

**Reserved on : 18.08.2026**  
**Pronounced on : 02.09.2026**



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02<sup>ND</sup> DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.28442 OF 2025 (S - RES)

**BETWEEN:**

DR. NAGESWARA RAO TUBATI,  
S/O LATE T. BAPAI AH,  
AGED ABOUT 61 YEARS,  
RESIDING AT FLAT NO. 2251,  
JANAPRIYA LAKE VIEW -PHASE II,  
KODI CHIKKANAHALLI,  
BENGALURU - 560 076.

... PETITIONER

(BY SRI M.NARAYANA BHAT, ADVOCATE A/W  
SRI A.K.VASANTHA, ADVOCATE)

**AND:**

- 1 . THE STATE OF KARNATAKA,  
REPRESENTED BY  
THE PRINCIPAL SECRETARY,  
DEPARTMENT OF HIGHER EDUCATION,  
M.S. BUILDING,  
BENGALURU - 560 001.
- 2 . THE CHANCELLOR,  
VISVESVARAYA TECHNOLOGICAL UNIVERSITY,  
RAJBHAVAN,

Digitally signed by  
PADMAVATHI B K  
Location: High  
Court of  
Karnataka

BENGALURU - 560 001.

- 3 . THE SECRETARY TO THE CHANCELLOR,  
RAJ BHAVAN,  
BENGALURU - 560 001.
- 4 . DR. S. VIDYASHANKAR,  
S/O LATE SHIVASHANKAR,  
AGED ABOUT 61 YEARS  
VICE CHANCELLOR,  
VISVESVARAYA TECHNOLOGICAL UNIVERSITY (VTU),  
"JNANA SANGAMA"  
BELAGAVI - 590 018.
- 5 . VISVESVARAYA TECHNOLOGICAL UNIVERSITY,  
REPRESENTED BY ITS REGISTRAR  
JNANA SANGAMA, BELAGAVI - 590 018.
- 6 . THE UNIVERSITY GRANTS COMMISSION  
REPRESENTED BY ITS CHAIRMAN  
BAHADUR SHAH JAFAR MARG,  
NEW DELHI - 110 002.

... RESPONDENTS

(BY SMT.HEMALATHA V., AGA FOR R-1;  
SRI UDAYA HOLLA, SR.ADVOCATE A/W  
SRI SANTOSH S.NAGARALE, ADVOCATE FOR R-2 AND R-3;  
SRI ADITYA SONDHI, SR.ADVOCATE A/W  
SRI ABHISHEK KUMAR AND  
SMT.KEERTHI K.REDDY, ADVOCATES FOR R-4;  
SRI P.S.RAJAGOPAL, SR.ADVOCATE A/W  
SRI M.P.SRIKANTH, ADVOCATE FOR R-5;  
SRI SHRIKAR JAYAGOVIND, ADVOCATE FOR R-6;  
R-7 IS DELETED VIDE ORDER DATED 28.10.2025;  
SRI HARISH VASHISTH, ADVOCATE FOR IMPEADING  
APPLICANT IN IA 1/26  
SRI GURURAJA P.B., ADVOCATE FOR IMPEADING  
APPLICANT IN IA 4/26

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO. A) ISSUE A WRIT OF QUO WARRANTO CALLING UPON RESPONDENT NO. 4 TO SHOW UNDER WHAT AUTHORITY HE CONTINUES TO OCCUPY THE POST OF VICE CHANCELLOR OF VTU, BELAGAVI TO MEET THE ENDS OF JUSTICE; B) ISSUE A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION HOLDING THAT THE APPOINTMENT OF RESPONDENT NO. 4 TO THE POST OF VICE CHANCELLOR OF THE 5<sup>TH</sup> RESPONDENT AS ILLEGAL, VOID AB INITIO, AND IN VIOLATION OF THE PROVISIONS OF THE UGC REGULATIONS 2018 AND ARTICLE 14 OF THE CONSTITUTION AND OTHER CONSTITUTIONAL PRINCIPLES; C) ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION SETTING ASIDE THE NOTIFICATION BEARING (i) NO. GS05 TUM 2025, DATED 03.09.2025 MARKED AT ANNEXURE (ii) NO. GS 7 TUM 2022 DATED 29.09.2022 MARKED AS ANNEXURE- L ISSUED BY RESPONDENT NO. 2; AS THE SAME ARE OPPOSED TO UGC REGULATIONS 2018 AND VTU ACT AND ARTICLES 14, OF THE CONSTITUTION OF INDIA TO MEET THE ENDS OF JUSTICE; D) ISSUE A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION DIRECTING THE RESPONDENT NO. 2 TO CONSIDER THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 14.08.2025 MARKED AS ANNEXURE- J IN ACCORDANCE WITH LAW TO MEET THE ENDS OF JUSTICE; E) ISSUE A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION DIRECTING THE RESPONDENT NO. 2 TO INITIATE FRESH PROCEEDINGS FOR APPOINTMENT OF VICE CHANCELLOR IN COMPLIANCE WITH UGC REGULATIONS 2018 AND VTU ACT IN EXCLUSION OF THE CANDIDATURE OF RESPONDENT NO. 4.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.08.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

The petitioner is before the Court seeking the following prayers: -

- (a) "Issue a writ of *quo warranto* calling upon respondent No.4 to show under what authority he continues to occupy the post of Vice-Chancellor of VTU, Belagavi to meet the ends of justice.
- (b) Issue a writ of mandamus or any other appropriate writ, order or direction holding that the appointment of respondent No.4 to the post of Vice-Chancellor of the 5<sup>th</sup> Respondent as illegal, void ab initio and in violation of the provisions of the UGC Regulations 2018 and Article 14 of the Constitution and other constitutional principles;
- (c) Issue a writ of certiorari or any other appropriate writ, order or direction setting aside the Notification bearing (i) No.GS05 TUM 2025 dated 03-09-2025 marked at Annexure-A and (ii) No.GS 7 TUM 2022 dated 29-09-2022 marked as Annexure-L issued by respondent No.2 as the same are opposed to UGC Regulations 2018 and VTU Act and Article 14 of the Constitution of India to meet the ends of justice;
- (d) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent No.2 to consider the representation submitted by the petitioner dated 14-08-2025 marked as Annexure-J in accordance with law to meet the ends of justice;
- (e) Issue a writ of mandamus or any other appropriate writ, order or Direction Directing the Respondent No.2 to initiate fresh proceedings for appointment of Vice-Chancellor in compliance with UGC Regulations 2018 and VTU Act in exclusion of the candidature of respondent No.4;

- (f) Grant such other reliefs as this Hon'ble Court deems just and proper in the interest of justice."

In substance, stripped of its multiplicity of reliefs, the petitioner calls upon this Court to issue the high prerogative writ of *quo warranto* and, as a necessary sequel, to efface the orders, which sustain the continuance of the 4<sup>th</sup> respondent in the public office in question.

2. Shorn of the embellishments and the details that do not bear upon the controversy, the facts germane to the *lis*, in their essential contour, are as follows:

2.1. The petitioner projects himself as a highly decorated academician and as a Professor and Head of the Department of Mechanical Engineering at the Oxford College of Engineering, a position which he claims to have adorned since July, 2010. The petition is replete with averments touching upon the encomiums and academic distinctions said to have come his way.

2.2. The array of parties requires little elaboration: the 1<sup>st</sup> respondent is the State; the 2<sup>nd</sup>, the Chancellor of Visvesvaraya Technological University (hereinafter referred to as 'the University'

for short); the 3<sup>rd</sup>, the Secretary to the Chancellor; the 4<sup>th</sup> respondent is the incumbent Vice-Chancellor; the University, represented by its Registrar is the 5<sup>th</sup> respondent; and the University Grants Commission is the 6<sup>th</sup> respondent.

2.3. The fulcrum of the challenge is, the appointment and, more particularly, the continuance of the 4<sup>th</sup> respondent as Vice-Chancellor of the University. The 4<sup>th</sup> respondent had earlier been appointed as the Vice-Chancellor of the Karnataka State Open University on 28-05-2019. That appointment is not the subject of the present *lis*. Upon completion of his tenure, a Notification dated 10-08-2022 comes to be issued, inviting applications for appointment to the office of the Vice-Chancellor of the University. The 4<sup>th</sup> respondent emerged from that process and came to be appointed for a term of three years with effect from 29-09-2022. The appointment did not remain unchallenged. One Professor B. Shivaraj invoked the public law remedy of *quo warranto* in a public interest petition. A Division Bench of this Court, by order dated 07-11-2023, declined the challenge. The matter travelled to the Apex Court, but without success. Thus fell the curtain on the challenge to the initial appointment.

2.4. Section 13(4) of the Visvesvaraya Technological University Act, 1994 ('the Act' for short), however, permits an extension for another term of similar duration at the discretion of the Chancellor. Exercising that power, the Chancellor, by order dated 03-09-2025, continued the 4<sup>th</sup> respondent for a further period of three years. Barely thereafter, on 12-09-2025, the present petition came to be instituted, once again invoking *quo warranto*, this time against the continuance.

2.5. There is yet another strand to the narrative. It is alleged that the petitioner, along with one Dr. Narayanswamy, visited the residence of the 4<sup>th</sup> respondent and attempted to extort money, leading the 4<sup>th</sup> respondent to register Crime No.35 of 2026. Investigation has culminated in a charge sheet against the petitioner for offences punishable under Sections 308(2), 351(2), 62 and 61(2) of the BNS. That criminal proceeding forms the backdrop; it is not the *lis* before this Court. What occupies centre stage is the legality of the 4<sup>th</sup> respondent's continuance as Vice-Chancellor and whether that continuance can be unseated by the writ of *quo warranto*.

3. Heard Sri M.Narayana Bhat, learned counsel appearing for the petitioner; Smt. Hemalatha V, learned Additional Government Advocate appearing for respondent No.1; Sri Udaya Holla, learned senior counsel appearing for respondents 2 and 3; Sri Aditya Sondhi, learned senior counsel appearing for respondent No.4; Sri P.S. Rajagopal, learned senior counsel appearing for respondent No.5 and Sri Shrikar Jayagovind, learned counsel appearing for respondent No.6.

**SUBMISSIONS:**

**PETITIONER:**

4. Sri M. Narayana Bhat, learned counsel appearing for the petitioner, would mount a spirited challenge to the appointment and continuance of the 4<sup>th</sup> respondent. His first plank is, the University Grants Commission Regulations, 2018 ('UGC Regulations 2018' for short). According to him, the Search Committee was mandatorily required to carry a nominee of the UGC; admittedly, it did not. That, he submits, is the first statutory infraction. The second limb of attack travels to the integrity of the incumbent. It is urged that several proceedings are pending against the 4<sup>th</sup> respondent and

that a person whose integrity is under such a cloud, can neither enter nor continue in the high academic office of Vice-Chancellor. The challenge is then carried to the composition of the Search Committee: two of its members, it is contended, had links with the affairs of the University - one being a Member of the Executive Council and another a former Registrar - whereas the UGC Regulations insist upon members unconnected with the University. On this edifice, learned counsel would contend that the very foundation of the appointment is contrary to the governing norms and must, therefore, be dismantled by a writ of *quo warranto*. He would add that even the registration of a criminal case against the 4<sup>th</sup> respondent did not deter his continuance, a circumstance which, according to the petitioner, further sullies the decision.

#### **THE UNIVERSITY:**

5.1. *Per contra*, Sri P.S. Rajagopal, learned senior counsel appearing for the University, would stoutly defend both the appointment and its continuance. His submission is that the petitioner seeks to make the extension wear the procedural apparel of a fresh appointment, when the Act does no such thing. Once a

Search Committee has performed its statutory role and the Vice-Chancellor has entered office, a continuation under Section 13(4), he submits, is an exercise resting in the discretion of the Chancellor and does not demand the resurrection of the entire selection machinery. The grievance concerning absence of a UGC nominee, according to learned senior counsel, is not new; it formed part of the assault on the original appointment.

5.2. He would further submit that the UGC Regulations, 2018 have not been adopted by the University and, therefore, cannot be mechanically transplanted into the statutory regime governing State Universities in Karnataka. More importantly, the original appointment has survived judicial scrutiny before the Division Bench and thereafter before the Apex Court. What has attained finality, he contends, cannot be permitted to return to the judicial arena wearing the garb of a challenge to extension. He would characterize the present petition as an attempt by a different Professor to reopen a door already judicially closed. No fresh Search Committee is contemplated for continuance; no second *quo warranto* can be fashioned out of grounds already spent. The petition, he submits, deserves rejection at the threshold.

**THE CHANCELLOR:**

6. Sri Udaya Holla, learned senior counsel appearing for the Chancellor, would sail in the same direction. He submits that Section 13(4) itself contemplates a tenure of three years extendable by another term of like duration, thereby placing the outer span at six years. The statutory ritual of a Search Committee belongs to the threshold of initial appointment; it is not commanded afresh when the Chancellor exercises the distinct power of continuation. He, too, would therefore seek dismissal of the petition.

**THE APPOINTEE:**

7. Sri Aditya Sondhi, learned senior counsel appearing for the 4<sup>th</sup> respondent - the incumbent, would add another dimension to the defence. He submits that though traditional notions of locus stand considerably diluted in *quo warranto* and delay or laches may not operate with their usual rigour, the conduct, bias and *animus* of the relator cannot be rendered invisible to a constitutional Court. According to him, the very appointment now sought to be indirectly reopened, had earlier been assailed before a Division Bench on

substantially identical pleadings; *quo warranto* was refused and the challenge failed. The present petition, he would submit, is little more than a copy-paste resurrection of that earlier challenge. The matter thereafter reached the Apex Court and attained finality. What the law does not permit directly, it cannot permit through a relay of litigants, each taking a fresh turn at knocking on the same constitutional door. He would, therefore, seek dismissal of the petition.

