

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.17398 of 2022

PROFESSOR SAIKAT MAITRA

-VERSUS-

STATE OF WEST BENGAL AND OTHERS

For the petitioner : Mr. Bikash Ranjan Bhattacharya, Sr. Adv.,
Mr. Soumya Majumdar, Adv.,
Mr. Dwip Raj Basu, Adv.,
Mr. Uttam Kumar Mandal, Adv.

For the State : Mr. S.N. Mookherjee, Ld. A.G.,
Mr. Swapan Kumar Datta, Ld. A.G.P.,
Mr. T.M. Siddiqui, Adv.,
Mr. Sandip Dasgupta, Adv.,
Mr. Saaqib Siddiqui, Adv.,
Mr. Aviroop Mitra, Adv.,
Mr. Tapas Kumar Mandal, Adv.

For respondent no.2 : Mr. Suranjan Dasgupta, Adv.,

For respondent no.3 : Mr. Amitava Chaudhuri, Adv.,
Mr. N. Roy, Adv.

Hearing concluded on : 02.08.2022

Judgment on : 04.08.2022

Kausik Chanda, J.:-

Since the relevant facts of this case are not disputed by the parties, this petition is disposed of without inviting affidavits from the respondents.

2. The petitioner was appointed the Vice-Chancellor of Maulana Abul Kalam Azad University of Technology (in short, “the said University”) for a period of four years by an order dated February 21, 2017, issued by the Principal Secretary, Department of Higher Education, Science & Technology and Biotechnology and also by the Secretary to the Chancellor of the said University.

3. Thereafter by an order dated February 26, 2021, the Principal Secretary, Higher Education Department, University Branch, re-appointed the petitioner as the Vice-Chancellor of the said University for a further period of four years with effect from February 27, 2021, or till he attained the age of 65 years whichever was earlier.

4. The factual backdrop in which the petitioner was re-appointed is somewhat peculiar. To appreciate the facts preceding the re-appointment of the petitioner as the Vice-Chancellor, the said order dated February 26, 2021, is reproduced below:

**“GOVERNMENT OF WEST BENGAL
HIGHER EDUCATION DEPARTMENT
(UNIVERSITY BRANCH)
BIKASH BHABAN, SALT LAKE
KOLKATA-700091**

No. 389-Edn (U)/TU-05/2004 (Pt-I) Date: 26.02.2021

NOTIFICATION

Whereas, the tenure of Prof. Saikat Maitra, existing Vice Chancellor of the Maulana Abul Kalam Azad University of Technology, West Bengal is going to expire on 26.02.2021 afternoon on being completing four years term, and

Whereas, the State Government has constituted a Search Committee for appointment of regular Vice Chancellor of the University in terms of rules 9 (1) (c) appended to the Maulana Abul Kalam Azad University of Technology, West Bengal Act, 2000 vide this Department's Notification No. 900-Edn (U) dated 10.10.2020, and

Whereas, it is considered expedient that the office of the Vice Chancellor being the highest administrative and academic office of the University cannot be left vacant after expiry of the term of present Vice Chancellor, and

Whereas, the Department's above noted proposal has been placed before the Hon'ble Chancellor of the University twice for approval in terms of rule 9 of the West Bengal State Universities (Terms and Conditions of Service of the Vice Chancellors & the Manner and Procedure of Official Communication) Rules, 2019, but the said proposal has not yet been approved by Hon'ble Chancellor till date, and

Whereas, the constituting Act of the University is silent in regard to the best action to be taken in such situation and thus there is no other option but to invoke the provisions of section 30 of the said Act in view of removing the present difficulty arises due to non approval of the Department's proposal by the Hon'ble Chancellor, and

Therefore, in view of the above and in exercise of the powers conferred by section 30 of the Maulana Abul Kalam Azad University of Technology, West Bengal Act, 2000, and in terms of the provisions of rule 9 (5) (b) appended to the Schedule of the said Act, the Governor is hereby pleased to re-appoint Prof. Saikat Maitra, the existing Vice Chancellor of the University as the Vice Chancellor of the Maulana Abul Kalam Azad University of Technology, West Bengal for a period of four years w.e.f 27.02.2021 forenoon, or till he attain the age of

sixty-five years, or until further order, whichever is earlier.

