

DR. RAM TAWAKYA SINGH
v.
STATE OF BIHAR AND OTHERS
(Civil Appeal No. 6831 of 2013)

AUGUST 19, 2013

[G.S. SINGHVI AND V. GOPALA GOWDA, JJ.]

UNIVERSITIES:

Appointment of Vice-Chancellors and Pro-Vice-Chancellors - 'Consultation with State Government' - Expression 'consultation' - Connotation of - Explained - Held: Though, the final decision is with the consulter, he cannot generally ignore the advice of the consultee except for good reasons -- There should be meeting of minds between the parties involved in the process of consultation on the material facts and points involved -- Consultation is not complete or effective unless the parties thereto make their respective points of view known to the other and discuss and examine the relative merit of their views.

Appointment of Vice-Chancellors and Pro Vice Chancellors - Notifications dated 9.2.2013, 19.2.2013 and 14.3.2013 issued for appointment of candidates as Vice-Chancellors and Pro Vice-Chancellors of different Universities in State of Bihar - Held: As regards the instant matters, Chancellor has been consistently flouting the mandate of law and making appointments completely disregarding the requirement of academic excellence and experience and without effectively consulting the State Government -- He neither adopted any transparent method of making selection nor did he keep in view the qualifications enumerated in the relevant statutory provisions -- He also acted in contemptuous disregard of the pronouncements

- A *made by the High Court in two rounds of litigation, that appointments of Vice-Chancellors and Pro Vice-Chancellors must precede meaningful and effective consultation with State Government - He selected for appointment some persons who were facing prosecution under various criminal laws and/or*
- B *involved in financial irregularities -- The mechanism adopted by Chancellor in making appointments is blatantly violative of the scheme of the BSU Act and the PU Act and also Art. 14 of the Constitution - Impugned Notifications are quashed - Consequential directions issued - Bihar State Universities*
- C *Act, 1976 -ss.10 and 12 - Patna University Act, 1976 - ss. 11 and 14 - Nalanda Open University Act, 1995 - ss.11 and 13 - Constitution of India, 1950 - Art. 14.*

- Vice-Chancellors and Pro Vice-Chancellors - Appointment to the offices of - Held: Position of Vice Chancellor and Pro Vice Chancellor is extremely important in every University - They are responsible for maintaining the academic standard and discipline of the University and also ensure that all the bodies and authorities conduct themselves in conformity with the statutory provisions -- Relevant statutory*
- D *provisions prescribe the qualification of academic excellence as a condition precedent for appointment to these posts - Even if the language of the relevant provisions may not postulate selection of Vice-Chancellor or Pro Vice-Chancellor by inviting application through open advertisement, the*
- E *candidate must be a person reputed for his scholarship and academic interest or eminent educationist having experience of administering the affairs of any University, and selection of such a person is possible only if a transparent method is adopted and efforts are made to reach out to people across*
- F *the country -- Art. 14 of the Constitution which mandates that every action of the State authority must be transparent and fair has to be read in the language of these provisions -- The UGC Regulations, which provide for constitution of a Search Committee consisting of eminent educationists*

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academicians are intended to fill up an apparent lacuna in the provisions - Bihar Acts No. 12/2013, 13/2013 and 14/2013 have subsequently amended the relevant provisions in consonance with the relevant UGC Regulations. A

LOCUS STANDI:

Appointment of Vice Chancellors and Pro Vice-Chancellors - Writ petition by a Professor and Head of Department in a University, in the State, challenging the appointments, though he was not a candidate for such appointments - Held: Maintainable - Further, even assuming that the writ petitioner does not have any direct personal interest in such appointments, High Court could have suo motu taken cognizance of the issues raised by him and treated his petition as one filed in public interest and decided the same on merits - Public interest litigation. B C D

CONSTITUTION OF INDIA, 1950:

Art.136 - Appeal by State Government challenging order of High Court after the Chancellor initiated process of making appointments of Vice-Chancellors and Pro Vice-Chancellors pursuant to order of High Court - Maintainability of - Discussed. E

Appointments of two persons as Vice-Chancellors of Magadh and Veer Kunwar Singh Universities in terms of Notifications dated 9.4.2010 and 15.4.2010 were challenged by the appellant and another on the ground that the Chancellor had not consulted the State Government as per the requirement of s. 10(2) of the Bihar State Universities Act, 1976 ('the BSU Act'). The Single Judge of the High Court allowed the writ petition and quashed the notifications issued by the Chancellor. Letters Patent Appeals Nos. 822 and 824 of 2011 filed by the appointees were dismissed by the Division Bench of the High Court and their special leave petitions were F G H

A dismissed by the Supreme Court on 29.9.2011. During the pendency of the Letters Patent Appeals, the Chancellor issued Notifications dated 1.8.2011 and 3.8.2011 for appointment of ten persons as Vice-Chancellors and Pro Vice-Chancellors of different Universities in the State. The said appointments were challenged in another writ petition filed by the appellant mainly on the ground that the Chancellor had not consulted the State Government as per the mandate of s. 10(2) of the BSU Act and s. 11(2) of the Patna University Act, 1976. The Division Bench of the High Court quashed the appointments and directed that the Chancellor would propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors in the named Universities to the State Government with the relevant materials and the latter would forward its opinion in respect of all such names to the Chancellor.

The appellant filed C.A. No. 6831 of 2013 challenging the direction given by the High Court. He has also questioned the direction given by the High Court virtually debarring him from being considered for appointment as Vice-Chancellor or Pro Vice-Chancellor. The State of Bihar and others filed C.A. No. 6830 of 2013 challenging the order of the High Court on the ground that the view taken by it on the scope of ss.10(2) and 12(1) of the BSU Act and ss.11(2) and 14(1) of the PU Act was contrary to the one expressed by the coordinate Bench in LPA Nos. 822 and 824 of 2011. After the order dated 7.12.2012 passed by the Division Bench of the High Court, the Governor-cum-Chancellor, Bihar issued notifications dated 9.2.2013 and 19.2.2013 for appointment of certain persons as Vice Chancellors and Pro-Vice-Chancellors of different Universities. This was challenged by the appellant in Writ Petition No. 158 of 2013. On 18.3.2013, the Supreme Court stayed the operation of Notifications dated 9.2.2013 and 19.2.2013 and directed that the senior

most Deans in the Universities would discharge the function of the Vice-Chancellors and Pro Vice-Chancellors. Meanwhile, the Governor-cum-Chancellor issued yet another order dated 14.3.2013 appointing one person as Vice-Chancellor and two as Pro Vice-Chancellors.

It was contended for the writ petitioner and appellants that the direction given by the Division Bench of the High Court to the Chancellor to propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors was liable to be set aside and the appointments made by him were liable to be quashed because by taking advantage of the direction contained in the impugned order, the Chancellor arbitrarily prepared the list of the persons to be appointed as Vice-Chancellors and Pro Vice-Chancellors without making any selection whatsoever and without following any transparent method for making a choice from amongst the persons of academic excellence, unquestionable integrity and institutional commitment and without effectively consulting the State Government. It was pointed out that the said list issued by the Chancellor included some persons against whom criminal cases were registered with the police and/or were pending in the court(s). It was submitted that even though the BSU Act and the PU Act were not suitably amended for incorporating the UGC regulations dated 30.6.2010, the Chancellor was duty bound to keep in mind the parameters laid down by the UGC for selecting the candidates for appointment as Vice-Chancellors and Pro Vice-Chancellors.

Allowing the appeals and the writ petition, the Court.

HELD: 1.1 Section 10 of the BSU Act and s.11 of the PU Act make it clear that the position of Vice-Chancellor

A is extremely important in every University. The Pro-Vice Chancellor appointed in terms of s.12 of BSU Act and s.14 of P.U. Act is also a whole time officer of the University and is entitled to exercise such powers and perform such duties which may be prescribed or which
B may be conferred or imposed on him by the Vice-Chancellor. He is responsible for admission and conduct of examination upto Bachelor course and also the student welfare. The Vice-Chancellor and the Pro Vice-Chancellor are responsible for maintaining the academic
C standard and discipline of the University and also ensure that all the bodies and authorities conduct themselves in conformity with the statutory provisions. This is the precise reason why s.10(1) of the BSU Act and s.11(1) of the PU Act are couched in negative form and prescribe
D the qualification of academic excellence as a condition precedent for appointment as Vice-Chancellor. [para 12-14] [181-G-H; 182-G-H; 183-A-B]

E 1.2 The word 'consultation' used in ss.10(2) and 12(1) of the BSU Act and s.11(2) and 14(1) of the PU Act is of crucial importance. Consultation is a process which requires meeting of minds between the parties involved in the process. Though, the final decision is with the consultor, but he cannot generally ignore the advice of the consultee except for good reasons. In order for two
F minds to be able to confer and produce a mutual impact, it is essential that each must have for its consideration full and identical facts, which can constitute both the source and foundation of the final decision. There should be meeting of minds between the parties involved in the
G process of consultation on the material facts and points involved. Consultation is not complete or effective unless the parties thereto make their respective points of view known to the other and discuss and examine the relative merit of their views. [para 15-16] [183-G-H; 184-A-E]

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Chandramouleshwar Prasad v. Patna High Court (1970) 2 SCR 666, *Union of India v. Sankalchand Himatlal Sheth and Another* (1977) 4 SCC 193; *Union of India vs. Sankar Chand Himatlal Sheth and Another* 1996 (5) Suppl. SCR 419 = 1996 (10) SCC 469; *S.P Gupta vs. Union of India* 1982 SCR 365 = 1981 Suppl. SCC 87; *Gauhati High Court and another vs. Kuladhar Phukan* 2002 (2) SCR 808 = 2002 (4) SCC 524 - referred to.

Rollo v. Minister of Town and Country Planning (1948) 1 All ER 13, *Fletcher v. Minister of Town and Country Planning* (1947) 2 All ER 946 - referred to.

Words and Phrases (Permanent Edn. 1960, Vol.9), *Corpus Juris Secundum* (Vol.16A, 1956 Edn.) - referred to.

1.3 As regards the instant matters, the Chancellor has been consistently flouting the mandate of law and making appointments of Vice-Chancellors and Pro Vice-Chancellors without effectively consulting the State Government and completely disregarding the requirement of academic excellence and experience. He did not adopt any transparent method of making selection nor did he keep in view the qualifications enumerated in s.10(1) of the BSU Act and s.11(1) of the PU Act. Further, the extraordinary haste exhibited by the Chancellor in getting the notifications issued on 9.2.2013 speaks volume of his intention to prevent the State Government from bringing to the fore, the facts relating to criminal cases pending against some of his nominees. [para 19,20 and 22] [187-D; 188-C-D; 190-D-E]

1.4 The entire exercise undertaken by the Chancellor was ex-facie against the mandate of ss. 10(1), 10(2) and 12(1) of the BSU Act and ss. 11(1), 11(2) and 14(1) of the PU Act, because he made every possible effort to prevent the State Government from providing inputs about the candidates and conveying its opinion on their suitability

A to be appointed as Vice-Chancellors and Pro Vice-Chancellors. He also acted in contemptuous disregard of the pronouncements made by the High Court in two rounds of litigation, that the appointments of the Vice-Chancellors and Pro Vice-Chancellors must precede
B meaningful and effective consultation with the State Government. What is most shocking is that the Chancellor selected some persons for appointment as Vice-Chancellor and Pro Vice-Chancellor despite the fact that they are facing prosecution under various criminal
C laws and/or are involved in financial irregularities. The mechanism adopted by the Chancellor in making appointments is blatantly violative of the scheme of the BSU Act and the PU Act and also Art. 14 of the Constitution. [para 23] [191-B-E, G]

D 2.1 For the last many years the Chancellors have been appointing Vice-Chancellors and Pro Vice-Chancellors without adopting any transparent and fair method of selection. Even though the language of ss.10(1) and 12(1) of the BSU Act and ss.11(1) and 14(1) of the PU Act does
E not postulate selection of Vice-Chancellor or Pro Vice-Chancellor by inviting application through open advertisement, a wholesome reading of these sections makes it clear that Vice-Chancellor must be a person reputed for his scholarship and academic interest or
F eminent educationist having experience of administering the affairs of any University and selection of such a person is possible only if a transparent method is adopted and efforts are made to reach out to people across the country. Art. 14 of the Constitution which mandates that every
G action of the State authority must be transparent and fair has to be read in the language of these provisions and if that is done, it becomes clear that the Chancellor has to follow some mechanism whereby he can prepare panel by considering persons of eminence in the field of
H education, integrity, high moral standard and character

who may enhance the image of the particular University. [para 23-24] [191-E-F, H; 192-A-D] A

2.2 The UGC regulations, which provide for constitution of a Search Committee consisting of eminent educationists / academicians are intended to fill up an apparent lacuna in the provisions like s.10(1) of the BSU Act and s. 11(1) of the PU Act. If the UGC regulations had been engrafted in the two Acts, an unseemly controversy relating to appointment of Vice-Chancellors and Pro Vice-Chancellors could have been avoided. However, it has been brought to the notice of the Court that subsequently, by Bihar Acts Nos. 14/2003, 13/2013 and 12/2013, ss.10 and 12 of the BSU Act, ss.11 and 14 of the PU Act and ss.11 and 13(a) of the Nalanda Open University Act, 1995 respectively, have been amended in consonance with the UGC Regulations. [para 25-26] [192-E-F; 193-B-D] B C D

3.1 Challenge to the locus standi of the appellant (in CA No. 6831 of 2013) was rightly rejected by the High Court. It is not in dispute that he is a Professor and Head of the Department of Chemistry in Veer Kunwar Singh University, Ara. Therefore, the mere fact that he did not project himself as a candidate for the office of Vice-Chancellor or Pro Vice-Chancellor is not sufficient to deny him the right to question the appointments made by the Chancellor. His anxiety to ensure that eminent educationists are appointed as Vice-Chancellors and Pro Vice-Chancellors in the State can very well be appreciated. Even if it may be possible to say that the appellant does not have any direct personal interest in the appointment of Vice-Chancellors and Pro Vice-Chancellors in the State Universities, the High Court could have suo motu taken cognizance of the issues raised by him and treated his petition as one filed in public interest and decided the same on merits. [para 28-29] [195-C-G] E F G H

A *Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi* 1987 (1) SCR 458 = (1987) 1 SCC 227- relied on.

B 3.2 It is true that the State Government moved this Court only after the Chancellor initiated the process of making appointments and an apparently incorrect statement was made before the Court on 18.3.2005 in the context of the Governor's refusal to approve the amendments made in the two Acts but these factors are not sufficient to negate the State Government's challenge to the direction given by the High Court which, gave free hand to the Chancellor to manipulate the appointment of the persons of his choice, some of whom are embroiled in criminal cases, without getting a selection made keeping in view the requirements of s.10(1) of the BSU Act and s.12 (1) of the PU Act. [para 30] [196-G-H; 197-A-B]

D 4(i) In the result, Notifications dated 9.2.2013, 19.2.2013 and 14.3.2013 issued for appointment of the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities are declared illegal and quashed.

