IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.05.2005

CORAM:

THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P. No.30499 of 2004

Dr.R.Natarajan .. Petitioner

versus

1. Prof.Arun Nigavekar
   Chairman
   University Grants Commission
   Bahaduras Zafar Marg
   New Delhi-110 002.

2. The Secretary to Government
   Ministry of Human Resources Development
   Department of Secondary and
   Higher Education
   Union of India
   New Delhi.

3. The Secretary to Government
   Ministry of Law, Justice and
   Company Affairs, Union of India
   New Delhi. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Quo Warranto to direct the first respondent to show cause by what authority the first respondent claims to have, use and enjoy and perform the duties, privileges of the office of the Chairman of University Grants Commission.

For petitioner : Mr.K.Chandru,
Senior Advocate
for Mr.A.Suresh

For 1st respondent : Mr.K.M.Vijayan
Senior Counsel
for Mr.A.Sasidaran

For respondents-2 & 3 : Mr.Gopalasubramaniam
Senior Counsel
Assisted by
Mr.N.Murali Kumaran
A.C.G.S.C.

ORDER

The petitioner prays for a writ of Quo Warranto to direct the first respondent to show cause by what authority the first respondent/the Chairman of the University Grants Commission claims to have, use and enjoy and perform the duties, privileges of the said office.

2. The petitioner holds a doctoral degree in Bio Chemistry granted by the Texas A & M University, U.S.A. He was qualified to be appointed as the Chairman of the University Grants Commission (U.G.C.). According to him, the first respondent was ineligible to hold the post of Chairman of the U.G.C. and his appointment was in gross violation of the statutory provisions. According to the petitioner, the post was to fall vacant on 6.4.2002 in view of the retirement of the then incumbent. The petitioner understands that on 14.3.2002, a Search Committee consisting of Shri.Venkat Subramaniam, Member, Planning Commission, Shri.R.A.Mashelkar, DG CSIR and Dr.G.C.Pande, Chairman, Indian Institute of Administrative Service (IIAS) was constituted for the purpose of recommending persons from whom one would be appointed as the Chairman of U.G.C. The Search Committee recommended the names of the first respondent who was the then Vice-Chairman and Dr.V.N.R.Rajasekar Pillai together with the name of Prof.H.P.Dikshit. In the communication on 6.4.2002, the Chairman is said to have consulted the then Law Minister and had told him that there was no bar for appointing the first respondent as the Chairman, but he cannot be given the full term of five years and that he can be given only a term of 3½ years, after deducting his term of incumbency as the Vice Chairman. It is further stated that on 10.4.2002, the Joint Secretary, Higher Education, had sought for certain clarifications regarding the qualification of the first respondent before it was sent to the Appointments Committee of the Cabinet for approval. Finally, by notification dated 16.7.2002, the first respondent was appointed as the Chairman of the U.G.C.

3. According to the petitioner, the office of Chairman of U.G.C. was a public office created under the statute and that the first respondent had usurped the post as he was not legally qualified to hold or to remain any further. The appointment of the

first respondent was a clear infringement of the statutory provisions. It is further stated that every day, the first respondent was performing his act as Chairman was a fresh cause of action, giving rise to issuance of a writ of Quo Warranto.

4. In the counter affidavit filed by the first respondent, it is stated that he is a well-known Physicist and renowned educationist with forty years of experience and he has made several innovative contributions to higher education. He was holding the post of Member of the University Grants Commission from 31.5.1992 to 30.5.1992 and he was appointed as Vice Chairman for a term of three years from 28.9.2000. However, he did not hold for a full term and by order dated 16.7.2002, he was appointed as Chairman of the U.G.C. He would further submit that before the completion of term as Vice Chairman the post of Chairman fell vacant due to the superannuation of the then Chairman and accordingly, the Central Government, in exercise of the power conferred under Section 5(1) of the Act, had duly appointed the respondent. The period of service rendered by him from out of his incomplete term as Vice Chairman has been deducted from the prescribed term of five years so as to conclude his tenure as Chairman by 27.9.2005.

