L.N. Mathur Vs. the Chancellor, Lucknow University, Lucknow and ors.

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Court : Allahabad

Decided On : Nov-30-1984

Reported in : AIR1986All273

Judge : D.N. Jha, ;R.C. Deo Sharma and ;Kamleshwar Nath, JJ.

Acts : Uttar Pradesh State Universities Act, 1973 - Sections 31, 31(1) and 31(8); Constitution of India - Article 226; Administrative Law

Appeal No. : Writ Petn. No. 2615 of 1979

Appellant : L.N. Mathur

Respondent : The Chancellor, Lucknow University, Lucknow and ors.

Advocate for Def. : Umesh Chandra, ;K. Chandra, ;K.C. Jauhari and ;J.C. Srivastava, Advs.

Advocate for Pet/Ap. : P.N. Mathur, Adv.

Judgement :

D.N. Jha, J.

1. This reference has been made by a learned single Judge in view of the conflict of judicial opinion between two Division Bench decisions expressed in Dr. (Mrs.) Prabha Gupta v. Lucknow University, 1981 Lawyers' Law Times (Services) 51 and Dr. U.N. Roy v. His Excellency, Sri G.D. Tapase (the Ex-Governor, State of Uttar Pradesh). Chancellor, Allahabad University 1981 UPLBEC 309. In the former decision a Division Bench expressed a view that the decision of the Chancellor in regard to appointment of a teacher made under Section 31(8)(a) of the U.P. State Universities Act, 1973 (hereinafter to be referred as the Act) is not of a quasi-judicial nature. In the case of Dr. U.N. Roy (supra) the Division Bench held that while exercising powers under Section 31(8)(a) of the Act the Chancellor exercised quasi-judicial power. The learned single Judge, therefore, has made a reference to the larger Bench to decide as to whether powers exercisable by the Chancellor under Section 31(8)(a) are quasi-judicial and he is required to state reasons for his decision or whether such an order is not a quasi-judicial order and it is not necessary to pass a speaking order.

2. The facts of the case are that an advertisement had been made for the selection to the post of Reader in the Faculty of Law.

Several persons had applied for the said post. A meeting of the Selection Committee duly constituted under the Act was held on 17-2-1979 and the committee after

considering the qualifications of the various applicants and after interview made the recommendation as under: --

1. Sri. L. N. Mathur.

2. Sri Avtar Singh,

3. Sri V. Section Shukla.

The matter came up in the meeting of the Executive Council held on 30-3-1979 which did not approve the recommendation of the Selection Committee in regard to appointment of Reader in Law and made a reference to the Chancellor under Section 31(8)(a) of the Act. The reasons for disagreement are indicated in Annexure 4 to the petition. The order of the Chancellor was communicated vide letter dated 2-9-1979, Annexure 5 to the writ petition. It is apparent from this letter that the Chancellor had been pleased to accept the recommendation of the Executive Council and directed that Dr. Avtar Singh be appointed Reader in Law of the Lucknow University. The legality of this order has been questioned by Sri L. N. Mathur through this writ petition.

3. On reference being made to the larger Bench for consideration of the question mentioned above we have heard the learned counsel for the parties at length and have also gone through the record. Section 31 of the Act deals with the appointment of teachers. The relevant portion of Section 31 is being reproduced hereunder for the sake of convenience : --

'31(8)(a). In the case of appointment of ateacher of the University, if the ExecutiveCouncil does not agree with therecommendation made by the SelectionCommittee the Executive. Council shall referthe matter to the Chancellor along with thereasons of such disagreement, and his decisionshall be final :

(Emphasis is mine)

Provided that if the Executive Council does not take a decision on the recommendations of the Selection Committee within a period of four months from the date of the meeting of such Committee, then also the matter shall stand referred to the Chancellor, and his decision shall be final.'

4. The learned counsel for the respondents conceded that the powers exercised by the Chancellor under Section 68 are of quasi-judicial nature. Section 68 is being reproduced hereunder : --

'68. If any question arises whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of any authority or officer of the University including any question as to the validity of a Statute, Ordinance or Regulation, not being a statute or ordinance made or approved by the State Government or by the Chancellor or whether any decision of any authority or officer of the University is in , conformity with this Act or the Statutes or the Ordinance made thereunder the matter shall be referred to the Chancellor and the decision of the Chancellor thereon shall be final:

Provided that no reference under this section shall be made-

(a) more than three months after the date when the question could have been raised for the first time;

(b) by any person other than an authority or officer of the University, or a person aggrieved :

Provided further that the Chancellor may in exceptional circumstances-

(a) act suo motu or entertain a reference after the expiry of the period mentioned in the preceding proviso;

(b) where the matter referred relates to a dispute about the election, and the eligibility of the person so elected is in doubt, pass such orders of stay as he thinks just and expedient;

(c) review any decision made by him earlier under this section.

5. A reading of the entire Section 31 of the Act coupled with Section 31(8)(a) amply indicates that the power to give appointment is vested in the Executive Council of the University, the Selection Committee only recommends and no appointment can be made of a teacher without seeking recommendation of the Selection Committee but the decision to give appointment is purely of the Executive Council and by no stretch of imagination the statutory provision contained in Section 31(8)(a) of the Act can be eroded. The word 'recommendation' carried weight and cannot be lightly brushed aside. But the reading of the provision shows that it does not make it conclusive. Section 31(8)(a) envisages a situation where the Executive Council may not agree with the recommendation made by the Selection Committee. It, therefore, follows that where the Executive Council does not agree with the recommendation of the Selection Committee with regard to relative merits of the individual candidates it may not ditto the recommendation. The power conferred on the Executive Council to disagree is hedged in with valuable safeguard, i.e., that in the first instance the Executive Council must record its reasons for such disagreement and secondly that the matter thereafter should be referred to the Chancellor who according to the provision is made the final Judge or an arbitrator in this connection.

