

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

WPA (P) 170 of 2022
with
CAN 1 of 2022

Reserved on: 06.02.2023
Pronounced on: 14.03.2023

Anupam Bera

...Appellant

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Ms. Susmita Saha Dutta
Mr. Asit Kumar Manna
Mr. Niladri Saha
Ms. Madhurima Basu

... .. for the petitioner

Mr. Sauvik Nandy
Mr. Avijit Chakraborty

... .. for the applicant

Mr. S.N. Mookherjee, AG
Mr. Md. Ghalib

... .. for the State

Mr. Tarunjyoti Tewari

... .. for the UOI

Mr. Abhrotosh Majumder, Sr. Adv.
Mr. Nilotpal Chatterjee

... .. for the respondent no.9

Mr. N. C. Bihani

... .. for Burdwan University

Mr. Soumya Mazumder
Mr. Suranjan Dasgupta
Mr. Uttam Mandal

... .. for the respondent no.20

Mr. Joydip Kar, Sr. Adv.
Mr. Soumya Mazumder
Mr. A. Ray
Mr. P. Ghosh

... .. for the respondent no.35

Mr. Riaz Abedin
Mr. Asif Dewan

... .. for the respondent no.11

Mr. Amitava Chaudhuri
Mr. N. Roy

... .. for the respondent nos.10 & 17

Mr. Anil Kumar Gupta

... .. for the UGC

Mr. Subhrangshu Panda

... .. for the respondent no.31

Ms. Debjani Sengupta

Ms. Shahina Haque

Ms. Koyel Bag

... .. for the Vidyasagar University

Mr. Raghunath Chakraborty

Ms. Amrita De

... .. for the Alia University

Mr. Arunangshu Chakraborty

Mr. Aswini Bera

Ms. Geneya Mukherjee

... .. for the respondent nos.23 and 29

Mr. Soumya Majumder

Ms. Sanjukta Dutta

... .. for the respondent nos.15 and 22

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Prakash Shrivastava, CJ:

1. The petitioner being General Secretary of one Jatiyatabadi Adhyapak O Gabeshak Sangha, a registered society and organization of educationist, has filed the present public interest petition challenging the validity of West Bengal University Laws (Amendment) Act, 2012 and West Bengal Laws (Amendment) Act, 2014 and has prayed for writ of *quo warranto* questioning the appointments of respondent nos. 5 to 35 as Vice-Chancellors of different Universities within the State of West Bengal.

2. The plea of the petitioner is that the provisions of the West Bengal University Laws (Amendment) Act, 2012 (for short, 'Act of 2012') and West Bengal University Laws (Amendment) Act, 2014 (for short, 'Act of 2014') are ultra vires of the provisions of the Constitution of India, University Grants Commission Act and the UGC Regulations

of 2010 and 2018. Further plea of the petitioner is that the respondent Vice-Chancellors have been appointed either by a Search Committee which was not properly constituted or without constituting any such Committee. Some of the appointments are also being challenged on the ground that they do not fulfill the minimum eligibility criteria of 10 years experience as Professor in the University or 10 years experience in a reputed research and/or academic administrative organization as prescribed in the UGC Regulation. Some of the appointments have also been questioned on the ground that the appointments have been made in defiance of specific order or without specific approval of the Chancellor, who in law, is the sole appointing authority for Vice-Chancellor post. A plea has also been taken that the appointment of some of the respondent Vice-Chancellors have been made contrary to the provisions contained in the UGC Regulations, 2018.

3. Submission of learned counsel for the petitioner is that provisions of the Act of 2012 and Act of 2014 run counter to the UGC Regulations, 2018 as the minimum qualifications prescribed in the impugned Acts for the post of Vice-Chancellors stands diluted and these provisions prescribed minimum qualification lower than the one prescribed in the UGC Regulations, 2018. A further plea has been raised that in terms of the UGC Regulations, 2018, the Search Committee for appointment of Vice-Chancellors must have a nominee of the Chairman, UGC which was missing in the Search Committee formed for appointment of the respondent Vice-Chancellors. She further submits that the UGC Regulations have statutory force having being framed under the UGC Act, 1956 and that the UGC Regulations are applicable in the State of West Bengal even if the UGC Scheme has not been

accepted by the State and the State has no option in this regard. In support of this submission, she has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Professor (Dr.) Sreejith P.S. vs. Dr. Rajasree M.S. and Others** reported in **2022 SCC OnLine SC 1473**. She has also referred to relevant entries of List I and List III of Schedule 7 and Article 254 of the Constitution and has submitted that in case of conflict, the Central Legislation will prevail. In support of this submission, she has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Gambhirdan K. Gadhvi vs. State of Gujarat and Others** reported in **(2022) 5 SCC 179**. She has also submitted that some of the respondent Vice-Chancellors have been appointed by the State taking recourse to the removal of difficulty clause which is not permissible and in support of her submission, she has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **State of West Bengal vs. Anindya Sundar Das and Others** reported in **(2022) SCC OnLine SC 1382**. She has submitted that the appointing authority for the office of Vice-Chancellor is the Chancellor, therefore, the appointments made by the State cannot be sustained and that if the initial appointment itself is defective, then extension by the proper authority cannot cure the defect. Learned counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court in the matter of **Baharul Islam and Others vs. Indian Medical Association and Others** reported in **2023 SCC OnLine SC 79** and has further submitted that UGC Regulations, 2018 are mandatory whereas UGC Regulations, 2010 were directory since they were applicable to those who had adopted the Scheme. She submits that there is no question of exercising discretion while issuing the writ of *quo warranto* against

the respondent Vice-Chancellors because they are holders of high position and it is not the issue of their livelihood as they will go back to their original places.

4. Learned counsel for the UGC has supported the argument of the learned counsel for the petitioner and has submitted that the Search Committee is required to be constituted in terms of the UGC Regulations and the minimum eligibility prescribed in the UGC Regulations cannot be diluted by the State enactment.

5. Learned Advocate General appearing on behalf of the State has opposed the petition and has submitted that a review petition has been filed before the Hon'ble Supreme Court against the judgment in the case of **Anindya Sundar Das and Others (supra)**. He submits that UGC Regulations, 2018 are not applicable in the State of West Bengal and they are not binding on the Universities established under the State Act. He submits that by the UGC Regulations, 2018, the earlier Regulations have been superseded, therefore, the UGC Regulations, 2010 are no longer existing from the date of publication of UGC Regulations, 2018. He has further submitted that UGC Regulations, 2018 have been published subsequent to the Scheme of the Central Government dated 2nd of November, 2017. He has submitted that implementation of the revised scale under the Scheme was subject to acceptance of all the conditions. Placing reliance upon the judgment in the matter of **Kalyani Mathivanan vs. K. V. Jeyaraj and Others** reported in (2015) 6 SCC 363, he has submitted that UGC Regulations are directory in nature and they are not binding on the State if not adopted by the State. He has also submitted that in the Division Bench judgment of this Court in the case of **Anindya Sundar Das vs. State of West Bengal & Ors.** in WPA (P)