E (ii) The direction given by the High Court to the Chancellor to propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors is modified and it is directed that the Chancellor shall prepare a panel of suitable persons for appointment to the offices of Vice-Chancellors and Pro Vice-Chancellors keeping in view the provisions of ss. 10(1), 10(2) and 12 of the BSU Act and ss. 11(1), 11(2) and 14 of the PU Act as amended by Bihar Act No.14/2013 and 13/2013 respectively and by following a transparent and fair method of selection.

F (iii) The Chancellor shall make appointments after effective and meaningful consultation with the State Government, as indicated in the orders passed by the Single Judge in CWJC No. 8141/2010 and the Division H

Bench of the High Court in L.P.A. Nos. 822 and 824 of 2011. [para 31] [197-C-H] A

Case Law Reference:

1996 (5) Suppl. SCR 419	referred to	para 3.2	B
1982 SCR 365	referred to	para 3.2	B
2002 (2) SCR 808	referred to	para 3.2	B
(1970) 2 SCR 666	referred to	para 17	B
(1977) 4 SCC 193	referred to	para 18	C
(1948) 1 All ER 13	referred to	para 18	C
(1947) 2 All ER 946	referred to	para 18	C
1987 (1) SCR 458	relied on	para 29	D

CIVIL APPELLATE JURISDICTION : Civil Appeal NO. 6831 of 2013.

From the Judgment and Order dated 07.12.2012 of the High Court of Patna in CWJC No. 15123 of 2011. E

WITH

C.A. Nos. 6830 of 2013 & W.P. (C) No. 158 of 2013.

Ranjit Kumar, Ram Jethmalani, Manan Kumar Mishra, L. Nageshwara Rao, Vijay Hansaria, Rudreshwar Singh, Abhinav Mukerji, Kumar Ranjan, Gopal Jha, Sishir Pinaki, Sanjay Jain, Ravi Shankar Kumar, Birenora Kumar Chaudhary, Arun Kumar, D.K. Thakur, Priyambica Jha, Dr. V.P. Appan, Ashish Dixit, Karan Kalia, Pranav Dinesh, Nitin Kumar Thakur, Amit Pawan, Rajiv Kumar, Hareesh Ahmad Minhaaj, Sudhanshu Saran, Tarkeshwar Nath, B.K. Pandey, Nirmal Singh, T.G. Narayanan Nair, Rohit Kumar Singh, Rakesh Kumar Singh, Prem Prakash, V.V. Gautam, Rikesh Singh, Sanjay Kapur, Anmol Chandan, Priyanka Das, Shubhra Kapur, Atul Jha, Sandeep Jha, D.K. Sinha, Shantanu Sagar, Smarhar Singh, Abhishek Kr. Singh, H

A Gopi Raman, Mohd. Shahid Anwar, Syed Rehan, Minhajul Rashid, Navin Gupta, Neeraj Shekhar, Kunal Verma, Ardhendumauli Kumar Prasad, Irshad Ahmad, Rameshwar Prasad Goyal, Tayenjam Momo Singh for the appearing parties.

B The Judgment of the Court was delivered by

G.S. SINGHVI, J. 1. Leave granted in the special leave petitions.

C 2. Dr. Ram Tawakya Singh, who had filed writ petition before the Patna High Court for quashing the appointments of Vice-Chancellors and Pro Vice-Chancellors of different Universities in the State of Bihar, has questioned the directions contained in order dated 7.12.2012 passed by the Division Bench of that Court. The State of Bihar and two others have also filed an appeal against the order of the High Court and simultaneously questioned the notifications issued by the Chancellor for appointment of Vice-Chancellors and Pro Vice-Chancellors. Dr. Ram Tawakya Singh has filed Writ Petition No.158/2013 for quashing the appointments of the private respondents as Vice-Chancellors and Pro Vice-Chancellors.

The background facts

F 3.1 By Notifications dated 9.4.2010 and 15.4.2010, the Chancellor appointed Dr. Arvind Kumar and Dr. Subhash Prasad Sinha as Vice-Chancellor of Magadh and Veer Kunwar Singh Universities, respectively. The same were challenged by Dr. Pramod Kumar Singh and Dr. Ram Tawakya Singh in CWJC No.8141/2010 on the ground that the Chancellor had not consulted the State Government as per the requirement of Section 10(2) of the Bihar State Universities Act, 1976 (for short, 'the BSU Act'). The learned Single Judge of the Patna High Court allowed the writ petition and quashed the notifications issued by the Chancellor. He referred to the affidavits filed by the parties, the documents produced by them as also the documents summoned by the Court and observed:

"23. From the various averments as well as the relevant extract of the notings of the file annexed with the supplementary counter affidavit filed on behalf of the State there is sufficiency of material to show that the stand of the State is un-ambiguous that there was no consultation of any kind on the issue of appointment of Vice Chancellors including the two Vice Chancellors whose appointments are under challenge in the present writ application. The Court opines that if there was any consultation, there would not have been occasion for the Minister or the State to take such clear and categorical stand on the issue of consultation and to annex all those notings of the file to show that there was actually no consultation, so far as the State was concerned.

24. Now, let us take notice of the stand taken by the office of the Chancellor on whose behalf counter affidavit dated 23.03.2011 was initially filed. This counter affidavit has been sworn by one Kumar Braj Kishore Sahani, who is stated to be the Joint Secretary in the Governor's Secretariat and he has stated that he was well acquainted with the facts and circumstances of the case. The affidavit also states that he has been authorized to swear affidavit in this case on behalf of respondent no. 2 i.e. Chancellor of Universities, Raj Bhawan, Patna. What is relevant in this affidavit is paragraph 5 which is being reproduced for ready reference :-

"That the Vice Chancellor of V.K.S. University, Ara and the Vice Chancellor of Magadh University, Bodh Gaya have been appointed by the Hon?ble Chancellor in consultation with the State Government on 29th March, 2010, and Notifications of appointments of Vice Chancellors as per provisions of Section 10(2) of the B.S.U. Act, 1976 were issued from the Chancellor's Secretariat on 9.4.2010 (Ann. 7 of the I.A.) and on 15.4.2010 (Ann. 8 of the I.A.). It is wrong to allege that there had been no consultation with

A the State Government."

B 25. A stand has been taken on behalf of the Chancellor that since the notification itself talks in terms of consultation with the State Government on 29.03.2010, then it is a complete answer to the controversy which have been created in the matter of appointment of two Vice Chancellors because nothing more is required to be seen beyond the notification.

C 26. Court was not satisfied with such a sweeping stand taken on behalf of the Chancellor, in view of other overwhelming evidence which have been brought on record not only by the petitioners but also by the State Government.

D 27. In this background, the Court directed production of the file relating to consultation which supposedly took place with the State Government on 29.03.2010.

E 28. Learned Senior Counsel representing the Chancellor, namely, Mr. Y. V. Giri tendered a file for perusal by the Court to show that there was consultation with the then H. R.D. Minister on the issue, based on which the Chancellor made the appointments of the two Vice Chancellors. The file in question is file No. ACT - 01/10 which has an endorsement "Bihar State Universities Tribunal Act." Reliance was placed by the learned Senior Counsel representing the Chancellor to pages 51, 52 and 53 of the said file. The Court observed that since the file in question did not relate to appointment of Vice Chancellors but with regard to constitution of a University Tribunal and the objections of the Governor to ratification of the said bill. F The relevant pages, namely, page nos. 51, 52 and 53 of the said file was ordered to be brought on record by way of an affidavit so that all the parties to the dispute including G the Court had the benefit of looking into the same closely on the question of consultation with the State.

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29. A counter affidavit again on behalf of respondent no. 2 i.e. the Chancellor duly sworn by Kumar Brij Kishore Sahani, Joint Secretary in the Governor's Secretariat dated 18.04.2011 was filed annexing the said pages as Annexure R-2/1. This is supposed to be the portion of the file in which the so called consultation for appointment of Vice Chancellors took place or its evidence is reflected though the main minutes in the file deals with constitution of Bihar Universities Tribunal.

30. Since the noting on the question of consultation is in the purported hand of the Chancellor which speaks for itself, therefore, the Court feels that all the pages itself should be reproduced as part of this order. Annexure- R-2/1, therefore, is duly scanned and forms part of this order.

The note of the Chancellor is not fully legible.

32. The Court has meticulously gone through the said note of the Chancellor which has been purportedly made in his own pen. The first thing which the Court notices is that the note does not have any initial of the Minister and it has been incorporated in a file not even related to the question of appointment of Vice Chancellors to the Universities of Bihar muchless the Universities in question. There is obvious evidence that the visit of the Minister to the Raj Bhawan and the discussion he had with the Chancellor, primarily, related to the objections the Governor had in giving his assent to the Universities Tribunal Bill, which was pending approval of His Excellency for many a months, if not more than a year. Another significant aspect which emerges from the noting is that no separate Minutes came to be drawn up on a separate file or piece of paper as if Chancellor's Secretariat lacks stationery or Secretarial assistance. It was not even sent to the Minister for his signature or acknowledgment of what was recorded. It also shows that even a file was not opened on the issue

A of appointment to such important posts of Vice
Chancellors. What was the compelling circumstance under
which such a noting was done remains a mystery wrapped
in an enigma. A reading of the said note, even if it is
B accepted as evidence of the so called consultation, it does
not show that the two names were even mentioned for
appointment as Vice Chancellors to the two Universities,
namely, Magadh University or Veer Kunwar Singh
University, in the so called discussion. There is generality
C of discussion that vacancies are existing in the Universities
and there was some urgency of filling up those vacancies
on due priority. But that by itself did not mean by giving a
go bye to the law.

D 33. It is also not further understood or explained as to why
the so called "Minutes", if at all, could not be drawn up
subsequently and referred to the concerned Minister of
H.R.D. for obtaining his signature as a proof of his
agreeing of what was recorded therein. The Court is not
aware of any Minutes being drawn up unilaterally without
any endorsement or acknowledgment thereto of the parties
E to such consultation or deliberations. It is also not
understood as to what was the occasion for the Chancellor
to make such endorsement on a file and on a Minute which
dealt through and through with regard to objections His
F Excellency had to give assent to a Bill relating to
constitution of a Tribunal for the Universities.

G 34. Court has serious reservation whether the above
exercise amounts to consultation on behalf of the State,
based on which the Chancellor could go ahead and make
unilateral appointments of Vice Chancellors, without even
basic materials or subject of consultation existing before
the two authorities. How did the Chancellor zero down on
these two names still stands a mystery and unexplained.

H 35. No further comments on the issue as well as the so
called material of consultation is required to be offered by

the Court. Inferences are obvious. The Court can now well appreciate the background to the H.R.D. Minister's notings and letters denying any consultation on the issue of appointment of Vice Chancellors. Though he does accept that his visit to Raj Bhawan related to discussion on the Tribunal Bill and that alone, the stand of the Minister stands corroborated and seems more closer to the actual state of affairs, as noting by the Chancellor is in the file relating to the University Tribunal Bill and that too on the page of the Minutes dealing with the Tribunal Bill.

36. The Court, therefore, has serious reservation or doubt whether this evidence or proof can be taken as the ultimate answer or material showing consultation between the State and the Chancellor, meeting the requirement of consultation under section 10(2) of the Act, vesting him with the authority to make appointments at his level on the post of Vice Chancellors to the two Universities."

(emphasis supplied)

3.2 The learned Single Judge then adverted to the judgments of this Court in *Union of India v. Sankat Chand Himatlal Sheth and Another* AIR 1977 SC 2328, *S.P. Gupta v. Union of India* AIR 1982 SC 149, *Gauhati High Court and Another v. Kuladhar Phukan* (2002) 4 SCC 524 and held:

"51. There could be an arguable case that even the Chancellor has some flexibility with regard to suggesting names which may come within his knowledge or domain but those details and opinion must be shared and deliberated between the State Government and the Chancellor and some kind of opinion reached, before it can be said that there was consultation with regard to the persons who are fit or otherwise deserving to be appointed as Vice Chancellors. Obviously, the manner and the way appointments to the two posts have been made, in the opinion of this Court, does not satisfy the

A requirement of consultation and there is much a-miss with regard to the way the whole exercise has been carried out at the office of the Chancellor and in the manner in which Chancellor has gone about making appointments to the post.

B 52. Consultation with the State is a must. Consultation with the State must be effective. Consultation also means placing of materials between the consulting and the consulted party. There has to be proper deliberations by producing all materials duly recorded to show that such exercise was carried out and there was application of mind with regard to all those persons who may be otherwise eligible. If all these elements are missing and there is no evidence in this regard in existence, then the Court will have no hesitation in recording that any appointment made, may be at the behest or at the level of the Chancellor, would be in clear breach of the requirements of Section 10(2) of the Act. There is no absolute power of the Chancellor to make appointment on the post of Vice Chancellor or Pro Vice Chancellor at his level without the consultation with the State within the meaning of law enunciated by Courts and as mandated and that alone would satisfy the requirement of consultation under section 10(2) of the Act.

F 53. In this case there are predominant materials to show that there was never any consultation with any State authorities and the Chancellor on the question of appointment of two Vice Chancellors. If the two Vice Chancellors came to be appointed in breach of Section 10(2) of the Act, then the appointment will have to be interfered with and the issue cannot be allowed to rest."