6. Learned counsel for the respondents Sri Umesh Chandra vehemently argued that making of appointment is an administrative action and neither the Selection Committee nor the Chancellor performs quasi-judicial function in making the appointment. In support of his contention he has placed reliance on the case of University of Mysore v. Govinda Rao : [1964]4SCR575 wherein it has been laid down that the Selection Committee does not perform any quasi-judicial function. The argument of the learned counsel in short is that the Chancellor while exercising powers under Section 31(8)(a) of the Act exercises only administrative powers as it is only an executive act. He is, therefore, not to act like a quasi-judicial Tribunal while deciding the reference submitted by the Executive Council. He also placed reliance on the case of the Union of India v. Col. J. N. Sinha : (1970)IILLJ284SC wherein it has been observed (at p. 42) : --

'Fundamental Rule 56(j) in terms does not require that any opportunity should be given to the concerned Government servant to show cause against his compulsory retirement, A Government servant serving under the Union of India holds his office at the pleasure of the President as provided under Article 310 of the Constitution but

this 'pleasure' doctrine is subject to the rules of law made under Article 309 as well as to the conditions prescribed under Article 311. Rules of natural justice are not embodied in rules nor can they be elevated to the position of Fundamental Rules. As observed by this Court in A.K. Kraipak v. Union of India : [1970]1SCR457 , 'the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it.'

It is true that if a statutory provision can be read consistently with the principles of natural justice the Court should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if, on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the Court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.'

7. I do not find substance in the submission of the learned counsel for the respondents that when the Chancellor is called upon to take a decision on the reference made by the Executive Council he exercises only administrative powers and it is only an executive act.

8. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. The term 'judicial' has not been successfully defined. Sometimes it is contrasted with 'administrative', sometimes with 'ministerial', sometimes with 'executive' and sometimes with the word 'non-judicial'. Whatever be the meaning it is at least certain that the term 'judicial' extends to the acts and orders of a competent authority which has power to impose a liability or to give decision which determines the rights of the affected parties. The term 'judicial' embraces even the acts of special tribunals which, though administrative in character, perform the functions resembling those of Courts. Such authorities, it may be mentioned, are subject to certiorari and mandamus, but appeals against their decisions cannot be taken to a Court without the right being expressly given. It, therefore, follows that a judicial act seems to be an act done by a competent authority upon a consideration of facts and circumstances, and imposing liability or affecting the rights of others. When a person or persons have legal authority to determine questions affecting the rights of the parties in a judicial manner the act cannot be said to be of an executive nature. Whether an act is a judicial or a quasi-judicial one or a purely executive depends on the terms of the particular rules and the nature, scope and effect of particular powers in exercise of which the act may be done and would, therefore, depend on the facts and circumstances of each particular case. Where an authority is required to act judicially, either by an express provision of the statute under which it acts or by necessary implication of the said statute the decisions of such an authority generally are of quasi-judicial nature. On the other hand, where the executive or administrative bodies are not required to act judicially and are competent to deal with issues referred to them administratively, their conclusions cannot be treated a quasi-judicial conclusions. A true judicial decision

presupposes an existing dispute and involves the following requisites as observed in Cooper v. Wilson (1937) 2 KB 309 at page 340 and the same has been quoted with approval in Bharat Bank Limited, Delhi v. Employees of Bharat Bank Limited, Delhi : (1950)NULLLLJ921SC :--

1. The presentation (not necessarily orally) of their case by the parties to the dispute;

2. If the dispute between them is a question of fact the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties, on the evidence.

3. If the dispute between them is a question of law the submission of legal argument by the parties; and

4. A decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including, where required, a ruling upon any disputed question of law.

In Cooper v. Wilson, (1937-2 KB 309) (supra) it is further observed : --

'A quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves : --

1. The presentation (not necessarily orally) of their case by the parties to dispute; and

2. If the dispute between them is a question of fact the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence, but does not necessarily involve the rest of the requisites required for a judicial decision.'

9. There can be no doubt that varieties of administrative and domestic tribunals are known to exist in this country as well as in other countries of the world but the real question to decide in each case is as to the extent of judicial power exercised by the authority.

10. In order to determine whether a power is an administrative or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is to be exercised. It would not be out of place to mention that in a welfare State it is inevitable that the organ of the State is regulated and controlled by the rule of law. The jurisdiction of the administrative bodies in a welfare State is also inevitably increasing at a rapid rate. The concept of the rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their function in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate, if not ensure, a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was once considered as an administrative power some years back is now being considered as a quasi-judicial power.