55 of 2022 dated **13.09.2022**, the applicability and effect of UGC Regulations has been decided as pure question of law. He has also submitted that UGC Regulations, 2018 have not been adopted by the State, therefore, the judgment relied upon by learned counsel for the petitioner in this regard are distinguishable. He has also submitted that most of the respondent Vice-Chancellors fulfill the minimum qualification of 10 years of experience. He has also referred to the judgment of the Learned Single Bench dated 4th of August, 2022 passed in WPA No. 17398 of 2022 and has submitted that State can take recourse of removal of difficulty clause for appointment and reappointment of Vice-Chancellors. He has also submitted that the relief of the writ of *quo warranto* is discretionary and discretion may not be exercised against the Vice-Chancellors who fulfill the minimum eligibility criteria, against whom there are no complaints and whose appointments have been challenged belatedly. In support of his submission, he has placed reliance upon the judgments of the Bombay High Court in the matter of **Bhairul Chunilal Marwadi vs. State of Bombay and Others** reported in **AIR 1954 Bom 116**, the Delhi High Court in the matter of **P.L. Lakhanpal vs. A. N. Ray and Others** reported in **ILR (1974) 1 Delhi 725 (FB)**, the Calcutta High Court in the matter of **Shri Anil Kumar Xalxo vs. The Lieutenant Governor, Andaman & Nicobar Islands** reported in **2019 (5) CHN (Cal) 54**, the Kerala High Court in the matter of **K. J. Joseph vs. Hon'ble Justice, K. Sukumaran and others** reported in **AIR 1987 Ker 140** and the Hon'ble Supreme Court in the matter of **Dr. M. S. Mudhol and Another vs. S. D. Halegkar and Others** reported in **(1993) 3 SCC 591**.

6. Learned counsel appearing for 31 respondent Vice-Chancellors has submitted the chart to show that term of some of the Vice-Chancellors have expired, appointment of some of the Vice-Chancellors were approved by the State, some of the Vice-Chancellors fulfill the eligibility of 10 years experience as Professor. He submits that the provision to have one nominee of the Chairman of the UGC in the Search Committee is not binding on the State. In support of his submission, he has referred to Entry 66 List I and Entry 25 List III of Schedule 7 and has submitted that the State University Acts have been framed under Entry 25 List III whereas UGC Regulations have been framed under Entry 66 List I, therefore, there is no question of conflict and provisions of State Act will prevail. In support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Tamil Nadu Medical Officers Association and Others vs. Union of India and Others** reported in **(2021) 6 SCC 568**. He has further submitted that the UGC Regulations are not applicable to the State and the Regulations are only recommendatory and not binding on the State. In support of his submission, he has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of **Annamalai University Represented By Registrar vs. Secretary To Government, Information And Tourism Department And Others** reported in **(2009) 4 SCC 590** and in the matter of **Praneeth K and Others vs. University Grants Commission (UGC) and Others** reported in **2020 SCC OnLine SC 688**. Arguing on the issue of repugnancy, he has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of **State of Kerala and Others vs. Mar Appraem Kuri Company Limited and Another** reported in **(2012) 7 SCC 106** and in

the matter of **Union of India and Others vs. G.S. Chatha Rice Mills and Another** reported in **(2021) 2 SCC 209**. He has further submitted that when the appointee possesses minimum qualification, no writ of *quo warranto* is required to be issued. In support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Gambhirdan K. Gadhvi vs. State of Gujarat and Others** reported in **(2022) 5 SCC 179**. He has also submitted that if the initial appointment by the State is rectified, the ratification relates back to the original appointment and in support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **National Institute of Technology and Another vs. Pannalal Choudhury and Another** reported in **(2015) 11 SCC 669**.

7. Learned counsel for the respondent no. 23 and 29 has submitted that these respondents were appointed by the Chancellor, therefore, their appointments do not suffer from any illegality.

8. Learned counsel for the respondent no. 20 pressing CAN 1 of 2022 has made a prayer for expunging of name of respondent no. 20 by submitting that the appointment made by the State under removal of difficulty clause was cancelled which was subject matter of challenge in WPA No. 17398 of 2022 and the said petition was allowed by the Single Bench which has attained finality, therefore, now the appointment of respondent no. 20 cannot be questioned. He submits that the same issue cannot be adjudicated twice and in support of his submission, he has placed reliance upon judgments of the Hon'ble Supreme Court in the matter of **Sri Gangai Vinayagar Temple and Another vs. Meenakshi Ammal and Others** reported in **(2015) 3 SCC 624** and in the matter of **State of Jharkhand Through SP, Central Bureau of Investigation vs.**

Lalu Prasad Yadav Alias Lalu Prasad reported in **(2017) 8 SCC 1**. He has further submitted that the West Bengal University of Technology Act which is applicable to respondent no. 20 as amended by Section 25 read with Schedule 9 of the amended Act is in line with the UGC Regulations, therefore, the appointment is in accordance with law. He submits that respondent no. 20 fulfills all the eligibility conditions, qualifications and experience.

9. Learned counsel for respondent no. 15, 22 and 35 has submitted that respondent no. 15 is the senior-most Vice-Chancellor in the country. He has further submitted that the tenure of respondent no. 35 will be over on 17th of March, 2023. He has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of **Modern Dental College and Research Centre and Others vs. State of Madhya Pradesh and Others** reported in **(2016) 7 SCC 353** and in the matter of **Maa Vaishno Devi Mahila Mahavidyalaya vs. State of Uttar Pradesh and Others** reported in **(2013) 2 SCC 617**.

10. We have heard the learned counsels for the parties and have perused the record.

11. Before entering into the merits of the matter, it would be appropriate to take a look at the relevant legal provisions. The University Grants Commission Act, 1956 has been enacted to make provision for the coordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission. The University Grants Commission, in exercise of the powers conferred by Clauses (e) and (g) of sub-section (1) of Section 26 read with Section 14 of the UGC Act, 1956 in supersession of the earlier Regulations of 2010 has framed the University Grants Commission

(Minimum Qualification for Appointment of Teachers and Other Academic Staff in University and Colleges and Other Measures for Maintenance and Standards of Higher Education) Regulations, 2018 (for short, 'UGC Regulations, 2018'). Regulation 7.3 of UGC Regulation, 2018 deals with the appointment of Vice-Chancellor and reads as under:

“7.3. VICE CHANCELLOR:

- i. A person possessing the highest level of competence, integrity, morals and institutional commitment is to be appointed as Vice-Chancellor. The person to be appointed as a Vice-Chancellor should be a distinguished academician, with a minimum of ten years' of experience as Professor in a University or ten years' of experience in a reputed research and / or academic administrative organisation with proof of having demonstrated academic leadership.
- ii. The selection for the post of Vice-Chancellor should be through proper identification by a Panel of 3-5 persons by a Search-cum-Selection-Committee, through a public notification or nomination or a talent search process or a combination thereof. The members of such Search-cum-Selection Committee shall be persons' of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the Search cum-Selection Committee shall give proper weightage to the academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance, to be given in writing along with the panel to be submitted to the Visitor/Chancellor. One member of the Search cum-Selection Committee shall be nominated by the Chairman, University Grants Commission, for selection of Vice Chancellors of State, Private and Deemed to be Universities.