(emphasis supplied)

H 3.3 Letters Patent Appeal Nos. 822 and 824 of 2011 filed by Dr.Subhash Prasad Sinha and Dr. Arvind Kumar,

respectively were dismissed by the Division Bench of the High Court vide judgment dated 8.9.2011, paragraphs 18 and 19 of which are extracted below: A

"18 The word "shall" is only indicative. The need of consultation is between two constitutional authorities, one is the Chancellor whose rule has been noticed above and the other is the State Government which has a high stake in ensuring that standard of higher education in the State is maintained and the hundreds of crores of rupees allocated to the Universities every year are well utilized by appointment of suitable persons who are not only reputed for their scholarship and academic interest but can also be good administrators, capable of safeguarding the finances and interests of the Universities. The Governor as Chancellor does not have the elaborate requisite machinery to enable him to form the appropriate opinion for appointing persons as Vice Chancellors and this is adequately taken care of by providing consultation with the State Government. The nature of duty of both the Constitutional authorities in this context is to promote public interest and interest of higher education by selecting and appointing best persons available out of eligible candidates. To achieve this object the stipulated consultation has to be effective. It is not only desirable but clearly a must, before selection and appointment. B
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19. Though the judgment of the Supreme Court in the case of *Indian Administrative Service (SCS) Association v. Union of India* (1993 1 Supp. 22 SCC 731) has been cited on behalf of the appellants, a careful perusal shows that the settled principles as to what shall constitute consultation and when it is mandatory do not support the case of the appellants. The judgment approves that prior consultation is mandatory and moreso if its violation would affect fundamental rights or fair procedure. In the present case, the dispute whether opinion or advice of the State F
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A Government will bind the Chancellor or not is not at all in
 issue. The controversy is in respect of earlier stage as to
 whether the State Government should have adequate
 opportunity to give its opinion or advice in respect of the
 appointees. The procedure and details as to who shall be
 B taken into consideration on account of eligibility and who
shall be selected out of eligible persons has rightly not
been prescribed by the Act because the appointment and
consultation process has been left in the hand of high
 C Constitutional functionaries. Nonetheless, like any
selection process it must be fair. Consultation with the
State Government has been introduced by the Legislature
with the obvious aim of making the selection procedure
wider in ambit, deeper in contents, transparent and fair.
 D The State Government has the means to render intensive
and extensive information and input in course of
consultation. The consultation in such important matter and
at such high level needs to be effective so that after the
Chancellor has made tentative choice on considering the
 E entire information and input given by the State
Government, the latter may provide further relevant
information, if available, in respect of tentatively selected
persons, in order to avoid the risk of Universities being
placed in the hands of wrong persons or unsuitable
persons."

F (emphasis supplied)

3.4 The special leave petitions filed by the two appointees, which were registered as SLP (C) Nos. 27644/2011 and 27725/2011, were dismissed by this Court on 29.9.2011.

G 3.5 During the pendency of the letters patent appeals before the High Court, the Chancellor issued Notifications dated 1.8.2011 and 3.8.2011 for appointment of as many as ten persons as Vice-Chancellors and Pro Vice-Chancellors of different Universities of the State. The details of these

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appointments are as under:

Sl No.	Notifica- tion date	Memo No.	Name	Appointed as
1	01/08/11	BSU-13/2011-1789(GS (I))	Dr. Shambhu Nath Singh	Vice-Chancellor of Patna University, Patna
2	01/08/11	BSU-13/2011-1834(GS (I))	Dr. Bimal Kumar	Vice-Chancellor of B.R.A. University, Muzafar
3	01/08/11	BSU-13/2011-1864(GS (I))	Dr. Ram Vinod Sinha	Vice-Chancellor of J.P. University, Chapra
4	01/08/11	BSU-13/2011-1819(GS (I))	Dr. Arun Kumar	Vice-Chancellor of B.N.Mandal University, Madhepura
5	01/08/11	BSU-13/2011-1849(GS (I))	Dr. Arvind Kumar Pandey	Vice-Chancellor of K.S.D. Sanskrit University, Darbhanga.
6	01/08/11	BSU-13/2011-1804(GS (I))	Dr. Md. Shamsuzzoha	Vice-Chancellor of Maulana Maharul Haque Arabic & Persian University, Patna
7	01/08/11	BSU-13/2011-1924(GS (I))	Dr. Pushpendra Kumar Verma	Pro Vice-Chancellor of B.N. Mandal University, Madhepura

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A	8	01/08/11	BSU-13/2011-1894(GS (I))	Dr. Kumaresh Prasad Singh	Pro Vice-Chancellor of L.N. Mithila University, Darbhanga
B	9	01/08/11	BSU-13/2011-1879(GS (I))	Dr. Sultana Khushood Jabeen	Pro Vice-Chancellor of Maulana Mazharul Haque Arabic & Persian University, Patna
C	10	03/08/11	BSU-13/2011-1941(GS (I))	Dr. Lal Keshwar Prasad Singh	Pro Vice-Chancellor of Patna University
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3.6 The afore-mentioned appointments also became subject matter of challenge in C.W.J.C. No.15123 of 2011 filed by Dr. Ram Tawakya Singh mainly on the ground that the Chancellor had not consulted the State Government as per the mandate of Section 10(2) of the BSU Act and Section 11(2) of the Patna University Act, 1976 (for short, 'the PU Act').

3.7 In the counter affidavits filed by the appointees an objection was taken to the *locus standi* of Dr. Ram Tawakya Singh on the premise that he was not eligible to be appointed as Vice-Chancellor or Pro Vice-Chancellor. The Division Bench of the High Court rejected the objection by observing that being a member of the teaching faculty of a University in the State, the petitioner was legitimately entitled to see that appointments to the offices of Vice-Chancellor and Pro Vice-Chancellor are made in accordance with law from amongst those who are qualified and are meritorious. The Division Bench then considered the question whether the Chancellor had made

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appointments in consultation with the State Government and answered the same in negative by recording the following observations:

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"It is evident that the Chancellor had the meeting with the Chief Minister, and that both the Chancellor and the Chief Minister were aware of the subject matter of discussion. The Chief Minister being the representative of the State Government, we cannot say that the Chancellor did not consult the State Government or that the State Government was not aware of the names selected by the Chancellor.

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But, in our opinion, it is not enough that the State Government was aware of the subject matter. If the State Government were satisfied by mere discussion, we would say that the State Government failed in discharge of its duty or abdicated its power.

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A proper consultation would be when the Chancellor forwards the names selected by him with the relevant materials and the State Government considers such names and scrutinizes the materials, the State Government may have or may collect further materials from its own resources and records its own opinion in respect of each such name. The matter of appointment of Vice-Chancellors or Pro Vice-Chancellors cannot be taken lightly. It would be the duty of the Chancellor and the State Government to select the best person or at least not to select a wrong person.

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We do not propose to enter into the eligibility, academic qualifications, general reputation, integrity or moral standards of any of the respondents Vice-Chancellors or Pro Vice-Chancellors. It is the function of the Chancellor to examine the materials on hand and to consider the opinion of the State Government and the materials forwarded by the State Government, if any. Once, the

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A Chancellor has examined the materials and is satisfied, that would be sufficient compliance with the statutory provisions.

B We do not propose to say that the Chancellor is required to receive recommendations from the State Government or that the opinion of the State Government is binding upon the Chancellor. No, that is not what the Legislature has intended. All that the Legislature has intended is that the Chancellor should obtain opinion of the State Government before he makes the appointment of Vice-Chancellors or Pro Vice-Chancellors selected by him. The opinion of the State Government may or may not be accepted by the Chancellor. The Chancellor being the supreme authority, it is the decision of the Chancellor which shall prevail, but not without obtaining the opinion of the State Government on the proposed names.

C As recorded hereinabove, at no point of time before the Chancellor discussed the matter with the Chief Minister, the names proposed by the Chancellor were disclosed to the State Government. In absence of the disclosure of the names, the State government could not have applied its mind or formed an opinion. A mere discussion without application of mind or forming an opinion, in our view, is not the "Consultation" envisaged by the above referred Acts of 1976."

(emphasis supplied)

G 3.8 In view of the findings recorded by it, the Division Bench of the High Court allowed the writ petition and quashed the appointments of Vice-Chancellors and Pro Vice-Chancellors and directed that fresh appointments be made in consultation with the State Government. The operative portion of order dated 7.12.2012 passed by the Division Bench reads thus:

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"For the aforesaid reasons, we hold that the appointment of the respondent nos. 20 to 29 as Vice-Chancellors or Pro-Vice-Chancellors in the concerned Universities have been made without "Consultation" as envisaged by Sections 10(2) and 12 of the Bihar Universities Act, 1976 and by Sections 11 and 14 of the Patna University Act, 1976. All the ten appointments are, therefore, vitiated and are void ab initio.

For the aforesaid reasons, CWJC No. 15123 of 2011 is allowed. The impugned notifications dated 1st August, 2011 and 3rd August, 2011 are quashed and set aside. The appointment of the respondent nos. 20 to 29 is held to be illegal and contrary to the Bihar Universities Act, 1976 or the Patna University Act, 1976, as the case may be, and are set aside.

The Chancellor will, within one month from today, propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors in the above referred Universities to the State Government with the relevant materials. The State Government will, within 30 days therefrom, forward its opinion in respect of all such names to the Chancellor. After receipt of such opinion, the Chancellor will make the appointment of Vice-Chancellors and Pro Vice-Chancellors in the respondents Universities.

We make it clear that the petitioner will have no right to submit his candidature or a right to be considered for appointment as Vice-Chancellor or Pro Vice-Chancellor in any of the respondents Universities."

4. Dr. Ram Tawakya Singh has challenged the direction given by the High Court mainly on the ground that the selection of Vice-Chancellors and Pro Vice-Chancellors cannot be left in the hands of the Chancellor without any mechanism for preparation of panel of candidates by a Search Committee

A consisting of academicians and educationists. He has also
questioned the direction given by the High Court virtually
debaring him from being considered for appointment as Vice-
Chancellor or Pro Vice-Chancellor. The State of Bihar and
others have challenged the order of the High Court on the
B ground that the view taken by it on the scope of Sections 10(2)
and 12(1) of the BSU Act and Sections 11(2) and 14(1) of the
PU Act is contrary to the one expressed by the coordinate
Bench in LPA Nos. 822 and 824 of 2011.

C 5. On 18.3.2013, this Court heard the arguments of
learned counsel for the State and some of the private
respondents who had appeared on caveat and stayed the
operation of Notifications dated 9.2.2013 and 19.2.2013
issued by the Chancellor appointing the private respondents as
Vice-Chancellors and Pro Vice-Chancellors. That order is
D being reproduced below because one of the contentions urged
by the counsel for the private respondents is that the appellants
had misled the Court in passing an interim order:

"Delay condoned.

E This petition is directed against order dated 7.12.2012
passed by the Division Bench of the Patna High Court in
Civil Writ Jurisdiction Case No. 15123 of 2011, whereby
certain directions were given in the matter of appointments
of Vice-Chancellors and Pro Vice-Chancellors in various
F universities of the State. The operative portion of the High
Court's order reads thus:

G "For the aforesaid reasons, we hold that the
appointment of the respondent nos. 20 to 29 as
Vice-Chancellors or Pro Vice-Chancellors in the
concerned Universities have been made without
"Consultation" as envisaged by Section 10(2) and
12 of the Bihar Universities Act, 1976 and by
Sections 11 and 14 of the Patna University Act,

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1976. All the ten appointments are, therefore, vitiated and are void ab initio. A

For the aforesaid reasons, CWJC No. 15123 of 2011 is allowed. The impugned Notifications dated 1st August 2011 and 3rd August, 2011 are quashed and set aside. The appointment of the respondent nos. 20 to 29 is held to be illegal and contrary to the Bihar Universities Act, 1976 or the Patna University Act, 1976, as the case may be, and are set aside. B C

The Chancellor will, within one month from today, propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors in the above referred Universities to the State Government with the relevant materials. The State Government will, within 30 days therefrom, forward its opinion in respect of all such names to the Chancellor. After receipt of such opinion, the Chancellor will make the appointment of Vice-Chancellors and Pro Vice-Chancellors in the respondents Universities. D E

We make it clear that the petitioner will have no right to submit his candidature or a right to be considered for appointment as Vice-chancellor or Pro Vice-Chancellor in any of the respondents Universities." F

(Copied from the SLP Paper book)

The petitioners have also questioned the consequential actions taken by the Chancellor for appointment of Vice-Chancellors and Pro Vice Chancellors in various Universities of the State. G

We have heard Shri Harish Salve, learned senior counsel for the petitioners and perused the record. H

A Issue notice, returnable on 16.04.2013. Dasti, in addition, is permitted.

B Shri Amit Pawan, learned counsel instructing Dr. Rajeev Dhawan, Shri Amrendra Sharan and Shri Uday U Lalit, learned senior counsel accepts notice on behalf of respondent nos. 20, 21 and 22.

C Shri Harish Salve strongly pressed for stay not only of the order passed by the High Court, but also of notifications dated 9.2.2013 and 19.02.2013 issued by the Governor-cum-Chancellor, Bihar for appointment of the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities. Dr. Rajeev Dhawan, S/Shri Amrendra Sharan and Uday U Lalit vehemently opposed the prayer made by Shri Salve. Dr. Dhawan submitted that the exercise undertaken by the Chancellor and the Government for appointment of Vice-Chancellors and Pro Vice-Chancellors cannot be questioned in the special leave petition which is essentially directed against order dated 7.12.2012 of the High Court and if any person feels aggrieved by the appointments made in furtherance of the directions given by the High Court, then he can avail appropriate legal remedy. Learned senior counsel submitted that this Court can examine the legality of notifications dated 9.2.2013 and 19.02.2013 only if an independent writ petition is filed for that purpose. Dr. Dhawan was joined by Shri Sharan and Shri Lalit in making a submission that the prayer made by Shri Salve should not be accepted because only few of the candidates mentioned in the list annexed with communication dated 5.1.2013 sent by the Secretary to the Governor are shown to be facing criminal cases and any deficiency in their candidature cannot be used against the other respondents, who are fully qualified and have been found suitable for the posts of Vice-Chancellors and Pro Vice Chancellors. Learned counsel then submitted that

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it will not be desirable to create vacuum in the positions of Vice-Chancellors and Pro Vice-Chancellors because that would adversely affect the functioning of the Universities and the students community.

In his rejoinder submissions, Shri Salve invited the Court's attention to the regulations framed by the University Grants Commission, which were circulated on 30.06.2010 for selection of Vice-Chancellors and Pro Vice-Chancellors of the Universities and claimed that even though Legislature of the State of Bihar had made appropriate amendments in the relevant enactments and forwarded the same to the Governor in the month of March, 2011, the latter has neither approved nor returned the same to the State Legislature.

We have considered the respective submissions.

The record of the case shows that in the purported compliance of the direction given by the High Court on 7.12.2012, the Secretary to the Governor sent letter No. 2C/GS/GB dated 5.1.2013 to the Principal Secretary to the Chief Minister, Government of Bihar stating therein that in exercise of powers conferred upon him under Section 10(1) and (2) and Section 12(1) of the Bihar State Universities Act, 1976 (as amended up to date) as well as Sections 11 and 14 of the Patna University Act, 1976 (as amended up to date) and Sections 11(1) and (2) of the Nalanda Open University Act, 1995 (as amended up to date), the Chancellor proposes to appoint the persons named in Annexure-A and Annexure-B as Vice-Chancellors and Pro Vice-Chancellors against the vacancies existing in the Universities and sought the Chief Minister's view on the names. In the last column of the lists enclosed with letter dated 5.1.2013, few lines were recorded about the capabilities of the candidates to be appointed as Vice-Chancellors and Pro Vice-Chancellors.