5. The first respondent also contends that the writ petitioner lakhs bona fides and the second respondent Union Government have acquiesced in the appointment of the petitioner for nearly three years and with only about five months to go, the present writ petition has been filed. The petitioner has no locus standi to challenge the appointment of the first respondent. The petitioner is not qualified and he has not been a Vice Chancellor of any University.

6. It is further stated that the petitioner has filed the petition after a lapse of long period of the tenure of the respondent. A writ of Quo Warranto may be refused for undue delay. The writ petition filed at Chennai at a very belated stage highlights the lack of bona fides. The petition being a vexatious one, was liable to be dismissed. The respondent further contends that his appointment was only in compliance with Section 6(1)(b) of the Act. The proviso to the said provision entitles the petitioner to hold the office of the Chairman for a term of five years or until he attains the age of sixty five years, whichever is earlier. The second proviso to Section 6(1) only provides that if a person has already held the post for two terms, then he shall not be appointed to the post of Chairman, Vice Chairman or member. Only a person who has held the office for two full terms will not be eligible for being appointed as Chairman.

7. It is further stated that the appointment is made only after due approval of the Appointments Committee at the highest level.

The Ministry of Law had given its opinion regarding the appointment of the respondent. It is further stated that the writ petition has been filed with mala fide intention and the petitioner had reproduced various Government notings and had annexed documents in the petition which are part of confidential records of the second respondent. The petitioner cannot have any access to such official documents which are confidential in nature. There is no disqualification as alleged by the petitioner.

8. It is further stated that a writ of Quo Warranto is not to be issued in a case where the petition has been filed after laches and with mala fide intention on the part of the petitioner.

9. In the counter affidavit filed by respondents-2 and 3, it is stated that the purpose of the affidavit was to place on record the perception of the respondents with reference to the appointment of the first respondent and advisedly to refrain from commenting on the sufficiency of the locus standi of the petitioner or the reproduction of various Governmental notings and that the present affidavit was being filed only with a view to assist the Court.

10. On the attainment of superannuation of the then incumbent, on 6.4.2002, the Ministry of Human Resources Development commenced the process of appointing a new Chairman in or about March, 2002. A Search Committee was appointed and they had recommended the names of the first respondent, Prof.V.N.Rajasekaran Pillai and Prof.H.P.Dixit.

11. On 6.4.2002, the Chairperson of the Search committee, forwarded the panel and it was clarified that if the first respondent was selected to be appointed, then his term of office should be fixed as per Section 6 of the U.G.C. Act. The Chairman of the Committee in a letter to the then Hon'ble Minister for Human Resource Development had proceeded on the basis of the informal consultations with the then Hon'ble Law Minister who had indicated that as per the University Grants Commission Act, there was no impediment in appointing the first respondent as Chairman, but the term cannot be given for full five years and he could be offered only a term of 3½ years. The first respondent was appointed as the Member from 31.5.1992 to 30.5.1995. Later, he was appointed as Vice Chairman with effect from 28.9.2000. He was later appointed as Chairman on 16.7.2002 till 27.9.2005 or until he attains the age of 65 years, whichever was earlier. It is further stated that the records indicate that there were some reservations expressed by the Establishment Officer on 14.6.2002 regarding the qualifications of

the first respondent. Another officer of the Ministry had suggested on 17.6.2002 that the opinion of the Department of Legal Affairs may be obtained. However, the suggestion was not acted upon, in view of the fact that the views of the Hon'ble Law Minister had already been obtained, as reflected in the letter of of Dr.Venkatasubramaniam.

12. In the counter affidavit, it is further stated that the answering respondent was advised to refrain from making any comment on the academic credentials or the suitability of the first respondent. It is further stated that the second proviso disables any person who has held the office for two terms from holding any further appointment as Chairman. The first respondent had held office for two terms and as such, the appointment of the first respondent was not in accordance with Section 6 of the Act. The respondents have further stated that the appointment was not in conformity with law only on the analysis of the records available as well as statutory interpretation of Section 6.

13. Mr.K.Chandru, learned senior counsel for the petitioner, after referring to the service particulars of the first respondent, contends that the first respondent having served for one term as a Member and another term as Vice Chairman was disentitled to be appointed as Chairman in terms of second proviso to Section 6(1) of the Act. The illegality in the appointment was tacitly conceded in the counter affidavit by respondents-2 and 3 and it was evident, the appointment was made only on the interference and the opinion rendered by the then Law Minister. Therefore, the petitioner being an usurper to the post, cannot continue to hold the post.