- iii. The Visitor/Chancellor shall appoint the Vice Chancellor out of the Panel of names recommended by the Search-cum-Selection Committee.
- iv. The term of office of the Vice-Chancellor shall form part of the service period of the incumbent making him/her eligible for all service related benefits.”

12. In terms of the above Regulation, minimum 10 years experience as Professor in a University or 10 years of experience in a reputed research and/or academic administrative organization with proof of having demonstrated academic leadership is an essential eligibility condition. Clause ii of the Regulation provides for selection of Vice-Chancellor through a Search-cum-Selection Committee in which it is necessary to have one member nominated by the Chairman, UGC. It is worth noting that the similar eligibility condition and clause relating to nominee of the Chairman in the Search Committee was contained in the UGC Regulations, 2010 also.

13. In the present case, respondent Vice-Chancellors in different Universities have been appointed under the provisions of the Acts respectively governing those Universities. The West Bengal University Laws (Amendment) Act, 2012 was enacted to amend the Calcutta University Act, 1979, the North Bengal University Act, 1981, the Burdwan University Act, 1981, the Vidyasagar University Act, 1981, the Kalyani University Act, 1981, the West Bengal State University (Barasat, North 24-Parganas) Act, 2007, the Gour Banga University Act, 2007, the Sidho-Kanho Birsha University Act, 2010, the Jadavpur University Act, 1981, the Rabindra Bharati Act, 1981, the Netaji Subhas Open University Act, 1997, the Bengal Engineering and Science University Shibpur Act, 2004, the West Bengal University of

Technology Act, 2000, the Coochbehar Panchanan Barma University Act, 2012 and the Kazi Nazrul University Act, 2012. In the Calcutta University Act, 1979, Section 8 of the Act relating to the appointment of a Vice-Chancellor was amended to the following effect:

“(2) in section 8, sub-section (1), -

(a) for clause (a), the following clause shall be substituted:-

“(a) The Vice-Chancellor shall be a distinguished academic with proven competence and integrity, and having a minimum of ten years of experience in a University system of which at least five years shall be as professor or ten years of experience in a reputed research or academic administrative organization of which at least five years shall be in an equivalent position of professor.”;

(b) for sub-clause (ii) of clause (c), the following sub-clause shall be substituted:-

“(ii) a nominee of the State Government.”;

14. The above provision requires minimum five years experience as professor. Similar amendments were made in the other University Acts covered by the amendment Act of 2012. Subsequently, by the West Bengal University Laws (Amendment) Act, 2014, the amendment in the above University Acts were made. Section 8 of the Calcutta University Act, 1979 was amended to the following effect:

“2. In the Calcutta university Act, 1979, for clause (c) of sub-section (1) of section 8, the following clause shall be substituted:-

“(c) The Search Committee shall be constituted in the following manner:-

(i) an academician, not below the rank of the Vice-Chancellor of a Central or State-aided University or the Director of a National institute of higher learning, to be nominated by the Chancellor in

consultation with the Minister and such nominee shall be the Chairperson of the Committee;

- (ii) an academician, not below the rank of a Professor of a Central or State-aided University or national institute of higher learning, to be nominated by the State Government;
- (iii) an academician, not below the rank of a Professor of a Central or State-aided University or national institute of higher learning, to be nominated by the Senate;

Provided that the nominees, as mentioned under sub-clauses (i), (ii) and (iii) shall not be the persons associated with the concerned University for which the Search Committee is constituted.”.”

15. The above amended provision does not contain any clause relating one nominee of the Chairman of the UGC as required by Regulation, 2018. Similar amendments have been made in other University Acts also by the amendment Act of 2014.

16. The Calcutta University Act, 1979 contains following Section 60 relating to removal of difficulty clause:

“**60.** 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, as occasion may require, may 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.”

17. Similar removal of difficulty clause exists in the other University Acts also.

18. It is undisputed that in almost all the respondent Universities, similar amendments were made and similar position in law is existing.

19. It is also undisputed that all the State University Acts contain similar provision for appointment of Vice-Chancellors. For ready reference, Sections 7 and 8 of the Calcutta University Act are reproduced below:

“7. (1) The Governor shall, by virtue of his office, be the Chancellor of the University. He shall be the head of the University and the President of the Senate and shall, when present, preside at the meetings of the Senate.

(2) ...

(3) The Chancellor shall exercise such powers as may be conferred on him by or under the provisions of this Act.

x x x

8. (1) (a) The Vice-Chancellor shall be a distinguished academic with proven competence and integrity, and having a minimum of ten years of experience in a University system of which at least five years shall be as professor or ten years of experience in a reputed research or academic administrative organization of which at least five years shall be in an equivalent position of professor.

(b) The Vice-Chancellor shall be appointed by the Chancellor out of the panel of three names recommended in order of preference by the Search Committee constituted by the State Government. While preparing the panel, the Search Committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad and adequate experience in academic and administrative governance and reflect the same in writing while submitting the panel to the Chancellor.

(c) The Search Committee shall be constituted in the following manner:-

(i) an academician not below the rank of the Vice-Chancellor of a Central or State-aided University or the Director of a National institute of higher learning, to be nominated by the Chancellor in consultation with the Minister, and such nominee shall be the Chairperson of the Committee,

(ii) an academician, not below the rank of a Professor of a Central or State-aided University or national institute of higher learning, to be nominated by the State Government;

(iii) an academician, not below the rank of a Professor of a Central or State-aided University or National institute of higher learning, to be nominated by the Senate:

Provided that the nominees, as mentioned under sub-clauses (i), (ii) and (iii) shall not be the persons associated

with the concerned University for which the Search Committee is constituted.

(2) (a) The Vice-Chancellor shall hold office for a period of four years appointed as such in terms of the provisions of sub-section (1), and shall be eligible for reappointment for another term of four years subject to the satisfaction of the State Government and on the basis of his past academic excellence and administrative success established during his term of office in the capacity of Vice-Chancellor, or till he attains the age of seventy years, whichever is earlier.

(b) The Chancellor may, notwithstanding the expiration of the term of office of the Vice-Chancellor, allow him to continue in office for a period not more than two years at a time in consultation with the Minister, which shall under no circumstances be extended beyond the age of seventy years, subject to the satisfaction of the State Government and on the basis of his past academic excellence and administrative success established during his term of office in the capacity of Vice-Chancellor.

(3) The Vice-Chancellor shall be a whole-time officer of the University and shall be paid from the University Fund such salary and allowances as the Chancellor may decide in consultation with the State Government.

(4) the Vice-Chancellor may resign his office by writing under his hand addressed to the Chancellor.

(5) If –

(a) the Vice-Chancellor is, by reasons of leave, illness or other cause, temporarily unable to exercise the powers and perform the duties of his office, or

(b) a vacancy occurs in the office of the Vice-Chancellor by reason of death, resignation, removal, expiry of term of his office or otherwise,

then, during the period of such temporary inability or pending the appointment of a Vice-Chancellor, as the case may be, the Chancellor in consultation with the Minister may appoint a person to exercise the powers and perform the duties of the Vice-Chancellor.