A In response to the aforesaid letter, the Principal Secretary to the Chief Minister of Bihar sent communication dated 21.1.2013 to the Special Secretary to the Governor, paragraphs 1 to 3 and last paragraph of which read as under:

B "1. In compliance of the Hon'ble High Court order
C in the CWJC No. 10569 of 2011, the envisaged
D "Consultation" process has to be meaningful and
E based on substantive material. The order clearly
F mentions that "the legislature has cast a duty upon
G the State Government to scrutinize the names
H proposed by the Chancellor for appointment of
Vice-Chancellors and Pro-Vice-Chancellors for
their academic qualifications, experience, integrity
and moral standards".

It is to bring to your notice that the list sent by you contains only qualifications and experience and that too in a very brief and inadequate manner. There is no record of their vigilance clearance or integrity and moral standards. Hence it is not possible for us to scrutinize the names as envisaged in the Hon'ble High Court order.

2. Further prima facie, this is to point out that the proposed list contains name of one such person who has the criminal proceedings pending against him i.e. Sl. No.4 of the proposed Vice Chancellors' List. Please refer page no.16 of the Hon'ble High Court order wherein it has been admitted by the advocate of the person referred above.

3. The list also do not mention the name of the University against which proposed names are contemplated for consideration.

You are therefore requested to kindly arrange for

the required information with details in your possession so that an effective consultation takes place between the consulting parties." A

(copied from the SLP paper book)

Thereafter, the Secretary to the Governor sent letter dated 28.1.2013 to the Principal Secretary to the Chief Minister mentioning therein that if the latter is in possession of substantive and credible materials as to the integrity and moral standards of the persons named in the communication sent by the Governor's Secretariat, then the same may be forwarded for being placed before the Chancellor. The Secretary to the Governor also wrote that if the Chief Minister has any record of judicial conviction, instead of merely criminal proceedings pending, against the name at serial no.4 in the list, then he may send the same for being considered by the Chancellor. B
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After 12 days, the Principal Secretary to the Chief Minister sent letter dated 9.2.2013 to the Special Secretary to the Governor enclosing therewith summary of the report received from the Department of Education on various candidates mentioned in the list forwarded by the office of the Chancellor. On the same date, the Governor-cum-Chancellor issued notification dated 9.2.2013 appointing the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities. E
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In response to the Court's query, the learned senior counsel appearing for respondent Nos. 20 to 22 gave out that they are not in a position to say whether or not the amendments made by the State Legislature have been approved by the Governor. The question whether the Governor had kept pending for two years, the Bill passed by the State Legislature and whether there was any G
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A justification will require serious consideration by the Court at the time of final adjudication of the matter. However, at this stage, we are prima facie satisfied that the selection of Vice-Chancellors and Pro Vice-Chancellors has not been made by following the procedure laid down in the UGC Regulations because no such Committee was constituted by the Chancellor for preparing panel of the candidates who could be considered for such appointments. We may also observe that even in the absence of UGC Regulations, appointment to the posts of Vice-Chancellors and Pro Vice-Chancellors could have been made by the Chancellor in consultation with the competent authority only after following some procedure consistent with the doctrine of equality enshrined in Article 14 of the Constitution so as to enable all eligible persons to compete for selection.

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In a somewhat similar case, this Court had an opportunity to consider the legality of the appointment of Director of the Indian Statistical Institute and it was held that selection made without following the procedure laid down in the bye-laws of the society and issuing public notice was contrary to Article 14 of the Constitution. (See *B.S. Minhas v. Indian Statistical Institute and Others* (1983) 4 SCC 582).

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De hors the above observations, we are of the view that even though the special leave petition is primarily directed against the order of the High Court, this Court can take cognizance of the subsequent events including notifications dated 9.2.2013 and 19.2.2013 issued by the Chancellor and pass appropriate order in the matter.

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A reading of the letter sent by the Principal Secretary to the Chief Minister to the Special Secretary to the Governor on 9.2.2013 shows that criminal complaints are pending against some of the candidates who were

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proposed by the Chancellor to be appointed as Vice-Chancellors and Pro Vice-Chancellors and were actually appointed against those posts on 9.2.2013. Against two of them charge sheets have already been filed in the competent Court. Against one of the candidates, charge sheet has been filed under Sections 341/342/506 and other provisions of IPC read with Section 3(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Against another candidate, a case has been registered under Section 420/409/467/468/471 and other provisions of IPC read with Sections 13 and 14 of Prevention of Corruption Act. One more case is said to have registered against him under Sections 420/409/467 and other provisions of IPC.

All this, prima facie, indicate that the Chancellor did not at all apply his mind on the question of suitability and desirability of appointing the particular candidates as Vice-Chancellors and Pro Vice-Chancellors. Why this was done would require serious scrutiny by the Court which is possible only after giving opportunity of hearing to the private respondents and the Chancellor. However, the manner in which the Chancellor has made appointments albeit in the guise of adhering to the time schedule fixed by the Division Bench of the High Court leaves much to be desired. The High Court had not fixed any time limit for the Chancellor to take final decision after receiving the opinion of the State Government. One month's time was fixed by the Court for the Chancellor to propose the names for appointment of Vice-Chancellors and Pro Vice-Chancellors in various Universities and forward the same to the Government with relevant materials. The State Government was required to forward its opinion within next 30 days. However, there was no time limit for Chancellor to take final decision in the matter. Notwithstanding this, the Chancellor exhibited undue haste and ensured that the

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A notifications appointing the particular candidates are issued in less than 24 hours of the receipt of the opinion of the Chief Minister. It is a matter of serious concern that candidates facing criminal prosecution have been appointed as Vice-Chancellors/Pro Vice-Chancellors.

B In the premise aforesaid, we are convinced that it is a fit case in which an interim order should be passed by the Court.

C Accordingly, the operation of notifications dated 9.2.2013 and 19.2.2013 issued by the Governor-cum-Chancellor, Bihar appointing the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities is stayed and they are restrained from functioning as Vice Chancellors and Chancellors of the concerned Universities.

D With a view to ensure that functioning of the various Universities is not jeopardized, we direct that as a purely stop gap arrangement, the senior most Deans in the Universities shall discharge the function of the Vice-Chancellors and Pro Vice-Chancellors.

E It shall be the duty of the petitioners to serve the remaining respondents well before 16.04.2013.

F A copy of this order be sent to the Secretary to the Governor of Bihar by fax. He shall ensure that the entire record relating to the selection of Vice-Chancellors and Pro Vice-Chancellors be sent to this Court in sealed envelopes through a messenger and deposited with the Secretary General of this Court on or before 10.04.2013.

G Copies of this order be also sent to the Registrars of all the Universities by fax. They should place the order before the senior most Dean in the concerned University so as to enable him to discharge the function of Vice-

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Chancellor till the next date of hearing i.e. 16.4.2013." A

6. In compliance of the direction given by the Court, Shri Sudhir Srivastava, Special Secretary to the Governor-cum-Chancellor sent the relevant file in a sealed envelope along with letter dated 27.3.2013. The sealed cover was opened in the Court and the papers contained in the file were perused. Subsequently, the file was made available to the learned counsel for the parties for their perusal and all of them availed the opportunity. The counsel representing State of Bihar also produced File No.15/M 1-02/12 (part), Computer No.7058/13 maintained by the Education Department of the State. B C

7. A careful scrutiny of these files reveal the following facts:

i. The order passed by the Division Bench of the High Court was placed before the Governor-cum-Chancellor on 12.12.2012. D

ii. On 5.1.2013, the Governor-cum-Chancellor passed an order proposing appointments of Prof. (Dr.) Bimal Kumar, Dr. (Prof.) Arun Kumar, Dr. Ram Vinod Sinha, Dr. Kumaresh Prasad Singh, Dr. Sheo Shankar Singh, Dr. Samrendra Pratap Singh, Dr. Tapan Kumar Shandilya as Vice Chancellors and Dr. Ramayan Prasad, Dr. Birendra Kumar Singh, Dr. Dharma Nand Mishra, Dr. Sultana Khushood Jabeen, Prof. (Dr.) Shailendra Kumar Singh, Dr. Padmasha Jha, Dr. Anwar Imam, Prof. (Dr.) Chakradhar Prasad Singh and Prof. (Dr.) Raja Ram Prasad as Pro Vice Chancellors. On the same day, Special Secretary to the Governor sent letter No. 2C/GS/GB dated 5.1.2013 to the Principal Secretary to the Chief Minister, Bihar conveying the Chancellor's proposal to appoint the persons whose names were mentioned in Annexure-A and Annexure-B attached to the letter as Vice-Chancellors and Pro Vice-Chancellors of different Universities. The details contained in the two charts are quite significant and, therefore, the same are reproduced below: E F G

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ANNEXURE 'A'

Sl.No.	Names	Qualification	Experience & Posts held	Remarks
1.	Prof. (Dr) Bimal Kumar	M.A.(English) Ph.D.	Principal and Registrar (Commissioned and at present Vice Chancellor, BRA Bihar University, Muzaffarpur. Additional charge Vice Chancellor, TM Bhagalpur University, Bhagalpur	Comprehensively considered most suitable. Not a word as to his/her qualification, eligibility & suitability in the judgement.
2.	Dr. Prof. Arun Kumar	M.A. (Economics), Ph.D.	University Professor, PG Deptt. Of Economics, Principal, MM College, Vikram and at present Vice Chancellor, BN Mandal University Madhepura. Additional charge Vice Chancellor, Magadh University, Bodh Gaya and Nalanda Open University, Patna.	Comprehensively considered most suitable. Not a word as to his/her qualification, eligibility & suitability in the judgement.
3	Dr. Ram Binod Sinha	M.A. Ph.D.	Professor & HoD, Deptt. of Hindi and at present Vice Chancellor, JP University, Chapra	Comprehensively considered most suitable. Not a word as to his/her qualification, eligibility & suitability in the judgement.

4.	Dr. Arvind Kumar Pandey	MA (Ancient India and Asian Studies, M.A. (History) Acharya (MA in Sanskrit Sahitya) L.L.B., Ph.D	Reader, Principal (Commissioned) and at present Vice Chancellor, KSD Sanskrit University, Darbhanga	Comprehensively considered most suitable. Not a word as to his/her qualification, eligibility & suitability in the judgement.
5.	Prof (Dr) Md. Shamsuzzoha	M.A. (Arabic), Ph.D. in Humanities (Arabic)	Professor & Head Deptt of Arabic, Patna University, Patna and at present Vice Chancellor, MMH Arabic & Persian University, Patna	Comprehensively considered most suitable. Not a word as to his/her qualification, eligibility & suitability in the judgement.
6.	Prof. Shambhu Nath Singh	PG Diploma in Journalism, Ph.D. (Mass Communication)	Director and Professor, IG-NOU and at present Vice Chancellor, Patna University, Patna	Comprehensively considered most suitable. Not a word as to his/her qualification, eligibility & suitability in the judgement.

7	Dr. Kumaresh Prasad Singh	M.A. Ph.D., LL.B.	Reader, Professor and Registrar (Commissioned) and at present Incharge Vice Chancellor, V.K.S. University, Ara	Comprehensively considered most suitable. Not a word as to his/her qualification, eligibility & suitability in the judgement.
8	Dr. Anjani Kr. Sinha	M.Sc. Ph.D.	Professor & Head, Deptt of Botany BN Mandal University, Madhepura	Comprehensively considered most suitable. Not a word as to his/her qualification, eligibility & suitability in the judgement.
9	Dr. Sheo Shankar Singh	M.A. (Economics), Ph.D.	Principal, Maharaja College, Ara (VKS University, Ara)	Considered duly qualified and best suitable for the job
10	Dr. Samrendra Pratap Singh	M.B.B.S., M.D. Ph.D.	Principal (Retd), DMCH, Darbhanga and at present, Vice Chancellor, L.N. Mithila University, Darbhanga	Considered duly qualified and best suitable for the job
11	Dr. Tapan Kumar Shandilya	M.A. (Economics), Ph.D.	Assistant Professor, Principal, RLS College, Manjhaul and at present Pro Vice Chancellor, TM Bhagalpur University, Bhagalpur	Considered duly qualified and best suitable for the job

ANNEXURE 'B'

Sl.No.	Names	Qualification	Experience & Posts held	Remarks
1.	Dr. Ramayan Prasad	M.A., Ph.D.	HoD, Labour & Social Welfare, College of Commerce, Patna	Considered best suitable for the job.
2.	Dr. Birendra Kumar Singh	M.A. Ph.D.	Associate Professor, University Deptt. of History, BRA Bihar University, Muzaffarpur	Considered best suitable for the job.
3	Dr. Dharma Nand Mishra	M.A., M.Com., LL.B., Ph.D.	Dean, Faculty of Law, Magadh University, Bodhgaya and Principal, Nawada Law College, Nawada	Considered best suitable for the job.
4	Dr. Sultana Khushood Jabeen	M.A. (Urdu), Ph.D.(PU)	Reader and HoD, Urdu and Persian, VKS University, Ara and former Pro Vice Chancellor, M.M.H. Arabic & Persian University, Patna	Considered best suitable for the job.
5	Prof.(Dr.) Shailendra Kumar Singh	M.A., Ph.D.	Principal, College of Commerce, Patna University and presently Registrar, Nalanda Open University, Patna	Considered best suitable for the job.
6	Dr. Padmasha Jha	M.A., Ph.D.	University Professor History (Retd), Former Pro Vice	Considered best suitable for the job.

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			Chancellor, BRA Bihar University, Muzaffarpur and former Incharge Vice Chancellor, LNMU, Darbhanga	
7	Dr. Anwar Imam	M.A. (Economics), B.Ed. and Ph.D.	Presently Controller of Examination, VKSU, Ara	Considered best suitable for the job.
8	Prof.(Dr.) Chakradhar Prasad Singh	M.A., Ph.D.	University Prof. & HoD of PG in English, Magadh University, Bodh Gaya. Dean, Faculty of Humanities, MU, Bodh Gaya.	Considered best suitable for the job.
9	Prof.(Dr.) Raja Ram Prasad	M.A., Ph.D. (Maithili)	University Professor & HoD of Maithili, B.N.M.U., Madhepura. Dean of Humanities, B.N.M.U., Madhepura	Most OBC Candidate. Considered best suitable for the job.

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"To,

Shri Sudhir Shrivastava,
Special Secretary,
Governor Secretariat,
Governor House, Patna.

Patna, dated 21 January, 2013.

Sub : Appointment of Vice Chancellors and Pro- Vice Chancellors.

Sir,

With reference to your letter no. 20/GS/GB dated 5.1.2013, it seems necessary to raise some of the required and essential points to enable the Government to render its opinion for meaningful and effective Consultation with the Chancellor of the universities of State of Bihar.