8. Sri Narayana Bhat, learned counsel for the petitioner, would join issue. His rejoinder is that a challenge to the initial appointment cannot, by some process of legal osmosis, immunise a subsequent continuation from scrutiny. The two, according to him, are distinct juridical events. He would further submit that the observations of the Apex Court in the earlier round do not constitute the *ratio decidendi* and, at the highest, partake the character of an *obiter dicta*. They cannot, therefore, be erected as an impregnable wall against the present challenge. He would consequently urge that the petition be allowed and the 4<sup>th</sup> respondent be commanded to vacate the office.

9. I have bestowed my anxious consideration upon the rival submissions, traversed the material on record and given due thought to the statutory scheme and the precedents pressed into service.

**CONSIDERATION:**

10. The facts narrated hereinbefore are those that emerge from the pleadings of the parties. **The University is a creature of the Visvesvaraya Technological University Act, 1994 and must necessarily live, move and have its being within the four corners of that enactment.**

10.1. Section 13 of the Act is the statutory gateway to the office of the Vice-Chancellor: it delineates the office, the mode of appointment and the tenure. It reads as follows:

"13. **The Vice Chancellor.**- (1) The Vice-Chancellor shall be a whole time officer of the University and shall function as the chief academic and administrative head of the University.

**(2) The Vice-Chancellor shall be appointed by the Chancellor from a panel of three persons who are outstanding in the field of Engineering, Technology or education and recommended by the committee referred to in sub-section (3) of this section and such panel shall**

**not contain the name of any member of the sub-committee.**

(3) For the purpose of sub-section (2) the committee shall consist of a member of Academic Senate, a member of the Executive Council, a representative of Government and a person of eminence in the field of engineering, technology and industry nominated by the Chancellor:

Provided that if none of the persons recommended by the committee is willing to accept the appointment or if none of the persons recommended is acceptable to the Chancellor, the Chancellor may call for fresh recommendations from such committee:

Provided further that the first Vice-Chancellor shall be appointed by the Chancellor from out of a panel of names recommended by State Government.

**(4) The term of office of the Vice-Chancellor shall be three years extendable by another term of similar period at the discretion of the Chancellor:**

**Provided that the Vice-Chancellor may by writing under his hand addressed to the Chancellor and after giving three months notice resign his office.**

(4A) The Vice-Chancellor shall not be removed from his office except by an order of the Chancellor passed on the ground of willful omission or refusal to carry out the provisions of this Act or for abuse of the powers vested in him and on the advice tendered by the State Government on consideration of the report of an inquiry ordered by it under sub-section (4B).

(4B) For the purposes of holding an inquiry under this section, the State Government shall appoint a person who is or has been a Judge of the High Court or the Supreme Court. The inquiry authority shall hold the inquiry after giving an opportunity to make representation by the Vice-Chancellor and shall submit a report to the State Government on the action to be taken including penalty if any to be imposed, and the State Government shall on consideration of the report advise the Chancellor. The Chancellor shall act in accordance with such advice.

(5) The Chancellor may direct that a Vice-Chancellor whose term of office has expired shall continue in the office for such period not exceeding one year as may be specified in the direction.

(6) The emoluments and other service conditions of the Vice-Chancellor shall be such as may be determined by the Chancellor and shall not be varied to his disadvantage after his appointment.

(7) Where a temporary vacancy occurs or is likely to occur in the office of the Vice-Chancellor by reason of leave, illness or other cause, other than the expiry of the term, the Executive Council shall as soon as possible and subject to approval of the Chancellor make such arrangements for carrying on the duties of the office of the Vice Chancellor as it may think fit and until other arrangements are made, such officer of the University as may be nominated by the Chancellor for the purpose shall carry on the current duties of the office of the Vice Chancellor."

A plain reading of Section 13 of the Act reveals the architecture chosen by the Legislature. Entry into the office of Vice-Chancellor is through a panel of three outstanding persons in the fields indicated in sub-section (2), recommended by the Committee constituted under sub-section (3). That Committee itself is statutorily composed of a Member of the Academic Senate, a Member of the Executive Council, a representative of the Government and a person of eminence in engineering, technology and industry nominated by the Chancellor. Sub-section (4) then moves from appointment to tenure: the first term is three years

and is expressly made extendable by another term of similar duration at the discretion of the Chancellor.

10.2. Section 19 of the Act, which identifies the authorities of the University, is also germane and reads as follows:

**"19. Authorities of the University.- (1) The following shall be the authorities of the University, namely:-**

- (i) the Executive Council,**
- (ii) the Academic Senate.**

**(2) The Chancellor shall as soon as may be after the first Vice-Chancellor is appointed under sub-section (4) of section 10 constitute the Executive Council and the Academic Senate.**

**(3) The Executive Council shall consist of the following members namely:-**

- (a) the Vice-Chancellor, ex-officio Chairman;**
- (b) Secretary to Government in-charge of Higher Education or his nominee not less than the rank of Deputy Secretary to Government;
- (c) five persons representing Industry/business, trade/educational experts in the field of Engineering/Architecture and the Engineering professions, nominated by the Chancellor on the recommendation of the Vice-Chancellor. Out of them, one must belong to Scheduled Caste/Scheduled Tribe, one to backward community and one to religious minorities;
- (d) three representatives of the Government of Karnataka nominated by the State Government one of whom shall be the Director of Technical Education;

- (e) five representatives of the constituent colleges, not below the rank of Principal/Professor nominated by the Chancellor on the recommendations of the Vice Chancellor;
- (f) the nominee of the Universities Grant Commission;
- (g) two eminent persons connected with Engineering, Technology or allied sciences education co-opted by the Council.

(4) The term of office of the members of the Executive Council other than the ex-officio members shall be three years:

Provided that the term of office of any member nominated to fill a casual vacancy shall be the residuary term of his predecessor.

(5) Six members of the Executive council shall form the quorum for the meeting of the Executive Council. The members of the Executive Council shall not be entitled to receive any remuneration from the University except such daily and travelling allowances as may be prescribed.

(6) The Registrar shall act as non-member Secretary of the Executive Council."

(Emphasis supplied at each instance)

The statutory tapestry thus places the Executive Council and the Academic Senate amongst the authorities of the University. Against this backdrop, the chronology may be recapitulated.

10.3. The 4<sup>th</sup> respondent was initially appointed as the Vice-Chancellor of the Karnataka State Open University on 28-05-2019 and completed that tenure on 06-04-2022, whereafter

the Chancellor continued him for a further period of one year. While that continuation subsisted, the Notification dated 10-08-2022 invited applications to the office of Vice-Chancellor of the present University. The 4<sup>th</sup> respondent participated in the process and came to be appointed on 29-09-2022 for a period of three years. The Notification of appointment reads as follows:

"KARNATAKA GOVERNOR'S SECRETARIAT

No. GS 7 TUM 2022

Raj Bhavan  
Bengaluru,  
Date: 29-09-2022.

**NOTIFICATION**

WHEREAS, Dr. Karisiddappa, was appointed as the Vice Chancellor, Visvesvaraya Technological University, Belagavi under Section 13(2) of the Visvesvaraya Technological University Act, 1994, for a period of three years with effect from date of assuming charge vide Notification No. GS 22 TUM 2016 dated 24-09-2016. Further, Dr. Karisiddappa was continued for another term of three years with effect from 26-09-2019, under Section 13(4) of the Visvesvaraya Technological University Act, 1994, vide Notification No. GS 10 TUM 2019, dated 19-08-2019.

WHEREAS, Dr. Karisiddappa was directed to continue as Vice Chancellor, Visvesvaraya Technological University, Belagavi for a period of one-month w.e.f. 26-09-2022 or until a regular Vice Chancellor is appointed, whichever is earlier under Section 13(5) of the Visvesvaraya Technological University Act, 1994, vide Notification of even number dated 23-09-2022.

WHEREAS, the Selection Committee constituted under the provisions of Section 13(2) & (3) of the Visvesvaraya Technological University Act, 1994 has recommended a panel of three names for appointment of one of them as the Vice Chancellor, Visvesvaraya Technological University, Belagavi.

WHEREAS, the panel of names recommended by the Selection Committee has been considered.

NOW, THEREFORE, I, THAAWARCHAND GEHLOT, Governor of Karnataka & Chancellor of Visvesvaraya Technological University, Belagavi in exercise of the powers conferred on me by Section 13(2) of the Visvesvaraya Technological University Act, 1994 hereby appoint Dr. Vidyashankar S, Vice Chancellor Karnataka State Open University, Mysuru, as the Vice Chancellor, Visvesvaraya Technological University, Belagavi for a period of three years from the date of assuming charge.

Sd/-  
(THAAWARCHAND GEHLOT)  
Governor of Karnataka and  
Chancellor of Universities."

The three-year tenure under the aforesaid Notification was to run its course on 28-09-2025. Before the sands of that tenure ran out, the term is extended by another three years on 03-09-2025 by the following order:

"ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಸಚಿವಾಲಯ

KARNATAKA GOVERNOR'S SECRETARIAT

No. GS 05 TUM 2025

Raj Bhavan,  
Bengaluru,  
Dated: 03.09.2025

### **NOTIFICATION**

WHEREAS, Dr. Vidyashankar S., was appointed as the Vice Chancellor, Visvesvaraya Technological University, Belagavi under Section 13(2) of the Visvesvaraya Technological University Act, 1994 for a period of three years vide Notification No. GS 07 TUM 2022 dated 29-09-2022, from the date of assuming charge i.e., with effect from 30-09-2022, which will end on 29-09-2025.

WHEREAS, as per his request and having perused his accomplishment as the Vice Chancellor of Visvesvaraya

Technological University, Belagavi and his ideas of further goals to be achieved, merits for an extension.

NOW, THEREFORE, I THAAWARCHAND GEHLOT, Governor of Karnataka and Chancellor of Visvesvaraya Technological University, Belagavi, using my discretion and in exercise of the powers conferred on me by Section 13(4) of the Visvesvaraya Technological University Act, 1994, hereby extend the term of Dr. Vidyashankar S., as the Vice Chancellor of Visvesvaraya Technological University, Belagavi for another term of similar period with effect from 30-09-2025.

Sd/-  
(THAAWARCHAND GEHLOT)  
Governor of Karnataka and  
Chancellor of Universities

Sd/-  
03/09/2025  
(B. S. Prashant Kumar)  
Under Secretary to Governor (U)"

Thus, the appointment continued for 3 years from that date.

### **THE FIRST CHALLENGE:**

11.1. Between the dates 29-09-2022 and 03-09-2025, the appointment of the 4<sup>th</sup> respondent had become subject matter of the challenge. One Professor B.Shivaraj had called the said appointment dated 29-09-2022 in question by seeking a writ of *quo warranto* on identical grounds that are urged now. The Division Bench of this Court by its order dated 07-11-2023 passed in Writ Petition No.21681 of 2022 c/w Writ Petition No.23349 of 2022

rejected the challenge. The observations are necessary to be paraphrased for a decision in the subject *lis*.

" .... .... "

3. After service of notice, the State has entered appearance through the learned Additional Government Advocate; the Chancellor of the University & the University are represented by their Panel Advocates; and the 3rd respondent against whom a Writ of Quo Warranto is sought for is represented by his private counsel. The Chancellor of the University and the University together have filed a common Statement of Objections on 15.03.2023. The 3rd respondent has filed an application in I.A.No.1/2023 for the rejection of the writ petitions. The respondent-UGC spoke through its panel counsel. The UOI is represented by the learned CGC. All the learned advocates appearing for the answering respondents vehemently opposed the petitions making submission in justification of the appointment to the office in question. The contesting respondents too have relied upon a few Rulings in support of their stand.

4. Having heard the learned counsel for the parties and having perused the petition papers, we are not inclined to grant indulgence in the matter for the following reasons:

**(I) FOUNDATIONAL FACTS OF THE CASE AS EMERGING FROM THE RECORD:**

(a) The vacancy in the office of the Vice Chancellor of the respondent-VTU having occurred, the Search Committee came to be constituted vide Chancellor's Order dated 10.08.2022 issued u/s 13(3) of the VTU Act, 1994. It comprised of 4 persons viz., Dr.Himamshu Rai (Director, IIM, Indoor), Prof. M.S.Shivakumar (former Vice Chancellor, CMR University), Prof. Krupa Shankar (former Vice Chancellor of Uttara Pradesh Technical University) and Sri Jitendra P. Nayak (Executive Director, Sujirkar's Group, Hubli). The Special Secretary to Governor was appointed as the Convener of the Committee. Applications were invited for the post of Vice Chancellor vide Notification dated 10.08.2022. This Notification came to be followed by another Notification dated 16.08.2022. The last date for filing of the applications/nominations was 06.09.2022.

(b) Several candidates including the 3rd respondent in these petitions had staked their claim. The Committee having held deliberations concluded the selection proceedings vide report dated 24.09.2022 short-listing names of three of the persons in the fray. These were Prof. Anand Deshpande (the then sitting Registrar of VTU), Prof. Gopal Mugeraya (the Director of NIT, Goa) and Prof. S.Vidyashankar i.e., 3rd respondent herein (the then sitting Vice Chancellor of KSOU, Mysuru). The Chancellor issued the Notification dated 29.09.2022 appointing the 3rd respondent as the Vice Chancellor of the respondent University.