Sd/-
Principal Secretary

No.389/1(7)-Edn (U)/TU-05/2004 (Pt-I) Date: 26.02.2021

Copy forwarded for information and/or for taking necessary action to:-

1. The Vice Chairman (Academic), WBSCHE, 147-A, Rashbehari Avenue, Kolkata-700029,

2. The Vice Chancellor, Maulana Abul Kalam Azad University of Technology, Wes Bengal, NH-12, Simhat, Haringhata, Nadia, PIN-741249,

3. The Registrar, Maulana Abul Kalam Azad University of Technology, Wes Bengal, NH-12, Simhat, Haringhata, Nadia, PIN-741249,

4. Special Secretary (University), H. E. Department, Bikash Bhaban, Salt Lake, Kolkata-700091,

5. PS to HMIC, H. E. Department, Bikash Bhaban, Salt Lake; Kolkata-700091,

6. Sr. PA to Principal Secretary, H. E. Department, Bikash Bhaban, Salt Lake, Kolkata-700091,

7. Office Copy.

Sd/-
Assistant Secretary (Law)"

5. By the order impugned dated July 29, 2022, issued by the Assistant Secretary, Department of Higher Education, the said order dated February 26, 2021, re-appointing the petitioner for a further period of four years was rescinded and respondent no.3 was given the temporary charge of the office of the Vice-Chancellor of the said University for a period of six months or

until the appointment of a Vice-Chancellor of the University whichever was earlier.

6. The said order dated July 29, 2022, is quoted below:

“GOVERNMENT OF WEST BENGAL
HIGHER EDUCATION DEPARTMENT
BIKASH BHABAN, SALT LAKE
KOLKATA-700091

No.645-Edn (U)/TU-01/2004(Pt-III) Date: 29.07.2022

NOTIFICATION

Subject: Rescission of Department's Order No. 389-Edn
(U)/TU-01/2004 (Pt-III) dated 26.02.2021

The Governor is pleased hereby in the interest of public service to rescind the Department's Order No. 389-Edn (U)/TU-01/2004 (Pt-III) dated 26.02.2021 with immediate effect. It is further ordered that Prof. Malayendu Saha, the Chairman of the West Bengal Joint Entrance Examinations Board and the erstwhile Vice Chancellor of the Kalyani University shall be temporarily in charge of the office of the Vice Chancellor, Maulana Abul Kalam Azad University of Technology, West Bengal, in addition to his duties as Chairman West Bengal Joint Entrance Examinations Board, for a period of six months or until appointment of a Vice Chancellor of the Maulana Abul Kalam Azad University of Technology, West Bengal following due process, or until further order, whichever is earlier.

This is issued in the interest of Education in the State of West Bengal with approval of the competent authority in the State Government.

Sd / -
Assistant Secretary”

7. Since the said order dated July 29, 2022, did not contain any specific reason for termination from the service of the petitioner in the midway, the State was directed to produce the relevant note-sheets to ascertain the reason behind the issuance of the said order.

8. Learned Advocate General, S.N. Mookherjee, appearing for the State has produced the original note-sheets which ultimately resulted in issuance of the impugned order dated July 29, 2022, before the Court.

9. The State suggests that there was a complaint by a private individual against the re-appointment of the petitioner to the post of Vice-Chancellor. On the basis of the said complaint, the opinion of Law Department of the State was sought. The Law Department opined that the petitioner was illegally appointed by invoking Section 30 of Maulana Abul Kalam Azad University of Technology, West Bengal, Act, 2000 (hereinafter referred to as “the said Act of 2000”. Sub-section (3) of Section 30 of the said Act of 2000, makes it clear that no order could be made under Section 30 after the expiry of a period of two years from the date on which the Act came into force. Therefore, the petitioner could not be re-appointed on February 26, 2021, by invoking Section 30 of the said Act of 2000, which came into operation on and from July 20, 2000.