1. In compliance of the Hon'ble High Court order in the CWJC No. 10569 of 2011, the envisaged "Consultation" process has to be meaningful and based on substantive material. The order clearly mentions that "the legislature has cast a duty upon the State Government to scrutinize the names proposed by the Chancellor for appointment of Vice-Chancellors and Pro-Vice Chancellors for their academic qualifications, experience, integrity and moral standards."

It is to bring to your notice that the list sent by you contains only qualifications and experience and that too in a very brief and inadequate manner. There is no record of their vigilance clearance or integrity and moral standards. Hence it is not possible for us to scrutinize the names as envisaged in the Hon'ble High Court order.

2. Further prima-facie, this is to point out that the proposed list contains name of one such person who has the criminal proceedings pending against him i.e. Sl. No. 4 of the

A proposed Vice Chancellors' list. Please refer page no. 16 of the Hon'ble High Court order wherein it has been admitted by the advocate of the person referred above.

B 3. The list also do not mention the name of the University against which proposed names are contemplated for consideration.

C In these circumstances it is nearly impossible to properly scrutinize the names and form an opinion for a valid consultation as envisaged in the statutes and Hon'ble High Court's order.

D You are therefore requested to kindly arrange for the required information with details in your possession so that an effective consultation takes place between the consulting parties."

(emphasis supplied)

E iv. The Secretary to the Governor then sent letter dated 28.1.2013 to the Principal Secretary to the Chief Minister and asked him to forward substantive and credible materials as to the integrity and moral standards of the persons named in letter dated 5.1.2013. It was also mentioned in the letter that record of judicial conviction, instead of merely criminal proceedings pending against the person named at serial no.4 in the list, may be sent for consideration of the Chancellor.

G v. The letter of the Secretary to the Governor was sent by the Chief Minister's Secretariat to the Principal Secretary, Education, who wrote D.O.No.29/C/2013 dated 1.2.2013 to the Principal Secretary (Vigilance Department) with the request to provide update on vigilance matters with regard to the candidates. The Vigilance Department got conducted the necessary enquiries and submitted the required information to the Principle Secretary, Education.

H

vi. In the meanwhile, the Principal Secretary to the Chief Minister sent letter to the Special Secretary to the Governor pointing out that the matter has been referred to the Vigilance Department and the information is likely to become available in a few days. That letter reads as under:

**"Government of Bihar
Chief Minister Secretariat**

Letter No.4610032/CMS

4 February 2013

From,
Secretary to the Chief Minister,
Government of Bihar,
Patna.

To,
The Special Secretary,
Governor's Secretariat,
Raj Bhawan, Patna.

Subject: Appointment of Vice Chancellors and Pro Vice Chancellors

Reference: Your letter no. 63, dated 28th January 2013.

Sir,

This has reference to letter no. 144/PSC/CMS dated 21 January, 2013 and your letter no. 63/GS(I)/GB dated 28 January, 2013.

In letter dated 21st January, 2013 it was categorically mentioned that for valid, effective and meaningful consultation in regard to appointment of Vice-Chancellor/ Pro Vice Chancellor in the State Universities it would be essential to have full and complete input in possession of Hon'ble Chancellor. A list containing names of prospective

A candidates has been forwarded by you. However, very sketchy information in regard to each of the candidates has been made available. No information regarding which of the candidate is proposed for appointment to which University has been provided.

B It is to be noted that the list of name has been finalized by the Hon'ble Chancellor and therefore it has to be presumed that he is in possession of all relevant materials, such as document in support of eligibility /qualification, experience, moral character/integrity. Appointment in each University is an independent decision which has to be preceded by effective and meaningful consultation. In the absence of requisite materials, any exercise would appear as mere formality. As ordained by Hon'ble Court's order, the State Government is required to give it opinion. As the names have been short listed by Hon'ble Chancellor, it is considered imperative that State Government before tendering opinion should have full materials with specific detail as to which candidate is being considered for which University.

E However, instead of responding to the Government's request, you have asked us to make available substantive and credible materials as to integrity and moral standards of persons included in the list. You have also mentioned to make available pending proceeding against the person at Sl. No. 4.

G Vice Chancellor/Pro Vice-Chancellor of University is expected to possess basic eligibility as prescribed by the Universities Grants Commission. Besides, the candidate is required to have credible experience of a high position and should be perceived to have good reputation. Serious allegation of misconduct as holder of the post for any omission or commission being investigated by State Vigilance/Police is sufficient reason not to recommend such a person.

H

Since the State Government has not been provided the grounds on which the candidates have been recommended or at least the due diligence that was undertaken before suggesting the names, it is impossible for the State Government to engage in a meaningful consultation. The State Government has requested the Vigilance Department for information based on simply the names of the candidates recommended, without any other information or bio data. It is likely that such information will be available in a few days.

The orders of the Hon'ble Court have been absolutely clear regarding the consultation process. Any hasty decision without conforming to the basic framework for consultation as outlined by the Hon'ble Court, will amount to a contravention of the Court's orders. The State Government would like to request that appointments should only be made after the process of consultation, as outlined in the Court's orders, are fully complied with."

(emphasis supplied)

vii. On 8.2.2013, the Special Secretary to the Governor-cum-Chancellor recorded a note, which reads as under:

"As per order of the Hon'ble Chancellor dated 05.01.2013, a list of names for appointment as Vice Chancellors and Pro-Vice Chancellors was sent to the Principal Secretary to Chief Minister vide this Secretariat letter No.20/GS/GB dated 5th January, 2013.

The Principal Secretary to Chief Minister, Bihar vide his letter No. 144/PSC/CMS dated 21 January, 2013 sought some clarifications against one person named in the list.

Thereafter, as directed by H.E. a reply was sent to the Principal Secretary to Chief Minister vide this Secretariat letter No.63 GS/GB dated 28 January, 2013 conveying him

A that in case he is in possession of substantive and credible materials as to integrity and moral standards of the persons named in the list, he was requested to forward the same to this Secretariat. It was also mentioned that similarly, if he has any record of judicial conviction, instead of merely criminal proceedings pending, against person in serial No. 4 in the list, he was also requested to send it for consideration of the Hon'ble Chancellor.

B
C In response to our letter dated 28 January, 2013, the Secretary to Chief Minister, Bihar has sent his reply vide his letter No. 4610032/CMS dated 4th February, 2013 that State Govt. has requested the Vigilance Department for information regarding candidates proposed.

D Today is 8/2/2013 and the State Government has not given any specific objection or opinion against the individual persons named in the list proposed by the Hon'ble Chancellor on 5/1/2013 to the State Government.

H.E. to take decision please."

E viii. On the same day, the Governor-cum-Chancellor recorded the following note:

F "As discussed with you, please prepare draft Notifications for appointment of VCs and Pro VCs as per relevant provisions of the Acts and in consonance with ratio decidendi / ratiocination of the High Court judgment for immediate issuance."

G The Governor-cum-Chancellor also approved the draft format of the notifications to be issued for appointing Vice-Chancellors and Pro Vice-Chancellors and directed that the same be issued when ordered by him. Below that note the Special Secretary recorded the following:

H "Notification formats ready. H.E. may like to indicate names of VCs and date of issue of notifications."

ix. On the next day, i.e., 9.2.2013, Governor-cum-Chancellor recorded the following noting: A

"Notifications in the approved format appointing the following persons as Vice-Chancellors may be issued on 9th February, 2013, at the Universities shown against their names. The order is to take immediate effect. B

	"Name of VC	University	
1.	Prof Shambhu Nath Singh, interim Vice-Chancellor, Patna University, Patna	Patna University, Patna.	C
2.	Prof.(Dr.) Md.Shamsusuzzha, interim Vice-Chancellor, MMH Arabic and Persian University, Patna	MMH Arabic and Persian University, Patna.	D
3.	Prof.(Dr.) Arun Kumar, interim Vice-Chancellor, B.N.Mandal University, Madhepura	Magadh University, Bodh Gaya.	E
4.	Prof.(Dr.) Bimal Kumar, interim Vice-Chancellor, BRA Bihar University, Muzaffarpur	J.P. University, Chapra.	F
5.	Dr. Ram Binod Sinha, interim Vice-Chancellor, J.P. University, Chapra	B.N. Mandal University, Madhepura.	G
6.	Dr. Sheo Shankar Singh, Principal, Maharaja College, Ara	V.K.S. University, Ara.	H

- A 7. Dr. Kumaresh Prasad Singh, In-Charge Vice-Chancellor, V.K.S. University, Ara BRA Bihar University, Muzzaffarpur.
- B 8. Dr. Arvind Kumar Pandey, interim Vice-Chancellor, KSD Sanskrit University, Darbhanga KSD Sanskrit University, Darbhanga.

C Thereafter, the Special Secretary to Governor-cum-Chancellor made a recording that all the eight notifications have been sent to the concerned Universities by fax.

D x. On 9.2.2013, the Principal Secretary to the Chief Minister, Bihar sent a report received from the Education Department, which got conducted enquiry through the Vigilance Department, to the Special Secretary to the Governor. The relevant portions of that report are as under:

"In the category of Vice-Chancellors

E 1. Prof. (Dr.) Bimal Kumar

F Vigilance Department of the State Government is enquiring charges against him regarding financial irregularities, appointment of lecturers illegally and corrupt misuse of post when he was posted as Registrar, Magadh University. Complaint Case No. 13/12. 14/12 and 35/12 have been filed against Dr. Bimal Kumar in the Special Vigilance Court, Muzaffarpur and the same has been forwarded to the Vigilance Investigation Bureau for further enquiry. These relate to financial irregularity. The Vidhan Parishad has also discussed a Call Attention Motion regarding financial irregularity and corruption against Dr. Bimal Kumar which has been referred by the Education Department to the Vigilance Department for enquiry. From Bhagalpur also charges regarding corruption in Bhagalpur University against Dr. Bimal Kumar has been leveled which is

H

currently under enquiry in the Vigilance Department.

A

As per information from Sr. S.P., Muzaffarpur charge sheet has been filed in University Police Station Case No. 21/11 dated 24.9.11 under Section 341/342/506/509/386/834 of IPC and 3(x) SC/ST Act.

B

These clearly indicate that the moral character and the integrity of Dr. Bimal Kumar is not good enough to be considered for appointment as the Vice Chancellor and enquiries and investigations are currently going on in the Vigilance Department.

C

2. Dr. Prof. Arun Kumar

Complaint has been received by the Vigilance Department against Prof. Kumar regarding irregularities in evaluation of answer books, irregular financial drawal, illegal gratification from contractors and having investment beyond his known source of income. The Vigilance Department is currently enquiring into these. These charges are of financial nature and clearly shows that his appointment as the Vice Chancellor will not be in the interest of good governance in the University.

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3. Dr. Ram Binod Sinha

Charges have been leveled in the Bihar Vidhan Parishad in Nivedan No. 278/12 regarding not following reservation rule in recruitment, irregular drawal in the name of medical bill, illegal payment for court cases etc. As per information available in the Education Department his age does not make him eligible to become a Vice Chancellor under the regulation of University Grants Commission.

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4. Dr. Arvind Kumar Pandey

As per information available from Sr. S.P. Darbhanga Case No. 126/10 dated 29.6.10 under Section 420/409/

H

A 467/468/471/197/218/120(B) IPC and Sections 13/14 of Prevention of Corruption Act and Case No. 150/10 dated 23.8.10 under Sections 420/409/467/488/471/120(B) of IPV have been registered and are currently under investigation.

B As per information available from Sr. S.P. Gaya, Case against Dr. Arvind Kumar Pandey have been filed in Both Gaya Police Station Case No.135/10 dated 30.6.2010 under Sections 197/208/409/420/468 and 120(B) of IPC and the same is under investigation. Snaskrit Chetna Parishad has made serious charges of financial irregularieis against Dr. Pandey which has been sent to the Governor Secretariat as well. The Governor Secretariat vide letter no. 3950 dated 1.10.2007 forwarded complaint against Dr. Pandey to Vigilance Department for further enquiry. The charge against him at that time was that in the year 2006 he took money from students for awarding Shastri and Upshastri. The Governor Secretariat vide letter no. 916 dated 9.6.2003 forwarded other complaint against Dr. Pandey to the Vigilance Department for further enquiry.

E Based on the details mentioned above Dr. Pandey should not be considered for appointment as Vice Chancellor as he lacks moral character and integrity. Details regarding his educational qualification also need to be examined very carefully whether he has basic qualification for appointment to the post of Vice-Chancellor as per the regulation of U.G.C.

F
G 6. Prof. Shambhu Nath Singh

H As per information available complaint against him has been forwarded by the Education Department to the Vigilance Department for enquiry. A complaint case no. 43/12 has been filed against Prof. Singh in the Vigilance Court, Patna and the same has been forwarded to the

Vigilance Investigation Bureau for further enquiry. These A
pertain to financial irregularity which include irregular
drawal of TA/DA, unnecessary expenditure on legal case
etc. The audit conducted by the Principal Accountant
General has also pointed out major financial irregularities B
in the Patna University some of which directly at the level
of the Vice Chancellor. Audit report of the Pr. Accountant
General was sent to the Vice Chancellor, Patna University
for commends and comments received was sent against
to the Pr. Accountant General for his response to the
comments. Report has been received from the Pr. C
Accountant General where they have not accepted the
explanation in a few serious financial irregularities pointed
out by the audit. These reports have also been forwarded
to the Vigilance Department for thorough enquiry and
appropriate action. Beside these many other complaints D
have been received from time to time against Sri Singh
including the issue whether his qualifications are good
enough to be appointed as Vice Chancellor under Patna
University Act. The Department of Education has
forwarded serious complaints and Pr. Accountant E
General's final report to the Vigilance Department and also
to the Governor Secretariat for necessary action.

Based on the facts mentioned above Dr. Singh is not fit
to be appointed as Vice Chancellor.

9. Dr. Sheo Shankar Singh F

Complaints have been received from one Sri
Ramashankar Yadav, Vill. Jaitpur, P.O. Asani, P.S.
Udwanthnagar, Bhojpur regarding financial irregularity G
against Sri Singh. These have to be further enquired into.
Without further details about his academic qualifications,
quality to publications and experience it is difficult to
suggest Dr. Singh's name as appointment of Vice-
Chancellor.

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A In the category of Pro Vice-Chancellors

6. Dr. Padmasha Jha

As per information available from Sr. S.P. Muzaffarpur charge sheet has been submitted against her in case no. 10/11 dated 23.5.11 under Sections 342/341/323/504/507 of IPC on 30.06.2011. Charge sheet has also been submitted against her in case no. 21/11 dated 24.9.2011 under sections 341/342/506/504/386/34 and under section 3(x) under SC/ST Act. In the light of these she is not suited for appointment as pro Vice-Chancellor.