11. It is now convenient to consider whether the Chancellor exercises quasi-judicial nature of power or his action is administrative in nature. In this connection the words underlined in Section 31(8)(a) as quoted above requires serious consideration. It is provided in Section 31(8)(a) that if the Executive Council does not agree with the recommendations made by the Selection Committee the Executive Council shall refer the matter to the Chancellor. The reference to the Chancellor, therefore, shows existence of disagreement for an inquiry. A reference, therefore, is made for a decision on a problem for which reasons have been recorded by the Executive Council. It also indicates a reasonable dispute or a bona fide dispute between two bodies of the University who have some semblance of right. This in short would indicate a dispute and would imply some kind of disagreement between the concerned authorities which would be in respect to the claims of the respective candidates. The disputes so arising requires an adjudication by the Chancellor who is competent as per the requirement of the provision to determine whether the Selection Committee was right in making the selection or the reasons for disagreement recorded by the Executive Council are correct. It is well settled that a dispute that arises must be finally determined by a competent authority. The said provision, therefore, postulates the assertion of a claim by one party and its denial by the other. The provision further contemplates a decision by the Chancellor with respect to the dispute and his decision is not open to appeal but it is deemed to be final. The expression 'decision' in my opinion has a wide connotation. Whenever a question is determined or a conclusion is arrived at has to be dene after proper weighing of the claims of the respective candidates. A decision, therefore, envisages and postulates reasons for and against the proposition. The provision further emphasises that the decision given by the Chancellor shall be final. Thus, considering the nature of the power conferred on the Chancellor, the framework of law conferring power on the Chancellor, and the consequences ensuing from the exercise of that power it cannot be doubted that the Chancellor while exercising jurisdiction under Section 31(8)(a) performs a quasi-judicial function.

12. I also do not find myself in agreement with the submission of the learned counsel for the respondents that Section 31(8)(a) excludes the application of principles of natural justice when the Chancellor is called upon to take a decision on the reference made by the Executive Council. Lord Parker, C. J. in Reg v. Criminal Injuries Compensation Board; Ex Parte La-in, (1967) 2 QB 864 at page 881 has observed as under :--

'With regard to Mr. Bridge's second point I cannot think that Atkin, L J intended to confine his principle in cases in which the determination affected rights in the sense of enforceable rights. Indeed, in the Electricity Commissioners case, the rights determined were at any rate not immediately enforceable rights since the scheme laid down by the Commissioners had to be approved by the Minister of Transport and by (sic) of this Court. Moreover, as can be seen from Rex v. Postmaster-General; Ex Parte Carmichael, (1928) 1 KB 291 and Rex v. Boycott; Ex parte Keasley, (1939) 2 KB 651 the remedy is available even though the decision is merely a step as a result of which legally enforceable rights may be affected.

The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time the writ only went to an inferior Court. Later its ambit was extended to statutory tribunals determining a lis inter partes. Later again it extended to cases where there was no lis

in the strict sense of the word but where immediate or subsequent rights of citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is deprived solely from contract, that is, from the agreement of the parties concerned.

Finally, it is to be observed that the remedy has now been extended, (see Reg v. Manchester Legal Aid Committee Ex parte R. A. Brand and Co. Ltd., (1952) 2 QB 413), to cases in which the decision of an administrative officer is only arrived at after an inquiry or process of a judicial or quasi-judicial character. In such a case this Court has jurisdiction to supervise that process.

We have, as it seems to be, reached the position when the ambit of certiorari can be 'said to cover every case in which a body of persons of public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially. Looked at in this way the board in my judgment comes fairly and squarely, within the jurisdiction of this Court. It is, as Mr. Bridge said, 'a servant of the Crown charged by the Crown, by executive instruction, within the duty of distributing the bounty of the Crown. It is clearly, therefore, performing public duties.'.

13. It may be mentioned that the Supreme Court in Purtabpore Co. Ltd. v. Cane Commissioner of Bihar, Civil Appeal No. 14164 of 1968, decided on 21-11-1968 (reported in : [1969]2SCR807) held that the power to alter the area reserved under the Sugar-Cane (Control) Order, 1966 is a quasi-judicial power.

14. The Court of Appeal of New Zealand had held that the power to make a zoning order under Dairy Factory Supply Regulation 1936 has to be exercised judicially New Zealand and Dairy Board v. Okita Co-operative Dairy Co. Ltd., 1953 NZLR 366.

15. It is no doubt true that the Chancellor while exercising powers under Section 31(8)(a) is not required to follow any set procedure. He is not required to sit in public; no formal pleadings are also (expected?) to be tendered; he is not empowered to compel the attendance of the witness nor is he restricted in making an inquiry of evidence which the parties may bring before him. It it also true that he is not capable of delivering a determinative judgment or award affecting the rights and obligations of the parties. He is not invested with powers similar to those of Court or any Tribunal for enforcing attendance of any person and examining him on oath, compelling production of documents, issuing commission for examination of witnesses and other matters. The Chancellor still by the phraseology is required to act fairly and objectively and to reach a decision which is nonetheless final so far as the rights of the parties involved in the matter of appointment are concerned. The authority to reach to decision conferred on the Chancellor in my opinion is clearly distinct and separate. It also cannot be denied that whenever any such body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, acts in excess of its legal authority it is subject to the controlling jurisdiction of the Court exercised under Article 226 of the Constitution.

16. It is, therefore, evident that if a matter is required to be approached with a judicial mind then the decision on it is a judicial or a quasi-judicial decision. There are not only formal Courts of law, but also administrative tribunals, the Committees or

the councils or the members of the trade unions and of professional bodies established by statute which for the sake of convenience may have to act on their knowledge and on their own inspection of relevant papers in order to give decision without providing hearing to either party unless the party claims to be heard. These bodies although functioning administratively are said to exercise quasi-judicial powers.