14. Mr.Gopalasubramanian, learned senior counsel appearing for respondents-2 and 3, contended that at the time of the proposal, doubts had been raised regarding the qualifications of the first respondent to be appointed. But the issue was raised and dealt with at the highest level and decided that there was nothing wrong in appointing the first respondent as the Chairman for the remaining period of his term as Vice Chancellor. To my specific question as to whether the then Minister for Law had issued any specific order, direction or communication, learned senior counsel had fairly stated that there was no such order or letter and the only information is the letter of the Chairman of the Search Committee stating that he had consulted the Law Minister. Learned senior counsel had left the entire file to the Court and would state that they would abide by the directions of the Court.

15. Mr.K.M.Vijayan, learned senior counsel appearing for the first respondent, contended that the writ petition was liable to be dismissed on grounds of lack of locus standi and due to laches. The petition was also vitiated by mala fides. Learned senior counsel contends that the petitioner has not been able to clearly state as

to how he had any locus standi and as to how he was aggrieved. Though the appointment had been made as early as 16.7.2002, the writ petition has been filed only on 14.10.2004. It is not as though the petitioner did not have knowledge of the appointment. Various facts pleaded in the affidavit and produced and reference to internal correspondence would clearly establish collusion between the Government and the petitioner. Such an attitude on the part of the Government merely because there was a change of Government with another ruling party cannot be entertained.

16. Learned senior counsel refers to the judgment of the Supreme Court in DR.M.S.MUDHOL Vs. S.D.HALEGKAR ((1993) 3 SCC 591). In that case, though the Supreme Court found that there was infraction of the statutory rule, it was held that it was not necessary to go into the question as to whether a writ of Quo Warranto would lie, considering that the incumbent had been discharging his functions continuously for over a long period of nine years.

17. In A.H.SHASHTRI Vs. STATE OF PUNJAB ((1988 (Supp) SCC 127), the Supreme Court, on a writ for Quo Warranto, went into the issue as to whether the writ petition had been filed for malicious reasons and is the outcome of malice and if so, no writ can be issued.

18. Reference was also made to another judgment of the Supreme Court in STATESMAN (PRIVATE) LTD. Vs. H.R.DEB & OTHERS (1968 (3) SCR 614). On facts, it was held that even if there was some doubt it is to be resolved in favour of upholding the appointment. For the purpose of a writ of Quo Warranto, it was held that at least in an unclear case, the intent of the legislature is entitled to greater weight and that the High Court, in a Quo Warranto proceeding, should be slow to pronounce upon the matter unless there is a clear infringement of the law.

19. On the strength of of the above decisions, learned senior counsel would contend that even assuming that two interpretations were possible, the one in favour of the appointment should be accepted. On merits also, learned counsel states that there was absolutely no basis for the interpretation of the petitioner. The expression "term" should be construed only as a full term and not a half term or part of the term. Though reference is made to the term of office it could only mean the entire period of term. Holding the office for a truncated period can never be said to be holding the office for the full term. Therefore, the interpretation placed on the word "term" by the petitioner was not correct.

20. It is further stated that the issue had arisen for the first time and even if it is found that two interpretations are possible, some latitude has to be given to the interpretation placed

by the authorities in a bona fide manner. In this context, reference is made to the maxim "contemporanea expositio", which would be applicable and the interpretation placed by the authorities should be generally accepted.

21. In this context, reference is made to the judgment of the Supreme Court in UNION OF INDIA AND ANOTHER Vs. AZADI BACHAO ANDOLAN AND ANOTHER (JT 2003 (Suppl.2) SC 205). Therefore, the services of the first respondent cannot be interrupted only on the basis of a possible interpretation contrary to the interpretation adopted by the appointing authority. The first respondent was to retire from office in the month of September, 2005 and no interference was called for.

22. In reply, Mr.K.Chandru, learned senior counsel, contends that none of the objections relating to the maintainability of the writ petition can be sustained. There was no question of any collusion or delay. The writ petition was filed more than a year after the present Government had taken over. The writ petition was filed only after the facts came to the knowledge of the petitioner. There can be no confidentiality in the matter of appointments to high posts and the Government was required to properly justify the appointment in terms of law instead of raising technical objections and confidentiality of the communications.