10. The learned Advocate General submits that there is no personal allegation against the petitioner as to his performance or otherwise, but

since he was reappointed without any authority of law, the State had rectified the mistake by issuance of the impugned order dated July 29, 2022.

11. By placing reliance upon the judgment reported at **(2018) 15 SCC 463 (*Union of India v. Raghuwar Pal Singh*)**, Mr. Mookherjee, learned Advocate General, argued that the re-appointment of the petitioner was a nullity and therefore, the petitioner was not given any opportunity of hearing before the order impugned was issued.

12. Mr. Soumya Majumdar, learned advocate being led by Mr. Bikash Ranjan Bhattacharya, learned senior advocate, on the other hand, has argued that the power of the State to give any direction to the University to remove any difficulty can be traced to Section 19 of the West Bengal Universities and Colleges (Administration and Regulation) Act, 2017 (in short, “the said Act of 2017”). In the impugned order, though it has been mentioned that the State re-appointed the petitioner in exercise of power under Section 30 of the said Act of 2000, such exercise was authorised under Section 19 of the said Act of 2017.

13. The learned Advocate General has disputed the applicability of Section 19 of the said Act of 2017 in the present case. He submits that the said Section 19 empowers the State to remove difficulties that may arise in applying the provisions of the said Act of 2017 only. According to the learned Advocate General, the appointment of a Vice-Chancellor of the said

University is completely covered by the said Act of 2000. Therefore, the re-appointment of the petitioner cannot be justified by taking recourse to Section 19 of the said Act of 2017. The State has rightly undone its mistake in re-appointing the petitioner in exercise of power under Section 30 of the said Act of 2000, which was not in force at the relevant point of time.

14. From the submission of the respective parties, the only point that arises for consideration is whether the State had the authority to re-appoint the petitioner following its power to remove the difficulties under Section 30 of the said Act of 2000 or whether such power could be exercised under Section 19 of the said Act of 2017.

15. It is necessary to quote Section 30 of the said Act of 2000, which runs as follows:

Removal of
difficulties

“30. (1) If, by reason of any provision of this Act, any difficulty arises in giving effect to the provisions of section 25, the first Vice-Chancellor shall refer such difficulty to the State Government which may make such order or do such thing, not inconsistent with the provisions of that section, as appears to it to be necessary or expedient for removing the difficulty.

(2) If, on account of any lacuna or omission in the provisions of this Act, or for any other reason whatsoever, any difficulty arises as to the first constitution of any authority of the University under this Act, or otherwise, in giving effect to the provisions of this Act, the State Government may, as occasion may require, by order do anything which appears to it to be necessary for the purpose of removing the difficulty, notwithstanding anything to the contrary contained elsewhere in this Act or in

any other law for the time being in force.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), no order shall be made under this section after the expiry of a period of two years from the date on which this Act comes into force.”

16. There cannot be any doubt that Section 30 has been engrafted in the said Act of 2000 to remove any difficulty in giving effect to the transitory provision of Section 25 of the said Act of 2000. Sub-section (3) of Section 30 makes it clear that the said provision could not be invoked after the expiry of a period of two years from July 20, 2000, i.e. the date of commencement of the said Act of 2000. Therefore, there was no occasion on the part of the State to invoke the said provision on February 26, 2021, to re-appoint the petitioner by way of removal of difficulties.

17. To appreciate the applicability of Section 19 of the said Act 2017, it is necessary to note that the said Act was introduced with an object to provide better administration and to improve the quality of education in the State-aided higher education institutions in West Bengal and for such other matters connected therewith and incidental thereto.

18. By virtue of Section 2, the said Act applies to all Universities established by or under any Act of the State Legislature and are receiving financial assistance from the State Government in any form. Chapter V of the said Act deals with the Administration of Universities. The relevant portion of the said Chapter V is quoted below:

Administration of Universities

13. (1) Notwithstanding anything contained in any other law for the time being in force or in any custom or usage to the contrary, wherever it is proposed to nominate a person by the Chancellor in any body or authority of any University or other body corporate, such person shall henceforth be nominated by the Chancellor in consultation with the State Government.