17. With the increase of the power of the administrative bodies it has become necessary to provide guidelines for just exercise of their power. To prevent the abuse of the power and to see that it does not become a new despotism, the Courts are gradually evolving the principles to be observed while exercising such powers. In matters like these in my opinion public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is, therefore, neither possible nor desirable to fix a limit of quasi-judicial powers, but for the purpose of the present case it has to be laid down that the power exercised by the Chancellor although was apparently administrative in nature but he is called upon to test the validity of the impugned selection on the basis of the recommendation made by the Selection Committee. The Chancellor cannot decide according to his personal inclination or what he may consider fair and reasonable in the circumstances but he has to decide without fear or favour and in a way which fulfils the need for consistency, for equality and for certainty. His decision must be objective and impartial and he must state explicitly the reasons for his decisions. The Chancellor in our opinion in order to reach a decision can lay down his own procedure for systematically surveying from the circumstances of the case. The Chancellor in order to arrive at a decision has to make a judicial approach as he has to adjudge the suitability of person to be appointed after due consideration of the reasoning for dissent expressed by the Executive Council on the recommendation made by the Selection Committee.

18. In view of the aforesaid discussion it leaves no doubt in my mind that though the Chancellor may not be functioning as a Court or tribunal in the strict sense of the term but he is enjoined by the Act to act quasi-judicially i.e. he has got to approach the matter which he has to decide with a judicial frame of mind. The view expressed in Dr. U.N. Roy v. His Excellency, Sri G. D. Tapase, (the Ex-Governor, State of Uttar Pradesh) Chancellor, Allahabad University, 1981 UPLBEC 309 to the effect that the Chancellor acts in a quasi-judicial manner while deciding the reference is correct and approved and the view expressed by the Division Bench of this Court in (Dr. Mrs.) Prabha Gupta v. State of Uttar Pradesh, 1981 Lawyers' Law Times (Services) 51 in our opinion does not hold the field with respect to powers exercised by the Chancellor-under Section 31(8)(a) of the Act.

19. In view of the aforesaid discussion the answer to the question is that the Chancellor while exercising jurisdiction under Section 31(8)(a) of the Act exercises powers of a quasi-judicial nature and the matter should be disposed of by a speaking order.

R.C. Deo Sharma, J.

20. I am in respectful agreement with the reasons and conclusions recorded in the case by brother Jha, J. but would like to add a few lines Section 31(8)(a) of the U. P. Slate Universities Act, 1973 speaks of the Chancellor's order as a decision and attaches finality to it. The language used in the section is almost pari materia with the language used in Section 68 of the said Act. Any order passed by the Chancellor in

exercise of the aforesaid powers is undoubtedly amenable to the writ jurisdiction of this Court. While Section 31 postulates the recording of reasons by the Executive Council in case it differs from the recommendations made by the Selection Committee there is no corresponding requirement of recording reasons in the case of Chancellor when he decides the matter, but mere omission of this requirement does not empower the Chancellor to act arbitrarily or agree with any one of the two differing views recorded by the Selection Committee and the Executive Council in a mechanical manner. The principles of natural justice do require the application of mind and decision of the matter in a fair and just manner. When the order of the Chancellor is amenable to the writ jurisdiction of this Court, obviously the Court is entitled to look into the reasons that impelled the Chancellor to take the view that he did. The office of the Chancellor being a high office of dignity held usually by the Governor who is the head of the State, the Legislature might not have thought it appropriate to direct in specific terms the Chancellor to record reasons for his decision. Nonetheless, when the Executive Council is by law required to give reasons for differing from the recommendations of the Selection Committee, the Chancellor in recording his decision which again by law is made final is also expected to record reasons though they may not necessarily be incorporated in the order to be communicated but at least they should appear on record for possible use by the Court in case any party aggrieved by the decision chooses to approach it. This alone can enable the Court while exercising jurisdiction under Article 226 of the Constitution to know if the decision arrived at by the Chancellor has been reached after application of mind and in a judicious and fair manner. Indeed this exercise by the Court is not intended to be made with a view to substitute its own decision by taking a view that in the circumstances it would be a better decision in the matter, but with a view to satisfying itself as to whether the requirements of natural justice have been met or not and whether there has been an application of mind in accepting or rejecting one of the two differing views or that the order is arbitrary and recorded in a merely mechanical way. It was observed by their Lordships of the Supreme Court in State of Bihar v. A.K. Mukherji : (1975)ILLJ198SC that it was not necessary for the government to make a speaking order while appointing a government servant. But all the same, where a question of the nature involved in the instant case arises and the Chancellor is called upon to give a decision on conflicting views expressed by two authorities he should record reasons for the decision, may be in his Secretariate files, so that the Court while considering the matter in its writ jurisdiction could satisfy itself if the principles of natural justice have been observed. In the case of State of Bihar v. A. K. Mukherji, (supra) material was placed before the Court from which it appeared that the case of one of the applicants was not considered in its proper perspective and accordingly the matter was sent back for being looked into again in the light of the observations made by the Court. With these observations I agree with the conclusions recorded by brother Jha, J.

Kamleshwar Nath, J.

21. By referring order dated 27-5-1983 of brother Verma, J. the following question has arisen for the opinion of Full Bench.

