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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P.(C) 4471OF 2012**

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*Judgment Delivered on: 1.8.2012*

P.R.R. NAIR

... PETITIONER

Through :

Mr. Deepak Kanwar, Advocate  
with Mr. Sudhir Kumar, Mr.  
Rajeev Prasad Dubey,  
Advocates.

VERSUS

INDIRA GANDHI NATIONAL OPEN UNIVERSITY & ORS.

....RESPONDENTS

Through:

Mr. Sandeep Sethi, Sr. Advocate  
with Mr. Aly Mirza, Advocate  
for Respondent no.1

**CORAM :-**

**HON'BLE THE ACTING CHIEF JUSTICE  
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**A.K. SIKRI, ACTING CHIEF JUSTICE: (ORAL)**

1. In this Public Interest Litigation, the petitioner is praying for Writ of Quo-Warranto seeking removal of respondent nos. 3 to 6 from the Board of Management of Indira Gandhi National Open University (IGNOU) on the ground that their appointment is illegal, unconstitutional and without sanction of the appropriate authority. The respondent no.3 and 4 were nominated to the Board of Management of the IGNOU. It is not in dispute

that power of nomination lies with the Vice Chancellor, submission however is that the respondent no.2 Prof. M. Aslam, was only a Acting Vice-Chancellor and therefore he had no power to nominate the respondent no. 3 and 4 of the Board of Management. The question in this behalf which requires to be considered is as to whether the respondent no.2 was “Acting Vice Chancellor” and had no such power. The Second Schedule to the IGNOU Act provides for Statutes of the University. Statute-1 deals with the Vice Chancellor and stipulates that the Vice Chancellor shall be a whole – time salaried officer of the University. He shall be appointed by the Visitor from out of a panel of not less than three persons recommended, (the names being arranged in the alphabetical order) by a Committee constituted under clause (3). Clause (6) provides for filling up of the vacancy of Vice-Chancellor in the event of death, resignation or otherwise, when he is unable to perform his duties due to ill health or any other cause. This provision mentions that in that event the senior most Pro Vice-Chancellor, shall perform the duty of the Vice-Chancellor and if there is no Pro Vice – Chancellor, the Senior-most Professor from amongst Directors of the Schools shall perform the functions of the Vice-Chancellor until the new Vice-Chancellor assumes his office or until the existing Vice-Chancellor attends to the duties of his office, as the case may be. The term of the earlier Vice-Chancellor had come to an end and Pro Vice-Chancellor has seized to function as Vice-Chancellor. It is in these circumstances, Professor M. Aslam, the senior most Professor among Directors of the School given the charge of the Vice-Chancellor. On this basis, it is sought to be contended that he was only a Acting Vice-Chancellor. We may record that there is no

term “Acting” stipulated in the entire Act or the Statutes. A person, who assumed the office as Vice Chancellor even under Clause (6), is given the power to perform the functions of the Vice-Chancellor. Thus, when the respondent no.2 assumed the office of Vice-Chancellor, he was expected to perform all the functions of the Vice-Chancellor and, therefore, he had adequate power to nominate the Members of the Board of Management.

2. We, therefore, do not accept the contention of the learned counsel for the petitioner that as the respondent no.2 assumed the charge of Vice-Chancellor in terms of Clause (6) of Statute -1, he could not nominate the Members. We would, however, like to record that whether appointment of respondent no.2 as a Vice-Chancellor in the aforesaid circumstances itself was proper or not is the subject matter of some other writ petition pending in this Court and, therefore, we have not touched upon that aspect. Our answer is predicated on assumption of the office of Vice-Chancellor by a person under Clause-6 and that even such Vice-Chancellor will have full powers to nominate the Members of the Board of Management.

3. Insofar as respondent no.5 is concerned, his continuation as Director, School of Extension and Development Studies, IGNOU, Maidan Garhi, New Delhi is challenged. It is submitted by the learned counsel for the petitioner in this behalf that the provision for appointment of Directors is contained in Statute-4. Reading of this Statute would show that every Director is to be appointed by the Board of Management on the recommendation of the persons stipulated therein. It is further mentioned that tenure of a Director shall be three years and he would be eligible for reappointment. Submission of learned counsel for the petitioner is that the Director could be appointed

only by the Board of Management. The term of respondent no.5 had come to an end on 24.2.2012. However, his tenure was not extended by the Board of Management but only taken note of in 113<sup>th</sup> meeting held on 31.5.2012. This issue is discussed as item no.5 with the caption “To consider the appointment of Directors of various Schools of studies”. It is stated in the minutes that the Board of Management was informed that certain Directors whose names are mentioned therein (which included respondent no.5) had completed their tenure of three years and “they have been asked to continue as Directors of the respective Schools till further orders.....”. It was submitted that Board of Management had not extended their tenure but had only noted that they were asked to continue and it is not known who had asked them. We are unable to read the minutes in the manner suggested by the learned counsel. The expression “they have been asked to continue as the Directors...” clearly demonstrate that it is the Board of Management which is asking them to continue as Directors meaning thereby the Board of Management had extended the tenure. We, therefore, do not find any infirmity in the reappointment/extension of the tenure of the respondent no.5 as Director.

4. The Respondent no.6 is the Vice Chancellor of Uttarakhand Open University, Haldwani, Uttarakhand. Allegation against him is that he was co-opted as Member of the Board of Management in the 112<sup>th</sup> Meeting held on 9<sup>th</sup> April, 2012. Minutes of the said meeting duly record the same. His co-option is challenged on the ground that there was no Coram in the 112<sup>th</sup> meeting of the Board of Management. It is not in dispute that as per the Statute, the Members of the Board of Management form the Coram for the meeting of the Board. Statute -6A deals with the Board of Management and

Clause (1) thereof mentions the Members who would constitute the Board of Management. It includes “two representatives of the Government of India, Secretary, Department of Education and Secretary, Information and Broadcasting, to be nominated by the Visitor”. The 112<sup>th</sup> meeting was attended by these persons. The objection of the learned counsel for the petitioner is that one of them was Mr. Anant Kumar Singh, Jt. Secretary who was not the Member of the Board of Management inasmuch as it could be only the Secretary and not the Jt. Secretary. No doubt, the provision mentions two representatives namely Secretary of the two Ministries, which is followed by the words “to be nominated by the Visitor” which gives indication that there can be a representative of the Secretary who can attend the meeting. In the minutes it is clearly disclosed that Mr. Anant Kumar Singh attended the meeting as representative of the Secretary, MHRD. We thus do not agree with the learned counsel for the petitioner that the Board of Management lacks sufficient Coram.

5. For the aforesaid reasons, we do not find any merit in this petition which is accordingly dismissed. All pending applications stand disposed of.

**ACTING CHIEF JUSTICE**

**(RAJIV SAHAI ENDLAW)  
JUDGE**

**AUGUST 1, 2012**

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