of selection has become illegal and on that basis no appointment can be made in accordance with Law.

8. It is further contended by learned senior counsel appearing for the respondents that the learned Single Judge has erred in not considering the provisions of Section 8 of the Adhiniyam 1991 whereby powers have been given to the Chancellor of the University (referred to in Hindi as '*Kuladhipati*') and further that the impugned order which was under challenge in the writ petition directing to put the recruitment process on hold has been erroneously considered to be an order passed by the State Government, whereas it was the order passed by the Chancellor who is having plenary powers in the University in view of Section 8 and is father figure of the University and this aspect has been totally glossed over by the learned Single Judge.

9. It is further argued that the writ petition has been allowed on the basis of 65<sup>th</sup> and 66<sup>th</sup> meetings of Board of Management of University whereas the said meetings were virtually set at naught by the 67<sup>th</sup> meeting of the Board of Management which is dated 06.12.2016 and was annexed even to the disputed first reply of the university in as much as in the 67<sup>th</sup> meeting it was decided that the further directions to be received in the matter from the Rajbhawan (Chancellor/Governor's House) will be followed and the matter be put on hold. Incidentally, His Excellency the Governor of M.P. is *Ex-Officio* Chancellor of the University.

10. *Per Contra*, it was contended by learned counsel for the respondents/writ petitioners that the order passed by the learned Single Judge is well justified because the earlier reply filed was not a collusive reply and in fact there was a prayer in last paragraph of the reply to dismiss the writ petition and therefore, it could not be said to be collusive reply. It is further contended that the matter was enquired into by a Committee appointed under the Chairmanship of retired District Judge, though erroneously mentioned as retired Judge of the High Court, so also various



academicians and it was found that there has been no error or mistake or irregularity in the selection process and therefore, learned Single Judge has rightly ordered to give effect to the select list.

**11.** It is further contended that though it is true that mere selection does not give any vested right of appointment but that discretion to appoint or not to appoint must be for valid and cogent reasons and in the present case, it was a case of State Government jumping into the matter without any just cause and putting the selection process on hold and therefore, the learned Single Judge has correctly and rightly passed the impugned order by directing to operate the select list.

**12.** Heard the learned counsel for the parties and perused the record.

**13.** In the present case, a selection process was put into motion for appointment on various teaching posts in the appellant University which is a State-run open university. The said university has been established under the provisions of Adhiniyam 1991 and is subject to the provisions of the said Adhiniyam and statutes framed there under.

**14.** The University issued notification for appointment on various teaching posts vide employment notice dated 11.02.2015 calling for applications on various teaching posts in various departments. The said notice is stated to be published in various newspapers printed from Bhopal. It is interesting to note here that though the selection process was not restricted to residents of Madhya Pradesh, but most of the candidates who were selected either belonged to Bhopal or at the most, from other cities of M.P. There was no written examination laid down for the purpose of selection and the selection was only on the basis of receipt of applications and interviews of short listed applicants.

**15.** The call letters for interview were issued and therefore, select list was prepared by the University and in the intervening process a number of complaints were received in the matter that most of the selected candidates either are close relatives of the seniors officers and office-bearers of the University, or of other universities or are otherwise having good connections. When the complaints in the matter were received, the University placed the matter in its 65<sup>th</sup> and 66<sup>th</sup> meetings conducted on 01.08.2016 and 27.10.2016 respectively placed on record as Annexure P-5 and P-6.

**16.** In the 65<sup>th</sup> meeting of the Board of Management of University, the decision was taken to open sealed cover of selected candidates to take consequential action.

**17.** In the 66<sup>th</sup> meeting held on 27.10.2016, the Board of Management took a further decision to constitute a 5 members committee headed by retired District Judge though mentioned in the said proceedings as a retired Judge of the High Court. The enquiry committee who enquired into the complaints in the matter of irregularities in the selection process comprised of 5 other members most of whom were academicians or former Registrars or officers of the Higher Education Department of the State.