(c) The case in W.P.No.21681/2022 has been filed by Prof. B.Shivaraj on 31.10.2022 and the companion case in W.P.No.23349/2022 has been filed by Dr.K.Mahadev on 21.11.2022. Both these cases are represented by the same learned counsel on record. The 3rd respondent i.e., the incumbent of the office of the Vice Chancellor has filed an application in I.A.No.1/2023 in both these petitions on 25.03.2023 seeking their dismissal. Rejoinder and counter affidavits have been filed thereto by the petitioners.

## **(II) AS TO THE CREDENTIALS & CONDUCT OF PETITIONER-DR.K.MAHADEV:**

Petitioner –Dr.K.Mahadev in W.P.No.23349/2022, at page 15 of the petition has falsely averred 'Petitioner's has not been involved in any civil, revenue or criminal litigation in any capacity before any court or Tribunal..' (sic). However, this assertion is plainly false as is demonstrated from the following:

(a) He had held a press conference wherein serious allegations of corrupt practices against the 3rd respondent herein were leveled, when his name was being considered for the post of Vice Chancellor. This led to the 3rd respondent filing a civil suit in O.S.No.6362/2022 on 29.09.2022, wherein this petitioner happens to be one of the defendants. Learned XLII Additional City Civil Judge, Bengaluru City has issued an ex parte ad interim order of temporary injunction on 01.10.2022 which reads as under:

"Issue an ex parte ad-interim order of temporary injunction against restrain the defendants from publishing any news, newscast, telecast, newsflash, bulletin, update, information, gossip,

conversations, documentation, material report, communication of any kind which may damage the image or cause harm to the plaintiff and also from publishing, broadcasting, communicating or in any manner making available or causing or continuing to do so."

It is notable that he has filed the PIL on 21.11.2022 i.e., much after suit summons was served on him along with the order of temporary injunction. Several contentions have been taken by him in the Petition that are plainly defamatory of 3rd respondent.

(b) In W.P.Nos.25339-40/2003 filed by the then Vice Chancellor of Mysore University Prof. S.N.Hegde and in W.P.No.24135/2003 (GM-KLA), filed by one Dr.B.R.Ananthan, petitioner Dr.K.Mahadev happened to be the 4th respondent in both. He suffered a common judgment on 04.02.2004 whereby the Lokayukta proceedings instituted on the basis of his complaint came to be quashed, with caustic remarks, that were held to be defamatory of those Writ Petitioners. Very wild allegations were made by him as has been discussed in a reported case in PROF. S.N. HEGDE VS THE LOKAYUKTA, **2004 SCC OnLine Kar 70**.

(c) In W.P.No.870/2006 filed by Prof.S.N.Hegde against Lokayukta, a learned Single Judge of this Court vide order dated 1.12.2015 has quashed the Lokayukta proceedings in which act of bribery was alleged against this petitioner wherein, at internal page 4, it is observed against Dr.K.Mahadev as under:

"...It is the petitioner's belief that one Dr. K. Mahadev is the master mind behind these complaints, who is known to have a history of having filed such complaints against several former Vice Chancellors. All of which were found to be baseless. The petitioner's belief flows from the fact that Dr. Mahadev was also in the USA when Dr. Ramadas was there. They along with Kumaraswamy had engineered the complaint..."

(d) He had filed an FIR which came to be registered by V.V.Puram police as Crime No.34/2017 against the office bearers of Rajya Vokkaligara Sangha, Bengaluru. After investigation, the ChargeSheet was filed by the police for

offences punishable under sections 506, 504, 323 read with section 34 of IPC. The cognizance having been taken, learned XXIV Addl. CMM, Bengaluru, registered the same as C.C.No.17289/2017. A learned Single Judge of this court in CrI.P.No.2613/2018 between SRI.SATISH & OTHERS vs. STATE & DR.K.MAHADEV quashed the criminal proceedings vide order dated 13.04.2022.

(e) He had filed a PIL in W.P.No.19111/2006, in which the Mysore University, its Chancellor & Vice Chancellor were parties along with the State Government, challenging the proposal for conferring Honorary Doctorate Degrees on certain persons and excluding certain others from the proposal. He had made a bit wild allegations against the then Governor of the State who happened to be the ex officio Chancellor of the University. A Coordinate Bench of this Court headed by the then Chief Justice dismissed the same observing at para 5 of the judgment as under:

“...The Chancellor is not a mere signing machine to approve every proposal of the Syndicate. He is not expected to act mechanically to grant or to refuse approval to the proposal of the Syndicate. There can be meaningful interaction and exchange of views between the Chancellor and the Syndicate. Such interactions and exchange of views will only facilitate smooth functioning of the University and increase the quality and credibility of the decisions of the University. It does not amount to interference with the power of the Syndicate. Therefore, the contention of the petitioner that the first respondent Chancellor has exceeded his right, power and jurisdiction is totally misconceived...”

(f) There are several other cases too in which he was a party. All these have been suppressed by him, though the PIL pro forma required their compulsive disclosure. Such a requirement is justifiably enacted in the extant Rules to facilitate ascertainment of bonafide of the PIL litigants, who at times, have hidden agenda. The explanation offered by his counsel for such non-disclosure, is far from satisfactory, to say the least.

**(III) AS TO THE CONDUCT AND CREDENTIALS OF PETITIONER-PROF.B.SHIVARAJ:**

In W.P.No.21681/2022, petitioner-Prof. B.Shivaraj claims to be an educationist and a former acting Vice Chancellor of Mysore University. He has retired as a Professor from the said University. He is a Senior Fellow of ICSSR and he was a Member of AICTE Expert Committee. This petitioner asserts in so many words that he is a public-spirited citizen and has no personal interest in the lis. He also avers at page 15 of the petition 'That the Petitioner respectfully submits that Petitioner's has not been involved in any civil, revenue, criminal litigation in any, capacity before any court or Tribunal...' This assertion is demonstrably false because of the following:

(a) The petitioner-B.Shivaraj was arrayed as a delinquent along with another in a disciplinary enquiry way back in 2015. By way of penalty, he was compulsorily retired vide Syndicate Resolution dated 21.11.2016 on a proven misconduct. However, in appeal, the penalty came to be scaled down by reducing his salary to the 'minimum pay'.

(b) In W.P.No.33386/2015, another learned Single Judge of this court at para 16 of the judgment dated 15.07.2019 has observed against him as under:

"...It has been held by this Court as also Hon'ble Supreme Court that it is not open for the Tribunal or Courts to re-appreciate the evidence so as to interfere in the enquiry proceedings and also for reducing the punishment. The only scope in such proceedings is to find out whether the Enquiry Officer has committed any basic error and there is violation of principles of natural justice or any provisions of law. No such circumstances exist in the instant case. In the circumstances, I hold that University is justified in punishing the petitioner for the charges framed against the petitioner..."

(c) In W.P.No.33863/2015, he had laid a challenge to the reduced penalty order contending that the government vide order dated 12.6.2017 had set at naught the entire Resolution levying the penalty and therefore, the order reducing the penalty was also non-est. Another learned Single Judge of this court vide order dated 10.08.2022 dismissed the Writ Petition observing at paras 7 & 8 as under:

"...The Government in its order has specially refused to enter into the aspect of decision of the Syndicate regarding reduction of pay on the ground that the matter is sub-judice...Needless to state that the order of Government does not have the effect of wiping off that portion of the order of the Syndicate relating to reduction of pay in light of the observations made in the order that "the matter was sub-judice, no decision is taken in that regard."

(d) The penalty order made in the D.E came to be set aside by the Government on 03.05.2023 may be true. But that is no answer for not disclosing a few writ petitions which he had filed before this Court and suffered adverse orders.

5. It hardly needs to be stated that one who invokes PIL jurisdiction, more particularly with a prayer for a Writ of Quo Warranto, has to approach the court with 'clean heart, clean mind and clean objective' vide *STATE OF JHARKAND vs. SHIV SHANKAR SHARMA*, **2022 SCC OnLine SC 1541**. Learned advocates appearing for the contesting respondents are more than justified in contending that the Writ Petitions lack bonafide. Their contention that because of the caveat entered by the 3rd respondent qua Dr.K.Mahadev, he has setup Prof.B.Shivaraj to file an independent petition, cannot be discounted in the pleaded circumstances. The text, tenor & language of these petitions are ditto, barring in those paragraphs which mention personal credentials of the petitioners. These are 'copy-paste' petitions couched in verbatim duplicate language. The same counsel on record represents the petitioners has drafted these petitions, does not dilute our this impression, even in the least. The persons presenting & prosecuting social action litigations should act in bonafide; those seeking to secure vengeance qua certain private parties cannot be granted indulgence by the Court of Constitutional jurisdiction vide *CHANCHALPATI DAS vs. STATE OF WEST BENGAL*, **2023 SCC OnLine SC 650**, wherein it is observed that parties cannot take up court proceedings as a platform for settling their personal scores or for nurturing their personal ego.

**6. Learned counsel for the petitioners has advanced his contentions as to the violation of UGC Guidelines of 2018 whilst forming the Search Committee and later**

treating its recommendation for appointment to the post of Vice Chancellor. He pressed into service certain Rulings of the Apex Court to the effect that these Guidelines are mandatory and have to be followed notwithstanding the provisions of State enactments in variance thereto. The Rulings cited by him are **GAMBHIRDAN K. GADHVI vs. STATE OF GUJARAT AND OTHERS, (2022) 5 SCC 179; STATE OF WEST BENGAL vs. ANINDYA SUNDAR DAS AND OTHERS, 2022 LiveLaw (SC) 831; PROF.(DR.) SREEJITH P S vs. DR.RAJASREE M S AND OTHERS, 2022 SCC OnLine SC 1473; PROF. NAGENDRA SINGH BHANDARI vs. RAVINDRA JUGRAN AND OTHERS, 2022 SCC OnLine SC 1555; DR.K.K.VIJAYAN vs. THE CHANCELLOR in W.P.(C)No.16457/2021 disposed off on 14.11.2022.** The learned Advocates appearing for the respondents too have advanced their counter contentions. However, in our considered opinion, petitions lack bonafide and petitioners have not approached the court with 'clean hands, clean heart & clean objective'. This apart, there is a short unexplained delay on the part of the petitioners in calling in question the subject appointment to a public office. The Vice Chancellor, ideally speaking, is the "Conscience Keeper of the University" vide **MARATHWADA UNIVERSITY vs. SESHRAO BALWANT RAO CHAVAN, (1989) 3 SCC 132.** Whilst examining the appointment of such a high functionary, this aspect cannot be lost sight off. After all, Mahatma Gandhi said "means are as important as the ends".

7. It has been a settled position in the domain of public law that where a litigant, more particularly dominant litis is not fair in approaching the court inasmuch as he has not laid bear all facts including those of his credentials, ordinarily, the lis will not be examined on merits. The Apex Court in **K.JAYARAM vs. BDA, (2022) 12 SCC 815**, has observed:

"... a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter..."

Therefore, we are not inclined to undertake the examination of the contentions and counter contentions of the parties on merits of the matter.

In the above circumstances, these petitions are dismissed, costs having been made reluctantly easy.

We make it clear that we have not expressed any opinion as to the regularity or otherwise of the entire proceedings that culminated into the appointment of the 3rd respondent in these petitions, as the Vice Chancellor of 5th respondent-University.

It is also made clear that the observations hereinabove made being confined to the disposal of these cases, the same shall not have any bearing on any other proceedings by and between the parties."

(Emphasis supplied)

11.2. This order is challenged by Prof.B.Shivaraj before the Apex Court in S.L.P. Diary No.5941 of 2024. This comes to be rejected by the Apex Court on 09-04-2024 not in limine, but by making certain observations. The order in S.L.P. reads as follows:

"1. Delay condoned.

2. The petitioner filed a writ petition under Articles 226 and 227 of the Constitution of India before the High Court of Karnataka seeking a writ of quo warranto to declare the appointment of respondent no.3 as Vice-Chancellor of the Visvesvaraya Technological University at Belagavi, Karnataka illegal and remove the said respondent from the office of Vice-Chancellor. A Division Bench of the High Court has dismissed the PIL petition without going into the merits of appointment of respondent no.3, after taking adverse view with regard to the conduct and credentials of the petitioner.

3. It is urged on behalf of the petitioner that a misleading averment was made before the High Court to the fact that the petitioner had suffered punishment pursuant to disciplinary

proceedings. The fact of the matter is that he was eventually exonerated in those enquiries. However, petitioner did not get any opportunity to bring such material on record before the High Court. It is also contended that the other circumstances relied upon by the High Court can also be well explained by the petitioner.

**4. So far as the challenge to the appointment of respondent no.3 as Vice-Chancellor of the University is concerned, we do not find any merit in such a challenge. The view taken by the Division Bench of the High Court does not warrant any interference. As regard to the adverse comments made by the High Court on the conduct and credentials of the petitioner, it seems to us that the petitioner has some explanation worth consideration.**

5. We, therefore, deem it appropriate to dispose of this special leave petition with liberty to the petitioner to approach the High Court with an explanation on the adverse comments made against him in the impugned order. We request the High Court to take a sympathetic view and pass appropriate order as it may deem fit.

6. All pending applications, if any, also stand disposed of."

(Emphasis supplied)

Paragraph-4 of the order of the Apex Court *supra* also observes that so far as the challenge to the appointment of respondent No.3 of the present 4<sup>th</sup> respondent as Vice-Chancellor of the University is concerned, the Apex Court found no merit in such a challenge and with regard to the view taken by the Division Bench it was observed that it did not call for any interference. As regards adverse comments made by the High Court on the conduct and

credentials of the petitioner therein, the Apex Court felt that the petitioner has some explanation worth consideration. He was given liberty to approach the High Court with an explanation on the adverse comments and the High Court was directed to take a sympathetic view.