(2) Notwithstanding anything contained in any other law for the time being in force or in any custom or usage to the contrary, no University, without the prior approval of the State Government, shall, after the commencement of this Act,-

- (a) permit any person to work under the University beyond the prescribed age of superannuation except in the manner notified by the state Government;
- (b) dispose of or sell any immovable property of the University;
- (c) declare setting up or conversion of any post of Officer or teacher of the University;
- (d) such other act or acts as may be prescribed by the State Government.

(3) The State Government may, subject to availability of fund, allow the application for creation of teaching, non-teaching and officers' posts in such University on its discretion, after considering the need for staff in the University.

(4) The State Government may, by order, from time to time, revise the scale of pay

attached to the post of teachers, officers or non-teaching employees or sanction any new allowance thereof.

(5) The State Government may, by order, regulate the expenditure of a University and may revise such rules from time to time.”

19. Section 18 confers power upon the State Government to give directions to any College or in any University in any matter not inconsistent with the provisions of this Act and the College and the University shall be duty bound to comply with such direction.

20. Section 19 authorises the State to remove any difficulty as may arise in applying the provisions of the Act to any College or University covered under the Act.

21. Sections 18 and 19 of the said Act of 2017 are quoted below:

Powers to give directions.

“18. The State Government shall have the power to give directions to any college or in any University in any matter not inconsistent with the provisions of this Act and the college or the University shall be duty bound to comply.

Power to remove difficulties.

19. (1) The State Government shall have the power to remove any difficulty as may arise in applying the provisions of this Act to any college or University covered under this Act.

(2) The decision of the State Government shall, in every case, be final in regard to any dispute in between the State Government and the College or the University in effecting the provisions of this Act.”

22. Even if after reading the aforesaid provisions there is any doubt in anyone’s mind as to the applicability of the said Act of 2017 in case of

appointment of a Vice-Chancellor, the same can be cleared by reading the rules namely, the West Bengal State Universities (Terms and Conditions of Service of the Vice Chancellor & the Manner and Procedure of Official Communication) Rules, 2019, which has been framed under the rule-making power of the State under Section 17 of the said Act of 2017.

23. The relevant provisions of the said rules are quoted below:

“3. Office of the Vice Chancellor/ Pro-Vice Chancellor:-

- (1) The Office of the Vice Chancellor shall be deemed to be a Public Office and shall remain open on all week days, except holidays.
- (2) The Vice Chancellor may, in his discretion keep open his office on any holiday if he considers that an urgent business in relation to the University is required to be done.
- (3) All employees of the University shall assist to the Vice Chancellor and the Pro-Vice Chancellor in performing all his works and duties as prescribed under the Act as and when the Vice Chancellor and the Pro-Vice Chancellor so requires.
- (4) During the absence of Vice Chancellor from his Office, either by reasons of leave, illness or otherwise, the charge of the Office of the Vice Chancellor shall be given to a Pro-Vice Chancellor, and if not available, the charge shall be given to another Vice Chancellor or Pro- Vice Chancellor of a nearby State-aided University with the approval of the State Government. If they are not available, the charge shall be given to the senior most Dean of the University, and if he is not available, to the senior most Professor of the University, with the intimation to the Department.
- (5) The person holding charge of the Office of the Vice Chancellor shall only discharge to do the routine functions of the University but shall not

hold any meeting of the Senate/Court/ Governing Board or the Syndicate/ Executive Council of the University without prior permission of the State Government.

- (6) All decisions taken by the person holding the charge of the Office of the Vice Chancellor under sub-rule (4), shall require ratification by the Vice Chancellor, failing which such decision shall cease to have effect.
- (7) During absence of the Pro-Vice Chancellor from his Office either by reasons of leave, illness or otherwise, the Vice Chancellor shall handover charge of the Office of the Pro-Vice Chancellor to the senior most Dean of the University, and if he is not available, to the senior most Professor of the University, with an intimation to the Department.

...