(6) The vacancy in the office of the Vice-Chancellor occurring by reason of death, resignation or expiry of the term of his office, removal or otherwise shall be filled up by appointment of a Vice-Chancellor in accordance with the provisions of sub-section (1) within a period of six months from the date of occurrence of the vacancy, and such period shall be held to include any period for which a Vice-Chancellor is allowed to continue in office under clause (b) of sub-section (2), or a person is appointed by the Chancellor in consultation with the Minister to exercise the powers and perform the duties of the Vice-Chancellor under sub-section (5).

(7) the Vice-Chancellor may be removed from his office by the Chancellor if he is satisfied that the incumbent, -

(a) has become insane and adjudged by a competent court to be of unsound mind; or

(b) has become an undischarged insolvent and stands so declared by a competent Court; or

(c) has been physically unfit and incapable of discharging function due to protracted illness or physical disability; or

(d) has willfully omitted or refused to carry out the provisions of this Act or has committed breach of any of the terms and conditions of the service contract or has abused or misused the powers vested in him or if the continuance in the office of the Vice Chancellor is detrimental to the interest of the University; or

(e) has been proved to be guilty of criminal breach of trust or criminal negligence or gross financial irregularity or impropriety or gross negligence of duty; or

(f) has shown incompetence to perform or has persistently made default in the performance of the duties imposed on him by or under this Act; or

(g) has been convicted by a court for any offence within the concept and meaning of the Code of Criminal Procedure, 1973; or

(h) is a member of, or otherwise associated with, any political party or acts in any partisan manner while in office.

Explanation. – For the purpose of this sub-clause, whether any party is a political party or any association is a political association or any act of the Vice-Chancellor is partisan, decision of the Chancellor thereon shall be final:

Provided that the Vice-Chancellor shall be given a reasonable opportunity to show cause by the Chancellor before taking recourse for his removal under clauses (d), (e), (f), (g) and (h).”

20. Since this Court is dealing with the issue of appointment of Vice-Chancellor, therefore, it would be relevant to take note of the important role which the Vice-Chancellor performs in the affairs of the University. Hon’ble Supreme Court in the matter of **Gambhirdan K. Gadhvi (supra)** has noted the role of the Vice-Chancellor and need to have a competent person as Vice-Chancellor by holding that:

“53. It is to be noted that the post of Vice-Chancellor of the university is a very important post so far as the university is concerned. Being a leader and head of the institution, the Vice-Chancellor of the university has to play very important role. While academic qualifications, administrative experience,

research credentials and track record could be considered as basic eligibility requirements, the greater qualities of a Vice-Chancellor would be one who is a true leader and a passionate visionary. A Vice-Chancellor needs to be one who understands and handles the affairs of the university as ethical business and maintains a pellucidity in his conduct towards the betterment of the university as well as the students therein. A Vice-Chancellor should be one who can inspire students and guarantee entry of high quality teachers into the university system. A Vice-Chancellor functions as a bridge between the executive and academic wings of a university as he is the head of both a “teacher” and an “administrator”.”

21. Various issues which are raised in this writ petition needs to be examined considering the above provisions in law. Mainly following issues arise for consideration of this Court in this writ petition:

- (i) Whether taking recourse to removal of difficulty clause, the State Government is competent to appoint the Vice-Chancellor?
- (ii) Whether the State Government is empowered to extend the tenure of the Vice-Chancellor on expiry of his tenure?
- (iii) Whether the UGC Regulations, 2018 are applicable in the State of West Bengal?
- (iv) Whether the appointment of the respondent Vice-Chancellors not fulfilling the minimum eligibility conditions of 10 years experience as Professor as prescribed in Regulation 7.3.i of UGC Regulations, 2018 is a valid appointment?
- (v) Whether appointment of the respondents as Vice-Chancellor by a Search Committee constituted without having a nominee of Chairman of the UGC as required by Regulation 7.3.ii of UGC Regulations, 2018 can be said to be a lawful appointment?

(vi) Whether the provisions of the amended Acts of 2012 and 2014 to the extent they are in contravention of the provisions of UGC Regulations, 2018 can be enforced?

22. So far as the first issue is concerned, it relates to appointment of the Vice-Chancellor taking recourse to the removal of difficulty clause by the State Government. A similar issue had come up before this Court in **WPA (P) 55 of 2022** in the matter of **Anindya Sundar Das vs. State of West Bengal & Ors.** when the appointment of the Vice-Chancellor of the Calcutta University was challenged and writ of *quo warranto* was prayed on the ground that the State Government was not competent to appoint the Vice-Chancellor. The Division Bench of this Court had considered Sections 7 and 8 of the Calcutta University Act, 1979 and had also taken note of Section 60 of the Act relating to removal of difficulty clause and had reached to the conclusion that the Governor is empowered to act as Chancellor of the University and in terms of Section 8, Vice-Chancellor is to be appointed by the Chancellor. This Court had found that only the Chancellor had the power to appoint, reappoint or temporarily appoint or remove the Vice-Chancellor. This Court had further found that taking shelter of Section 60 of the Act, the State cannot usurp the power of the Governor and appoint the Vice-Chancellor. Accordingly, while allowing the writ petition, this Court had found that the State had no authority to appoint or reappoint the Vice-Chancellor, either under Section 8 of the Act or by taking recourse to the residuary Section 60 of the Act. Accordingly, the appointment of Vice-Chancellor of the Calcutta University made by the State was set aside by issuing a writ of *quo warranto*.

23. Against the aforesaid Division Bench Judgment of this Court, Civil Appeal Nos. 6706 of 2022 and 6707 of 2022 were preferred which have been decided by the Hon'ble Supreme Court by the judgment dated 11th of October, 2022 reported in **2022 SCC OnLine SC 1382** in the matter of **State of West Bengal vs. Anindya Sundar Das & Ors.** Hon'ble Supreme Court while dismissing the appeal has held that:

“45. The issue is whether the deletion of the expression “subject to the provisions of this section” in the amended provisions of Section 8(2)(a) would lead to the inference that the power of reappointment has been taken away from the Chancellor and entrusted to the State government. The submission to that effect which has been urged on behalf of the appellants cannot be accepted.

46. The effect of the words “subject to the provisions of this section” in Section 8(2)(a) in its unamended form was that the reappointment would have to be in a manner provided in Section 8, which obviously included Section 8(1). Deletion of those words in Section 8(2)(a), as amended, would mean that the procedure which has been prescribed for making the appointment of a VC, namely the appointment of a search committee and the preparation of a panel, would not be attracted in the case of a reappointment. In the case of a reappointment, a VC who has completed a term of four years would be eligible subject to the satisfaction of the State government and on the basis of their past academic excellence and administrative record during the term of office held as a VC. Significantly, Section 8(2)(a) speaks of the satisfaction of the State government and past academic excellence and administrative success during the term of office. Fulfilment of those conditions makes a person eligible for being reappointed as a VC.

47. It is a settled principle of law that a statute must be read to avoid a construction which would make certain provisions or terms meaningless or redundant. In *Union of India v. Hansoli Devi*¹², a Constitution Bench of this Court reiterated the dictum

in the decision of the Constitution Bench in *Aswini Kumar Ghose v. Arabinda Bose*¹³, that “it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute.” The Court in *Hansoli Devi*¹⁴ reiterated the decision of the Privy Council in *Quebec Railway, Light Heat & Power Co. Ltd. v. Vandry*¹⁵ observing that the “legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons.” An effort must be made to read the provisions of the statute in a holistic manner so as to imbue it with meaning and content.