**18.** It is evident from the perusal of the documents placed on record that various complaints in the matter of irregularities in selection also reached H.E. the Governor of the State who is the Chancellor of the University and the office of Governor being the Chancellor, issued a letter dated 10.11.2016 which is immediately after the 66<sup>th</sup> meeting of Board of Management to put the process on hold. This letter is issued by Principal Secretary to Governor of Madhya Pradesh and is not issued by any authority of the State Government but is issued by the office of H.E. the Governor of the State who was Chancellor of the University. This letter was put to challenge

before the learned Single Judge on the ground that the State Government has unnecessarily interfered in the selection process and it is the University which is to take a final decision or final call in the matter of selection to academic post in the university and unauthorizedly the State Government has put the process on hold. The learned Single Judge considered it to be interference in the selection process by the State Government, though it was not so in view of provisions of the Adhiniyam 1991 which we proceed to discuss infra.

**19.** As per Section 8 of Adhiniyam 1991 the office of Chancellor (**Kuladhipati**) has been provided which reads as under:-

*8. The Kuladhipati- (1) The Governor of Madhya Pradesh shall be the Kuladhipati of the University.*

*(2) Subject to the provisions of sub-sections (3) and (4), the Kuladhipati shall have the right to cause an inspection to be made, by such person or persons as he may direct, of the University, its buildings, laboratories and equipment, and of any Regional Centre, a Study Centre and also of the examination, instruction and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the administration and finances of the University.*

*(3) Where an inspection or inquiry has been caused to be made by the Kuladhipati, the University shall be entitled to appoint a representative who shall have the right to appear in person and to be heard on such inspection or inquiry.*

*(4) The Kuladhipati may address the Kulpati with reference to the results of such inspection or inquiry together with views and advice with regard to the action to be taken thereon as the Kuladhipati may be pleased to offer*

*and on receipt of the address made by the Kuladhipati, the Kulpati shall communicate forthwith to the Board of Management the results of the inspection or inquiry and the views of the Kuladhipati and the advice tendered by him upon the action to be taken thereon.*

*(5) The Board of Management shall communicate through the Kulpati to the Kuladhipati such action, if any, as it proposes to take or has been taken by it upon the results of such inspection or inquiry.*

*(6) Whereas the Board of Management does not within a reasonable time, take action to the satisfaction of the Kuladhipati, the Kuladhipati may, after considering any explanation furnished or representation made by the Board of Management, issue such directions as he may think fit and the Board of Management shall be bound to comply with such directions.*

*(7) Without prejudice to the foregoing provisions of his section the Kuladhipati may, by an order in writing, annul any proceedings of the University, which is not in conformity with this Act, the Statutes or the Ordinances:*

*Provided that before making any such order, he shall call upon the University to show cause why such an order should not be made and, if any cause is shown within a reasonable time, he shall consider the same.*

*(8) The Kuladhipati shall have such other powers as may be specified by the Statutes.*

**(Emphasis supplied)**

**20.** As per Section 8(7) of Adhiniyam, 1991 the Chancellor has been given an extraordinary jurisdiction to annul any proceedings of the University which is not in conformity with the Act, Statutes or the Ordinances. Therefore, it is clear that the letter dated 10.11.2016 which has been issued by the office of Chancellor was in fact authorized in terms of

Section 8 (6) & (7) of Adhiniyam 1991 and cannot be said to be unauthorized interference in functioning of the University by the State Government because this letter which was impugned before the learned Single Judge was not issued by the State Government but by the office of the Chancellor of the university.