9. Prof.(Dr.) Raja Ram Prasad

While no complaint has been received more detail regarding educational qualification, quality of publications and work experience is required before commending on the candidature.

As the brief summary above will clearly indicate investigations and enquiry are currently going on against a number of candidates whose names have been forwarded. In many cases details of educational qualification, quality of publications and work experience etc. have not been forwarded. In the circumstances it is considered view of the State Govt. That a Search Committee as suggested in para-1 should be constituted immediately for short listing candidates for the post of Vice Chancellor and Pro-Vice Chancellor and appointment by the Chancellor should only be made from the list of short listed candidates."

G (The letter sent by the Principal Secretary is said to have been received in the Governor's Secretariat on 12.2.2013)

xi. On 13.2.2013, the Principal Secretary to Governor-cum-Chancellor recorded the following note:

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"The Principal Secretary to Chief Minister, Bihar, Patna vide letter No.4610034/2013 dated 09/02/2013 (72-78/C) alongwith the Education Deptt summary individual report about the persons whose names were proposed for the appointment of Vice-Chancellors and Pro-Vice-Chancellors in Annexure-A and Annexure-B, received in this Secretariat on 12/02/2013, may kindly be perused.

In this connection, it is submitted that on the orders of Hon'ble Chancellor dated 09/02/2013, notifications with regard to appointment of 8 (eight) Vice-Chancellors for different Universities have already been issued and communicated to them on 09/02/2013 and the incumbents have already joined their notified posts and sent their joining report to this Secretariat which are placed on the filed."

xii. On 19.2.2013, Governor-cum-Chancellor recorded the following order:-

"Secretary

PI issue Notifications, in continuation to my order dated 09/02/2013, today itself appointing Dr. Tapan Kumar Shandilya, as V.C. of Nalanda Open University, Patna, with immediate effect.

Also issue Notifications appointing the following persons as Pro-Vice-Chancellors in the Universities shown against their names:

1. Dr. Ramayan Prasad Magadh University, Bodh Gaya.
2. Dr. Birendra Kumar Singh KSD Sanskrit University, Darbhanga.
3. Dr. Dharma Nand Mishra B.N. Mandal University, Madhepura.

A 4. Dr. Sultana Khushood MMH Arabic and Persian
Jabeen University, Patna.

5. Prof.(Dr.) Shailendra J.P. University, Chapra.
Kumar Singh

B 6. Dr. Anwar Imam VKS University, Ara.
C PI issue another Notification appointing temporarily Dr.
Arun Kumar, V.C., Magadh University, to assume and hold
charge of the office of Vice-Chancellor, T.M. Bhagalpur
University, and perform all its duties and functions in
D addition to his own existing duties as V.C. of M.U. with
immediate effect and until the appointment of a regular
E Vice-Chancellor of T.M. Bhagalpur University within a short
span of time."

D Thereupon, the Special Secretary communicated the orders to
the concerned Universities.

xiii. After about one month, the Governor-cum-Vice-
Chancellor issued order dated 14.3.2013 for appointment of
E Dr. Anjani Kumar Sinha, Prof. and HOD of Botany Deptt. B.N.
Mandal University, Madhepura, as the Vice-Chancellor of T.M.
Bhagalpur University, Bhagalpur, with immediate effect. He also
directed that two notifications may be issued appointing
F Prof.(Dr.) Raja Ram Prasad, Prof. and HOD of Maithili Deptt.,
B.N. Mandal University, Madhepura, as Pro-Vice-Chancellor of
Patna University, Patna, and Dr. Padmasha Jha, ex-Pro-Vice-
Chancellor of L.N. Mithila University, Darbhanga, as Pro-Vice-
Chancellor of B.R.A. Bihar University, Muzaffarpur, with
immediate effect.

G 8. Dr. Ram Tawakya Singh challenged the appointments
made by the Chancellor in C.W.J.C. No.15123 of 2011, which
as mentioned hereinabove, was allowed by the Division Bench
of the High Court and directions were given for making the
H appointments of Vice Chancellors and Pro Vice Chancellors
afresh.

9. Shri Harish N. Salve, learned senior counsel appearing for the State and Shri Prashant Bhushan, learned counsel appearing for Dr. Ram Tawakya Singh referred to the provisions of the BSU Act and PU Act as also the regulations framed by the University Grants Commission (UGC) under Section 26 of the University Grants Commission Act, 1956 for selection of Pro Vice-Chancellors / Vice-Chancellors and argued that the direction given by the Division Bench of the High Court to the Chancellor to propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors is liable to be set aside and the appointments made by him are liable to be quashed because by taking advantage of the direction contained in the impugned order, the Chancellor arbitrarily prepared the list of the persons to be appointed as Vice-Chancellors and Pro Vice-Chancellors without making any selection whatsoever and without following any transparent method for making a choice from amongst the persons of academic excellence, unquestionable integrity and institutional commitment and without effectively consulting the State Government. Both, Shri Salve and Shri Prashant Bhushan emphasised that the Chancellor did not even try to find out whether persons of academic excellence are available in the country and prepared the list which included some persons against whom criminal cases are registered with the police and/or are pending in the Court(s). Learned counsel relied upon UGC regulations dated 30.6.2010 and argued that even though the BSU Act and the PU Act were not suitably amended for incorporating the regulations, the Chancellor was duty bound to keep in mind the parameters laid down by the UGC for selecting the candidates for appointment as Vice-Chancellors and Pro Vice-Chancellors and prepared list of eligible persons having highest level of competence, integrity, morals and institutional commitment and this could have been possible only if he had made a holistic selection by extending zone of selection beyond the frontiers of the State. Learned counsel submitted that instead of making a fair selection, the Chancellor manipulated re-appointment of those who were ousted by virtue

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A of the High Court's order. Shri Prashant Bhushan submitted that
 the Chancellor had shown his scant respect to the law laid down
 by the learned Single Judge and the Division Bench of the High
 Court and made appointments without effective consultation
 with the State Government. He submitted that the haste with
 B which the Chancellor ensured the issue of Notifications dated
 9.2.2013 is a proof of the oblique motive with which he pushed
 the appointments of even those who are facing trial for criminal
 offences. Shri Salve submitted that after having learnt about the
 vigilance inquiries being conducted into the antecedents of the
 C candidates proposed by him, the Chancellor should have
 waited for the vigilance reports and then only he could have
 made appointments.

10. Shri Ram Jethmalani, Shri Anil B.Divan, senior
 advocates and other learned counsel appearing for the private
 D respondents defended the appointments of their clients and
 argued that the methodology adopted by the Chancellor cannot
 be dubbed as arbitrary because he had consulted the State
 Government before ordering the issue of Notifications dated
 9.2.2013. Learned senior counsel submitted that the UGC
 E regulations cannot be invoked for quashing the appointments
 of the private respondents because the State legislature has
 not engrafted the same in the BSU Act and the PU Act by
 making appropriate amendments. Shri Jethmalani argued that
 the regulations framed by the UGC are in the nature of
 F subordinate legislation and they cannot override the plenary
 legislation, i.e., the State Acts. In support of this argument, he
 relied upon judgments of this Court in *State of U.P. v.*
Manbodhan Lal Srivastava AIR 1957 SC 912 and *Prem*
Chand Garg v. Excise Commissioner AIR 1963 SC 996.
 G Learned senior counsel also relied upon the judgment of this
 Court in *Kishore Samrite v. State of U.P.* (2013) 2 SCC 398
 and argued that Dr. Ram Tawakya Singh does not have the
 locus standi to challenge the appointments of Vice-Chancellors
 and Pro Vice-Chancellors because he was not a competitor
 H for any of the posts. Shri Jethmalani and Shri Divan submitted

that the appeal filed by the State and its functionaries should be dismissed because they not only waited till the issue of notifications for fresh appointments but also made misleading statement about the so called delay on the Governor's part in approving the amendments made by the State legislature purporting to incorporate the UGC regulations. Shri Anil Divan strongly criticised the State Government for deliberately not amending the relevant enactments to bring them in tune with the UGC regulations and submitted that the Governor cannot be blamed for not approving the Bill passed by the legislature because composition of the Search Committee proposed in the amendment made by the State legislature was loaded with bureaucrats, who would have never allowed others to play their role in selecting suitable persons and this would have effectively frustrated the object of appointing Vice-Chancellors and Pro Vice-Chancellors from amongst distinguished academicians. Learned counsel pointed out that majority of the appointees are having excellent academic record and vast experience of teaching in different Universities/Colleges and argued that their appointment should not be quashed simply because some of the candidates are facing prosecution. In the end, Shri Anil Divan submitted that even if this Court comes to the conclusion that the appointments made by the Chancellor are contrary to the scheme of the BSU Act and the PU Act, the private respondents who have clean record should be allowed to hold the posts and discharge the functions of Vice-Chancellors and Pro Vice-Chancellors till fresh appointments are made so that their image and integrity may not be adversely affected.

11. We have considered the respective arguments / submissions. For deciding the main question arising in the appeals and the writ petition it will be useful to notice the relevant statutory provisions. The same are as under:

BSU Act

"10. The Vice-Chancellor. - (1) No person shall be deemed to be qualified to hold the office of Vice-

A Chancellor unless such person is, in the opinion of the
Chancellor, reputed for his scholarship and academic
interest, and no person shall be deemed to be qualified
to hold the office of the Vice-Chancellor of the Kameshwar
Singh Darbhanga Sanskrit University unless such person
B is, in the opinion of the Chancellor, reputed for his
scholarship in Sanskrit or has made notable contribution
to Sanskrit education.

(2) The Vice-Chancellor shall be appointed by the
C Chancellor in consultation with the State Government.

(3)(a) The Vice-Chancellor shall be wholetime officer and
shall hold office during the pleasure of the Chancellor.

(b) Subject to the foregoing provisions of this section the
D Vice-Chancellor shall ordinarily hold office for a term of
three years and on the expiry of the said term he may be
reappointed by the Chancellor in consultation with the State
Government and he shall hold office at the pleasure of the
Chancellor for a term not exceeding three years.

(5) The Vice-Chancellor shall be the principal executive
and academic officer of the University, the Chairman of the
Syndicate and of the Academic Council and shall be
entitled to be present and speak at any meeting of any
authority or other body of the University and shall in the
E absence of the Chancellor preside over meetings of the
Senate and of any convocation of the University:
F

Provided that the Vice-Chancellor shall not vote in the first
instance but shall have and exercise a casting vote in the
G case of an equality of votes.

(6) The Vice-Chancellor shall subject to the provisions of
this Act, the Statutes and the Ordinances have power to
make appointment to posts within the sanctioned grades
and scales of pay and within the sanctioned strength of the
H

ministerial staff and other servants of the University not being teachers and officers of the University and have control and full disciplinary powers over such staff and servants. A

(7) B

(8) The Vice-Chancellor shall have the powers to visit and inspect the Colleges and buildings, laboratories, workshops and equipments thereof and any other institution associated with the University, and he shall have the right of making an inquiry or causing an inquiry to be made, in like manner in respect of any matter connected with such Colleges and institutions. C

(9) The Vice-Chancellor shall address the Principal of such College with reference to the result of such inspection or inquiry and, thereupon, it shall be the duty of such Principal to communicate the views of the Vice-Chancellor to the governing body of the College and to report to the Vice-Chancellor such action, if any, taken or proposed to be taken upon the result of such inspection or inquiry. D E

(10) It shall be lawful for the Vice-Chancellor to issue, from time to time, any direction to the Principal of a College in which post-graduate teaching conducted under clause (16) of section 4 and such Principal shall comply with all such directions accordingly. F

(11) The Vice-Chancellor shall exercise general control over the educational arrangement of University and shall be responsible for the discipline of the University. It shall be lawful for the Vice-Chancellor to take all steps which are necessary for maintaining the academic standard and administrative discipline of the University. G

(12) If at any time, except when the Syndicate or the Academic Council is in session, the Vice-Chancellor is satisfied that an emergency has arisen requiring him to H

A take such immediate action involving the exercise of any power vested in the Syndicate or Academic Council by or under this Act, the Vice-Chancellor shall take such action as he deems fit, and shall report the action taken by him to such authority which may either confirm the action so
B taken or disapprove of it.

(13) It shall be the duty of the Vice-Chancellor to see whether the proceeding of the University are carried on in accordance with the provisions of this Act, the Statutes, the Ordinance, the Regulations and the Rules or not and
C the Vice-Chancellor shall report to the Chancellor every proceeding which is not in conformity with such provisions.

For so long as the orders of the Chancellor are not received on the report of the Vice-Chancellor that the
D providing of the University is not in accordance with this Act, the Statutes, the Ordinance, the Regulation and the Rules, the Vice-Chancellor shall have the powers to stay the proceeding reported against.

E (14)

Illustration- 'equivalent post' means Reader and Principal in the pay-scale of Reader, Professor and Principal in the pay-scale or Professor.

F (15) The Vice-Chancellor shall exercise such other powers and perform such other duties as are conferred or imposed on him by this Act, the Statutes, the Regulations or the Rules.

G (16) The Vice-Chancellor shall have overall responsibility in maintaining good academic standard and promoting the efficiency and good order of the University.

H (17) Save as otherwise provided in the Act, or the Statutes the Vice-Chancellor shall appoint officer (other than the Pro-Vice-Chancellor) with the approval of the Chancellor,

and teachers and shall define their duties;

A

(18) The Vice-Chancellor shall have the power to take disciplinary action against all employees of the University including officers and teachers of the University;

(19) An appeal shall lie to the Chancellor against the order of the Vice-Chancellor imposing the penalty of dismissal, removal from service or reduction in rank.

B

12. Pro-Vice-Chancellor-(1) The Chancellor shall appoint the Pro-Vice-Chancellor, in consultation with the State Government.

C

(2) The Pro-Vice-Chancellor shall be a whole-time officer of the University. He shall hold office, on such conditions as may be determined, by the Chancellor, in consultation with the State Government, for a period not exceeding three years during the pleasure of the Chancellor.

D

(3) Where the person appointed as Pro-Vice-Chancellor gets pension from the Central or the State Government or any University or from any other source, the amount of pension due to him from such source shall be deemed to be the part of his salary as Pro-Vice-Chancellor.

E

(4) Subject to the provisions of this Act, the Pro-Vice-Chancellor shall exercise such powers and perform such duties as may be prescribed or as may be conferred or imposed on him, from time to time, by the Vice-Chancellor.

F

(5) The Pro-Vice-Chancellor shall be responsible for admission and conduct of the examination up to Bachelor course and the publication of the result of the examination conducted by the University up to Bachelor course and shall be responsible for student welfare."