'Whether powers exercisable by the Chancellor under Section 31(8)(a) of the U. P. State Universities Act, 1973, are quasi-judicial and he is required to state reasons for his decision, or whether such an order is not a quasi-judicial order and it is not necessary to pass a speaking order?'

This question has arisen in view of conflict of views between a Division Bench decision dated 2-7-1979 in Writ Petition No. 2821 of 1978, Dr. Mrs. Prabha Gupta v. Lucknow University 1981 Lawyers' Law Times (Services) 51, and the decision dated 10-10-1980 in Writ Petition No. 1923 of 1980, Dr. U. N. Roy v. His Excellency Sri G. D. Tapase (the Ex-Governor of the State of Uttar Pradesh) Chancellor, Allahabad University, 1981 UPLBEC 309. According to the former, decision of the Chancellor under Section 31(8)(a) of the U. P. State Universities Act, 1973 (for short, the Act) is not quasi-judicial and he need not record a speaking order; according to the latter, it is a quasi-judicial proceeding and the Chancellor is required to record reasons for his decision.

22. The controversy surrounds the selection to the post of Reader in the Discipline of Law in the University of Lucknow. The Selection Committee, constituted under Section 31(4)(a) of the Act for the purpose, held a meeting on 27-2-1979 and recommended the names of the petitioner Sri L. N. Mathur in the first place, Dr. Avtar Singh Opposite Party No. 4 in the second place, and one Sri V. S. Shukla in the third place.

23. Under Section 31(1) of the Act, the appointment of a teacher in a University is to be made by the Executive Council of the University on the recommendations of the Selection Committee in the manner provided in that section, subject to the other provisions of the Act. The Executive Council considered the recommendations of the Selection Committee in its meeting dated 30-3-1979, did not accept the recommendations of the Selection Committee, and decided to refer the matter to the Chancellor under Section 31(8)(a) of the Act stating the following reasons, contained in Annexure-4 to the writ petition-

'That the candidate placed at serial No. 2 of the precis of the application of the Selection Committee, Dr. Avtar Singh (opposite party No. 4) possesses a longer teaching experience, research publications and holds the LL.D. Degree. His claim should not be ignored.'

The precis of the applications is contained in Annexure-3 to the writ petition.

24. The Executive Council then made a reference of the matter to the Chancellor, University of Lucknow, under Section 31(8)(a) of the Act. The Chancellor accepted the recommendations of the Executive Council and directed that Dr. Avtar Singh, Opposite Party No. 4, be appointed as Reader in the Discipline (Department?) of Law of Lucknow University, the decision was communicated to the petitioner by Annexure-5 dated 3-9-1979 to the writ petition. The relevant portion of it is as follows : --

'Chancellor has been pleased to accept the recommendations of the Executive Council and to direct that Dr. Avtar Singh be appointed Reader in Law, Lucknow University.'

It may be mentioned that the dispute between the parties does not involve Sri V.S. Shukla who was placed at No. 3 in the recommendations of the Selection Committee, the controversy is confined to Sri L. N. Mathur, the petitioner who was placed at No. 1 and Dr. Avtar Singh, opposite party No, 4, who was placed at No. 2 by the Selection Committee; the Chancellor, accepting the recommendations of the Executive Council, made the order of appointment as indicated above.

25. To begin with, the material provisions of Section 31 of the Act may be mentioned as follows : --

'31. (1) Subject to the provisions of this Act, the teachers of the University.....shall be appointed by the Executive Council..... on the recommendations of a Selection Committee in the manner hereinafter provided.

(2) & (3).....

(4)(a) The Selection Committee for the appointment of a teacher.....shall consist of.....

(5) .....

(6) No recommendation made by a Selection Committee referred to in Sub-section (4), shall be considered to be valid unless one of the experts had agreed to such selection.

(7) Subject to the provisions of Sub-section (6), the majority of the total membership of any Selection Committee shall form the quorum of such Committee.

(7-A) It shall be open to the Selection Committee to recommend one or more but not more than three names for each post.

(8)(a) In the case of appointment of a teacher of the University, if the Executive Council does not agree with the recommendations made by the Selection Committee, the Executive Council shall refer the matter to the Chancellor along with the reasons of such disagreement, and his decision shall be final:

Provided that if the Executive Council does not take a decision on the recommendation of the Selection Committee within a period of four months from the date of the meeting of such Committee, then also the matter shall stand referred to the Chancellor, and his decision shall be final.' It will be seen that while this section speaks of a recommendation made by Selection Committee, the disagreement of the Executive Council with the recommendations of the Selection Committee, and the decision of the Chancellor on the matters referred to him in the event of disagreement, the only stage at which there is an express provision for statement of reasons is at the time of making of the reference by the Executive Council to the Chancellor. There is no mention that the Selection Committee while making its recommendations, under Section 31(1) of the Act has to record reasons. Similarly, there is no mention that the Chancellor while recording his decision under Section 31(8)(a) of the Act which is (sic) bound to 'refer the matter to the Chancellor along with the reasons of such disagreement.' The distinction made by these provisions of Section 31 of the Act between the functions of the three authorities, namely, the Selection Committee, the Executive Council, and the Chancellor, must be given its plain connotation. In other words, it is only the Executive Council which is required to record its reasons for disagreement with the recommendations of the Selection Committee before the appointment of a teacher of the University could be made; neither the Selection Committee nor the Chancellor is required to record reasons for their/his recommendations or decision in the matter.