5. Terms and condition of service of the Vice Chancellors and the Pro-Vice Chancellors of State-aided Universities:-

- (1) There shall be a Service Book to be maintained in the University and a copy of which shall be kept in the Department for all the Vice Chancellors and the Pro-Vice Chancellors of the University and shall be updated periodically, both in the University and in the Department.
- (2) The Service Book shall contain the details regarding joining in the post of Vice Chancellor, or a Pro- Vice Chancellor, as the case may be, emolument received, leave taken, details regarding academic and administrative performances, details regarding visit to various academic and administrative programme, details regarding foreign visit and such other things as may be directed by the State Government from time to time.
- (3) The Service Book maintained for the period of the tenure of a Vice Chancellor or a Pro-Vice Chancellor shall be part of his original Service Book maintained with his parent employer and shall be taken into account for all purposes.

- (4) The Vice Chancellor shall on his attaining the age of usual superannuation from his parent service may at his option, receive pension and other retirement benefits from the University where he is so appointed.
- (5) After expiry of the period of usual superannuation, if a person appointed or reappointed as the Vice Chancellor, his pay and allowances shall be fixed in a manner similar to that of the employees of the State Government who has been reemployed after attaining the date of usual superannuation.
- (6) Every Vice Chancellor and the Pro-Vice Chancellor shall be entitled to thirty days Earned Leave and fourteen days Casual Leave in a Calendar year.
- (7) The Vice chancellor and the Pro-Vice Chancellor shall also be entitled to all other leaves as enjoyed by other Officers of the University.
- (8) All kinds of leave enjoyed by a Vice Chancellor or the Pro-Vice Chancellor shall be recorded in their Service Book.
- (9) All application for leave, except casual leave, shall be made at least seven days prior to the intended days of leave sought either in writing, or in electronic form to the Department.

6. Obligations of the Vice Chancellor:-

- (1) No prior permission of the Department shall be necessary if the Vice Chancellor or the Pro Vice Chancellor of any State-aided University desires to move beyond the territorial jurisdiction of the State of West Bengal for any official business or otherwise for a period not more than seven days including holidays:

Provided that the Vice Chancellor or the Pro Vice Chancellor concerned shall be required to send an intimation in advance, in writing to the Department for his intended visit:

Provided further that in every case prior permission of the State Government is necessary

if such movement is for more than seven days including holidays.

- (2) In every case, prior permission of the Chief Minister to the Government of West Bengal shall be necessary if any Vice Chancellor or the Pro Vice Chancellor desires to move outside India for any reasons whatsoever.
- (3) No Vice Chancellor shall execute or sign or cause to be signed by any person associated with the University, any Memorandum of Understanding (MOU) or agreement with any person or any Institute of Learning or with any other authority on behalf of the University without the prior approval of the Department.
- (4) Every Vice Chancellor visiting any Indian or foreign University or any Institute of Learning for any academic or administrative purpose for and on behalf of the University with which he is associated, shall submit a detailed report to the Department with the copy to Minister immediately after his return.

7. Procedure regarding conducting enquiry, issuing show cause or taking any penal measures against the Vice Chancellor and the pro-Vice Chancellor:-

- (1) on receipt of a complaint against any Vice Chancellor or Pro-Vice Chancellor, the Department may, if it considers necessary, constitute a one man Enquiry Committee by the Vice Chairman (Academic) of the West Bengal State Council of Higher Education or the Vice Chancellor of any other State-aided University to conduct a preliminary enquiry into the allegations levelled against the Vice Chancellor or the Pro Vice Chancellor concerned.
- (2) The Committee so constituted shall submit its report to the Department within thirty days from its constitution, in respect of such complaint.
- (3) If upon consideration of the preliminary enquiry report, the Department proposes to initiate disciplinary proceeding against a Vice Chancellor or Pro Vice Chancellor, the Department shall draw up a Charge sheet containing the article of

charges, statement of imputation of charges, list of documents proposed to be relied upon, and a list of witness to prove the charges and serve the same upon the charged official.