11.3. A perusal at the pleadings now is a complete rehash of what was pleaded before the Division Bench by a different person. The petitioner is changed, but the challenge has remained and the grounds on which the earlier challenge was negated also remained. However, since submissions are made, I deem it appropriate to answer the contentions advanced by the petitioner.

**THE PRESENT CHALLENGE:**

12. At the outset, it must be borne in mind that the appointment of the 4<sup>th</sup> respondent as Vice-Chancellor is now in continuation and not initial appointment. **The challenge to the initial appointment has met its end as noted hereinabove. The petitioner is now all guard with new grounds perhaps a old wine in a new bottle.** What is sought is a writ of *quo*

*warranto*. It is trite, for a writ of *quo warranto*, as long as the person is holding public office any tax payer is entitled to question. Before embarking upon the journey of consideration of the issue, I deem it appropriate to notice the broad contours by way of liberties and limitations in issuance of writ in the nature of *quo warranto*. The contours would be going through the law declared by the Apex Court from time to time, right from the judgment rendered in the case of **UNIVERSITY OF MYSORE v. C.D. GOVINDA RAO**<sup>1</sup>. The entire judicial vista till today is as follows:-

12.1. The Apex Court in **UNIVERSITY OF MYSORE v. C.D. GOVINDA RAO**, observes as follows:

".... ....

6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of *quo warranto* which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.

As Halsbury [*Halsbury's laws of England*, 3<sup>rd</sup> Edn. Vol., II, p.145] has observed :

**"An information in the nature of a *quo warranto* took the place of the obsolete writ of *quo warranto* which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order that the**

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<sup>1</sup> (1963) SCC OnLine SC 15

right to the office or franchise might be determined."

**Broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has not title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.**

7. In the present case, it does not appear that the attention of the Court was drawn to this aspect of the matter. The judgment does not show that any statutory provisions for rules were placed before the Court and that in making the appointment of appellant No. 2 these statutory provisions had been contravened. **The matter appears to have been argued before the High Court on the assumption that if the appointment of appellant No. 2 was shown to be inconsistent with the qualification as they were advertised by appellant No. 1, that itself would justify the issue of a writ of quo warranto.** In the present proceedings, we do not propose to consider whether this assumption was well-founded or not. We propose to deal with the appeals on the basis that it may have been open to the High Court to quash the appointment of appellant No. 2 even if it was shown that one or the other of the qualifications prescribed by the advertisement published by appellant No. 1 was not satisfied by him."

## 12.2. The Apex Court in **STATESMAN (P) LTD. v. H.R.**

**DEB**<sup>2</sup>, observes as follows:

"... .."

**13.** Once this is so held the appeal must fail. But we cannot overlook the fact that even if there be some doubt that is to be resolved in favour of upholding the appointment on the ground that the Legislature itself contemplates that such appointments should not be called into question. Although the provisions of s. 9 cannot shut out an inquiry (if there is a clear usurpation) for purposes of a writ of quo warranto but at least in an unclear case the intent of the legislature is entitled to great weight. The Legislature has created the conditions of appointment and with its last voice has shut out inquiry. The provisions of s. 7(3)(d) therefore, are not so absolute as to be wholly mandatory in the same way as the provisions of other clauses are since they admit of no doubt, and therefore do not require construction. **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.** If a station master were appointed we can readily question the appointment but when a person exercising judicial functions is appointed one cannot be too astute to say that the person does not hold a judicial office when it must at least be conceded that he holds an office of some kind. Nor does the argument that magistrates will claim to be appointed Judges of the High Court need detain us. The scheme of Chapter V of Part VI of the Constitution has its own affect on the meaning of the expressions 'judicial office' and 'judicial service'. In any case the use of the same expression in any other enactment not in pari materia can have no bearing upon the Industrial Disputes Act and vice versa. In the Constitution these words must bear the meaning which the context dictates and in that connection the history of appointment of Judges cannot be overlooked.

**14.** Lest our meaning be extended by Government to cases undeserving of serving under s. 9, we wish to make it clear that the intention of the Legislature really is that men who can be described as independent and with sufficient judicial experience must be selected. The mention of High Court Judges and District Judges earlier in the same section indicates that

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<sup>2</sup> **1968 SCC OnLine SC 100**

ordinarily judicial officers from the civil judiciary must be selected at last so long as the separation of judiciary from the Executive in the public services is not finally achieved. The appointment of a person from the ranks of civil judiciary carries with it an assurance which is unique. The functions of a Labour Court are of great public importance and quasi civil in nature. Men of experience on the civil side of the law are more suitable than Magistrates. **Person employed on multifarious duties and in addition performing some judicial functions, may not truly answer the requirement of s. 7 and it may be open in a quo warranto proceeding to question their appointment on the ground that they do not hold essentially a judicial office because they primarily perform other functions.** For it cannot be denied that the expression "holding a judicial office" signifies more than discharge of judicial functions while holding some other office. The phrase postulates that there is an office and that that office is primarily judicial. Office means a fixed position for performance of duties. In this case the distinction was unsubstantial because the Magistrate was holding a fixed position for nineteen years and performing functions primarily of a judicial character. The case was not fit for interference by a writ in view of the provisions of s. 9 of the Act."

12.3. The Apex Court in **A.N. SHASHTRI v. STATE OF PUNJAB**<sup>3</sup>, observes as follows:

".... ....

**6.** Mr Rao counsel for the appellant relied upon a decision of this Court in *Statesman (Private) Ltd. v. H. Deb* [AIR 1968 SC 1495 : (1968) 3 SCR 614 : 1968 Lab IC 1526] at p. 621 of the Reports. Hidayatullah, C.J. speaking for the Constitution Bench indicated:

**"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."**

In the circumstances which we have narrated, it is indeed difficult to hold that the appellant did not have the requisite qualification.

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<sup>3</sup> **1987 SCC OnLine 782**

**7.** Ayurveda is the traditional method of medical attention prevalent in this country. Modern science and people associated with the medical faculties of the modern age have gradually accepted the position that Ayurveda provided a fully developed medical process. In the post-medieval India the system had suffered a setback but in recent years, the Ayurved system has been revived. In the post-independence period, the system has been accepted as a regular course of study and recognised as a system of therapy. The High Court should have given due consideration to the background and the history of the matter.

**8.** There is clear material that the petitioners before the High Court were the once-upon-a-time students of the appellant. Ordinarily one would expect obligations, piety and reverence in the conduct of the writ petitioners towards the appellant. This expectation would be more justified in the traditional system of Ayurved culture. Surprisingly that seems to have been totally wanting. **The appellant has, on the other hand, alleged that the writ petition was the outcome of malice and ill-will. The High Court did not appropriately advert to this aspect."**

12.4. The Apex Court in **R.K. JAIN v. UNION OF INDIA**<sup>4</sup>, observes as follows:

".... ....

**13.** The remedy under Article 32 of the Constitution itself is a fundamental right to enforce the guaranteed rights in Part III. **This Court shall have power to issue writ of habeas corpus, mandamus, certiorari, quo warranto or any other appropriate writ or direction or order appropriate to the situation to enforce any of the fundamental rights** (power of High Court under Article 226 is wider). Article 144 enjoins that all authorities, civil and judicial, in the territory of India shall act in aid of this Court. Article 142(1) empowers this Court to make such orders as is necessary for doing complete justice in any cause or matter pending before it. Subject to the provisions of any law made in this behalf by the Parliament, by clause (2) of Article 142, this Court shall "have all and every power to make any order for the purpose of securing the

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<sup>4</sup> (1993) 4 SCC 119

*attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself".*

.... ....

**74.** Shri Harish Chander, admittedly was the Senior Vice-President at the relevant time. The contention of Shri Thakur of the need to evaluate the comparative merits of Mr Harish Chander and Mr Kalyansundaram a seniormost member for appointment as President would not be gone into in a public interest litigation. Only in a proceedings initiated by an aggrieved person it may be open to be considered. **This writ petition is also not a writ of quo warranto. In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person.**

12.5. The Apex Court in **ARUN SINGH v. STATE OF BIHAR**<sup>5</sup>, observes as follows:

".... ....

**13.** The order imposing penalty was not before the High Court. There was nothing to show that the said order fulfilled the conditions precedent for invoking the provisions of Section 139(1)(f) of the Act. The High Court therefore, in our opinion, completely misdirected itself in holding that as the appellant had absented himself from duty the same constituted misconduct and thus his election was void. The High Court did not go into the correctness or otherwise of the order of the State Election Commission. On what premise the power of judicial review was exercised by the High Court is not indicated. No cogent or sufficient reasons have been given by the High Court for setting aside the well-considered order of the State Election Commission. Furthermore, **issuance of a writ of quo warranto is discretionary and such a writ should be issued only upon a clear finding that the appointment to a public office was contrary to the statute.** For the said purpose it was obligatory on the part of the High Court to arrive

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<sup>5</sup> (2006) 9 SCC 375

at a finding that the disqualifying clause contained in Section 139(1)(f) was squarely attracted in the case of the appellant, in the light of the order of the State Election Commission. Evidently, the appellant was not disqualified."

12.6. The Apex Court in **B. SRINIVASA REDDY v. KARNATAKA URBAN WATER SUPPLY & DRAINAGE BOARD EMPLOYEES' ASSN.**<sup>6</sup>, observes as follows:

"... .."

***Writ of quo warranto***

**43. Whether a writ of quo warranto lies to challenge an appointment made "until further orders" on the ground that it is not a regular appointment? Whether the High Court failed to follow the settled law that a writ of quo warranto cannot be issued unless there is a clear violation of law?** The order appointing the appellant clearly stated that the appointment is until further orders. The terms and conditions of appointment made it clear that the appointment is temporary and is until further orders. In such a situation, the High Court, in our view, erred in law in issuing a writ of quo warranto the rights under Article 226 which can be enforced only by an aggrieved person except in the case where the writ prayed for is for *habeas corpus*.

.... ..

**50.** The official memorandum dated 23-12-1994 deals with reappointment of retired government servants and granting extension of service to retired government servants. As already stated, the appellant is not a government servant nor a retired government servant. The official memorandum is an administrative instruction which is contrary to the provisions of the Act and the statutory Rules; neither the Act nor the Rules prescribe any age of retirement for the Managing Director of the Board. On the other hand, having regard to the disqualification prescribed by Section 7(1)(d) of the Act to the effect that an officer or servant of the Board cannot be appointed as Managing Director, the High Court could not have read an additional disqualification that a retired officer or a

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<sup>6</sup> (2006) 11 SCC 731 (2)

servant of the Board also cannot be appointed as Managing Director of the Board. The memorandum dated 23-12-1994 is in no manner applicable to the appointment in question and it is even otherwise ineffective inasmuch as it is an administrative instruction which is contrary to the provisions of the Act and the Rules. The High Court, in our opinion, erred in ousting the appellant from his service by issue of a *writ of quo warranto* on the ground that the appellant having retired from this service of the Board on 31-1-2004 suffered disqualification under the said memorandum. By a reading of the Act and the Rules the appellant acquired qualification for appointment on 31-1-2004 on his retirement and the view of the High Court that the appellant is disqualified on 31-1-2004 on his retirement from service of the Board is not only contrary to the Act and the Rules but is also plainly opposed to the language of the memorandum itself. Even otherwise, **no writ of quo warranto could have been issued on the ground that even though the appointment is contrary to any statutory rule it is contrary to the administrative instruction which the High Court holds as disclosed by the policy of the Government. There is no warrant to have taken such a view at all.**

**51.** It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. This Court in *R.K. Jain v. Union of India* [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that **in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no *locus standi* to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner. Having regard to the fact that neither Respondents 1 and 2 were or could have been candidates for the post of Managing Director of the Board and the High Court could not have gone beyond the limits of *quo warranto* so very well delineated by a**

**catena of decisions of this Court and applied the test which could not have been applied even in a certiorari proceedings brought before the Court by an aggrieved party who was a candidate for the post.**

**52. The judgment impugned in this appeal not only exceeds the limit of *quo warranto* but has not properly appreciated the fact that the writ petition filed by the Employees' Union and the President of the Union, Halakatte was absolutely lacking in bona fides. In the instant case, the motive of the second respondent Halakatte is very clear and the Court might in its discretion decline to grant a *quo warranto*.**

**53.** This Court in *A.N. Shashtri v. State of Punjab* [1988 Supp SCC 127 : 1988 SCC (L&S) 536 : (1988) 7 ATC 290] held that **the writ of *quo warranto* should be refused where it is an outcome of malice or ill will.** The High Court failed to appreciate that on 18-1-2003 the appellant filed a criminal complaint against the second respondent Halakatte, that cognizance was taken by the criminal court in CC No. 4152 of 2003 by the Jurisdictional Magistrate on 24-2-2003, process was issued to the second respondent who was enlarged on bail on 12-6-2003 and the trial is in progress. That apart, the second respondent has made successive complaints to the Lokayukta against the appellant which were all held to be baseless and false. This factual background which was not disputed coupled with the fact that the second respondent Halakatte initiated the writ petition as President of the 1st respondent Union, which had ceased to be a registered trade union as early as on 2-11-1992 suppressing the material fact of its registration having been cancelled, making allegations against the appellant which were no more than the contents of the complaints filed by him before the authorities which had been found to be false after thorough investigation by the Karnataka Lokayukta, would unmistakably establish that the writ petition initiated by Respondents 1 and 2 lacked in bona fides and it was the outcome of the malice and ill will the 2nd respondent nurses against the appellant. **Having regard to this aspect of the matter, the High Court ought to have dismissed the writ petition on that ground alone and at any event should have refused to issue a *quo warranto*, which is purely discretionary. It is no doubt true that the strict rules of *locus standi* are relaxed to an extent in a *quo warranto* proceedings. Nonetheless an imposter**

**coming before the Court invoking public law remedy at the hands of a constitutional court suppressing material facts has to be dealt with firmly.**

.... ....  
**55.** It is useful to refer to *University of Mysore v. C.D. Govinda Rao* [(1964) 4 SCR 575 : AIR 1965 SC 491] , SCR at pp. 580-81:

"As *Halsbury* has observed [ *Halsbury's Laws of England*, 3rd Edn., Vol. 11, p. 145.] :

**'An information in the nature of a *quo warranto* took the place of the obsolete writ of *quo warranto* which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.'**

**Broadly stated, the *quo warranto* proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of *quo warranto* gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of *quo warranto*, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not."**

**56.** It is also beneficial to refer to the decision of this Court in *Ghulam Qadir v. Special Tribunal* [(2002) 1 SCC 33] , SCC p. 54, para 38 which reads thus:

"38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or *quo warranto*. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been

violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."