26. These features in the terminology of Section 31(8)(a) of the Act were noticed in

the case of Dr. Mrs. Prabha Gupta v. Lucknow University, (1981 Lawyers' Law Times (Services) 51) (supra) and on that basis it was observed that it was not necessary for the Chancellor to pass a speaking order and that the proceeding before him under Section 31(8)(a) of the Act were not quasi-judicial.

27. The basis of the decision in the case of Dr. U. N. Roy v. His Excellency Sri G. D. Tapase, (the Ex-Governor of the State of Uttar Pradesh) Chancellor, Allahabad University, (1981 UPLBEC 309) (supra) seems to be the following :---

'It is apparent on a mere reading of Section 31(a) of the State University Act that reference is made to the Chancellor to resolve the dispute between the Selection Committee and the Executive Council. It is thus the function of an Arbitrator that is entrusted to the Chancellor by Section 31(8). Consequently, it can admit of no doubt whatsoever that the Chancellor acts in a quasi-judicial manner while deciding the reference. That being so, it is necessary for him to give reasons for his decision.'

The idea seems to be that since the function of the Chancellor is that of an Arbitrator, he must be held to act in a quasi-judicial manner and, therefore, he must give reasons for his decision.

28. With great respect, it may be pointed out that the settled Arbitration law is that an Arbitrator need not record reasons for his decision. In Russell's 'on the Law of Arbitration', (19th Edition, 1979, at page 316), it is stated that an arbitration award need not be a speaking award. Again at page 366 it is stated that an Arbitrator does not normally have to state his reasons in his award. In the case of Bungo Steel Furniture (Pvt.) Ltd. v. Union of India : [1967]1SCR633 the law has been stated as follows (Para 9) : --

'It is now a well-settled principle that if an arbitrator, in deciding a dispute before him, does not record his reasons and does not indicate the principles of law on which he has proceeded, the award is not on that account vitiated.'

In the case of Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indor : [1967]1SCR105 the arbitrator gave no reasons for the award. The Court observed that they did not find any erroneous legal proposition in the award and the contention that there were errors of law on the face of the record was rejected.

29. It is remarkable that the right of an Arbitrator not to make a speaking award has been recognised despite the fact that he is required to observe the principles of natural justice in making the award. See Union of India v. M/s. Ghaziabad Railway Station : AIR1972All34 . The principles of natural justice need not be confused with the quasi-judicial functions.

An authority which is required, in the eye of law, to function in a quasi-judicial manner must observe the principles of natural justice; but merely because an authority is required, in the light of Statute governing it, to observe some principles of natural justice, it does not become quasi-judicial. In the case of A.K. Kraipak v. Union of India : [1970]1SCR457 , it was pointed out at pages 468 and 469 that the concept of natural justice has undergone a great deal of change in recent years, that in the past it was thought that it included just two rules namely, (1) no one shall be a judge in his own case and (2) no decision shall be given against a party without affording him a reasonable hearing, and that very soon thereafter a third rule was

envisaged, and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. It was further observed that in the course of years many more subsidiary rules came to be added to the rules of natural justice. It was then held as follows (at p. 157): --

'What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose.'

This is how it appears that although an Arbitrator is required to observe the principles of natural justice, he is not required to record a speaking order.

30. It may not be said that merely because the Chancellor is required to give 'his decision' on the matter referred to him under Section 3l(8)(a) of the Act, he must be considered to act in a quasi-judicial manner. The leading case on the subject is Province of Bombay v. Khushaldas S. Advani : [1950]1SCR621 which was followed by our High Court in the Division Bench case of Registrar, University, Allahabad v. Dr. Ishwari Prasad : AIR1956All603 and reiterated by the Supreme Court in the case of Radeshyam Khare v. State of Madhya Pradesh : [1959]1SCR1440 . In the case of Province of Bombay v. Khushaldas S. Advani, (supra) the following observations are found at page 633 (of SCR) : (at p. 225 of AIR) :--

'Because an executive authority has to determine certain objective facts as a preliminary step to the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character.'

At page 642 (of SCR): (at p. 229 of AIR) of the Report the following observations are recorded : --

'The word 'decision' in common parlance is more or less a neutral expression and it can be used with reference to purely executive acts as well as judicial orders. The mere fact that an executive authority has to decide something does not make the decision judicial. It is the manner which makes the difference, and the real test is : Is there any duty to decide judicially.'

In the case of Radeshyam Khare v. State of Madhya Pradesh : [1959]1SCR1440 (supra) the Supreme Court observed as follows at page 118:--

'The mere fact that a question of fact has to be determined as a preliminary condition before action can be taken under the statute by itself, does not carry that implication. There must be some indication in the statute as to the manner or mode in which the preliminary fact is to be determined. I find nothing in Section 53-A (C. P. and Berar Municipalities Act) which in terms imposes any duty on the State Government to act judicially. No form of procedure is laid down or even referred to from which such a duty could be inferred.'