**21.** The learned Single Judge while allowing the writ petition held that two replies are filed by the universities at different points of time. The first reply is filed by document No.3924/2017 which was filed on 22.03.2017 and affidavit of the same has been executed on 19.03.2017. In this reply all the contentions of the writ petitioners were accepted and it was admitted by the University that the selection process is not polluted with any irregularity and it is fully in consonance with law and in fact in tacit manner, the State Government and Chancellor were criticized in this reply in para-17 by submitting that though the selection is as per law but since the State Government and Chancellor have intervened in the matter therefore, the University is unable to finalize the selection process. In para-17 of the reply vide document No.3924/2017 following pleadings were made :-

*That, it is respectfully submitted that the entire selection is as per law, however in view of the intervention of the State Government and the Secretariat of the Hon'ble Chancellor, no further action has been taken yet. However, there is no violation of any constitutional rights of the petitioners which they desire to be adjudicated before this Hon'ble Court.*

**22.** It is really surprising that the State University which is established and funded by the State and H.E. the Governor of the State is heading the said University as Chancellor, in reply filed before this Court is tacitly criticizing the State Government and the Chancellor.

**23.** A very relevant fact to mention here that as per Section 33 (B) of the Adhiniyam, 1991 there are special provisions carved out in the manner that

if there is emergent situation in the University, then the State Government by notification apply the provisions of Section 33(B)(2)(3)(4)(5) of Adhiniyam 1991 to the University which are nothing but emergency provisions empowering the State Government to remove the Vice Chancellor and other officers of the University and to dissolve Planning Board, Board of Management, Academic Council etc. of the University and to replace the Vice Chancellor of the University.

**24.** The State Government had duly issued a notification dated 18.03.2017 exercising emergency powers under Section 33(B) of Adhiniyam, 1991 whereby the Vice Chancellor of the University was removed and replaced by some other person. The notification under Section 33(B) is as under:-

*“No. F-52-02-2016-XXXVIII-3.-WHEREAS, on the basis of a report and material which has been made available regarding management of affairs of the Madhya Pradesh Bhoj (Open) University, Bhopal, the State Government is satisfied that a situation has arisen in which the administration of the said University cannot be carried out in accordance with the provisions of the Madhya Pradesh Bhoj (Open) University Adhiniyam, 1991 (No. 20 of 1991) without detriment to the interests of the University, and it is therefore, expedient to do so that the provisions of subsection (1) of Section 33-B of the said Act, be enforced so that the administration can be carried out without detriment to the interest of the University;*

*NOW, THEREFORE, in exercise of the powers conferred by subsection (1) of Section 33-B of the Madhya Pradesh Bhoj (Open) University Adhiniyam, 1991 (No. 20 of 1991), the State Government, hereby, directs that the Provisions of sub-section (2), (3), (4) and (5) of Section 33-B of the*

*said Act shall apply to the said University from 18th March, 2017 subject to the modifications specified in the said Act.”*

The relevant Section 33 (B) is as under :-

**“33B. Special Provision for better administration of University in certain circumstances.”***-(1) If the State Government, on receipt of a report or otherwise, is satisfied that a situation has arisen in which the administration of the University cannot be carried out in accordance with the provisions of the Act without detriment to the interests of the University, and it is expedient in the interest of the University so to do, it may by notification, for reasons to be mentioned therein, direct that the provisions of sub-sections (2), (3), (4) and (5) shall, as from the date specified in the notification (hereinafter in this section referred to as the appointed date), apply to the University.*

*(2) The notification issued under sub-section (1) (hereinafter referred to as the notification) shall remain in operation for a period of one year from the appointed date and the State Government may, from time to time, extend the period by such further period as it may think fit so, however that the total period of operation of the notification does not exceed three years.*

*(3) As from the appointed date the Kulpati, holding office immediately before the appointed date, shall notwithstanding that his term of office has not expired, vacate his office, and the Kuladhipati shall simultaneously with the issue of the notification appoint the Kulpati and the Kulpati so appointed shall hold office during the period of operation of the notification:*

*Provided that the Kulpati shall be appointed by the Kuladhipati in consultation with the State Government and may be removed by the Kuladhipati in the like manner:*