G

H

A **PU Act**

"11. The Vice-Chancellor.-(1) No person shall be deemed to be qualified to hold the office of the Vice-Chancellor, unless he-

B (i) is an educationist having experience of administering the affairs of any University of India for not less than six years, or

C (ii) is or has been Principal or Head of the Department of any University or College, and has a teaching experience of not less than 10 years in the University or in any other University or in any college.

D (2) The Vice-Chancellor shall be appointed by Chancellor, in consultation with the State Government from amongst persons having qualification as mentioned in sub-section (1) and he shall hold office during the pleasure of the Chancellor.

E (3) The Vice-Chancellor shall be whole-time officer and shall hold office for a period of three years with effect from the date on which he assumed charge. On the expiry of the said period, he may be re-appointed for another term not exceeding three years.

F (4)(i) Other terms and conditions of his appointment shall be determined by the Chancellor in consultation with the State Government.

G (ii) Where the person appointed as Vice-Chancellor gets pension from the Central or the State Government or any University or from any other source, the amount of pension due to him from such source shall be deemed to be the part of his salary as Vice-Chancellor.

H (5) The Vice-Chancellor shall be the principal executive and academic officer of the University, Chairman of the Syndicate and of the Academic Council, and shall be entitled to be present and speak at any meeting of any

authority or other body of the University and shall, in the absence of the Chancellor, preside at meetings of the Senate and any convocation of the University;

Provided that the Vice-Chancellor shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(6) The Vice-Chancellor shall, subject to the provisions of this Act, the Statutes and the Ordinances, made thereunder, have power to make appointment to posts within the sanctioned grades and scales of pay and within the sanctioned strength of the ministerial staff and other servant of the University, not being teachers and officers of the University, and have control and full disciplinary powers over such staff and servants.

(7)

(8) The Chancellor shall have the right to visit and inspect the Colleges and building, laboratories, workshops, and equipments thereof and any other institutions associated with the University.

(9) The Vice-Chancellor shall carry out the orders of the Syndicate in respect of appointment, transfer, discharge or suspension of officers and teachers of the University, and shall exercise general control over the educational arrangement of the University, and shall be responsible for the discipline of the University.

(10) If any time, except when the Syndicate or the Academic Council is in session, the Vice-Chancellor is satisfied that an emergency has arisen requiring him to take immediate action involving the exercise of any power vested in the Syndicate or the Academic Council by or under this Act, the Vice-Chancellor shall take such action as he deems fit, and shall report the action taken by him

A to such authority which may either confirm the action so taken or disapprove of it.

B (11) Subject to the provision of this Act, it shall be the duty of the Vice-Chancellor to see whether the proceedings of the University are carried out in accordance with the provisions of this Act, the Statutes, the Ordinances, the Regulations and the Rules or not, and the Vice-Chancellor shall report to the Chancellor every such proceeding which is not in conformity with such provisions.

C Till such time as the orders of the Chancellor are not received on the report of the Vice-Chancellor that the proceedings of the University is not in accordance with this Act, the Statutes, the Ordinances, the Regulation and the Rules, the Vice-Chancellor shall have the powers to stay
D the proceeding reported against.

(12)

E (13) The Vice-Chancellor shall exercise such other powers and perform such other duties as are conferred or imposed on him by this Act, the Statutes, the Regulations or the Rules.

F (14) The Vice-Chancellor shall have overall responsibility in maintaining good academic standard and promoting the efficiency and good order of the University.

G (15) Save as otherwise provided in the Act, or the Statutes the Vice-Chancellor shall appoint officers (other than the Pro-Vice-Chancellor) with the approval of the Chancellor, and teachers and shall define their duties.

(16) The Vice-Chancellor shall have power to take disciplinary action against officers, teachers and all employees of the University.

H (17) An appeal shall lie to the Chancellor against the order

of the Vice-Chancellor imposing the penalty of dismissal, removal from service or reduction in rank." A

(Most of the remaining provisions contained in this section are identical to those contained in Section 10 of the Bihar State Universities Act.) B

"14. Pro-Vice-Chancellor.-(1) The Chancellor shall appoint the Pro-Vice Chancellor in consultation with the State Government.

(2) The Pro-Vice-Chancellor shall be a whole time officer of the University. He shall hold office for a period not exceeding three years during the pleasure of the Chancellor on such conditions as may be determined by the Chancellor in consultation with the State Government. C

(3) Where the person appointed as Pro-Vice-Chancellor gets pension from the Central or the State Government or any University or from any other source, the amount of pension due to him from such source shall be deemed to be the part of this salary as Pro-Vice-Chancellor. D

(4) Subject to the provisions of this Act, the Pro-Chancellor shall exercise such powers and perform such duties as may be prescribed or as may be conferred or imposed on him from time to time by the Vice-Chancellor. E

(5) The Pro-Vice-Chancellor shall be responsible for admission and conduct of examination up to Bachelor course and the publication of the result of the examination conducted by the University up to Bachelor Course and he shall be responsible for student welfare also." F

12. An analysis of the above quoted provisions makes it clear that the position of Vice-Chancellor is extremely important in every University established under the BSU Act and the PU Act. He is the heart and soul of the functional apparatus of the University. He is the principal executive and academic officer G H

A of the University, Chairman of the Syndicate and the Academic Council and is entitled, as of right, to remain present and speak in any meeting of any other authority / body of the University. If the Chancellor is not available, the Vice-Chancellor is entitled to preside over the meetings of the Senate and Convocation

B of the University. He has the power to make appointments of ministerial staff and other servants of the University except the teachers and officers and exercise disciplinary control over such staff and servants. The Vice-Chancellor is entitled to visit and inspect the Colleges and also make an inquiry or cause

C an inquiry to be made in respect of any matter connected with such Colleges and institutions. He is required to inform the concerned College about the result of inspection and/or inquiry and also seek report about the action taken or proposed to be taken on the result of inspection or inquiry. The Vice-Chancellor

D is empowered to issue any direction to the Principal of a College in which post-graduate teaching is conducted under Section 4(16) and the Principal is bound to comply with such direction. The Vice-Chancellor is required to exercise general control over the educational arrangement of the University and

E is responsible for the discipline of the University. He is also entitled to take all the steps necessary for maintaining the academic standard and administrative discipline of the University. In case of emergency, the Vice-Chancellor can exercise any power vested in the Syndicate or the Academic Council. The Vice-Chancellor is duty bound to ensure that the

F proceedings of the University are carried on in accordance with the provisions of the Act, the Statutes, the Ordinances, the Regulations and the Rules. He is to report to the Chancellor every proceeding which is not in consonance with the provisions of the plenary as well as the delegated legislations.

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13. The Pro Vice-Chancellor is also a whole time officer of the University and is entitled to exercise such powers and perform such duties which may be prescribed or which may be conferred or imposed on him by the Vice-Chancellor. He is

H responsible for admission and conduct of examination up to

Bachelor course and also the student welfare.

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14. It is thus evident that the Vice-Chancellor and the Pro Vice-Chancellor are responsible for maintaining the academic standard and discipline of the University and also ensure that all the bodies and authorities conduct themselves in conformity with the statutory provisions. This is the precise reason why Section 10(1) of the BSU Act and Section 11(1) of the PU Act are couched in negative form and prescribes the qualification of academic excellence as a condition precedent for appointment as Vice-Chancellor. Section 10(1) of the BSU Act declares that no person shall be qualified to hold the office of Vice-Chancellor unless such person, in the opinion of the Chancellor, is reputed for scholarship and academic interest. In case of Kameshwar Singh Darbhanga Sanskrit University, the person must be reputed for his scholarship in Sanskrit or must have made notable contribution in the field of Sanskrit education. Section 11(1) of the PU Act declares that no person shall be deemed to be qualified to hold the office of the Vice-Chancellor unless he is an educationist having experience of administering affairs of any University of India for not less than six years or he is or has been Principal or Head of the Department of any University or College, and has teaching experience of not less than 10 years in any University or any College. Sub-section (2) of both the sections makes the consultation with the State Government mandatory for appointment of the Vice-Chancellor. Similarly, Section 12(1) of the BSU Act and 14(1) of the PU Act makes consultation with the State Government sine qua non for appointment of Pro Vice-Chancellor.

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15. The word 'consultation' used in Sections 10(2) and 12(1) of the BSU Act and Section 11(2) and 14(1) of the PU Act is of crucial importance. The word 'consult' implies a conference of two or more persons or impact of two or more minds in respect of a topic/subject. Consultation is a process which requires meeting of minds between the parties involved

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- A in the process Consultation on the material facts and points to evolve a correct or at least satisfactory solutions. Consultation may be between an uninformed person and an expert or between two experts. In either case, the final decision is with the consultor, but he will not be generally ignoring the advice
 B of the consultee except for good reasons.

16. In order for two minds to be able to confer and produce a mutual impact, it is essential that each must have for its consideration fully and identical facts, which can at once constitute both the source and foundation of the final decision.
 C Such a consultation may take place at a conference table or through correspondence. The form is not material but the substance is important. If there is more than one person to be consulted, all the persons to be consulted should know the subject with reference to which they are consulted. Each one
 D should know the views of the other on the subject. There should be meeting of minds between the parties involved in the process of consultation on the material facts and points involved. The consultor cannot keep one consultee in dark about the views of the other consultee. Consultation is not complete
 E or effective before the parties thereto make their respective points of view known to the other and discuss and examine the relative merit of their views.

17. In *Chandramouleshwar Prasad v. Patna High Court*
 F (1970) 2 SCR 666, this Court considered the question whether there was due compliance with Article 233(1) of the Constitution which provides that appointments of persons to be, and the posting and promotion of District Judges in any State shall be made by the Governor of the State "in consultation with the High Court" exercising jurisdiction in relation to such State.
 G While holding that a Government notification appointing the petitioner as an officiating District and Sessions Judge was in violation of Article 233, a Constitution Bench of this Court observed:

- H "Consultation or deliberation is not complete or effective

before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter proposal in his mind which is not communicated to the proposer the direction to give effect to the counter proposal without anything more, cannot be said to have been issued after consultation." A
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18. In *Union of India v. Sankalchand Himatlal Sheth and Another* (1977) 4 SCC 193, a Constitution of Bench of this Court interpreted the word 'consultation' ap C

earing in Article 222(1) of the Constitution. Y.V. Chandrachud, J. (as he then was) referred to Words and Phrases (Permanent Edn. 1960, Vol.9), Corpus Juris Secundum (Vol.16A, 1956 Edn.), the judgments in *Rollo v. Minister of Town and Country Planning* (1948) 1 All ER 13, *Fletcher v. Minister of Town and Country Planning* (1947) 2 All ER 946 and observed: D

"Thus, deliberation is the quintessence of consultation. That implies that each individual case must be considered separately on the basis of its own facts. Policy transfers on a wholesale basis which leave no scope for considering the facts of each particular case and which are influenced by one-sided governmental considerations are outside the contemplation of our Constitution." E
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In the same judgment, Krishna Iyer, J. expressed his views in the following words:

"The key words in this Article are "consultation" and "transfer". What is consultation, dictionary-wise and popular parlance-wise? It implies taking counsel, seeking advice. An element of deliberation together is also read into the concept. "To consult" is to apply to for guidance, direction or authentic information, to ask the advice of - as to consult H

A a lawyer; to discuss something together; to deliberate.
(Hewey v. Metropolitan Life Ins. Co.). The word "consult"
means to seek the opinion or advice of another; to take
B counsel; to deliberate together; to confer; to apply for
information or instruction. (CIR v. John A. Wathen Distillery
Co.). "Consult" means to seek opinion or advice of
another; to take counsel; to deliberate together; to confers;
to deliberate on; to discuss; to take counsel to bring about;
C devise; contrives to ask advice of; to seek the information
of; to apply to for information or instruction; to refer to.
Teplitzky v. City of New York. Stroud's Law Lexicon defines
"consultation" thus:

"Consultation. [New towns Act, 1946 (9 & 10 Geo. 6, c.
68), Section 1(1)]. "Consultation with any local authorities".
D "Consultation means that, on the one side, the Minister
must supply sufficient information to the local authority to
enable them to tender advice, and, on the other hand, a
sufficient opportunity must be given to the local authority
to tender advice" per Bucknill, L.J., in Rollo v. Minister of
E town and Country Planning. See also Fletcher v. Minister
of town and Country Planning."

We consult a physician or a lawyer, an engineer or an
architect, and thereby we mean not casual but serious,
deliberate seeking of informed advice, competent
F guidance and considered opinion. Necessarily, all the
materials in the possession of one who consults must be
unreservedly placed before the consultee. Further, a
reasonable opportunity for getting information, taking other
steps and getting prepared for tendering effective and
G meaningful advice must be given to him. The consultant,
in turn, must take the matter seriously since the subject is
of grave importance. The parties affected are high-level
functionaries and the impact of erroneous judgment can
be calamitous. Therefore, it follows that the President must
H communicate to the Chief Justice all the material he has

and the course he proposes. The Chief Justice, in turn, must collect necessary information through responsible channels or directly, acquaint himself with the requisite data, deliberate on the information he possesses and proceed in the interests of the administration of justice to give the President such counsel of action as he thinks will further the public interest, especially the cause of the justice system. However, consultation is different from consentaneity. They may discuss but may disagree; they may confer but may not concur. And in any case the consent of the Judge involved is not a factor specifically within the range of Article 222." A
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19. The facts encapsulated in the earlier part of this judgment shows that the Chancellor has been consistently flouting the mandate of law and making appointments of Vice-Chancellors and Pro Vice-Chancellors without effectively consulting the State Government and completely disregarding the requirement of academic excellence and experience. The appointments made by the Chancellor in 2010 were quashed by the learned Single Judge who found that there was virtually no consultation with the State Government. He opined that even though the Chancellor has some flexibility in suggesting the names which may come to his knowledge or domain but he is duty bound to share the details with the State Government and then decide who is suitable to be appointed as Vice-Chancellor. The Division Bench approved the view taken by the learned Single Judge and observed that the objective of making consultation with the State Government mandatory is to ensure that the selection procedure is transparent and fair. The Division Bench observed that the State Government has the means to enquire into the background of the candidates and provide inputs to the Chancellor which could be extremely useful in making final choice of the candidate. The Division Bench also emphasised that consultation in such an important matter must be effective so that the Chancellor may make final choice after considering the information and inputs given by the State D
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A Government and that would obviate the risk of University being placed in the hands of wrong or unsuitable person.