**57. It is settled law that a writ of quo warranto does not lie if the alleged violation is not of a statutory nature.** Three judgments relied on by Mr P.P. Rao can be usefully referred to in the present context.

**58.** In *A. Ramachandran v. A. Alagiriswami* [AIR 1961 Mad 450 : ILR 1961 Mad 553] the Court observed in paras 74 and 104 as under: (AIR pp. 465 & 472)

"Where an authority has power to make rules relating to a subject-matter and also the power to decide disputes arising in the field occupied by that subject-matter, the two powers and functions must be kept distinct and separate. This dispute must be decided with reference to the rules in force at the time the adjudication had to be made and, the rule-making power cannot be invoked in relation to that adjudication.

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It was also contended that it was incumbent on the State Government to follow the principle of appointment as laid down in 1932 G.O. so as to avoid arbitrariness of nepotism. Reliance was placed upon the decision in *K. Nagarathnammal v. S. Ibrahim Saheb* [ (1955) 2 Mad LJ 49 : AIR 1955 Mad 305 (FB)] for the position that even non-statutory regulations and rules contained in the Board's Standing Orders are binding on the State Government, and that it cannot depart from such rules arbitrarily and capriciously to suit the exigencies of a particular situation. In that case the Government purported to exercise a revisional power over the orders of the Board of Revenue which it did not have as per Board's Standing Orders. The exercise of that power by the Government was sought to be justified on the ground that the executive instructions contained in the

Board's Standing Orders could at any time be modified or amended and that if the Government had power to bring about such modifications it followed that the Government had power of revision though in terms such power was not conferred upon it."

**59.** In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat* [(2003) 4 SCC 712 : 2003 SCC (L&S) 565] it was held by this Court that **a writ of quo warranto can only be issued when the appointment is contrary to the statutory rules.** The judgment in *Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. to Govt. of Haryana* [(2002) 6 SCC 269] was also relied on.

**60 [Ed.: Para 60 corrected vide Official Corrigendum No. F.3/Ed.B.J./90/2006 dated 12-12-2006.]** . Thus it is seen that **a writ of quo warranto does not lie if the alleged violation is not of a statutory provision.**

.... ....  
**79.** But the High Court of Delhi in *P.L. Lakhanpal v. Ajit Nath Ray* [AIR 1975 Del 66 : (1975) 77 Punj LR (D) 17 (FB)] held as under: (AIR p. 74, para 20)

"20. Another facet of the preliminary objection relates to the allegations of mala fides made in the petition. It will bear repetition to state that the preliminary objection is on the assumption and not admission that the appointment of Justice A.N. Ray was mala fide. It is indisputable that mala fide action is no action in the eye of the law. **But to my mind, the mala fides of the appointing authority or, in other words, the motives of the appointing authority in making the appointment of a particular person are irrelevant in considering the question of issuing a writ of quo warranto.**"

**80.** The discretion available to the competent authority under the Rules has been exercised by the appointing authority in making the appointment of the appellant. That could not have been annulled by the High Court. In Writ Petition No. 44001 of 2005 decided on 12-4-2002, the very High Court had directed the Government by a direction akin to mandamus to immediately take steps to appoint the Managing Director of the Board in accordance with the Act and the Rules. **The present appointment of the appellant was made under the provisions of the Act and the Rules. This appointment could not have been interdicted by a writ of quo**

**warranto as it amounted to issuance of writ of quo warranto to disobey the mandamus already issued and is in operation. Such a course adopted by the High Court is contrary to law** declared by this Court in *Rajendra Prasad Yadav v. State of M.P.* [(1997) 6 SCC 678]

.... ....

**84.** In our opinion, the finding of legal *mala fides* is unsustainable being based on a misunderstanding of the law and facts. When a competent and experienced officer of an outstanding merit is appointed to a higher post on contract basis after his superannuation from service in the larger public interest, it does not suffer from legal malice at all. The decision of the then Chief Minister, Shri S.M. Krishna, recorded in the file is also extracted by the High Court at p. 69 of SLP paper-book, Vol. II. In the context of the note put up by the Secretary of the Department, it is again extracted at pp. 67 and 68 which clearly bring out the fact that the appointment was made in the interest of the Board and the State at a time when nobody else other than the appellant could have served the interests of the State better. The High Court failed to appreciate the element of urgency involved in making the appointment because of impending negotiations with World Bank scheduled for 9-2-2004. The writ petition, in our opinion, was motivated as Respondent 1 had lodged a false complaint to the Lokayukta against the appellant which was found to be baseless by the Lokayukta (Annexure P-9). **A petition praying for a writ of quo warranto being in the nature of public interest litigation, it is not maintainable at the instance of a person who is not unbiased.** The second respondent is the President of the first respondent Union. He has chosen this forum to settle personal scores against his erstwhile superior officer after his retirement. The proceeding, in our view, is not meant to settle personal scores by an employee of the department. The High Court, in our view, ought to have dismissed the writ petition filed by Respondent 1 at the threshold.

.... ....

**96.** At any event, implicit in the finding of the Division Bench that **the appointing authority has no right to appeal in quo warranto proceedings, is that the Court cannot probe the mind of the appointing authority in a motion for quo warranto.** The High Court erred in probing the mind of the Government and acted contrary to its own finding on the role of the appointing authority in *quo warranto* proceedings. The reasons felt out by the learned

Judges of the Division Bench are not sustainable in law and the impugned judgment is liable to be interfered with in these appeals. The learned Judges are not right in quashing the appointment of the appellant as Managing Director on the misconception that he has been reappointed to the said office, whereas it was a fresh appointment under the provisions of the Act and in accordance with the prescribed qualification and eligibility under the Act. Further the appointee holds the office during the pleasure of the Government as provided under Section 6(1) of the Act. **The learned Judges are not correct in holding that the Government is not affected by allowing the writ of *quo warranto* against the appointee and observed that the Government ought not have filed the appeal. It is unfortunate that the learned Judges have observed that the Government has filed the appeal at the instance of the appointee. The learned Judges, in our opinion, failed to appreciate that it is the duty of the Government to justify the appointment, as such there is no wrong in filing the writ appeal.**

**97.** In the result, we hold:

- (a) That the appellant was not disqualified for appointment as Managing Director w.e.f. 1-2-2004.
- (b) There is no bar for appointment to the post in question on contract basis. The Government has absolute right to appoint persons on contract basis.
- (c) **The writ of *quo warranto* does not lie if the alleged violation is not of a statutory provision.**
- (d) There is no violation of Section 4(2) of the Act and Rule 3 of the Rules because the appellant had experience in administration and capacity in commercial matters before he was appointed as Managing Director on contract basis by the Government.
- (e) The Government has no doubt power to make contractual appointment until further orders. The power includes the power to make appointment

on substantive basis, temporary, officiating basis, ad hoc basis, daily wages or contractual basis.

- (f) The writ filed by Respondents 1 and 2 is motivated.
- (g) The petitioners in the writ petition, Respondent 1 herein—which is an unregistered association under the Trade Unions Act cannot maintain the writ petition.
- (h) The findings of legal *mala fides* is unsustainable and has no basis.”

12.7. The Apex Court in **KALYANI MATHIVANAN v. K.V.**

**JEYARAJ**<sup>7</sup>, observes as follows:

“**S.J. MUKHOPADHAYA, J.**— These appeals have been preferred by the appellants against a common judgment and order dated 26-6-2014 passed by the Division Bench of the Madras High Court, Madurai Bench in *K.V. Jeyaraj v. Chancellor of Universities* [*K.V. Jeyaraj v. Chancellor of Universities*, 2014 SCC OnLine Mad 2701 : (2014) 4 CTC 257] , Writ Petition (MD) No. 11350 of 2012 and Writ Petition (MD) No. 3318 of 2013.

**2. The aforesaid writ petitions were preferred by K.V. Jeyaraj and I. Ismail, respondents/writ petitioners praying for issuance of a writ of quo warranto directing the appellant Dr Kalyani Mathivanan to show cause under what authority she continues to hold the office of the Vice-Chancellor, Madurai Kamaraj University.**

.... ....

**62.** In view of the discussion as made above, we hold:

**62.1.** To the extent the State legislation is in conflict with the Central legislation including subordinate legislation made by the Central legislation under Entry 25 of the Concurrent List shall be repugnant to the Central legislation and would be inoperative.

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<sup>7</sup> (2015) 6 SCC 363

**62.2.** The UGC Regulations being passed by both the Houses of Parliament, though a subordinate legislation has binding effect on the universities to which it applies.

**62.3.** The UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central universities and colleges thereunder and the institutions deemed to be universities whose maintenance expenditure is met by UGC.

**62.4.** The UGC Regulations, 2010 are directory for the universities, colleges and other higher educational institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, the UGC Regulations, 2010 are partly mandatory and is partly directory.

**62.5.** The UGC Regulations, 2010 having not been adopted by the State of Tamil Nadu, the question of conflict between the State legislation and the Statutes framed under the Central legislation does not arise. Once they are adopted by the State Government, the State legislation to be amended appropriately. In such case also there shall be no conflict between the State legislation and the Central legislation.

**63.** In view of the reasons and finding as recorded above, we uphold the appointment of Dr Kalyani Mathivanan as Vice-Chancellor, Madurai Kamaraj University as made by G.O. (1D) No. 80, Higher Education (H2) Department, Government of Tamil Nadu dated 9-4-2012 and set aside the impugned common judgment and order dated 26-6-2014 passed by the Division Bench of the Madras High Court, Madurai Bench in *K.V. Jeyaraj v. Chancellor of Universities* [*K.V. Jeyaraj v. Chancellor of Universities*, 2014 SCC OnLine Mad 2701 : (2014) 4 CTC 257] . The appeals are allowed but in the facts and circumstances of the case, there shall be no order as to costs."

12.8. The Apex Court in **GAMBHIRDAN K. GADHVI v. STATE OF GUJARAT**<sup>8</sup>, observes as follows:

" .... .... "

**15. By way of this writ petition filed under Article 32 of the Constitution of India, the petitioner has prayed for a writ of quo warranto by challenging the appointment of Respondent 4 herein as Vice-Chancellor of the SP University — Respondent 2 herein.**

**16.** When a writ of quo warranto will lie has been dealt with by this Court in *Rajesh Awasthi v. Nand Lal Jaiswal* [*Rajesh Awasthi v. Nand Lal Jaiswal*, (2013) 1 SCC 501 : (2013) 1 SCC (Cri) 521 : (2013) 1 SCC (L&S) 192]. In para 19, it has been observed and held as under : (SCC p. 514)

**"19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions.** This Court in *Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy to Govt. of Haryana* [*Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy to Govt. of Haryana*, (2002) 6 SCC 269] held that **a writ of quo warranto can be issued when appointment is contrary to the statutory provisions.** In *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.*, (2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)] , this Court has reiterated the legal position that **the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules.** The said position has been reiterated by this Court in *Hari Bansh Lal v. Sahodar Prasad Mahto*, (2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771] wherein this Court has held that for the issuance of **writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules."**

**17.** In *Armed Forces Medical Assn. v. Union of India* [*Armed Forces Medical Assn. v. Union of India*, (2006) 11 SCC 731 (1) : (2007) 1 SCC (L&S) 548 (1)] , it has been observed by this Court that **strict rules of locus standi are relaxed to some extent in a quo warranto proceedings. It is further**

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<sup>8</sup> (2022) 5 SCC 179

observed in the said decision that broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by a judicial order. It is further observed that in other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect citizens from being deprived of public office to which they have a right. These proceedings also tend to protect the public from usurpers of public office. It is further observed that it will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry, as to, whether, the appointment of the alleged usurper has been made in accordance with law or not.

**18.** Thus, as per the law laid down in a catena of decisions, the jurisdiction of the High Court to issue a writ of quo warranto is a limited one, which can only be issued when a person is holding the public office does not fulfil the eligibility criteria prescribed to be appointed to such an office or when the appointment is contrary to the statutory rules. Keeping in mind the law laid down by this Court in the aforesaid decisions on the jurisdiction of the Court while issuing a writ of quo warranto, the factual and legal controversy in the present petition is required to be considered.