*Provided further that the Kulpati may notwithstanding the expiration of the period of operation of the notification continue to hold office thereafter until his successor enters upon office but this period shall not exceed six months.*

*(4) As from the appointed date, the following consequences shall ensue, namely:-*

*(1) every person holding office as a member of the Planning Board, the Board of Management or the Academic Council, as the case may be, immediately before the appointed date shall cease to hold that office;*

*(II) the Kulpati appointed under sub-section (3) shall exercise the powers and perform the duties conferred or imposed by or under this Act, on the Planning Board, the Board of Management the Board of Management or Academic Council:*

*Provided that the Kuladhipati may, if he considers it necessary so to do, appoint a committee consisting of an educationist, an administrative expert and a financial expert to assist the Kulpati so appointed in exercise of such powers and performance of such duties:*

*Provided further that such committee shall be appointed in consultation with the State Government.*

*(5) Before the expiration of the period of operation of the notification or immediately as early as practicable, thereafter, the Kulpati Kulpati shall take steps to constitute the Planning Board, the Board of Management and Academic Council in accordance with the provisions of the Act, and the Planning Board, the Board of Management and Academic Council as so constituted shall begin to function on the date immediately following the date of expiry of the period of operation of the notification or the date on which the respective bodies are so constituted whichever is later:*



*Provided that if the Planning Board, the Board of Management and Academic Council are not constituted before the expiration of the period of operation of the notification, the Kulapati shall on such expiration exercise the powers of each of these authorities subject to prior approval of the Kuladhipati till the Planning Board, the Board of Management or Academic Council, as the case may be, is so constituted.]”*

25. Interestingly, the first reply vide document Noo.3924/2017 was sworn before the notary public on 19.03.2017 at Bhopal by Director (CS) of the University. When during the course of argument of these appeals we posed a query to counsel for the respondents that who had appointed the said person as Officer In-charge of the case, then it was admitted by the counsel for the respondents that he must have been appointed by the outgoing Board of Management or the Vice Chancellor as Officer In-charge of case.

26. We are really surprised in the manner that once the State Government by exercising its emergency powers under Section 33(B) of Adhiniyam 1991 of the university had removed the Vice Chancellor of the University on 18.03.2017, then what was the urgency with the Officer In-charge appointed by outgoing Board of Management and Vice-Chancellor to have sworn affidavit of reply on 19.03.2017.

27. The counsel for the respondents had vehemently argued that the Board of Management of University is having plenary powers under Section 15 of Adhiniyam 1991 and that university can frame statues under Section 25. However, we are not apprised of any enabling provisions under which the Board of Management or any other authority of the University would be superior to the Chancellor who is father figure of the university. The Supreme Court in the case of ***Hitendra Singh Vs. P.D. Krishi Vidyapeeth, (2014) 8 SCC 369***, while considering the analogous provisions of Punjabrao Deshmukh Krishi Vidyapeeth, has held as under :-

*21. A plain reading of the above shows that apart from being the ex officio Head of the University, the statute specifically confers upon the Chancellor the power to call for his information any paper relating to the administration of the affairs of the University and upon such request the University is bound to comply with the same. Sub-section (5) vests the Chancellor with the power to annul any proceeding of any officer or authority if the same is not in conformity with the provisions of the Act, the statutes or the Regulations or which is prejudicial to the interest of the University. A conjoint reading of Sections 11 and 15, in our opinion, leaves no manner of doubt that the Chancellor exercises ample powers in regard to the affairs of the University and in particular in regard to the affairs of the administration of the University. The power to direct an inquiry into any matter concerning the administration of the University is only one of the facets of power vested in the Chancellor. The exercise of any such power is not subject to any limitation or impediment understandably because the power is vested in a high constitutional functionary who is expected to exercise the same only when such exercise becomes necessary to correct aberrations and streamline administration so as to maintain the purity of the procedures and process undertaken by the University in all spheres dealt with by it. The power to direct an inquiry is meant to kick-start corrective and remedial measures and steps needed to improve the functioning of the University as much as to correct any illegal or improper activity in the smooth running of the administration of the University. **As a father figure holding a high constitutional office, the Chancellor is to be the guiding spirit for the Universities to follow a path of rectitude in every matter whether it concerns the administration or the finances of the University or touches the teaching and other activities that are undertaken by it. The legislature, it is obvious, has considered the conferment of such powers to be essential to prevent indiscipline, root out corruption, prevent chaos or deadlock in the administration of the University or any office or establishment under it that may tend to shake its credibility among those who deal with the institution.***