23. Learned senior counsel referred to several judgments in the context of the objection relating to laches and locus standi which would be dealt with subsequently. Learned senior counsel also dealt with the meaning of the word "term" by referring to THE LAW LEXICON, which defines the word as including a part of the term. In the same context, reference was also made to the judgment of a Division Bench of the Orissa High Court in MADAN MOHAN PANI Vs. STATE OF ORISSA (AIR 1971 Orissa 283). The Division Bench held that the word "term" would include part of the term and any construction to the contrary would lead to absurd results.

24. I have considered the submissions of both sides and I am unable to sustain any of the objections regarding maintainability either on the ground of locus standi or laches.

25. On the issue of locus standi, apart from the fact that the petitioner claims to be qualified to be appointed as Chairman of U.G.C., even assuming for discussion that he is not qualified to be appointed as Chairman, he is certainly entitled to question the appointments to high constitutional or statutory posts as a member of public or as a tax payer. The post of Chairman, U.G.C. commands lot of public interest, importance and concern and any member of the public can voice concern that a person appointed to such a high post is not qualified to be appointed and that he is an usurper. In

SIVARAMAKRISHNAN V. ARUMUGHA MUDALIAR (AIR 1957 Madras 17), a Division Bench of this Court held that the Court has a right to investigate the matter and decide on the validity of the appointment notwithstanding that the petitioner is not a rival applicant to the office or that he does not have a personal interest.

26. In G.D.KARKARE Vs. T.L.SHEVDE (AIR 1952 Nagpur 330), a Division Bench of the Nagpur High Court held that in a proceeding for a writ of Quo Warranto, the applicant does not seek to enforce any right of his own as such, nor does he complain of any non-performance of duty towards him and that what is in question is the right of the respondent to hold the office.

27. In KASHINATH Vs. STATE OF BOMBAY (AIR 1954 Bombay 41), Chief Justice Chagla, on behalf of the Division Bench, held that the duty of the Court as soon as its attention is drawn to the fact that a person who is not qualified is holding a public office, is to declare that he is not entitled to that office and to prevent him from acting as such.

28. I am also unable to sustain the objection relating to laches. The petitioner has stated that as soon as the facts relating to the appointment of the first respondent came to his knowledge, he had filed the writ petition. In a writ of Quo Warranto, the question of laches assumes lesser significance when considered along with the issue of desirability of allowing an usurper to continue in office when he is not qualified.

29. In BAIJ NATH Vs. STATE OF U.P. (AIR 1965 Allahabad 151), a single Judge of the Allahabad High Court held that there can be no question of delay in a writ of Quo Warranto in which the right of a person to function in a capacity is challenged and that every day that person so acts, gives rise to a fresh cause of action.

30. In S.C.MALIK Vs. P.P.SHARMA (AIR 1982 Delhi 83), a Division Bench of the Delhi High Court took the same view and expressed that the delay in filing a petition would not make the appointment valid.

31. In KASHINATH G.JALMI Vs. THE SPEAKER (AIR 1993 SC 1873), the Supreme Court rejected the objections to a writ of Quo Warranto on the ground of delay and lack of bona fides and held as follows:

> "33. In our opinion the exercise of discretion by the Court even where the application is delayed is to be governed by the objective of promoting public interest and good administration; and on that basis it cannot be said that discretion would not be exercised in favour of interference where it is necessary to prevent continuance of

usurpation of office or perpetuation of an illegality.

34. We may also advert to a related aspect. Learned counsel for the respondents were unable to dispute that any other member of the public, to whom the oblique motives and conduct alleged against the appellants in the present case could not be attributed could file such a writ petition even now for the same relief, since the alleged usurpation of the office is continuing, and this disability on the ground of oblique motives and conduct would not attach to him. This being so, the relief claimed by the appellants in their writ petitions filed in the High Court being in the nature of a class action, without seeking any relief personal to them, should not have been dismissed merely on the ground of laches. The motive or conduct of the appellants, as alleged by the respondents, in such a situation can be relevant only for denying them the costs even if their claim succeeds, but it cannot be a justification to refuse to examine the merits of the question raised therein, since that is a matter of public concern and relates to the good governance of the State itself. " (emphasis supplied).