48. There is neither an express provision nor a necessary intendment by which it could be inferred that the power which is entrusted to the Chancellor to appoint a VC is taken away in the case of a reappointment. There is no intrinsic reason or rationale to accept the interpretation which has been urged on behalf of the State of West Bengal. A reappointment is the appointment of an existing incumbent who fulfils the conditions of eligibility. The fulfilment of the conditions makes a person eligible for reappointment. The power of appointment including of reappointment is entrusted to the Chancellor and not to the State government. The amended provisions of Section 8(2)(a) cannot therefore be construed to mean that the power of reappointment has been taken away from the Chancellor and entrusted to the State government. Reading the provisions in such a manner, would make the provisions entrusting the power of appointment of the VC with the Chancellor redundant.”

24. It has further been held that:

“**53.** Faced with the view of the Chancellor, the State government attempted to get around the situation by purporting to exercise its powers under Section 60. Section 60 provides as follows:

“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, as occasion may require, may 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.”

54. Section 60 contemplates a situation where *inter alia* any difficulty arises in giving effect to the provisions of the Act “on account of any lacunae or omission” in its provisions or for any other reason whatsoever. In such cases, the State government is empowered, as the occasion may require, to do anything which appears to it to be necessary for removing the difficulty notwithstanding anything to the contrary contained elsewhere in the Act or any other law. Where there is a specific provision, as in the present case Section 8(2)(a), it was not open to the State government to conjure up a lacunae or omission and purportedly exercise the power to remove difficulties. A “removal of difficulty clause” has been construed in *Madeva Upendra Sinai v. Union of India*¹⁶, which reads as follows:

“39. To keep pace with the rapidly increasing responsibilities of a welfare democratic State, the Legislature has to turn out a plethora of hurried legislation, the volume of which is often matched with its complexity. Under conditions of extreme pressure, with heavy demands on the time of the Legislature and the endurance and skill of the draftsman, it is well nigh impossible to foresee all the circumstances to deal with which a statute is enacted or to anticipate all the difficulties that might arise in its working due to peculiar local conditions or even a local law. This is particularly true when Parliament undertakes legislation which gives a new dimension to socio-economic activities of the State or extends the existing

Indian laws to new territories or areas freshly merged in the Union of India. In order to obviate the necessity of approaching the Legislature for removal of every difficulty, howsoever trivial, encountered in the enforcement of a statute, by going through the time-consuming amendatory process, the Legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adaptations and peripheral adjustments in the statute, for making its implementation effective, without touching its substance. That is why the “removal of difficulty clause”, once frowned upon and nick-named as “Henry VIII clause” in scornful commemoration of the absolutist ways in which that English King got the “difficulties” in enforcing his autocratic will removed through the instrumentality of a servile Parliament, now finds acceptance as a practical necessity, in several Indian statutes of post-independence era.”

55. The State government chose the incorrect path under Section 60 by misusing the “removal of difficulty clause” to usurp the power of the Chancellor to make the appointment. A government cannot misuse the “removal of difficulty clause” to remove all obstacles in its path which arise due to statutory restrictions. Allowing such actions would be antithetical to the rule of law. Misusing the limited power granted to make minor adaptations and peripheral adjustments in a statute for making its implementation effective, to side-step the provisions of the statute altogether would defeat the purpose of the legislation.

56. Accordingly, the High Court in our view was justified in coming to the conclusion that “in the guise of removing the difficulties, the State cannot change the scheme and essential provisions of the Act”.

25. Thus, it has been settled by the Hon’ble Supreme Court that when power is conferred upon the Chancellor to appoint or reappoint the Vice-Chancellor, the State Government cannot usurp that power taking

recourse to the removal of difficulty clause which is worded in the manner contained in Section 60 of the Calcutta University Act, 1979. In the present case, it is undisputed that there is no significant difference in the provisions relating to the appointment or reappointment of Vice-Chancellor or removal of difficulty clause in the different Acts under which the respondent Vice-Chancellors have been appointed as that of the Calcutta University Act, 1979.

26. Facts on record indicate that some of the respondent Vice-Chancellors have been appointed by the State Government taking recourse to the provisions of the removal of difficulty clause which in substance is the same as Section 60 of the Calcutta University Act, 1979, therefore, in view of the judgment of the Hon'ble Supreme Court in the case of **Anindya Sundar Das and Ors. (supra)**, their appointment cannot be sustained.

27. The connected issue is in respect of issuance of writ of *quo warranto* as against the respondent no. 20. Undisputedly, respondent no. 20 was reappointed as Vice-Chancellor of Maulana Abul Kalam Azad University of Technology by the order of the Principal Secretary of the Higher Education Department taking recourse to removal of difficulty clause contained in Section 20 of the West Bengal University of Technology Act, 2000. Against the cancellation of the said appointment, respondent no. 20 had filed WPA 17398 of 2022 and learned Single Judge by the judgment dated 4th of August, 2022 had allowed the writ petition. The view taken by the learned Single Judge in WPA 17398 of 2022 runs counter to the view of the Hon'ble Supreme Court in the matter of **Anindya Sundar Das (supra)**. The judgment of the Hon'ble Supreme Court is binding on this Court under Article 141 of the

Constitution, therefore, the plea raised by the learned counsel for the respondent no. 20 based upon the judgment of the learned Single Bench of this Court in WPA 17398 of 2022 cannot be sustained. Learned counsel for the respondent no. 20 has placed reliance upon the judgment in the case of **Sri Gangai Vinayagar Temple and Another (supra)** and **Lalu Prasad Yadav Alias Lalu Prasad (supra)**, in support of his plea double jeopardy but in the facts of the present case, such a principle is not attracted as the appointment of the respondent no. 20 clearly runs counter to the judgment of the Hon'ble Supreme Court in the case of **Anindya Sundar Das (supra)**. Hence, CAN 1 of 2022 is rejected.

28. The second issue is in respect of the legality of the orders issued by the State Government extending the tenure of those respondent Vice-Chancellors who were initially appointed as Chancellor. This Court in the matter of **Anindya Sundar Das (supra)** has already taken the view after considering the provisions of Section 8 of the Calcutta University Act, 1979 that the power of appointment, reappointment, extension of tenure solely lies with the Chancellor and the State Government, taking recourse to the removal of difficulty clause, cannot usurp that power. Once the power to reappoint or extend the tenure is vested with the Chancellor and the same cannot be usurped by the State under removal of difficulty clause, then the State is required to show as to how or under which provision, the State had passed the order reappointing or extending the tenure of some of the respondent Vice-Chancellors. In the present case, some of the respondent Vice-Chancellors were initially appointed by the Chancellor but their tenures have been extended by the State Government without any authority of law. Hence, the orders

extending their tenure as Vice-Chancellor passed by the State Government cannot be sustained.

29. At this stage, it would be relevant to mention the undisputed position that while reappointing the Vice-Chancellors or extending their tenure, the State Government had issued the orders exercising the power of the Governor, using the word 'Governor' but during the course of argument, it has not been disputed by the learned Advocate General that those orders are by the State Government and Governor has been mentioned since his powers were exercised by the State.