**(emphasis supplied)**

**28.** In the second reply filed before the learned Single Judge the University had come out with very detailed pleading in the matter of exact irregularities that have taken place in the selection process and the complaints received by the authorities of the State and the office of Chancellor were narrated in detail and it was narrated in detail that what are the exact irregularities in the selection process on account of which the Chancellor has intervened into the matter and directed to put the selection process on hold. Indeed, the learned Single Judge in its order under challenge has considered the subsequent reply and even considered the averments in the subsequent reply that the earlier reply filed on 21.03.2017 should not be considered. The learned Single Judge in the impugned order considered the pleadings in the second reply in the following manner:-

*“6. Respondent No.2 has again filed reply on 28/06/2017 contending that earlier reply filed on behalf of respondent No.3 may not be considered and separate reply has been filed on behalf of respondent No.3. In the said reply, respondent No.3 has stated that two advertisements i.e. dated 09/02/2015 and 11/02/2015 have been published for inviting applications for Professor, Associate Professor and Assistant Professor for the different department of the university. In the above advertisements, some posts have been sanctioned by the Higher Education Department, Govt. of Madhya Pradesh and some posts have been created by the Board of Management for which no prior approval has been taken from the Government. Before the above two advertisements, the Government of Madhya Pradesh, Higher Education Department vide its order dated 11/12/2014 has directed that for the sanctioned teaching posts in the universities, roster should be according to the University-Grant-Commission, roster preparation rules and M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vergon Ke Liye Arakshan) Adhiniyam, 1994 amended 2002. It has also directed*

*that roster should be prepared by ascertaining reservation according to the model form prepared by the Rani Durgawati University, Jabalpur.*

*7. The respondents have also stated that in above two advertisements, there is no reservation for the women and physically handicapped persons and the reservation roster has also not been prepared in accordance with the direction given by the Higher Education Department, Govt. of Madhya Pradesh in the format of the Rani Durgawati University, Jabalpur. In the reservation roster, two posts of professors and six posts of Assistant Professor have been sanctioned by the State Government vide letter dated 08/10/1997 which were to be filled up on deputation and not by regular appointment but these posts have also been included in the reservation roster prepared by the committee. The qualifications which prescribed in the said advertisement for the teaching posts are as per the UGC Regulation, 2010. In UGC Regulation, in addition to other qualifications "good academic record" has to be defined by the university concerned, but the university has not specified the same in the advertisement. Thus, the advertisement suffers from initial illegalities. As per amended UGC Regulation, for category-I, the minimum API score required for teacher is 75 based on the self- assessment. 300 points API is required to be considered by the selection committee. It is pertinent to mention here that the selection committees have been constituted by the Kuladhipati under Section 49(2) of the M.P. Vishwavidyalaya Adhiniyam, 1973.*

*8. Statute No.9 of the respondent-university provides constitution of selection committee for the appointment of the head of the department, Vice President, Course Writer/Coordinator for which the committee includes four subject experts nominated by Kuladhipati. One of the expert out of the four will be from Open University, but, in the above direct recruitment process the aforesaid provisions have not been followed and due to this, the whole process has become defective and illegal and on that basis the selection for all the appointments cannot be permitted legally and liable to*