**19.** Respondent 4 is holding the post of Vice-Chancellor. The post of Vice-Chancellor in a university can be said to be a public office. There cannot be any dispute about the same. It is nobody's case that holding the post of Vice-Chancellor cannot be said to be holding a post of public office.

**20.** Now the next question which is posed for consideration of this Court is, whether, the appointment of Respondent 4 as a Vice-Chancellor of the SP University — Respondent 2 herein can be said to be contrary to any statutory provisions and whether,

can it be said that Respondent 4 fulfils the eligibility criteria for the post of Vice-Chancellor.

....      ....      ....

**43.** The submissions made by Shri Navare, learned Senior Advocate appearing on behalf of Respondent 2 SP University that as the earlier writ petition filed by the petitioner herein, in which the appointment of Respondent 4 herein as the Vice-Chancellor, was under challenge came to be dismissed and the High Court refused to issue a writ of quo warranto and the judgment and order passed by the High Court in *Gambhirdan Kanubhai Gadhavi v. State of Gujarat* [*Gambhirdan Kanubhai Gadhavi v. State of Gujarat*, 2018 SCC OnLine Guj 3125] was not disturbed by this Court and therefore, the controversy stands concluded and it is not open for the petitioner to raise the same issue again is concerned, the aforesaid submissions is noted only to be rejected. This Court did not opine anything on the merits of the judgment and order [*Gambhirdan Kanubhai Gadhavi v. State of Gujarat*, 2018 SCC OnLine Guj 3125] passed by the High Court. This Court refused to entertain the special leave petition solely on the ground that by the time the same was taken up for hearing the tenure of Respondent 4 herein as a Vice-Chancellor was coming to an end. Even while dismissing the same on the aforesaid ground alone, this Court specifically observed that all the questions of law are left open.

....      ....      ....

**49.** Therefore, when the appointment of Respondent 4 is found to be contrary to the UGC Regulations, 2018 and the UGC Regulations are having the statutory force, we are of the opinion that this is a fit case to issue a writ of quo warranto and to quash and set aside the appointment of Respondent 4 as the Vice-Chancellor of the SP University.

**50.** It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Sections 26(1)(e) and 26(1)(g) of the UGC Act, 1956. Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before each House of Parliament. Therefore, being a subordinate legislation, UGC Regulations becomes part of the Act. In case of any conflict between the State legislation and the Central legislation, Central legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the Constitution as the subject "education" is in the Concurrent List (List III) of the Seventh Schedule to the Constitution. Therefore, any appointment as a Vice-Chancellor contrary to the provisions of the UGC Regulations can be said

to be in violation of the statutory provisions, warranting a writ of quo warranto.

**51.** In view of the above discussion and for the reasons stated above, the appointment of Respondent 4 as Vice-Chancellor of the SP University — Respondent 2 herein, is contrary to the UGC provisions, namely, UGC Regulations, 2018. We hence allow the present writ petition and issue a writ of quo warranto quashing and setting aside the appointment of Respondent 4 as the Vice-Chancellor of SP University. The present petition is accordingly, allowed.”

12.9. The Apex Court in **STATE OF W.B. v. ANINDYA**

**SUNDAR DAS**<sup>9</sup>, observes as follows:

“.... ....

**28.** These rival submissions would need to be analysed. However, before we enter into a substantive analysis of the submissions, it would be appropriate to deal with the procedural objection regarding the limits of the writ of quo warranto.

**29.** Through a line of cases, this Court has laid out the terms on which the writ of quo warranto may be exercised. In *University of Mysore v. C.D. Govinda Rao* [*University of Mysore v. C.D. Govinda Rao*, 1963 SCC OnLine SC 15 : (1964) 4 SCR 575] , a Constitution Bench of this Court, speaking through Gajendragadkar, J. (as he then was), held that : (SCC OnLine SC para 6)

**6. ... Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen**

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<sup>9</sup> (2022) 16 SCC 318

from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons, not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that *before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.*

(emphasis supplied)

**30.** In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat* [*High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat*, (2003) 4 SCC 712 : 2003 SCC (L&S) 565] , in his concurring opinion in a three-Judge Bench, S.B. Sinha, J. held that : (SCC pp. 730-31, paras 22-23)

**"22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact on the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See *R.K. Jain v. Union of India* [*R.K. Jain v. Union of India*, (1993) 4 SCC 119 : 1993 SCC (L&S) 1128] , para 74.)**

**23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See *Mor Modern Coop. Transport Society Ltd. v. State of Haryana* [*Mor Modern Coop. Transport Society Ltd. v. State of Haryana*, (2002) 6 SCC 269] .)"**

**31.** In *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.* [*B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.*, (2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S)

548 (2)] , the limitations of the writ of quo warranto were elaborated upon by a two-Judge Bench of this Court. The Court observed : (SCC pp. 754-55, paras 49 & 51)

**"49. ... The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules.**

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**51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment.**

This Court in *R.K. Jain v. Union of India* [*R.K. Jain v. Union of India*, (1993) 4 SCC 119 : 1993 SCC (L&S) 1128] was pleased to hold that **the evaluation of the comparative merits of the candidates would not be gone into in a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no *locus standi* to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner."**

(emphasis supplied)

**32.** In *Central Electricity Supply Utility, Odisha v. Dhobei Sahoo* [*Central Electricity Supply Utility, Odisha v. Dhobei Sahoo*, (2014) 1 SCC 161 : (2014) 1 SCC (L&S) 1] , another two-Judge Bench of this Court reiterated that : (SCC p. 174, para 21)

**"21. ... the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a**

***public office is not held by usurper without any legal authority."***

(emphasis supplied)

**33.** More recently, in *Bharati Reddy v. State of Karnataka* [*Bharati Reddy v. State of Karnataka*, (2018) 6 SCC 162] , a three-Judge Bench of this Court, of which one of us (D.Y. Chandrachud, J.) was a part, noted the line of precedent clarifying the remit of the writ of quo warranto.

**34.** Through these decisions, the Court has settled the position that **the writ of quo warranto can be issued where an appointment has not been made in accordance with the law.** Accordingly, the rival contentions must be analysed by dealing with the scheme of the statutory provisions governing the appointment and reappointment of the VC.

**62.** In *Gambhirdan K. Gadhvi v. State of Gujarat* [*Gambhirdan K. Gadhvi v. State of Gujarat*, (2022) 5 SCC 179 : (2022) 1 SCC (L&S) 813] , the Sardar Patel University Act, 1955, expressly vested the power of appointment of the Vice-Chancellor in the State Government (instead of the Chancellor). **Despite the appointment being in terms of the statutory provisions of the Sardar Patel University Act, 1955, the Court issued a writ of quo warranto setting aside the appointment of the Vice-Chancellor by relying upon the UGC Regulations, 2018.** This Court, holding that the UGC Regulations were binding, held that : (SCC p. 206, paras 49-50)

**"49. Therefore, when the appointment of Respondent 4 is found to be contrary to the UGC Regulations, 2018 and the UGC Regulations are having the statutory force, we are of the opinion that this is a fit case to issue a writ of quo warranto and to quash and set aside the appointment of Respondent 4 as the Vice-Chancellor of SP University.**

**50.** It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Sections 26(1)(e) and 26(1)(g) of the UGC Act, 1956. *Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before each House of Parliament. Therefore, being a subordinate legislation, UGC Regulations becomes part of the Act. In case of any conflict between the State legislation and the Central legislation, Central legislation shall prevail by applying the rule/principle of repugnancy as enunciated in*

*Article 254 of the Constitution as the subject "education" is in the Concurrent List (List III) of the Seventh Schedule to the Constitution. Therefore, any appointment as a Vice-Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions, warranting a writ of quo warranto."*

(emphasis supplied)

**63.** In view of the decision in *Gambhirdan K. Gadhvi* [*Gambhirdan K. Gadhvi v. State of Gujarat*, (2022) 5 SCC 179 : (2022) 1 SCC (L&S) 813], even if the provisions of the Act allowed the appointment of the Vice-Chancellor by the State Government, it would be in violation of the UGC Regulations. The Regulations become part of the statute framed by Parliament and will prevail.

**64.** For the above reasons, we hold that the judgment [*Anindya Sundar Das v. State of W.B.*, 2022 SCC OnLine Cal 2726] of the High Court is correct in law and on fact and does not warrant interference in appeal. The State Government could not have issued the order reappointing the VC."

#### 12.10. The Apex Court in **SREEJITH P.S. v. RAJASREE**

**M.S.**<sup>10</sup>, observes as follows:

".... ...."

**9.** It is submitted that therefore any appointment on the post of Vice-Chancellor of the University contrary to the UGC Regulations shall be void ab initio and therefore, the High Court ought to have issued a writ of quo warranto.

**10.** It is submitted that in the present case, the Search Committee constituted to recommend the appointment of Respondent 1 as Vice-Chancellor was not duly constituted Search Committee as required under the provisions of the UGC Regulations and therefore the same was illegal and void ab initio.

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<sup>10</sup> (2023) 17 SCC 338

**11.** It is submitted that even otherwise, even as per Section 13 of the University Act, the Search Committee was required to recommend a panel of not less than three suitable persons from amongst the eminent persons in the field of engineering sciences. It is submitted that in the present case, the Search Committee recommended the name of Respondent 1 alone, which was sent to the Chancellor. It is submitted that therefore also the appointment of Respondent 1 can be said to be contrary to Section 13(4) of the University Act, 2015.

**12.** Making the above submissions and relying upon the above two decisions, it is prayed to allow the present appeals and quash and set aside the impugned judgment(s) and order(s) [*Sreejith P.S. v. Rajasree M.S.*, 2021 SCC OnLine Ker 16278] ‘ [*Sreejith P.S. v. Rajasree M.S.*, 2021 SCC OnLine Ker 11086] passed by the High Court and allow the writ petition preferred by the appellant and to issue a writ of quo warranto declaring the appointment of Respondent 1 as illegal and void ab initio.

**13.** The present appeals are vehemently opposed by Shri Jaideep Gupta, leaned Senior Advocate appearing on behalf of the State—Government of Kerala. Relying upon the decision of this Court in *Kalyani Mathivanan* [*Kalyani Mathivanan v. K.V. Jeyaraj*, (2015) 6 SCC 363] , it is submitted that as observed and held by this Court unless the UGC Regulations are specifically adopted by the State, the State is not bound by the UGC Regulations. It is submitted that therefore the Hon'ble High Court has rightly refused to issue a writ of quo warranto considering and/or relying upon the decision of this Court in *Kalyani Mathivanan* [*Kalyani Mathivanan v. K.V. Jeyaraj*, (2015) 6 SCC 363] .

.... ....

**17.** Heard the learned counsel appearing on behalf of the respective parties at length.

**18.** The short question, which is posed for consideration of this Court is : whether while making the appointment of Respondent 1 as Vice-Chancellor of the APJ Abdul Kalam Technological University, Thiruvananthapuram, the appointment should be as per the prevailing UGC Regulations or in effect of the provisions of the University Act, 2015 (the State Act)?

**19.** The other question which is posed before this Court for consideration is : whether the Search Committee constituted to recommend the name of Respondent 1 as Vice-Chancellor of the University can be said to be duly constituted Committee?

**20.** Identical question came to be considered by this Court in *Gambhirdan K. Gadhvi* [*Gambhirdan K. Gadhvi v. State of Gujarat*, (2022) 5 SCC 179 : (2022) 1 SCC (L&S) 813] and *Kalyani Mathivanan* [*Kalyani Mathivanan v. K.V. Jeyaraj*, (2015) 6 SCC 363] . Now, the issue whether the UGC Regulations shall prevail vis-à-vis the State legislation/State Act, identical question came to be considered by this Court in the recent decision of this Court in *Gambhirdan K. Gadhvi* [*Gambhirdan K. Gadhvi v. State of Gujarat*, (2022) 5 SCC 179 : (2022) 1 SCC (L&S) 813] . **While considering the appointment of the Vice-Chancellor in the Sardar Patel University, Gujarat, it is specifically observed and held by this Court that the appointment of Vice-Chancellor cannot be made de hors the applicable UGC Regulations, even if the State Act concerned prescribes diluted eligibility criteria, vis-à-vis the criteria prescribed in the applicable UGC Regulations. It is further observed and held by this Court in the aforesaid decision that the State Act if not on a par with the UGC Regulations, must be amended to bring it on a par with the applicable UGC Regulations and until then it is the applicable UGC Regulations that shall prevail. It is further observed and held that being a subordinate legislation, UGC Regulations become part of the Act. It is further observed and held that in case of any conflict between the State legislation and the Central legislation, the Central legislation i.e. the applicable UGC Regulations shall prevail by applying the principle of repugnancy under Article 254 of the Constitution as the subject "education" is contained in the Concurrent List of Schedule VII of the Constitution.**

**21.** The observations made in the relevant paras are as under : (*Gambhirdan case* [*Gambhirdan K. Gadhvi v. State of Gujarat*, (2022) 5 SCC 179 : (2022) 1 SCC (L&S) 813] , SCC pp. 196-198 & 206, paras 20-23, 25-26 & 50)

"20. Now the next question which is posed for consideration of this Court is, whether, the appointment of Respondent 4 as a Vice-Chancellor of SP University—Respondent 2 herein can be

said to be contrary to any statutory provisions and whether, can it be said that Respondent 4 fulfils the eligibility criteria for the post of Vice-Chancellor.

20.1. While examining the aforesaid issues the relevant provisions of the UGC Regulations, 2010 enacted in exercise of powers conferred under clauses (e) and (g) of sub-section (1) of Section 26 of the University Grants Commission Act, 1956 and the relevant provisions of the SPU Act, 1955, are required to be referred to.