32. For the same reasons, as stated by the Supreme Court as underlined above, the contentions raised by the respondents that the writ petition is the result of mala fides or collusion with the present Government need not be gone into, apart from the fact that such allegations are not made out as discussed below. What is important to be considered is whether the first respondent is an usurper and whether his continuance in the post is desirable or not.

33. Now, coming to the merits of the writ petition, namely, whether the first respondent is qualified or not, it is necessary to extract Section 6(1) of the The University Grants Commission Act, 1956, which is as follows:

"6. Terms and conditions of service of members.--
(1) A person appointed as Chairman, Vice-Chairman or other member after the commencement of the University Grants Commission (Amendment) Act 1985 shall, unless he sooner becomes disqualified for continuing as such under the rules that may be made under this Act, --
(a) in the case of Chairman, hold office for a

term of five years or until he attains the age of sixty-five years, whichever is earlier.

(b) in the case of Vice-Chairman, hold office for a term of three years or until he attains the age of sixty-five years, whichever is earlier;

(c) in the case of any other member, hold office for a term of three years:

Provided that --

(i) a person who has held office as Chairman or Vice-Chairman shall be eligible for further appointment as Chairman, Vice-Chairman or other member; and

(ii) a person who has held office as any other member shall be eligible for further appointment as Chairman, Vice-Chairman or other member:

provided further that a person who has held office for two terms, in any capacity, whether as Chairman, Vice-Chairman or other member excluding a member referred to in clause (a) of sub-section (3) of section 5, shall not be eligible for any further appointment as Chairman, Vice-Chairman or other member. "

34. It is the second proviso which is relevant for consideration. The words "two terms" in any capacity would mean and refer to the individual holding the post either as a Member or as a Vice Chairman or both. It is not the contention of even the first respondent that the expression "two terms" would mean two terms separately as Member and further two terms as Vice Chairman.

35. But what is contended on behalf of the first respondent is that the word "term" should necessarily mean full term and not part of the term. In other words, the proviso would apply and disqualify only a person who had held two full terms/period of the post held by him. I am afraid that this contention cannot be accepted not only because of the dictionary meaning and the judgment of a Division Bench of the Orissa High Court relied on behalf of the petitioner as extracted below, but also due to the undesirable and anomalous situations such an interpretation could lead to. It would facilitate very ingenious and unprincipled attempts to defeat the very purpose of the provision. Any incumbent could resign his post at the fag end of his term and claim to be appointed to the post again on the ground that he did not hold the post for the full term

and as the term had not been completed. If the word "term" is to be assumed as full term as pleaded by the first respondent, then such a claim would become unquestionable and acceptable. Interpretation of statutory provisions has to satisfy the test of reasonableness, be rational and should avoid ambiguity. The total period of an office may be for a particular length of prescribed period which is also described as a term. But the word "term" in the context of the bar which is created against the right to contest or to be appointed for a further term, then it can only refer to a person holding the post even for a part spell of the term. It could be a short spell of the term or full spell of the term. When once the incumbent assumes the office and enters into the office, he has to be held as having entered the term of office, no matter whether he holds the office for a short spell or a long spell or for the full spell. The following is one of the meanings given to the word "term" in the LAW LEXICON Page 1877.

> " Term. The word 'term' would include part of a term (Dictionary of English Law, Jowitt, page 1739). Madan Mohan Pari v. State of Orissa, AIR 1971 Ori 283, 284. [Orissa Panchayat Samitis and Zilla Parishad Act (7 of 1960), Sec 16(3) Proviso]. "

36. The following is the extract from the judgment of the Division Bench of the Orissa High Court in M.M.PANI V. STATE OF ORISSA (AIR 1971 Orissa 283):

> "3. The second contention was not seriously pressed by Mr.Patnaik and rightly. The word 'term' would include part of a term (see Dictionary of English Law, Jowitt Page 1739). Any construction to the contrary would lead to absurd results. The prohibition in the statute can be easily avoided, as the petitioner has done in this case, by tendering his resignation just a month before the expiry of the term. "

37. Therefore, in order to avoid absurd results, it is necessary to conclude that a person holding the office, even though for a short or part of the spell of the full term has to be held as having held the post for one term.