- (4) On receipt of the written statement of defence, if the Department is not satisfied with the reply, the Department shall appoint an Enquiry Officer to conduct an inquiry into the charges leveled against the Vice Chancellor or Pro-Vice Chancellor. If the Department is satisfied with the written statement of defence, no further steps need to be taken.
- (5) Other procedure of conducting Disciplinary proceedings shall be similar to that of the procedure followed in case of Government employees in the rank of Group 'A'.
- (6) The findings of the Inquiry Officer shall be submitted to the Department as early as possible for consideration.
- (7) If the Inquiry Officer returns a finding that the charges are proved, the Department shall record reasons for accepting or not accepting such finding partially or in its entirety. However, if the Inquiry Officer returns findings of innocence in favour of the Vice Chancellor or the Pro-Vice Chancellor and the Department disagree with the finding, the Department shall give its reasons for such disagreement.
- (8) The Department may thereafter communicate its decision on the findings of the Inquiry Officer to the Chancellor for taking necessary action.
- (9) If the Chancellor expresses his disagreement with the decision of the Department, he shall submit his reasoning of such disagreement in writing and revert back to the Minister for reconsideration.
- (10) The Minister shall again communicate his recommendation to the Chancellor's reference made under sub-rule (8), with or without modification, as he deems fit and such decision of the Minister shall be approved by the Chancellor.
- (11) If the decision approved by the Chancellor goes against the Vice Chancellor or Pro Vice

Chancellor, the report of the Inquiry Officer, reasons recorded by the Department on the inquiry report, the reasons for disagreement of the Chancellor and the recommendation of the Minister shall be served upon the Vice Chancellor or the Pro-Vice Chancellor, calling upon him to submit his written submission on all the documents and to show cause within fifteen days as to why he shall not be removed as the Vice Chancellor or Pro Vice Chancellor of the University.

- (12) If the Department is satisfied with the reply of the Vice Chancellor or Pro Vice Chancellor, all further proceedings will be dropped and he shall be informed accordingly. In case of dissatisfaction, the Department shall issue appropriate order as it deems fit.
- (13) If the Vice Chancellor or the Pro Vice Chancellor is not satisfied with the action taken, he may prefer an appeal before a Tribunal to be constituted by the State Government for this purpose.
- (14) The constitution, powers and functions of such Tribunal mentioned under sub-rule (13) shall be such as may be determined and notified by the State Government, from time to time.

8. Mode of communication by the Chancellor and Vice Chancellors with the State Government:-

- (1) Notwithstanding anything contained in any Statutes, Ordinances, and Regulations or in any rules, customs or usages to the contrary for the time being in force, in every case, all communications proposed to be made to the Chancellor by the Vice Chancellor, of a State-aided University, shall be addressed to the Secretary of the Department.
- (2) Notwithstanding anything contained in any Statutes, Ordinances, Regulations, rules, customs or usages to the contrary for the time being in force, the meeting of the Senate/Court or the Syndicate/ Executive Council or the Governing Board or of any other Bodies or

authorities of the University, as the case may be, shall be convened by the Vice Chancellor with an intimation to the Department and the Department, may intimate the same wherever necessary, to the Chancellor for record.

- (3) Notwithstanding anything contained in any Statutes, Ordinances, Regulations, rules, customs or usages to the contrary for the time being in force, all notice regarding Convocation shall be brought to the notice of the Department.
- (4) Notwithstanding anything contained in any Statutes, Ordinances, Regulations, rules, customs or usages to the contrary for the time being in force, all proposals for conferring any Honorary Degree to any person shall be placed before the Department for concurrence the Department shall send the list of awardees to the Chancellor for his confirmation.
- (5) Every communication proposed to be made by the Chancellor to any State-aided University shall be routed through the Department and action on such communication shall be taken once the same is endorsed by the Department. However, there shall be no Chancellor's Secretariat.
- (6) Any complaint received by the Chancellor regarding the affairs of any State-aided University shall be forwarded to the Department and the Department, if deems fit, may cause an enquiry or investigation on such complaint and may recommend appropriate action to be taken in this regard as per procedure prescribed in rule (7).