30. When the State has no power to appoint or reappoint the Vice-Chancellor, the State cannot appoint Vice-Chancellor by giving additional charge, therefore orders passed by the State Government giving additional charge of Vice-Chancellor are also bad in law.

31. The following respondents were appointed/reappointed/their tenure extended as Vice-Chancellors of respective Universities by the State Government invoking the provisions of removal of difficulty clause contained in the Act or they were given additional charge of Vice-Chancellor by the State. The details of such appointments are as under:

- i. Respondent no. 5 – By order dated 21.12 2021 appointed by the State as Vice-Chancellor for a period of one year w.e.f. 23.12. 2021.
- ii. Respondent no. 6 – By order dated 29.06.2021 appointed by the State as Vice-Chancellor for a period of one year w.e.f. 01.07.2021.

- iii. Respondent no. 7 – By order dated 02.12.2021 appointed by the State as Vice-Chancellor for a period of one year w.e.f. 03.12.2021.
- iv. Respondent no. 8 – By order dated 25.02.2021 appointed by the State as Vice-Chancellor for a period of four years.
- v. Respondent no. 9 – By order dated 27.08.2021 appointed by the State as Vice-Chancellor for a period of four years w.e.f. 28.08.2021. [Appointment already set aside in the case of **Anindya Sundar Das (supra)**]
- vi. Respondent no. 11 – Additional charge of Vice-Chancellor given by the State Government by order dated 14.01.2022.
- vii. Respondent no. 12 – Appointed by the State Government by the order dated 25.02.2021 for a period of four years w.e.f. 03.03.2021.
- viii. Respondent no. 13 – Tenure extended by the State by order dated 28.01.2022 for a period of one year w.e.f. 30.01.2022.
- ix. Respondent no. 14 – By order dated 15.12.2021, tenure extended by the State for a period of one year w.e.f. 16.12.2021.
- x. Respondent no. 15 – By order dated 23.06.2021, tenure extended by the State for a period of two years w.e.f. 24.06.2021.
- xi. Respondent no. 16 – By order dated 21.05.2022, tenure extended for a period of six months w.e.f. 13.05.2022.
- xii. Respondent no. 17 – By order dated 18.12.2020 appointed by the State as Vice-Chancellor for a period of four years.

- xiii. Respondent no. 18 – Tenure extended by the State by order dated 29.08.2022 for a period of one year w.e.f. 01.09.2022.
- xiv. Respondent no. 19 – By order dated 02.11.2022, tenure extended by the State for a period of three months w.e.f. 03.11.2022.
- xv. Respondent no. 20 – By order dated 26.02.2021, reappointed by the State as Vice-Chancellor for a period of 4 years w.e.f. 27.02.2021.
- xvi. Respondent no. 21 – By order dated 26.02.2022, additional charge as Vice-Chancellor was given by the State w.e.f. 01.03.2022.
- xvii. Respondent no. 22 – By order dated 10.06.2021, tenure extended for a period of two years w.e.f. 11.06.2021.
- xviii. Respondent no. 23 – By order dated 14.09.2022, reappointed by the State as Vice-Chancellor for six months w.e.f. 19.09.2022.
- xix. Respondent no. 24 – By order dated 14.09.2021, additional charge as Vice-Chancellor was given by the State w.e.f. 15.09.2021.
- xx. Respondent no. 25 – By order dated 17.02.2022, appointed by the State as Vice-Chancellor for a period of one year w.e.f. 20.02.2022.
- xxi. Respondent no. 26 – By order dated 14.01.2022, additional charge of Vice-Chancellor was given by the State w.e.f. 16.01.2022.

xxii. Respondent no. 27 – By order dated 05.01.2022, tenure as Vice-Chancellor was extended by the State for a period of one year w.e.f. 06.01.2022.

xxiii. Respondent no. 28 – By order dated 22.02.2021, reappointed as Vice-Chancellor by the State for a period of four years w.e.f. 23.02.2021.

32. The tenure of some of the above respondents has expired and there is no material on record indicating that their tenure has been extended. Therefore, their appointment, reappointment, extension of tenure, giving additional charge is by the State Government without their being any order of the Chancellor is unsustainable, but at this stage, no case for issuing the writ of *quo warranto* against them arises.

33. So far as the respondent nos. 6, 8, 12, 15, 17, 18, 20 and 22 are concerned by virtue of above orders, their tenure as Vice-Chancellor still subsists, therefore, if they are continuing on the basis of the above unsustainable orders, then they have no authority to continue, therefore, a case of issuing the writ of *quo warranto* against them is made out.

34. The other issues are hereby decided together.

35. The Entry 66 of List I (Union List) of Seventh Schedule of the Constitution provides for co-ordination and determination of standards in institutions for higher education etc. and reads as under:

“66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

36. Entry 25 of the List III (Concurrent List) deals with education and reads as under:

“25. Education, including technical education, medical education and universities, subject to the provisions of entries

63, 64, 65 and 66 of List I; vocational and technical training of labour.”

37. Article 254 of the Constitution provides for eventuality in case of inconsistency between laws made by the Parliament and laws made by the State Legislatures and reads as under:

“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

38. The UGC Act, 1956 has been enacted to make provisions for co-ordination and determination of standards of Universities and for that purpose to establish the University Grants Commission. Section 12 of the Act provides for functions of the Commission and Section 14 provides for consequences of failure of the Universities to comply with

the recommendation of the Commission. Section 26 contains powers to make regulation. Sub-Section (g) thereto empowers it to make regulations and regulate the maintenance of standards and co-ordination of work or facilities in the Universities. Section 28 of the Act requires the Regulations framed under the UGC Act to be laid before different Houses of Parliament. It is only when both the Houses of Parliament approve Regulations, the same can be given effect to.

39. It has been contended before this Court by the learned Counsel for the respondents that the Acts governing different Universities containing the provisions for appointment of Vice-Chancellors have been enacted by the State under Entry 25 of List III of Seventh Schedule.

40. In such a situation, to the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, the same would be void and inoperative. This aspect has been considered by the Hon'ble Supreme Court in the matter of **State of T.N. v. Adhiyaman Educational & Research Institute and Others** reported in (1995) 4 SCC 104 wherein it has been held that:

“41. What emerges from the above discussion is as follows:

(i) The expression ‘coordination’ used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore,

includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central

law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.”

41. In the matter of **Annamalai University Represented By Registrar vs. Secretary To Government, Information And Tourism Department And Others** reported in (2009) 4 SCC 590, Hon’ble Supreme Court in paragraph 42 has held that the provisions of UGC Act are binding upon the Universities whether conventional or open and that the subordinate legislation when validly made becomes part of the Act.

42. In the case of **Kalyani Mathivanan (supra)** in reference to UGC Regulations 2010, the issue came up before the Hon’ble Supreme Court if in respect of appointment and eligibility criteria of Vice-Chancellors there is conflict between the State University Act and the UGC Regulations which one will prevail, Hon’ble Supreme Court had reiterated the legal position in this regard as under:

“53. The aforesaid judgment makes it clear 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 shall be repugnant to the Central legislation and would be inoperative.”