38. In the background of the above interpretation, it is not possible to accept the contention of the first respondent that the first respondent having been appointed only for the remaining period after deducting the period of his vice chairmanship was proper. The Act does not permit or authorise such an appointment. Section 6 (3) contemplates a Vice Chairman being appointed as Chairman when a

casual vacancy of the post of Chairman arises due to the death or resignation or other incapacity of the Chairman (which situation does not arise in this case). In such circumstances, the Vice Chairman may be appointed to hold the office as Chairman for the remainder of the term of office of the person in whose place he is appointed to act. The nature of impugned appointment in this case is not at all contemplated or visualised in the Act while filling up regular vacancy. It is settled proposition of law that when the statute lays down that anything shall be done in a particular or specified manner, it shall be done only in that manner and not in any other manner. Appointing a Vice Chairman as Chairman for a part of the period by deducting the period he held the post of Vice Chairman is not at all contemplated under the Act. Therefore, there is no legislative/statutory sanction for such an appointment.

39. I am unable to accept the reliance placed on the maxim "contemporanea expositio". The issue which was dealt with in UNION OF INDIA AND ANOTHER Vs. AZADI BACHAO ANDOLAN AND ANOTHER (JT 2003 (Suppl.2) SC 205), cited above on behalf of the respondent, is a case of circular issued by the Central Board of Direct Taxes (CBDT) clarifying the levy on capital gains under certain circumstances. The validity of the said circular arose for consideration and it was only after holding that the only bar on the exercise of the power (to issue clarificatory circular) was that it should not be prejudicial to the assessee, the Supreme Court went further to hold that on the merits of the circular, it required to be upheld. It was also observed in the said context that contemporaneous construction placed by the administrative authorities should not be overturned unless such construction was clearly wrong. I am inclined to hold that the said observation cannot be quoted out of context to validate each and every erroneous construction or interpretation by the executive.

40. In D.B.GUPTA Vs. DELHI STOCK EXCHANGE ASSOCIATION LTD. ((1979) 4 SCC 565), which has been relied upon and referred to in the above-mentioned judgment, it has been clearly stated that such contemporaneous construction will not always be decisive and at least not for a controlling effect on the Courts. Therefore, I am of the view that if the law is otherwise, even in cases of glaring mistakes by the executive, the Court should close its eyes and uphold the erroneous interpretation. The maxim should be applied in rarest of rare cases as in the case of UNION OF INDIA AND ANOTHER Vs. AZADI BACHAO ANDOLAN AND ANOTHER (JT 2003 (Suppl.2) SC 205). In that case, there was power in the executive to issue clarificatory notifications and the said notification had been holding the field for considerable time and the Court did not want to disturb the status quo in the interest of smooth administration.

The Supreme Court did not come to a definite conclusion that the notification was contrary to law. The principle cannot be applied in each and every case of wrong decision taken by the executive.

41. I am unable to sustain the mutual accusations of mala fides or collusion by the contesting parties against each other. As regards the contention by the petitioner that the appointment of the first respondent was a motivated act of favouritism by the Government, the said allegation is based mainly on the noting of the Chairman of the Search Committee that the proposal to appoint the first respondent was cleared by the then Law Minister. I am unable to sustain the same. Firstly, learned senior counsel for respondents-2 and 3 fairly agreed that there was nothing in the file in writing by the then Law Minister, expressing any opinion. The noting of the Chairman of the committee about an oral consultation with the Law Minister cannot by itself alone lead to a definite decision by the Court. Neither the then Law Minister had been made a party, nor is the Chairman of the Search Committee is alive today to inform the Court as to what happened. It is also not known as to what are the materials or notings placed before the Minister and what is the actual information given to him. Secondly, the bona fides of a decision cannot be decided only by the fact that the Court is not inclined to agree with the decision. My conclusions today may be overruled by the appellate forum tomorrow and it does not lead to any inference of lack of bona fides. It is settled proposition that an allegation of mala fides or bias has to be based on strong pleadings and proof and not just on the basis of the correctness or otherwise of the opinion by the concerned authority.