*be cancelled with liberty/direction to re-advertise for fresh appointment. The selection committee of the subject post concerned, has not followed the norms prescribed by the UGC Regulation and API statement have not been filled in the prescribed form. The committee has not examined and scrutinized the academic records of each applicant minutely and the statement of summary of marks awarded by the committee are also in typed manner and some of the columns of marks are blank, without any explanation. It has further been submitted that from perusal of the above statement of the summary marks, it is clearly depict therefrom that the proposed candidates have been favoured out of the way by awarding highest marks in interview. The respondents have further submitted that complaints were made against the said selection to the Higher Education Department. The Higher Education Department vide its letter dated 19/09/2016 asked Registrar of the University to submit point-wise facts with documents, report. Accordingly, the Registrar of the university has submitted detailed factual report to the State Government vide report dated 04/10/2016. Thereafter His Excellency the Governor's office vide order dated 10/11/2016 has directed the university that the matter of the selection of 14 teaching posts should not be placed before the Board of Management till further orders of His Excellency the Governor's Secretariat. In spite of various complaints and State Government direction, the matter has been placed before the Board of Management. The Board of Management in its 66th meeting dated 27/10/2016 without examining the complaints, itself, has constituted a five members committee. The meeting of the said committee was held on 04/11/2016 and on the same day, the said committee has submitted its report. The respondents have further submitted that the committee has not examined the subject matter in question properly and thoroughly and in the said report no reasoned findings have been given by the committee. Thus, in light of the aforesaid, learned counsel for the respondents submit that the selection process from beginning suffers from*

*legal defect as well as illegal and, therefore, the same cannot be permitted to be implemented and on that basis, the petitioners are not entitled to be appointed on the said post. Learned counsel for the respondents relied upon the judgments delivered by the Apex Court in the cases of **Director, SCTI for Medical Science & Technology and another Vs. M. Pushkaran** reported in (2008) 1 SCC 448, **East Coast Railway and another Vs. Mahadev Appa Rao and others**, reported in (2010) 7 SCC 678 and **State of U.P. and others Vs. Rajkumar Sharma and others** reported in (2006) 3 SCC 330.”*

**29.** Despite noting the serious irregularities in the selection process as brought out by the appellants in their subsequent reply as also mentioned by us in earlier part of this order i.e. in paragraphs 4 to 7 above, the learned Single Judge simply discarded the aforesaid pleadings only on the ground that there is no application on record to withdraw the earlier reply and relied on the pleadings made in the first reply which, as discussed above, was filed under suspicious circumstances.

**30.** The counsel for the respondents have tried to justify swearing of affidavit of first reply on 19.03.2017 and its filing on 22.03.2017 on the ground that the notification under Section 33 (B) of Adhiniyam, 1991 was published in the official Gazette on 20.03.2021. Be that as it may, but it cannot be inferred that the University Management Committee came to know about removal of Vice Chancellor and Board of Management etc. only after publication of notification in official Gazette. Subsequent publication is for information of all concerned including third parties, but it cannot be inferred that the person to whom it is addressed, that it also did not have any information of the same. Nothing has been brought on record to show that the University office did not receive the said order prior to 22.3.2017.

**31.** It appears to this Court that indeed it was a case where the outgoing Management of the University wanted to place a reply on record in any manner supporting the averments of the petition. The learned Single Judge has relied on various provisions of Adhiniyam 1991 like Section 25 which relates to framing of statutes of university and Section 15 whereunder Board of Management has been constituted. However, all these authorities are under supervision of Chancellor under Section 8 of Adhiniyam which has not been gone into by the learned Single Judge, while erroneously holding that the University being an autonomous body, decision of its Board of Management, would prevail.