20.2. The UGC Act, 1956 was enacted to make provision for the coordination and determination of standards in universities and for that purpose, to establish a University Grants Commission. Section 12 deals with "Functions of the Commission", while Section 14 speaks of "Consequences of failure of universities to comply with recommendations of the Commission". Section 26 deals with "Power to make regulations". As per Section 28 the rules and regulations framed under the UGC Act are required to be laid before each House of Parliament and when both the Houses agree then rules and regulations can be given effect with such modification as may be made by Parliament. Therefore, any regulation enacted in exercise of powers under Section 26 can be said to be subordinate legislation.

20.3. For the appointment and career advancement of teachers in the universities and institutions affiliated to it, UGC by Regulation dated 4-4-2000, enacted the University Grants Commission (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) Regulations, 2000. However, in the said Regulation of 2000, no qualifications were prescribed for the post of "Pro-Chancellor" or "Vice-Chancellor".

21. Thereafter, the Government of India, Ministry of Human Resource Development Department of Higher Education, New Delhi by Letter No. 1-32/2006-U.II/U.I(i) dated 31-12-2008 communicated to the Secretary, University Grants Commission, New Delhi the Scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of the Central Government employees on the recommendations of the 6th Central Pay Commission.

22. By the said letter, the Government of India directed that there shall be only three designations in respect of teachers in the universities and colleges, namely, Assistant Professors, Associate Professors and Professors. In the said letter revised

pay scales, service conditions and Career Advancement Scheme for teachers and equivalent positions including the post of Assistant Professors/Associate Professors/Professors in universities and colleges were intimated. Pay scales of Pro Vice-Chancellor/Vice-Chancellor were also mentioned therein. It was intimated that the said Scheme may be extended to the universities, colleges and other higher educational institutions coming under the purview of the State Legislature, provided the State Governments wish to adopt and implement the Scheme subject to the terms and conditions mentioned therein.

23. In view of the aforesaid Letter No. 1-32/2006-U.II/U.I(i), dated 31-12-2008 issued by the Government of India and in exercise of the powers conferred under clauses (e) and (g) of sub-section (1) of Section 26 of the UGC Act, 1956, UGC enacted the 2010 Regulations in supersession of the UGC Regulations, 2000. It was published in the Gazette of India on 28-6-2010 and came into force with immediate effect.

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25. Regulation 7.4.0 mandates that the universities/State Governments shall modify or amend the relevant Acts/Statutes of the universities concerned within six months of adoption of these Regulations.

26. Thus, the UGC Regulations, 2010, inter alia, prescribe in Regulation 7.3.0 that a person shall have ten years of teaching work experience as a Professor in a university system. It also provides for constitution of a Search Committee consisting of a nominee of the Visitor/Chancellor, a nominee of the Chairman of the UGC, a nominee of the Syndicate/Executive Council of the University and the Search Committee has to recommend the names of the successful candidates.

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50. It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Sections 26(1)(e) and 26(1)(g) of the UGC Act, 1956. Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before each House of Parliament. Therefore, being a subordinate legislation, the UGC Regulations become part of the Act. In case of any conflict between the State legislation and the Central legislation, Central legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the Constitution as the subject "education" is in the Concurrent List (List III) of the Seventh Schedule to the Constitution. **Therefore, any appointment as a Vice-Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions, warranting a writ of quo warranto."**

**22. That thereafter and having found that the appointment of the Vice-Chancellor in Sardar Patel University was contrary to the UGC Regulations, 2010, this Court issued the writ of quo warranto.** It is required to be noted that the decision of this Court in *Kalyani Mathivanan* [*Kalyani Mathivanan v. K.V. Jeyaraj*, (2015) 6 SCC 363] was also pointed out by this Court.

**23.** Even in *Kalyani Mathivanan* [*Kalyani Mathivanan v. K.V. Jeyaraj*, (2015) 6 SCC 363] , it is observed in para 53 that to the extent the State legislation is in conflict with the Central legislation including subordinate legislation made by the Central legislation under Entry 25 of the Concurrent List, the same shall be repugnant to the Central legislation and would be inoperative. It is also required to be noted that in *Kalyani Mathivanan* [*Kalyani Mathivanan v. K.V. Jeyaraj*, (2015) 6 SCC 363] , this Court was considering the UGC Regulations, 2010, which were silent in regard to the post of Vice-Chancellor.

**24.** The decision of this Court in *Gambhirdan K. Gadhvi* [*Gambhirdan K. Gadhvi v. State of Gujarat*, (2022) 5 SCC 179 : (2022) 1 SCC (L&S) 813] has been subsequently followed by this Court in the recent decision of this Court in *Anindya Sundar Das* [*State of W.B. v. Anindya Sundar Das*, (2022) 16 SCC 318 : 2022 SCC OnLine SC 1382] while considering the appointment of the Vice-Chancellor of Calcutta University. In the said decision, it is also observed and held in para 56 that in view of the decision in *Gambhirdan K. Gadhvi* [*Gambhirdan K. Gadhvi v. State of Gujarat*, (2022) 5 SCC 179 : (2022) 1 SCC (L&S) 813] , even if the provisions of the State Act allowed the appointment of the Vice-Chancellor by the State Government, it would have to be as per the UGC Regulations and any appointment of Vice-Chancellor in violation of the UGC Regulations shall be void ab initio. It is further observed that the UGC Regulations shall become part of the statute framed by Parliament and, therefore, shall prevail.

**25.** In view of the above two binding decisions of this Court, any appointment as a Vice-Chancellor made on the recommendation of the Search Committee, which is constituted contrary to the provisions of the UGC Regulations shall be void ab initio. If there is any conflict between the State legislation and the Union legislation, the Union law shall prevail even as per Article 254 of the Constitution of India to the extent the

provision of the State legislation is repugnant. Therefore, the submission on behalf of the State that unless the UGC Regulations are specifically adopted by the State, the UGC Regulations shall not be applicable and the State legislation shall prevail unless the UGC Regulations are specifically adopted by the State cannot be accepted.

**26.** Even otherwise, it is required to be noted that in the present case as such vide order dated 10-12-2010, the UGC Regulations have been specifically adopted by the State Government. At this stage, it is required to be noted that in the order dated 27-3-2010, while adopting/accepting the UGC Regulations, it is specifically observed in para 5 that all the universities shall incorporate the UGC Regulations in their statutes and Regulations within one month from the date of the said order and the Government will initiate steps to amend the Acts of the universities, if required to implement the Regulations. It is further mentioned in para 5 that the Government will also take the steps to amend the Special Rules to give effect to the stipulations of the UGC Regulations. Merely because the subsequent amendment has not been specifically adopted/accepted by the State cannot be a ground by the State to contend that the amendment to the Regulations shall not be binding on the State/State's Universities. Therefore also, the UGC Regulations were applicable with respect to the appointment of Vice-Chancellor in the respective universities in the State and the appointment of the Vice-Chancellor shall be always as per the relevant provisions of the UGC Regulations amended from time to time."

12.11. The Apex Court in **PREMACHANDRAN KEEZHOTH v. KANNUR UNIVERSITY**<sup>11</sup>, observes as follows:

".... ....

#### **J. WRIT OF QUO WARRANTO**

**27. Quo warranto is a judicial remedy against an intruder or usurper of an independent substantive public office or franchise or liberty. The usurper is asked 'by**

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<sup>11</sup> 2023 SCC OnLine SC 1592

what authority' (quo warranto) he is in such office, franchise, or liberty. A writ of quo warranto thus poses a question to the holder or occupier of a public office, and that question is: "Where is your warrant of appointment by which you are holding this office?" If the answer is not satisfactory, the usurper can be ousted by this writ.

**28.** The writ of quo warranto is an ancient Common Law remedy of a prerogative nature. It was a writ of right used by the Crown against a person claiming any office, franchise, or liberty to inquire by what authority he was in the office, franchise or liberty. In case his claim was not well founded or there was non-use, neglect, misuse, or abuse of the office, he was to be ousted.

**29.** Quo warranto is a writ that lies against a person who usurps any franchise, liberty, or office.

**30.** In *Corpus Juris Secundum*, quo warranto is defined thus;

*"Quo warranto is a proceeding to determine the right to the exercise of a franchise or office and to oust the holder if his claim is not well founded, or if he has forfeited his right."*

**31.** Blackstone, states: "The ancient writ of quo warranto was in the nature of a writ of right for the King against any office, franchise or liberty of the Crown to inquire by what authority he supported his claim, in order to determine the right."

**32.** Quo warranto is a remedy or procedure whereby the State inquires into the legality of the claim which a party asserts to an office or franchise, and to oust him from its enjoyment if the claim be not well founded, or to have the same declared forfeited and recover it, if, having once been rightfully possessed and enjoyed; it has become forfeited for mis-user or non-user.

**33.** In *B.R. Kapur v. State of T.N.*, (2001) 7 SCC 231, after referring to Halsbury's Laws of England, Words and Phrases and

leading decisions on the point, it was observed that **a writ of quo warranto is a writ which lies against the person who is not entitled to hold an office of public nature and is only a usurper of the office. Quo warranto is directed to such person who is required to show by what authority he is entitled to hold the office. The challenge can be made on various grounds, including the ground that the possessor of the office does not fulfill the required qualifications or suffers from any disqualification, which debars him to hold such office. It was further stated that on being called upon to establish valid authority to hold a public office, if such person fails to do so, a writ of quo warranto shall be directed against him. It shall be no defence by the holder of the office that the appointment was made by the competent authority, who under the law is not answerable to any court for anything done in performance of duties of his office. The question of fulfilling legal requirements and qualifications necessary to hold a public office would be considered in the proceedings independent of the fact as to who made the appointment and the manner in which the appointment was made.**

**34. Any person may challenge the validity of an appointment of a public office, whether any fundamental or other legal right of his has been infringed or not. But the court must be satisfied that the person so applying is bona fide and there is a necessity in public interest to declare judicially that there is a usurpation of public office. If the application is not *bona fide* and the applicant is a mere pawn or a man of straw in the hands of others, he cannot claim the remedy. Though the applicant may not be an aspirant for the office nor has any interest in appointment, he can apply as a private relator, or an ordinary citizen.**

**35.** These rival submissions would need to be analyzed. However, before we enter into a substantive analysis of the submissions, it would be appropriate to deal with the procedural objection regarding the limits of the writ of *quo warranto*.

**36.** Through a line of cases, this Court has laid out the terms on which the writ of quo warranto may be exercised.

In *The University of Mysore v. C.D. Govinda Rao*, a Constitution Bench of this Court, speaking through Justice Gajendragadkar (as he then was), held that : (1964) 4 SCR 575

***"Broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the Executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.***

(Emphasis supplied)

**37.** In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat*, (2003) 4 SCC 712, in his concurring opinion in a three-Judge Bench, Justice SB Sinha, held that:

***"22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact on the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464], SCC para 74.)***

**23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules.**  
(See *Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. to Govt. of Haryana* (2002) 6 SCC 269.)"

**38.** In *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.*, (2006) 11 SCC 731 (2), the limitations of the writ of quo warranto were elaborated upon by a two-Judge Bench of this Court. The court observed:

"49. ... **The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules.**

XXXXXXXXXX

**51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment.** This Court in *R.K. Jain v. Union of India* [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] was pleased to hold that **the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no locus standi to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner...**"

(Emphasis supplied)

**39.** In *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo*, (2014) 1 SCC 161, another two-Judge Bench of this Court reiterated that:

"21. ...**the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality**

*or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.*

(Emphasis supplied)

**40.** More recently, in *Bharati Reddy v. State of Karnataka*, (2018) 6 SCC 162, a three-Judge Bench of this Court, of which one of us (Justice D.Y. Chandrachud) was a part, noted the line of precedent clarifying the remit of the writ of quo warranto.

**41.** Through these decisions, the Court has settled the position that **the writ of quo warranto can be issued where an appointment has not been made in accordance with the law.** Accordingly, the rival contentions must be analyzed by dealing with the scheme of the statutory provisions governing the appointment and reappointment of the Vice-Chancellor.

.... ....

#### **M. FINAL CONCLUSION**

**86.** It is now well settled that a writ of quo warranto lies if any appointment to a public office is made in breach of the statute or the rules. In the case on hand, we are not concerned with the suitability of the respondent No. 4. The "suitability" of a candidate for appointment to a post is to be judged by the appointing authority and not by the court unless the appointment is contrary to the statutory rules/provisions. We have reached to the conclusion that although the notification reappointing the respondent No. 4 to the post of Vice-Chancellor was issued by the Chancellor yet the decision stood vitiated by the influence of extraneous considerations or to put it in other words by the unwarranted intervention of the State Government.

**87.** It is the Chancellor who has been conferred with the competence under the Act, 1996 to appoint or reappoint a Vice-

Chancellor. No other person even the Pro-Chancellor or any superior authority can interfere with the functioning of the statutory authority and if any decision is taken by a statutory authority at the behest or on a suggestion of a person who has no statutory role to play, the same would be patently illegal.

**88.** Thus, it is the decision-making process, which vitiated the entire process of reappointment of the respondent No. 4 as the Vice-Chancellor. The case on hand is not one of mere irregularity.

**89.** We emphasise on the decision-making process because in such a case the exercise of power is amenable to judicial review.

**90.** In *Chief Constable of the North Wales Police v. Evans*, [1982] 1 WLR 1155 : [1982] 3 All ER 141 (HL), Lord Brightman observed thus : (WLR p. 1174 G)

*"... Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made."*

**91.** In view of the aforesaid, we allow this appeal.

**92.** The impugned judgment and order passed by the High Court dated 23.02.2022 is hereby set aside. As a consequence, the Notification dated 23.11.2021, reappointing the respondent No. 4 as the Vice-Chancellor of the Kannur University is hereby quashed."