It is clear enough that in day-to-day administration the executive authorities have to take decision on various matters. It cannot be the law that wherever there is a

requirement to take a decision, the function must be quasi-judicial. Everything depends upon the nature of the power conferred by the statute. A close examination of the provisions of Section 31 of the Act would show that the Chancellor is not required to act judicially while acting under Section 31(8)(a) of the Act, Section 31 of the Act deals with 'appointment of teachers' as the heading of the section specifies. The function of selection and appointment is essentially an administrative function. In the case of State of Bihar v. Asis Kumar Mukherji : (1975)ILLJ198SC it has been observed as follows (at p. 197) : --

'Once the right to appoint belonged to the Government, the Court could not usurp it merely because it would have chosen a different person as better qualified, or given a finer gloss, or different construction to the regulation, or on the score of a set formula that relevant circumstances had been excluded, irrelevant factors had influenced and such like grounds familiarly invented by parties to invoke the extraordinary jurisdiction under Article 226. True, no speaking order need be made while appointing a government servant.'

Under Section 31(1) of the Act the Selection Committee has to make recommendations for appointment to the post of teacher. These recommendations are to be based on the first Statutes of the University, into the details of which it is not necessary to go. We are not examining the performance of the Selection Committee. The point is that the preparation of a Selection List by the Selection Committee does not confer any legal right on a person, on the Select List, to be appointed. He has only a legal right to be considered for being appointed.

This consideration is to be made initially by the Executive Council under Section 31(8)(a) of the Act and if the Executive Council does not agree with the Select List, it has to record its reasons for the disagreement and refer the matter to the Chancellor. In the case of State of Haryana v. Subash Chander Marwaha : (1973)IILLJ266SC it has been held that the mere fact that a candidate's name appears in the List of Candidates, approved by the Public Service Commission, would not entitle the candidate to a Writ of Mandamus that he be appointed. It was pointed out that if the State Government while making the selection for appointment had departed from the ranking given in the List, there would have been a legitimate grievance on the ground that the State Government had departed from the applicable rule. It must be appreciated at this stage that while the State Government was not competent, in that case, to depart under the Rules from the ranking contained in the List prepared by the Public Service Commission, in the present case, the ranking contained in the List prepared by the Selection Committee was liable to be departed from by the Executive Council under Section 31(8) (a) of the Act. Here, the obligation of the Executive Council, on disagreement with the recommendations of the Selection Committee, is only to refer the matter to the Chancellor for decision. In other words, the only legal right which the petitioner could have with regard to the Select List was to have his matter referred to the Chancellor. The manner in which the Chancellor was to proceed has to be determined by the nature of the power contained in Section 31(8) (a) of the Act. As in the cases of Province of Bombay v. Khushaldas S. Advani : [1950]1SCR621 (supra) and Radeshyam Khare v. State of Madhya Pradesh : [1959]1SCR1440 (supra) so also there is nothing in that provision which in terms imposes any duty on the Chancellor to act judicially. No form of procedure is laid down or even referred to from which a duty to act judicially could be inferred. The Chancellor had before him the required recommendations of the Selection Committee and the Executive Council. So long as the material contained in the recommendations

of the Selection Committee and the Executive Council are before the Chancellor, he has, so to say, only to consider the two views and arrive at his own subjective satisfaction in respect of the two recommendations and decide which to accept. The function of the Chancellor, as set out in the case of Registrar. University, Allahabad v. Dr. Ishwari Prasad : AIR1956All603 (supra) seems to be as follows (at p. 606) : --

'The main thing to be considered is whether the authority concerned has to decide a dispute between two parties or it has merely to take note of the dispute to inform its mind before it exercises the power conferred upon it in its discretion. In the former case it acts judicially or quasi-judicially, but in the latter case it acts administratively.'

It cannot be said that in the present case the Chancellor is deciding a dispute between two parties. As already indicated, the persons on the Select List have no legal right of appointment except a right to be considered for appointment. Both the Selection Committee and the Executive Council are only advisory in nature; they cannot be said to possess any 'legal right' which is for the adjudication of the Chancellor. At last, if there could be any dispute of any legal right between them, it could only be that in the event of disagreement by the Executive Council, the Selection Committee has a 'right' to have the matter referred to the Chancellor, the Executive Council has a 'right' to differ from the recommendations of the Selection Committee and on account of the difference it has an obligation to make a reference to the Chancellor. In the present case, there is no dispute over the making of the reference to the Chancellor because the dispute has been referred to the Chancellor. Thus the Chancellor is not required to 'decide' any dispute between the Executive Council and the Selection Committee; his decision of the matter is in essence and substance only a decision to make an appointment and not to decide a lis.

31. The point may be elaborated. In the case of Province of Bombay v. Khushaldas S. Advani : [1950]1SCR621 (supra) it was observed that the real test which distinguishes a quasi-judicial act from an administrative act is the duty to act judicially. It was held that in order that a body may satisfy the required test, it is not enough that it should have legal authority to determine the question affecting rights of subject, there must be superadded to that characteristic the further characteristic that the body has the duty to act judicially. In cases where the authority was found to act quasi-judicially, the ruling points out, there were some parties making a claim under the Statute and some parties opposing such claim and the Statutory authority was empowered to adjudicate upon the matters in issue between the parties, and to grant or refuse the claim. It was observed that the point to note was that in each of those cases there was a lis, i.e., a proposition of a party making a claim and an opposition of another party making a counterclaim, and the Statutory authority was authorised to decide the question and in those cases the decision was regarded as quasi-judicial It is plain enough that there must be parties making claims and the claims must relate to 'rights'. Where any of these ingredients is missing, the proceeding cannot be quasi-judicial. As already mentioned, neither the Selection Committee nor the Executive Council had made a 'claim' before the Chancellor, nor the disagreement on the recommendations could constitute counter-claims in respect of a 'right'. The only right could be that of any appointment and that right had not accrued. The only right that had accrued to the petitioner was right to be considered. There was, therefore, no lis before the Chancellor.