42. Likewise, I am also unable to sustain the contention on behalf of the first respondent that the present Government, on political motives, had taken a decision to upset the appointment made by the earlier Government and that the present Government had indulged in collusion with the petitioner. The decision regarding correctness or otherwise of the action of the former Government had been taken at the highest level of the present Ministry and they have their own right to interpret the provision or express opinion on an issue in a manner as they deem fit and proper. There can be no compulsion on the succeeding ministry to accept and adopt the decision taken by the previous Government if it is felt to be wrong. To hold otherwise would be contrary to proper democracy. Therefore, the mere fact that the present Government had come to a different conclusion cannot lead to any inference much less proof of bad motives. The decision has to be honest and not for ulterior reasons.

43. Learned senior counsel for the respondent relied on few decisions in support of his contention that in a writ of Quo Warranto, this Court will not generally interfere in belated matters

and on an issue in which two different opinions were possible. I have already referred to the decisions of the Supreme Court and other High Courts, wherein, it has been held that delay alone cannot stand in the way of the Court to examine as to whether the appointee is qualified or not. The decision of the Supreme Court in DR.M.S.MUDHOL Vs. S.D.HALEGKAR ((1993) 3 SCC 591), was a case of a challenge being made to the appointment after nine years to the post of Principal of a private aided school and the Supreme Court held that the appointment need not be disturbed at the late stage. The nature of the post which was dealt with by the Supreme Court has to be borne in mind and cannot be compared to a case of appointment to the post of Chairman of U.G.C.

44. In A.H.SHASHTRI Vs. STATE OF PUNJAB ((1988 (Supp) SCC 127), it was a case of challenge to the appointment to the promotion post on the ground of non-fulfilment of academic qualification. The challenge was held to be unsustainable in the absence of any opposition to the earlier appointment to the original post which also suffered from the same defect. Therefore, the facts of that decision cannot govern this writ petition.

45. The decision of the Supreme Court in STATESMAN (PRIVATE) LTD. Vs. H.R.DEB & OTHERS (1968 (3) SCR 614), is a case of there being a provision in the Act itself holding that the appointments cannot be called in question vide Section 9 of the Industrial Disputes Act. The Supreme Court, on facts, found that there was no clear infringement of the law. In the said circumstances, the Supreme Court held that although the provisions of Section 9 cannot shut out an inquiry for the purpose of a writ of Quo Warranto, at least in an unclear case, the intent of the legislature was entitled to great weight and that the High Court should be slow to pronounce upon the matter unless there was a clear infringement of the law. Here again, neither the legal mandate nor the factual issues which arose for consideration in that judgment can be compared with this writ petition.

46. As a result of the above discussion, I am inclined to hold that the appointment of the first respondent is unsustainable, as he was disqualified in terms of second proviso to Section 6(1) of the Act. The appointment is also bad for the reason that the Act does not contemplate appointment of a Vice Chairman as Chairman for a truncated period by deducting the period of his period as Vice-Chairman.

47. With the result, I am inclined to pass the following order:

(i) The appointment of the first respondent is erroneous and is violative of the second proviso to Section 6(1) of the University Grants Commission Act, 1956, and as such, the

appointment is set aside;

(ii) However, as this order is pronounced during summer vacation, it shall remain suspended for a period of two weeks to enable the first respondent to file an appeal if he chooses to do so.

(iii) No costs.

The writ petition is allowed subject to the above observation. Connected W.P.M.P.Nos.36960 and 36961 of 2004 are closed.

ksv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
   Ministry of Human Resources Development
   Department of Secondary and
   Higher Education
   Union of India
   New Delhi.

2. The Secretary to Government
   Ministry of Law, Justice and
   Company Affairs, Union of India
   New Delhi.

3. The Chairman
   University Grants Commission
   Bahaduras Zafar Marg
   New Delhi 110 002.

+ 1 cc to Mr.A.Suresh, Advocate SR No.21860

+ 1 cc to Mr.A.Sasidharan, Advocate SR No.21858

+ 1 cc to Mr.N.Muralikumaran, ACGSC SR No.21861

JRG(CO)'
SR/10.5.2005

order in

W.P.No.30499 of 2004