**On a blend of the judgments rendered by the Apex Court what would unmistakably emerge is, the writ of *quo warranto* is directed principally against the holder of the office and is his legal title to it, rather than being a conventional service dispute between the rival candidates.**

**13. Essential conditions for issuance of *quo warranto* is the independent substantive public office, the incumbent holding the office lacking the prescribed eligibility/qualification or the appointment suffering from constitutional/statutory requirement. The illegality must be sufficiently clear to justify the extraordinary public law remedy. While so doing, the motive or *mala fides* of the relator – the person who brings the challenge is also to be looked into.** The motive may sometimes influence the Court's discretionary exercise particularly where illegality is doubtful. The Apex Court in the line of cases quoted *supra* also considers the appointment of Vice-Chancellor. In the case of **GAMBHIRDAN K. GADHVI** *supra* the Apex Court considers the applicability of the UGC Regulations and its mandate. This is carried forward in **STATE ANINDYA SUNDAR DAS** *supra*.

14. The law so elucidated supplies the compass for the present controversy. The Court is not sitting in judgment over the academic brilliance, administrative talent or comparative desirability of the incumbent. ***Quo warranto* asks a far more austere question: does the incumbent possess lawful title to the**

**public office and does the law permit him to continue in it? But even that question cannot be examined in a historical vacuum.** The original appointment of the 4<sup>th</sup> respondent had already been carried into a previous round of *quo warranto* litigation. The Division Bench declined to exercise the extraordinary public law jurisdiction, principally on the want of bona fides of the relators and their failure to approach the Court with the candour expected in public interest litigation.

15. **True it is, that the Division Bench expressly refrained from pronouncing upon the legality of the decision-making process. But the matter did not end there. Professor B. Shivaraj carried the challenge to the Apex Court, both on the appointment and on the adverse observations touching his conduct. The Apex Court, while granting liberty concerning the latter, made a clear observation that it found no merit in the challenge to the appointment of the incumbent. That observation cannot be wished away merely because it does not arrive dressed in an elaborate discussion. The judicial journey of the original appointment has thus reached its terminus.**

16. **The present challenge is not to a fresh appointment, born of a fresh selection; it is to the immediate continuation of the same incumbent for the second term. To permit the petitioner now to reopen every alleged infirmity in the constitution of the original Search Committee - including the absence of a UGC nominee, would be to permit finality to become a revolving door.** The distinction between appointment and reappointment, therefore, assumes decisive significance. An extension or reappointment in immediate continuation does not necessarily carry the same procedural rigmarole as an original appointment.

17. On this very issue, two pronouncements of the Apex Court illuminate the path. In **ANINDYA SUNDAR DAS** *supra*, the Apex Court held as follows:

".... ....

**44.** The Chancellor has been described in Section 7(1) as the head of the University. The power of appointing a VC is vested by Section 8(1)(b) in the Chancellor. That provision stipulates that "the VC shall be appointed by the Chancellor". Section 8(2)(b) empowers the Chancellor to allow a VC to continue, notwithstanding the expiration of its term, for a period of not more than two years at a time in consultation with the Minister. Here again, the continuation is "subject to the satisfaction of the State Government and on the basis of his past academic excellence and administrative success"

established during the term of office in the capacity of VC. These words are in terms identical to those contained in Section 8(2)(a). Section 8(5) entrusts to the Chancellor the power to appoint the VC as a result of the temporary inability of the VC to perform the duties of the office or pending the appointment of the VC when a vacancy has arisen in the office.

... ..  
**51. It would be appropriate to also analyse whether the reappointment of the VC has to follow the same process as a fresh appointment, by setting up a selection committee under Section 8(1) of the Act, as indicated by the Chancellor.**

**52. Section 8(6) stipulates the manner in which a vacancy in the office of the VC which occurs by reason of death, resignation, expiration of the term of office, removal or otherwise shall be filled up. The provision indicates that such vacancy shall be filled up in accordance with the provisions of sub-section (1) of Section 8. Section 8(6) has to be read in conjunction with Section 8(1) since the former expressly refers to the latter. The reference to the provisions of sub-section (1) for filling up a vacancy on the expiration of the term of office will not obviously apply to a case of reappointment because the procedure contemplated by Section 8(1)(b) of a search committee would not attach to a reappointment. On this aspect, the High Court has correctly disagreed with the petitioner before it and noted that amended Section 8(2)(a) which provides for the reappointment of a VC for another term does not require that the procedure prescribed in Section 8(1) has to be followed for reappointment."**

17.1. The principle was carried forward and stated with greater clarity in **DR.PREMACHANDRAN KEEZHOTH** *supra* wherein the Apex Court holds as follows:

" ....  
**iii) Whether the reappointment of the Vice-Chancellor has to follow the same process as a fresh appointment under Section 10 of the Act, 1996?**

**60.** Reappointment of Vice-Chancellor has been provided under sub-section (10) of Section 10 of the Act, 1996. The proviso to sub-section (10) of the Act, 1996 further makes the intention of the legislature to provide for reappointment more clear. The legislature has not thought fit to prescribe any particular procedure or any particular mode or manner of reappointment. The UGC Regulations are also silent as regards the reappointment of Vice-Chancellor.

**61.** The language of sub-section (10) of Section 10 of the Act, 1996 is plain and simple. The provision does not confer right to seek reappointment. There is only one way of reading the provision, which is, that a Vice-Chancellor once appointed, subject to the proviso to sub-section (10) of Section 10, is eligible to be considered for reappointment. What this implies is that an incumbent Vice-Chancellor may not have to reapply along with other candidates and compete for the same position once again. Reappointment essentially means the incumbent Vice-Chancellor would receive another term of four years if the Chancellor deems fit without reopening the position for new applications or without constituting a select committee. "Re" means again, and is freely used as prefix. It gives colour of "again" to the verb with which it is placed. "Reappointment" is an act or process of being appointed again.

**62.** Where the appointment is to be made for the first time or where the same person is being appointed as a Vice-Chancellor for the second time, but not in continuation of the first term, the procedure provided under Section 10 of the Act, 1996 must be gone through. However, in the case of reappointment immediately upon the tenure of the first term coming to an end, there is no requirement to initiate the entire process of appointment as provided under Section 10 of the Act, 1996.

**63.** In the aforesaid context, we may refer to a decision of this Court in the case of *Anindya Sunder Das* (supra), authored by one of us Dr. D.Y. Chandrachud, CJI. In the said case, the High Court at Calcutta had allowed a petition under Article 226 of the Constitution seeking a writ of quo warranto against the Vice-Chancellor of Calcutta University. The High Court held that the State Government had no authority to

appoint or reappoint the Vice-Chancellor under Section 8 of the Calcutta University Act, 1979 (for short, "the Act, 1979") or by taking recourse to the residuary provisions of Section 60 of the Act, 1979. As a consequence, the order issued by the Special Secretary to the Government of West Bengal reappointing the incumbent Vice-Chancellor of Calcutta University was set aside. The High Court held that the Vice-Chancellor had no authority to hold that office on the basis of the order of appointment. The judgment of the Calcutta High Court was challenged before this Court in Civil Appeal No. 6706 of 2022. One of the issues that fell for consideration of this Court in the said case was, whether the same procedure which was provided for appointment of a Vice-Chancellor under Section 8(1) was required to be followed at the time of reappointment.

**64. It was argued that there is a distinction in law between appointment and reappointment because in the case of the latter the zone of consideration is restructured to persons already holding posts and in such case the suitability of the incumbent which was assessed at the time of initial appointment need not be reassessed.**

**65. This Court in the aforesaid case took the view that reappointment of the Vice-Chancellor need not follow the same process as a fresh appointment by setting up a selection committee.** We may reproduce the relevant observations made by this Court.

*"45. It would be appropriate to also analyze whether the re-appointment of the VC has to follow the same process as a fresh appointment, by setting up a selection committee under Section 8(1) of the Act, as indicated by the Chancellor.*

*46. Section 8(6) stipulates the manner in which a vacancy in the office of the VC which occurs by reason of death, resignation, expiration of the term of office, removal or otherwise shall be filled up. The provision indicates that such vacancy shall be filled up in accordance with the provisions of sub-Section (1) of Section 8 of the Act. Section 8(6) has to be read in conjunction with Section 8(1) since the former expressly refers to the latter. The reference to the provisions of sub-Section (1) for filling up a vacancy on the expiration of the term of office will not obviously apply to a case of reappointment because the procedure contemplated by*

Section 8(1)(b) of a search committee would not attach to a reappointment. On this aspect, the High Court has correctly disagreed with the petitioner before it and noted that amended Section 8(2)(a) which provides for the re-appointment of a VC for another term does not require that the procedure prescribed in Section 8(1) has to be followed for re-appointment"

(Emphasis supplied)

**66. We are conscious of the fact, that in *Anindya Sundar Das* (supra) the afore-stated line of reasoning was adopted by this Court in view of the amendment that was carried out whereby the original expression "*subject to provisions of this section*" in the provision dealing with reappointment was deleted, in other words, by virtue of such amendment the reappointment was no longer subject to the provision/section detailing the ordinary procedure for appointment of Vice-Chancellor, and thus, this Court had no hesitation in holding that the legislature's intent was to allow reappointment by the Chancellor itself without following the ordinary process of appointment.**

**67. In the case at hand, sub-section (10) of Section 10 of the Act, 1996, provides for reappointment and does not even contain the words "*subject to provisions of this section*". This in our opinion is as good as to reflect the legislature's intention of permitting reappointment without following the ordinary process of appointment of Vice-Chancellor.**

**68. Thus, we hold that it is not necessary to follow the procedure of appointment as laid down in Section 10 of the Act, 1996 for the purpose of reappointment."**

The ratio that flows from **ANINDYA SUNDAR DAS** and **DR.PREMACHANDRAN KEEZHOTH** *supra* is neither obscure nor equivocal. **Reappointment, when it is an immediate continuation of the first tenure and when the governing statute does not command a fresh process, need not be put**

**through every sieve through which an original appointment must pass.**

18. The Legislature, in the case at hand, has chosen simple words in Section 13(4): a term of three years, **'extendable by another term of similar period at the discretion of the Chancellor'**. The provision does not summon a fresh Search Committee; it does not reopen the field to applications; it does not command a second comparative assessment. **To graft those requirements upon the provision would be not interpretation, but legislation by judicial addition.** The grounds concerning the constitution of the original Search Committee, including the absence of a UGC nominee, were grounds available and indeed urged when the original appointment was assailed. The Division Bench declined the challenge and the Apex Court thereafter recorded that it found no merit in the challenge to the appointment. The order of the Apex Court may be brief, but brevity does not denude the order.

**19. The same appointment, the same incumbent, and substantially the same foundational grounds, cannot be**

placed upon the anvil repeatedly, merely because the hand wielding the hammer has changed. Finality in litigation is not a technical ornament; it is an indispensable facet of orderly administration of justice. Therefore, this Court cannot travel backwards and reopen whether the original Search Committee carried a UGC nominee. The petitioner must still demonstrate a clear statutory or constitutional infraction in the continuance itself. That demonstration is conspicuously absent. The narrow but potent writ of *quo warranto* cannot be issued on conjecture, dissatisfaction or a recycled grievance; it demands a clear usurpation of public office contrary to law. It is in this context apposite to notice **B. SRINIVASA REDDY** *supra*, wherein the Apex Court holds as follows:

49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a *writ of quo warranto*. The jurisdiction of the High Court to issue a *writ of quo warranto* is a limited one which can only be issued when the appointment is contrary to the statutory rules.

71. In *Statesman (P) Ltd. v. H.R. Deb* [(1968) 3 SCR 614: AIR 1968 SC 1495] Hidayatullah, C.J., speaking for the Constitution Bench indicated: (SCR p. 621 F)

**"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."**

**72.** In the circumstances which we have narrated above in paragraphs supra, it is indeed difficult to hold that the appellant did not have the requisite qualification.

**73.** The above ruling was followed in *A.N. Shashtri v. State of Punjab* [1988 Supp SCC 127: 1988 SCC (L&S) 536: (1988) 7 ATC 290]. We are of the view that in the facts of this case, the reasonable conclusion to reach should have been that the writ petitioners had failed to establish that the appellant did not possess requisite qualification and the appeals are, therefore, allowed and the judgment of the High Court has to be set aside and the writ petition has to be dismissed."

(Emphasis supplied at each instance)

**In the teeth of the aforesaid statutory scheme and the law declared by the Apex Court, the challenge cannot survive. An extension, which the statute itself permits at the discretion of the Chancellor, cannot be compelled to retrace, step for step, the entire procedural journey of the original appointment, when neither the enactment nor the binding precedent demands it.** The petitioner has failed to point to that clear and unmistakable infringement of law which alone can unlock the extraordinary remedy of *quo warranto*. The challenge to the 4<sup>th</sup> respondent's second term must, therefore, necessarily flounder.

20. For the reasons afore-narrated, the edifice of challenge raised against the continuance of the 4<sup>th</sup> respondent does not withstand judicial scrutiny. Finding no merit in the petition and no warrant for issuance of the high prerogative writ of *quo warranto*, the petition must fail and is, accordingly, ***dismissed***.

Pending applications if any, also stand disposed.

**Sd/-  
(M.NAGAPRASANNA)  
JUDGE**

Bkp  
CT:MJ