**32.** During the course of arguments, the learned counsel for the respondents were unable to satisfy the query of the Court that how the illegalities mentioned in detail in subsequent reply are not met out. They only relied upon the report of enquiry committee constituted by earlier management of University which had given a clean chit to the appointments to the selection process. There is a clear averment in the subsequent reply of the University that the women's reservation provision was not given effect to. This issue has not been replied by the respondents in any manner and indeed we have gone through the reservation roster prepared and we have seen ourselves that no reservation for women has been provided in the roster duly placed on record by the University in its subsequent reply. All these issues have been simply glossed over by the learned Single Judge by holding that whatever decision has been taken by the Board of Management in its 65<sup>th</sup> and 66<sup>th</sup> meeting has to be given effect to. The learned Single Judge has not considered the effect of 67<sup>th</sup> meeting of Board of Management whereby Board of Management has decided to follow the instructions of the Chancellor and therefore, the recommendations and decisions in the 65<sup>th</sup> and 66<sup>th</sup> meetings were automatically put to hold and now it was for the

Chancellor to take a call in the matter. However, the learned Single Judge has set aside the directions of the Chancellor vide (Annexure P-7) treating it to be an undue and unauthorized interference in the University by the State Government, which is not so because the letter (Annexure P-7) has been issued by Chancellor and the powers are traceable to Section 8 of Adhiniyam 1991.

**33.** The State had removed the Board of Management and the Vice Chancellor by exercising powers conferred on the State during pendency of the writ petition i.e. on 18.03.2017. In the said notification that we have quoted above, it is duly recorded by the State Government that on the basis of report and material made available regarding management of affairs of university the State Government deems it fit to exercise extraordinary powers under Section 33(B) of the Adhiniyam 1991.

**34.** The complaint received by the State Government which led to taking action under Section 33(B) is also placed on record and letter dated 30.01.2017 was issued by the Chancellor requesting the State Government to take appropriate decision in the matter. The letter dated 30.01.2017 is as under :-

दिनांक 30 जनवरी, 2017

मध्यप्रदेश भोज ( मुक्त ) विश्वविद्यालय, भोपाल में शैक्षणिक पदों पर की जा रही नियुक्तियों में अनियमितता किए जाने के कुलसचिव के प्रतिवेदन के परिप्रेक्ष्य में आपके पत्र क्रमांक 160/पी एस.एच.ई / 16 दिनांक 09.11.16 के द्वारा प्रकरण में जांच की आवश्यकता प्रतिपादित की जाकर प्रकरण कुलाधिपतिजी के संज्ञान में लाकर आवश्यक निर्देश जारी करवाने का अनुरोध किया गया था।



इस संबंध में इस कार्यालय के पत्र दिनांक 10.11.16 के द्वारा कुलपति को निर्देशित किया गया कि आगामी आदेश तक प्रबंध बोर्ड के समक्ष शैक्षणिक पदों पर चयन संबंधी मामले को प्रस्तुत नहीं किया जाए।

कुलपति के प्रकरण में प्राप्त पत्र दिनांक 10.11.2016 में यह उल्लेख किया गया है कि विश्वविद्यालय के प्रबंध बोर्ड ने 66वीं बैठक दिनांक 27.10.2016 में शैक्षणिक पदों की नियुक्तियों पर कुलसचिव लगाए गए प्रश्नचिन्ह की जांच हेतु एक समिति गठित की थी जिसने प्रतिवेदन दिनांक 04.11.16 में यू.जी.सी. के नियमों के परिप्रेक्ष्य में कुलसचिव की आपत्ति को निराधार पाया है एवं शैक्षणिक पदों पर नियुक्ति पत्र जारी करने की अनुशंसा की है। (छायाप्रति संलग्न)

कृपया कुलपति से प्राप्त जानकारी का परीक्षण करवाकर तथ्यात्मक टीप इस कार्यालय को भिजवाने का कष्ट करें।

**35.** Prior to that complaints were being received by the State Government also which are also placed on record where under it has been mentioned that corruption has been made in the matter of charging of money for securing appointment in the University and various selected candidates have been named who are close relatives of Ex Vice Chancellor, senior officers of Higher Education Department, Ex Ministers of State Government, Vice Chancellors of other Universities of the State etc. and it has been mentioned that though the selection process was open to all the candidates throughout India but all selected candidates belonged to Bhopal and some of them belonged to other places of Madhya Pradesh which also indicates that there was no proper selection process was carried out.