32. Recommendations do not create rights. The recommendations before the Chancellor are only materials before him whereby he takes 'note of the dispute to

inform its mind before it exercises the power conferred upon it in its discretion,' to use the words in part 12 of the Report in the case of Registrar, University, Allahabad v. Dr. Ishwari Prasad : AIR1956All603 (supra).

33. It would be a different matter if the Chancellor while making his decision under Section 31(8)(a) of the Act travelled outside the recommendations of the Selection Committee and appointed a person who was not to be found within the recommendations of the Selection Committee or did not possess the requisite qualifications or he accepted the recommendations of the Selection Committee which contained persons who were not qualified to be its members in the light of the disqualifications prescribed by the Statute, or the decision was made mala fide. The decision in all those circumstances would be open to question in a court of law because they would have violated different provisions of Section 31 of the Act and not because he was expected to act in a quasi-judicial manner. In the case of mala fides or bias, the decision might be invalid, not because of violation of functions of a quasi-judicial authority, but because of the violation of some of the principles of natural justice with regard to the facts and circumstances of the particular case which could be made applicable in order to secure justice and prevent miscarriage of justice which constitutes one of the Constitutional guarantees under Articles 14 and 16 of the Constitution of India. In this connection the following observation by the Supreme Court in the case of State of Bihar v. Asis Kumar Mukherji : (1975)ILLJ198SC (supra) in para 23 is material : --

'Although the State need not always make a reasoned order of appointment, reasons relevant to the rules must animate the order. Moreover, an obligation to consider every qualified candidate is implicit in the 'equal opportunity' right enshrined in Articles 14 and 16 of the Constitution. Screening a candidate out of consideration altogether is illegal if the applicant has eligibility under the regulations. And for such a drastic step as refusal to evaluate comparatively, i.e., exclusion from the ring of competitors, manifest grounds must appear on the record.'

The upshot is that while making an order of appointment, a speaking order is not required at all; the record must indicate manifest grounds for appointment whereby the reason relevant to the rules would appear to animate the order. This is precisely the position when the Chancellor has before him the recommendations of both the Selection Committee and the Executive Council as the record on which he takes a decision. Unless it could be shown that the material thus available to the Chancellor, on the record, could not give him a reason to decide in favour of the appointment made by him, it cannot be said that the reason relevant to the rules did not animate the order of appointment or manifest grounds for such order did appear on the record. As observed in the case of B.S. Minhas v. Indian Statistical Institute : (1984)ILLJ67SC , it is not for the court to determine which of the two candidates was superior, and the members, of the Selection Committee or the Council, and in this case the Chancellor, are eminent persons and are presumed to have taken into account all relevant considerations before coming to a conclusion.

34. Learned counsel for the petitioner referred to the case of B.K. Gupta v. Chancellor, Lucknow University, 1962 All LJ 289 to show that the function of the Chancellor, under Section 39 of the Lucknow University Act, was quasi-judicial. The present corresponding provision is Section 68 of the Act which operates in an entirely different field from Section 31(8)(a) of the Act. In the former, the question for decision is an actual election or appointment as a member of any authority of the

University. Such an election or appointment creates a legal right and an adjudication thereupon undoubtedly constitutes a Us in which the Chancellor's functions are quasi-judicial; but in a reference under Section 31(8)(a) of the Act no right is for adjudication before the Chancellor and consequently there are neither parties contending a legal right nor a lis before him.

35. There can be no quarrel with the proposition contained in the case of A. K. Kraipak v. Union of India : [1970]1SCR457 (supra), relied upon by the learned counsel for the petitioner, that every administrative authority must act fairly and in a just manner, not arbitrarily or capriciously, but that is not the same thing as to say that the authority must act quasi-judicially. Instantly, it may be mentioned that the decision related to a question of bias of one of the members of the Selection Committee who was himself a candidate for the selection. The principle of natural justice regarding bias was then made applicable to the case in order to secure justice and prevent miscarriage of justice. As already mentioned, the Supreme Court ruled that the question as to what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, apart from the framework of law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. In the present case, there is no allegation of bias; the only question is whether the Chancellor is required to record a speaking order of appointment.

36. For reasons recorded above, it is held that the powers exercisable by the Chancellor, Lucknow University, under Section 31(8)(a) of the Act are not quasi judicial, that he is not required to state reasons or pass a speaking order in deciding the reference made to him under that Section, that the view expressed in the case of Dr. U. N. Roy v. His Excellency of Sri G.D.Tapase (the ex-Governor of the State of Uttar Pradesh) Chancellor, Allahabad University, (1981) U. P. L. B. E. C. 309 to the effect that the Chancellor acts in a quasi judicial manner is not correct, and that the view expressed in the case of Dr. Mrs. Prabha Gupta v. Lucknow University, 1981 Lawyers' Law Times (Services) 51 that the Chancellor does not act in a quasi judicial manner and that he is not required to pass a speaking order, while exercising powers under the said Section, was correct.

BY COURT

37. In view of the opinion expressed by the majority the answer to the question is that the Chancellor while exercising jurisdiction under Section 31(8)(a) of the Act exercises power of a quasi judicial nature and the matter should be disposed of by a speaking order.

38. The file shall now be placed before the learned single Judge for decision.