9. Mode of consultation by the Chancellor with the State Government/Minister: -

For nominating any person in any Body or Authority or Committee of any University the mode of consultation by the Chancellor with the State Government/Minister shall be as follows:-

- (a) The Minister shall suggest at least three names for each nomination amongst which the Chancellor shall select one as his nominee in any Body or Authority or Committee of the University

and shall communicate the same to the Minister in return.

- (b) If the Chancellor disagrees with the names proposed by the Minister, he shall record reasons in writing and revert back to the Minister.
- (c) The Minister shall communicate his views in writing as he considers necessary and in such case the Chancellor shall finalize his nominee from amongst the names provided by the Minister.
- (d) In case of appointment of the Vice Chancellor of a University, the Chancellor shall maintain the order of preference of names placed before him.
- (e) Notwithstanding anything contained in any Statutes, Ordinances and regulations of any University, the Chairman of any Body or Authority or Committee of any University shall be decided by the University in consultation with the State Government unless the same has been specifically provided in the Constituting Act of the University.”

24. A bare perusal of the aforesaid provisions makes it clear that appointment or re-appointment of a Vice-Chancellor are not excluded from the purview of the said Act of 2017 read with the aforesaid rules namely, the West Bengal State Universities (Terms and Conditions of Service of the Vice Chancellor & the Manner and Procedure of Official Communication) Rules, 2019.

25. The State, therefore, cannot contend that the Act of 2017 has got no manner of application in appointment of a Vice-Chancellor of the University. In fact, the order impugned itself suggests that the proposal for appointment of the Vice-Chancellor of the University was placed before the

Hon'ble Chancellor of the University for approval in terms of Rule 9 of the West Bengal State Universities (Terms and Conditions of Service of the Vice Chancellor & the Manner and Procedure of Official Communication) Rules, 2019.

26. In that view of the matter, it must be held that the State is within its right to pass appropriate directions under Section 19 of the said Act of 2017, relating to the appointment or re-appointment of a Vice-Chancellor of the University.

27. It is also pertinent to mention that the learned Advocate General has fairly admitted that the State suggested three names for the post in question before the Chancellor placing the petitioner at no.1 position. Rule 9(d) of the West Bengal State Universities (Terms and Conditions of Service of the Vice Chancellor & the Manner and Procedure of Official Communication) Rules, 2019, mandates that the Chancellor should maintain the order of preference of names placed before him. Therefore, it is apparent that it was the desire of the State that the petitioner should be appointed as the Vice-Chancellor of the said University but when the required approval could not be obtained from the Chancellor, the State itself appointed the petitioner invoking its power to remove the difficulties.

28. The order dated February 26, 2021 re-appointing the petitioner as a Vice-Chancellor of the University cannot be said to be without any authority of law. Though the said order mentions a wrong provision, the

said power of the State, in fact, has been exercised under Section 19 of the Act of 2017. It is well-settled that mentioning a wrong provision of law by itself is not sufficient to invalidate the exercise of power when such power can be traced to a different provision of law.

29. In that view of the matter, the order impugned cannot be sustained as the same was uncalled for. Accordingly, the order dated July 29, 2022, issued by the Assistant Secretary, Department of Higher Education, is set aside.

30. The respondents will allow the petitioner to join the post of Vice-Chancellor within three working days from the date of this order and for that purpose it may not be necessary to hand over the charge to the petitioner by respondent no.3.

31. It should be clarified that in this writ petition only the authority of the State to exercise the power under Section 19 of the said Act of 2017 in appointing a Vice-Chancellor has been decided. The justification for such exercise of power has not been gone into by this Court since it is not the case of the State the order of re-appointment is otherwise bad in law.

32. Accordingly, W.P.A. No.17398 of 2022 is allowed.

33. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)

Later

After the judgment is delivered, Mr. Amitava Chaudhuri, learned advocate appearing for the University and Mr. Tapas Kumar Mandal, learned advocate appearing for the State, pray for stay of operation of the judgment and order. Such prayer is considered and rejected.

(Kausik Chanda, J.)