**36.** The University in the subsequent reply had brought out the aforesaid irregularities in much detail which though were noted by the learned Single

Judge but were simply ignored by the learned Single Judge by holding that it was the Board of Management and the Vice Chancellor who is empowered under the statutes of university to take action, and the learned Single Judge overlooked the provisions of Section 8 of the Adhiniyam 1991 so also Section 33(B) of the said Adhiniyam.

**37.** The aforesaid facts establish that supersession of Board of Management and Vice Chancellor of the university was in continuation of the complaints received in the matter of present selection and therefore, the first reply filed by the university was clearly malicious act carried out by the OIC appointed by the management of the University who had already been removed on that date despite which he filed reply on 21.03.2017.

**38.** So far as the other contentions raised that though selection does not give a vested right but there should be some reasoning to deny appointment, the said legal position is not in dispute. It is settled in law that a candidate does not acquire any vested right for appointment merely on being placed in the merit list/select list. In the case of **State of Haryana Vs. Subash Chander Marwaha & Others reported in (1974) 3 SCC 220**, it has been held by the Supreme Court that even if the candidate has been selected, then also, the State has a right either to appoint or not to appoint a candidate. In the case of **Jatinder Kumar and Others Vs. State of Punjab & Others reported in (1985) 1 SCC 122**, again the Supreme Court held that the process for selection and selection for the purpose of recruitment against anticipatory vacancies does not create a right to be appointed on the post which can be enforced by a Writ of mandamus. Similar view was taken by a constitution bench of the Supreme Court in the case of **Shankarshan Das Vs. Union of India reported in (1991) 3 SCC 47**. In the case of **S.S. Balu and Another Vs. State of Kerala and Others reported in (2009) 2 SCC 479**, the Supreme Court held that the State as an employer has a right to fill

up or not to fill up the same post. A candidate will not have any legal right claiming a writ of mandamus unless he shows discrimination or arbitrariness in regard to filling up of the vacancies. Considering the aforesaid legal position, a three Judges Bench of the Hon'ble Supreme Court in the case of **Dinesh Kumar Kashyap and Others Vs. South East Central Railway and Others reported in (2019) 12 SCC 798** has held that after selection, appointment may be denied on some justifiable, non-arbitrary reason. It must give some plausible reason for not filling up the posts. The courts would normally not question the justification but the justification must be reasonable.

**39.** In the present case, it is duly brought on record that the selection process was highly polluted on account of selection being opaque and partial relating to which various complaints were received in detail. There was sufficient reasoning placed on record to justify denial of appointment despite selection. Pleadings were made before the learned Single Judge by the University which have not been considered by the learned Single Judge who held that the decision of Board of Management shall prevail over everything else. We have gone through the material placed on record alongwith the subsequent reply filed before the Writ Court and it leaves no doubt to conclude that the selection process was polluted with arbitrariness and illegalities as narrated in detail above. The selectees on basis of such selection process would not have any right to claim appointment and denial of appointment to them cannot be faulted with.

**40.** In view of the above, the order of the learned Single Judge deserves to be and is hereby set aside and the writ petitions filed by selected candidates stand dismissed. The selection process was initiated more than 10 years ago and is found to be polluted. It would be now open for the University to issue fresh advertisement and fill the posts in accordance with law by giving

chance to all the eligible candidates to participate in the selection process. In terms of aforesaid, the writ appeals are **allowed**.

**(SURESH KUMAR KAIT)**  
**CHIEF JUSTICE**

**(VIVEK JAIN)**  
**JUDGE**

*nks*