43. Thus, UGC Regulations have been found to be subordinate legislations by the Hon’ble Supreme Court in the matter of **Kalyani Mathivanan (supra)**.

44. Considering the provisions of UGC Regulations 2010, Hon’ble Supreme Court had found that UGC Regulations 2010 were not applied to the universities, colleges and other higher educational institutions coming under the purview of the State Legislature unless the State

Government wish to adopt and implement the Scheme subject to the terms and conditions therein; in that background, Hon'ble Supreme Court in the matter of **Kalyani Mathivanan (supra)** had held that:

“**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.

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.”

45. It is worth noting that UGC Regulations 2010 have been superseded now by UGC Regulations 2018.

46. In the matter of **Baharul Islam and Others vs. Indian Medical Association and Others** reported in **2023 SCC OnLine SC 79**, the High Court had struck down Assam Rural Health Regulatory Act, 2004 finding the State Act to be in conflict with the Indian Medical Council Act, 1956. Considering the issue, Hon'ble Supreme Court had found that any law made under Entry 25 List III by State Legislature is always subject to Entry 66 of List I. Accordingly, Hon'ble Supreme Court held

that no State Legislature has the legislative competence to pass any law which would be contradictory to or would be in conflict with IMC Act, 1956 and the Rules and Regulations made thereunder. Hon'ble Supreme Court in this regard held that:

“85. In the result, we arrive at the following conclusions:

(i) Entry 25 of List III of the Seventh Schedule of the Constitution of India deals with the subject education which is in the Concurrent List under which both the Parliament or the Union Legislature as well as the State Legislatures have legislative competence to legislate. However, Entry 25 of List III is subject to, *inter alia*, Entry 66 of List I which is the Union List. Entry 66 of List I deals with coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Thus, when any law is made under Entry 25 of List III by a State Legislature, the same is always subject to Entry 66 of List I. In other words, if any law made by the Parliament comes within the scope of Entry 66 of List I, then the State Legislation would have to yield to the Parliamentary law.

Thus, where one Entry is made “subject to” another Entry, it would imply that, out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specifically dealt with by the appropriate legislature.

(ii) In the instant case, it is held that the IMC Act, 1956 is a legislation made by the Parliament for the purpose of coordination and determination of standards in medical education throughout the Country. The said law, along with the Rules and Regulations made thereunder are for the purpose of determination of standards of medical education throughout India. Thus, determination of standards in medical education in India

is as per the IMC Act, 1956 which is a Central Law. This is in respect of modern medicine or allopathic medicine within the scope of Entry 66 of List I and not under Entry 25 of List III of the Seventh Schedule. Therefore, a State Legislature which passes a law in respect of allopathic medicine or modern medicine would be subject to the provisions of the IMC Act, 1956 and the Rules and Regulations made thereunder. This would imply that no State Legislature has the legislative competence to pass any law which would be contradictory to or would be in direct conflict with the IMC Act, 1956 and the Rules and Regulations made thereunder. In other words, the standard in medical education insofar as modern medicine or allopathy is concerned, having been set by the IMC Act, 1956 and the Rules and Regulations made thereunder or by any subsequent Act in that regard, such as the Medical Council of India Act, 2019, the State Legislature has no legislative competence to enact a law which is in conflict with the law setting the standards of medical education in the context of modern medicine or allopathic medicine, which has been determined by Parliamentary Legislation as well as the Rules. In other words, a State Legislature has no legislative competence to enact a law in respect of modern medicine or allopathic medicine contrary to the said standards that have been determined by the Central Law....”

47. In the matter of **Gambhirdan K. Gadhvi (supra)**, the appointment of Vice-Chancellor of Sardar Patel University in the State of Gujarat was challenged and writ of *quo warranto* was prayed on the ground that the appointment was contrary to the provisions contained in the UGC Regulations. Hon’ble Supreme Court found that the UGC Regulations being subordinate legislation, becomes part of the Act and

the appointment of Vice-Chancellor found contrary to the UGC Regulations was set aside by holding as under:

“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.”

48. In the above judgment, Hon’ble Supreme Court had also found that the Search Committee was not constituted as per UGC Regulations, 2018 and the concerned respondent did not fulfill the eligibility criteria of 10 years teaching work experience as Professor in the university system as provided in UGC Regulations, 2018.

49. In the matter of **Professor (Dr.) Sreejith P.S. (supra)**, the precise issue which is involved in the present petition has been considered. In that case also, the writ of *quo warranto* was sought

challenging the appointment of the Vice-Chancellor of APJ Abdul Kalam Technological University and the same defence was raised by the respondent and the petition was opposed on the ground that unless UGC Regulations are adopted by the State Government, the University Act enacted by the State shall prevail and that the UGC Regulations, 2010 were directory for the Universities as the matter was left to the State Government to adopt and implement the same. Hon'ble Supreme Court had rejected the said argument by specifically holding that:

“23. The decision of this Court in the case of *Gambhirdan K. Gadhvi* (supra) has been subsequently followed by this Court in the recent decision of this Court in the case of *Anindya Sundar Das* (supra) while considering the appointment of the Vice Chancellor of Calcutta University. In the said decision, it is also observed and held in paragraph 56 that in view of the decision in the case of *Gambhirdan K Gadhvi* (supra), 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.

24. 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 UGC Regulations are specifically adopted by the State cannot be accepted.”

50. In the matter of **Anindya Sundar Das (supra)** wherein the appointment of Vice-Chancellor of Calcutta University was under challenge and writ of *quo warranto* was prayed, Hon’ble Supreme Court while affirming the judgment of the High Court has considered the issue of applicability of the UGC Regulations, 2018 and has found it to be applicable and the appointment of the Vice-Chancellor by the State Government to be in violation of the UGC Regulations by holding as under:

“**58.** The University Grants Commission (Minimum Qualifications for appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations 2018 have been issued to prescribe, inter alia. the minimum qualifications for appointment and other service conditions of University and College teachers.

59. Regulation 1.2 of the UGC Regulations provides that they are applicable to:

“every University established or incorporated by or under a Central Act, Provincial Act or a State Act, every Institution including a Constituent or an affiliated College recognized by the Commission, in consultation with the University concerned under Clause (i) of Section 2 of the University Grants Commission Act, 1956 and every Institution deemed to be a University under Section 3 of the said Act.”

60. Regulation 7.3 provides for the minimum qualifications of a VC, selection procedure and the appointment procedure. Regarding the appointment of the VC, Regulation 7.3 states that:

7.3 Vice Chancellor:

[...]

(iii) The Visitor/Chancellor shall appoint the Vice Chancellor out of the Panel of names recommended by the Search-cum-Selection Committee.

61. In *Gambhirdan K Gadhvi v. State of Gujarat*, 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:

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.**

(emphasis supplied)

62. In view of the decision in *Gambhirdan K Gadhvi*, 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.

63. For the above reasons, we hold that the judgment 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 re-appointing the VC.”