20. What the Chancellor did after the High Court quashed the appointments made vide Notifications dated 1.8.2011 and 3.8.2011 is extremely disturbing. By taking advantage of the language used in the penultimate paragraph of order dated 7.12.2012 passed in CWJC No.15123/2011, the Chancellor prepared a list of persons proposed to be appointed as Vice-Chancellors and Pro Vice-Chancellors and forwarded the same to the State Government. How the Chancellor picked those names is a matter of mystery because he did not adopt any transparent method of making selection keeping in view the qualifications enumerated in Section 10(1) of the BSU Act and Section 11(1) of the PU Act. In the charts annexed with letter dated 5.1.2013 sent by the Special Secretary to the Governor there was a mention of the academic qualifications and experience of the persons proposed to be appointed as Vice-Chancellors and Pro Vice-Chancellors but there was no indication of their academic excellence or eminence in the field of education. In the last column, the following identical remarks were given qua the first eight candidates:

"Comprehensively considered most suitable. Not a word as to his/her qualification, eligibility and suitability in the judgement."

F For the remaining three candidates in the category of Vice-Chancellors, the following remarks were given:

"Considered duly qualified and best suitable for the job.

G In the category of Pro Vice-Chancellor, the following remarks were given in respect of the first eight candidates:

"Considered best suitable for the job."

H In respect of the last candidate, the following remarks were recorded:

"Most OBC candidate. Considered best suitable for the job." A

Not only this, letter dated 5.1.2013 sent by the Special Secretary to the Governor to the Principal Secretary to the Chief Minister and the charts annexed therewith were conspicuously silent about the particular University in which the particular person was proposed to be appointed as Vice-Chancellor or Pro Vice-Chancellor. B

21. The Principal Secretary to the Chief Minister sent reply dated 21.1.2013 and conveyed the State Government's inability to make effective inquiry about the antecedents of the candidates. What followed was nothing but a farce enacted by the Chancellor to make a show of effective consultation with the State Government. In his letter, the Principal Secretary to the Chief Minister had pointed out that letter dated 5.1.2013 only contained a brief reference to the qualifications and experience of the persons nominated by the Chancellor but there was no record of their vigilance clearance or integrity and moral standard so as to enable the State Government to scrutinise the names in terms of the direction given by the High Court. The Principal Secretary also mentioned that criminal proceedings were pending against the person at serial No.4. When that letter was placed before the Governor, he directed the Special Secretary to send another communication requiring the Government to forward substantive and credible evidence as to the integrity and moral standard of the persons named in letter dated 5.1.2013 and also indicate whether there is any record of judicial conviction. The Chancellor brushed aside the factum of pendency of criminal proceedings against the person named at serial No.4. On receipt of the second letter sent by the Special Secretary to the Governor-cum-Chancellor, the Principal Secretary, Education forwarded the same to the Principal Secretary, Vigilance Department with the request to get an inquiry conducted into the antecedents of the candidates. An intimation to this effect was also sent to the Governor's C
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A Secretariat on 4.2.2013 and a request was made that
 appointments should be made only after the exercise for
 consultation with the State Government is completed. The
 Chancellor treated that letter as an affront to his authority and
 without waiting for the report of the Vigilance Department, he
 B passed order dated 8.2.2013 on the file for preparation of draft
 notifications, which were finally issued on 9.2.2013.

22. Though the counsel for the private respondents tried
 to make capital out of the fact that letter dated 9.2.2013 sent
 by Principal Secretary to the Chief Minister was received in the
 C office of the Chancellor only on 12.2.2013 and, therefore, he
 did not get an opportunity to consider the report annexed
 therewith, they could not explain as to why the Chancellor did
 not wait for the report of the Vigilance Department despite the
 fact that vide letter dated 4.2.2013 he was apprised of the fact
 D that the matter had been referred to that department for making
 an inquiry into the antecedents of the candidates. The
 extraordinary haste exhibited by the Chancellor in getting the
 notifications issued on 9.2.2013 speaks volume of his intention
 to prevent the State Government from bringing to the fore facts
 E relating to criminal cases pending against some of his
 nominees. The singular objective of the Chancellor to appoint
 his men as Vice-Chancellors and Pro Vice-Chancellors is
 evinced from the fact that he did not stop the process of
 appointment on 9.2.2013. By Notifications dated 19.2.2013, he
 F ordered appointment of Dr. Tapan Kumar Shandilya as Vice-
 Chancellor of Nalanda Open University, Patna and six others
 as Pro Vice-Chancellors of different Universities. Not only this,
 after about one month the Chancellor passed order dated
 14.3.2013 for appointment of Dr. Anjani Kumar Sinha as Vice-
 G Chancellor of TM Bhagalpur University and Prof. (Dr.) Raja Ram
 Prasad and Dr. Padmasha Jha as Pro Vice-Chancellors of
 Patna University and BRA Bihar University, Muzaffarpur,
 respectively. While ordering the appointments which were
 notified on 19.2.2013 and 14.3.2013, the Chancellor had before
 H him the report sent by the State Government but he simply

ignored the same and ordained appointment of his nominees. A

23. In our view, the entire exercise undertaken by the Chancellor was ex-facie against the mandate of Sections 10(1), 10(2) and 12(1) of the BSU Act and Sections 11(1), 11(2) and 14(1) of the PU Act because he made every possible effort to prevent the State Government from providing inputs about the candidates and conveying its opinion on their suitability to be appointed as Vice-Chancellors and Pro Vice-Chancellors. He also acted in contemptuous disregard to the pronouncements made by the High Court in the two rounds of litigation that the appointments of the Vice-Chancellors and Pro Vice-Chancellors must precede meaningful and effective consultation with the State Government. What is most shocking is that the Chancellor selected two persons for appointment as Vice-Chancellors and one person as Pro Vice-Chancellor despite the fact that they are facing prosecution under various provisions of IPC, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Prevention of Corruption Act, 1988. Against some other candidates there were complaints of wrongful drawal of TA / DA and other financial irregularities. It can only be a matter of imagination as to how the Universities would be safe in the hands of such persons. The reason for this malady is not far to seek. For the last many years the Chancellors have been appointing Vice-Chancellors and Pro Vice-Chancellors without adopting any transparent and fair method of selection. In the process they may have accommodated some persons having allegiance to the political party in power and thereby averted any conflict with the State Government. However, we do not have the slightest hesitation to hold that the mechanism adopted by the Chancellor in making appointments is blatantly violative of the scheme of the BSU Act and the PU Act and also Article 14 of the Constitution. B
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24. We may add that even though the language of Sections 10(1) and 12(1) of the BSU Act and Sections 11(1) and 14(1) H

A of the PU Act does not postulate selection of Vice-Chancellor
 or Pro Vice-Chancellor by inviting application through open
 advertisement, a wholesome reading of these sections makes
 it clear that Vice-Chancellor must be a person reputed for his
 scholarship and academic interest or eminent educationist
 B having experience of administering the affairs of any University
 and selection of such a person is possible only if a transparent
 method his followed and efforts are made to reach out people
 across the country. Article 14 which mandates that every action
 of the State authority must be transparent and fair has to be
 C read in the language of these provisions and if that is done, it
 becomes clear that the Chancellor has to follow some
 mechanism whereby he can prepare panel by considering
 persons of eminence in the field of education, integrity, high
 moral standard and character who may enhance the image of
 the particular University. Surely, Section 10(1) of the BSU Act
 D and Section 11(1) of the PU Act do not contemplate
 preparation of panel of suitable persons by the Chancellor
 sitting in his office.

25. The UGC regulations, which provide for constitution of
 E a Search Committee consisting of eminent educationists /
 academicians are intended to fill up an apparent lacuna in the
 provisions like Section 10(1) of the BSU Act and Section 11(1)
 of the PU Act. We have no doubt that if the UGC regulations
 had been engrafted in the two Acts, an unseemly controversy
 F relating to appointment of Vice-Chancellors and Pro Vice-
 Chancellors could have been avoided.

26. At this stage, we may mention that on 11.7.2013, Shri
 Vikas Singh, learned senior counsel appearing for the
 Chancellor made a statement that the Ordinance sent by the
 G State Government in April, 2013 for the approval of the
 Governor is not in consonance with the UGC regulations and
 the same will be immediately returned to the State Government.
 Thereupon, Shri Harish Salve, learned senior counsel
 H appearing for the State Government gave out that the Ordinance

will be re-submitted to the Governor within one week after making appropriate amendment. On 24.7.2013, i.e., the date on which the order was reserved, Shri Ranjit Kumar, learned senior counsel, who appeared for the State Government made a statement that if the two Acts are amended for incorporation of UGC regulations then he would inform the Court about the same. On 16.8.2013, the counsel assisting Shri Ranjit Kumar handed over xerox copies of Bihar Gazette (Extraordinary) dated 13.8.2013. The first Gazette contains the amendments made in the BSU Act by Bihar Act No.14/2013. The second Gazette contains the amendments made in the PU Act by Bihar Act No.13/2013 and the third Gazette contains the amendment made in Nalanda Open University Act, 1995 by Bihar Act No.12/2013. By these amendments, Sections 10 and 12 of the BSU Act, Sections 11 and 14 of the PU Act and Sections 11 and 13(a) of the Nalanda Open University Act, 1995 have been amended. For the sake of reference, Sections 2 and 3 of the amendment made in the BSU Act is reproduced below:

2. Amendment of section 10 of Bihar Act, 23 of 1976.-

In the Bihar State Universities Act 1976 (Bihar Act 23, 1976) sub section (1) of Section-10 shall be substituted by the following, namely :-

"(1) (i) Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice-Chancellors. The Vice-Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and / or academic administrative organization.

(ii) The selection of Vice-Chancellor should be through proper identification of a Panel of 3-5 names by a Search Committee through a public notification or nomination or a talent search process or in combination. The members of the above Search Committee shall be persons of

A 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
 committee must give proper weightage to academic
 excellence, exposure to the higher education system in the
 B 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
 Chancellor.

C (iii) Following shall be the constitution of the Search
 Committee.

(a) A member nominated by the Chancellor, who shall be
 an eminent Scholar / Academician of national repute or a
 recipient of Padma Award in the field of education and
 shall be the Chairman.
 D

(b) The Director or Head of an institute or organization of
 national repute, such as, Indian Institute of Technology,
 Indian Institute of Science, Indian Space Research
 E Organization, National Law University or National
 Research Laboratory or Vice-Chancellor of a statutory
 University nominated by the Chancellor as Member.

(c) A member nominated by the State Government who
 shall be an eminent Academician and have full knowledge
 F of the academic structure and problems of higher
 education of the State."

3. Amendment of section 12 of Bihar Act, 23 of 1976.-
 In the Bihar State Universities Act 1976 (Bihar Act 23,
 1976) sub section (1) of Section 12 shall be substituted
 G by the following namely :-

"(1) The Pro Vice-Chancellor shall be appointed by the
 Chancellor in consultation with the State Government in the
 same manner as prescribed for appointment of Vice-
 H

chancellor." A

27. In view of the aforementioned amendments, it is not necessary to delve into the question whether the UGC regulations are in the nature of subordinate legislation and they cannot override the provisions contained in the BSU Act and the PU Act. B

28. Before concluding, we shall deal with the objection raised by Shri Jethmalani to the locus standi of Dr. Ram Tawakya Singh and another objection raised by him and Shri C

Anil Divan to the maintainability of the appeal filed by the State of Bihar. In our view, challenge to the *locus standi* of Dr. Ram Tawakya Singh was rightly rejected by the High Court. It is not in dispute that he is a Professor and Head of the Department of Chemistry in Veer Kunwar Singh University, Ara. Therefore, the mere fact that he did not project himself as a candidate for the office of Vice-Chancellor or Pro Vice-Chancellor is not sufficient to deny him the right to question the appointments made by the Chancellor. His anxiety to ensure that eminent educationists are appointed as Vice-Chancellors and Pro Vice-Chancellors in the State can very well be appreciated. Therefore, we do not find any justification to non-suit him by accepting the respondents' challenge to his standing. D E

29. The issue deserves a look from another angle. Even if it may be possible to say that Dr. Ram Tawakya Singh does not have any direct personal interest in the appointment of Vice-Chancellors and Pro Vice-Chancellors in the State Universities, the High Court could have suo motu taken cognizance of the issues raised by him and treated his petition as one filed in public interest and decided the same on merits as was done in *Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi* (1987) 1 SCC 227. Some of the observations made in that judgment are worth noticing, which we hereby do: F G

"The allegations made in the petition disclose a lamentable H

A state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been
B brought to the notice of the Court, it was the duty of the Court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation
C assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice.

The allegations of the petitioner have been noted about the role of the Chief Minister. It is well to remember that
D Rajagopala Ayyangar, J. speaking for this Court in *C.S. Rowjee v. APSRTC* (1964) 6 SCR 330 observed at p. 347 of the Report that where allegations of this nature were made, the court must be cautious. It is true that allegation of mala fides and of improper motives on the part of those
E in power are frequently made and their frequency has increased in recent times. This Court made these observations as early as 1964. It is more true today than ever before. But it has to be borne in mind that things are happening in public life which were never even anticipated
F before and there are several glaring instances of misuse of power by men in authority and position. This is a phenomenon of which the courts are bound to take judicial notice."

G 30. The other objection raised by learned senior counsel relates to the maintainability of the appeals / special leave petitions. It is true that the State Government moved this Court only after the Chancellor initiated the process of making appointments and an apparently incorrect statement was made
H before the Court on 18.3.2005 in the context of the Governor's

refusal to approve the amendments made in the two Acts but these factors are not sufficient to negate the State Government's challenge to the direction given by the High Court which, as mentioned above, gave free hand to the Chancellor to manipulate the appointment of the persons of his choice, some of whom are embroiled in criminal cases, without getting a selection made keeping in view the requirements of Section 10(1) of the BSU Act and 12 (1) of the PU Act.

31. In the result, the appeals and the writ petition are allowed in the following terms:

(i) Notifications dated 9.2.2013, 19.2.2013 and 14.3.2013 issued for appointment of the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities are declared illegal and quashed.

(ii) The direction given by the High Court to the Chancellor to propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors is modified and it is directed that the Chancellor shall prepare a panel of suitable persons for appointment to the offices of Vice-Chancellors and Pro Vice-Chancellors keeping in view the provisions of Sections 10(1), 10(2) and 12 of the BSU Act and Sections 11(1), 11(2) and 14 of the PU Act as amended by Bihar Act No.14/2013 and 13/2013 respectively and by following a transparent and fair method of selection.

(iii) The Chancellor shall make appointments after effective and meaningful consultation with the State Government, as indicated in the orders passed by the learned Single Judge and the Division Bench of the High Court in the case of Dr. Subhash Prasad Sinha and Dr. Arvind Kumar.

- A (iv) The aforesaid exercise shall be completed within a maximum period of three months and appointments of the selectees shall be made within next four weeks.
- B (v) The persons who are currently holding charge of the offices of Vice-Chancellors and Pro Vice-Chancellors shall continue to discharge the duties of their respective offices till the joining of new appointees.
- C R.P. Appeals & Writ Petition allowed.