51. In the subsequent judgment in the matter of **Prof. Narendra Singh Bhandari vs. Ravindra Jugran and Others** reported in **2022 SCC OnLine SC 1555**, Hon’ble Supreme Court, taking note of the judgments in the case of **Gambhirdan K. Gadhvi (supra)**, in the case of **Anindya Sundar Das (supra)** and in the case of **Professor (Dr.) Sreejith P.S. (supra)** has reiterated that even otherwise than adopting the UGC Regulations, the State Government was bound to follow and/or act as per the UGC Regulations, 2018 by observing as under:

“28. From the note sheet dated 5.8.2020, it appears that only one name was placed before the State Government/the Chief Minister for approval. Under the circumstances, the appointment of the appellant as Vice-chancellor of the University was just contrary to Section 10 of the University Act, 2019 r/w Regulation 7.3.0 of the UGC Regulations, 2018. At this stage, it is required to be noted that as observed and held by this Court in the cases of *Gambhirdan K. Gadhvi (supra)*; *Anindya Sundar Das (supra)*; and *Dr. Rajasree M.S. (supra)*, in a case where there is a conflict between the State University Act and the UGC Regulations, 2018 to the extent State legislation is repugnant, the UGC Regulations, 2018 shall prevail. As observed hereinabove, UGC Regulations, 2018 were adopted by the State Government and the State Government was

otherwise bound to follow and/or act as per the UGC Regulations, 2018.”

52. Thus, the issue is concluded by the aforesaid judgments that UGC Regulations, 2018 are applicable and the appointments which have been made in violation of the UGC Regulations, 2018 cannot be sustained. In the present case, some of the respondent Vice-Chancellors do not fulfill the minimum qualification of 10 years’ experience as professor in the university or 10 years’ of expertise in a reputed research and/or administrative organization with proof of having demonstrated academic leadership, therefore, their appointment is contrary to Regulation 7.3.i of UGC Regulations, 2018. It is also undisputed that the Search Committee formed for the appointment of all the respondent Vice-Chancellors did not have one Member nominated by the Chairman, University Grants Commission as required by Regulation 7.3.ii, therefore, their appointments are contrary to Regulation 7.3.ii of UGC Regulations, 2018.

53. In view of the above analysis, it is held that the impugned provisions of amended Acts of 2012 and 2014 to the extent they are repugnant to the UGC Regulations, 2018 relating to appointment of Vice-Chancellor cannot be sustained and the State is directed to consider making suitable amendments in the concerned Acts to bring them in conformity with the UGC Regulations, 2018 preferably within a period of six months.

54. So far as the judgment in the matter of **Tamil Nadu Medical Officers Association and Others (supra)** and **Modern Dental College and Research Centre and Others (supra)** are concerned, the reliance has been placed in respect of scope of Entry 66 of List I but the

Regulations of 2018 are not under challenge in this petition and their scope and applicability has already been considered in the matter of **Gambhirdan K. Gadhvi (supra)** and **Anindya Sundar Das (supra)**. So far as the judgment in the matter of **Annamalai University Represented By Registrar (supra)** and **Praneeth K and Others (supra)** on the plea that the Regulations of 2018 are recommendatory is concerned, that issue has already been settled by the judgment in the case of **Anindya Sundar Das (supra)**, **Gambhirdan K. Gadhvi (supra)** and **Professor (Dr.) Sreejith P.S. (supra)**. So far as the reliance upon the judgment in the case of **Mar Appraem Kuri Company Limited and Another (supra)** and **G.S. Chatha Rice Mills and Another (supra)** in respect of the issue of repugnancy are concerned, the UGC Regulations, 2018 have already been found to be applicable by the Hon'ble Supreme Court in the judgments noted above and the amendment in the State Acts run contrary to the same. So far as the judgment relied upon by learned counsel for the respondent in support of the plea that once the appointee possesses minimum qualification, no writ of *quo warranto* is to be issued, in the present case, the issue is not only of minimum eligibility condition but in respect of the deficiency in the constitution of the Selection Committee as also appointment by the State which had no power to appoint the Vice-Chancellor. So far as the reliance upon the judgment in the matter of **National Institute of Technology and Another (supra)** is concerned, there is no issue of rectification when the State itself did not have power to appoint and when the procedure of appointment was contrary to the Regulations. So far as the reliance upon the judgment in the case of **Maa Vaishno Devi Mahila Mahavidyalaya (supra)** by the

learned counsel for the respondent nos. 15, 22 and 35 is concerned, the issue involved therein was entirely different relating to affiliation and recognition to the institutions.

55. It is also worth noting at this stage that the tenure of some of respondents has expired in the meanwhile and neither their terms have been extended nor fresh appointment to the post of Vice-Chancellor in the concerned Universities had been made, therefore, at this stage, question of issuing writ of *quo warranto* against them does not arise as they are not holding the Office of the Vice-Chancellor as on date.

56. So far as the other respondent Vice-Chancellors who are appointed/reappointed, holding additional charge or tenure extended by order of the State and are still working on the strength of those order without any approval of Chancellor are concerned, their appointments are found to be unsustainable being in contravention of the provisions of law, therefore, a question arises if writ of *quo warranto* be issued against them.

57. Hon'ble Supreme Court in the case of **Gambhirdan K. Gadhvi (supra)** has considered as to when the writ of *quo warranto* can be issued and has held as under:

“16. When a writ of quo warranto will lie has been dealt with by this Court in *Rajesh Awasthi v. Nand Lal Jaiswal*. 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* held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In *B. Srinivasa Reddy*, 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* 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*, 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 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.”

58. In the present case also, respondent Vice-Chancellors are appointed on the post of Vice-Chancellor which is a public office and their appointments have been found to be in violation of the provisions of law. Hence, if they are still holding the post by virtue of those orders, a case for issuing the writ of *quo warranto* against them is made out.

59. Learned counsel for the respondents, placing reliance upon the judgments of the Hon'ble Supreme Court in the matter of **Dr. M. S. Mudhol and Another (supra)**, the Bombay High Court in the matter of **Bhairul Chunilal Marwadi (supra)**, the Delhi High Court in the matter of **P.L. Lakhanpal (supra)**, the Calcutta High Court in the matter of **Shri Anil Kumar Xalxo (supra)** and the Kerala High Court in the matter of **K. J. Joseph (supra)** has taken the plea that the discretion should be exercised in favour of the respondents because they fulfill the minimum eligibility condition.

60. This Court has already taken note of the importance of the post of Vice-Chancellor in the University, therefore, it is essential that the appointment of the Vice-Chancellor should be strictly in accordance with the provisions of the Act. It would not be in the interest of the students and administration of the universities to continue the concerned respondents as Vice-Chancellor of the University once it is found that they have been appointed without following the due procedure and contrary to the provisions of the Act and that too by an authority not competent to appoint.

61. In view of the above, writ petition is allowed and it is directed that:

- i. The provisions of UGC Regulations, 2018 will prevail over the conflicting provisions of the concerned State Universities Act, relating to appointment of Vice-Chancellor, under which the respondent Vice-Chancellors have been appointed.
- ii. The appointment of those respondent Vice-Chancellors who are appointed, reappointed, whose tenure extended or who are given additional charge by the order of the State Government or who do not possess minimum eligibility condition or appointed without following the due procedure are held to be unsustainable and without the authority of law. Therefore, they have no right to continue as Vice-Chancellors by virtue of such unsustainable orders.

62. The writ petition is accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
14.03.2023

PA(RB)

(A.F.R. / N.A.F.R.)