[2023] 16 S.C.R. 377 : 2023 INSC 1032

CASE DETAILS

DR. PREMACHANDRAN KEEZHOTH & ANR.

v.

THE CHANCELLOR KANNUR UNIVERSITY & ORS.

(Civil Appeal No. 7700 of 2023)

NOVEMBER 30, 2023

[DR. DHANANJAYA Y. CHANDRACHUD, CJI, J.B. PARDIWALA AND MANOJ MISRA, JJ.]

HEADNOTES

Issue for consideration: The respondent No. 4 herein was appointed as the Vice-Chancellor of the Kannur University, his tenure was for a period four years. As the tenure of the respondent No. 4 was coming to an end, the Chancellor initiated steps for selection and appointment of a new Vice-Chancellor. The Additional Chief Secretary, Higher Education, State of Kerala issued notification inviting applications from eligible candidates. However, the respondent no. 4 herein was re-appointed as Vice-Chancellor of the Kannur University after the Minister for Higher Education and Social Justice addressed a letter to the Governor/Chancellor dated 22.11.2021 recommending re-appointment of the respondent No. 4 herein for a second term. (i) Whether re-appointment is permissible in respect of a tenure post; (ii) Whether the outer age limit of sixty years for the appointment of Vice-Chancellor as stipulated under sub-section (9) of Section 10 of the Kannur University Act, 1996 is to be made applicable even in the case of re-appointment of the Vice-Chancellor for one more term of four years (iii) Whether the re-appointment of the Vice-Chancellor has to follow the same process as a fresh appointment by setting up a selection committee under Section 10(1) of the Act 1996 (iv) Did the Chancellor abdicate or surrender his statutory power of reappointment of the Vice-Chancellor.

Kannur University Act, 1996 – s. 10(9) and s.10(10) – Whether reappointment is permissible in respect of a tenure post:

Held: The ordinary meaning that can be ascribed to the term "reappointment" is the act or process of deciding essentially that someone should continue in a particular job – Ordinarily, the object behind providing

for reappointment is twofold – First is "retention" i.e., where the incumbent to the office/post during his term is found to be extraordinary and has established himself or herself to be an asset to the institution, then in such circumstance, such person is retained with a view to allow him to continue on the same post for one more term – Secondly, having regard to the nature of the post the organization or institution may not be in a position to fill up the post in a time bound manner and in such circumstances, the provision for reappointment may enable the organization or institution to relieve itself of the tedium of going through the entire selection process afresh every time the post becomes vacant – Therefore, the reappointment is permissible even in case of a tenure post. [Paras 46 and 47]

Kannur University Act, 1996 – s. 10(9) and s.10(10) – Whether the outer age limit of sixty years for the appointment of Vice-Chancellor as stipulated under sub-section (9) of Section 10 of the Act, 1996 is to be made applicable even in the case of reappointment of the Vice-Chancellor for one more term of four years.

Held: On a plain reading of sub-section (9) of Section 10 of the Act 1996, it appears that the person sought to be appointed as a Vice-Chancellor must not be more than sixty-years of age at the time of appointment i.e., it provides the outer age limit for appointment – While sub-section (10) of Section 10 of the Act 1996 provides that upon appointment, the term of the Vice-Chancellor would be for four years and that he shall be eligible for reappointment – The proviso attached to sub-section (10) stipulates that no person shall be appointed as Vice-Chancellor for more than two terms – Sub-section (9) of Section 10 of the Act 1996 will apply only at the stage of appointment of Vice-Chancellor and would have no application whatsoever when it comes to reappointment of Vice-Chancellor under sub-section (10) – This is reinforced from the words "shall be eligible for reappointment" occurring in sub-section (10) which connotes that the same is an enabling provision whereby the Vice-Chancellor by virtue of holding his office is deemed eligible for reappointment irrespective of the other provisions – If the outer age limit provided in sub-section (9) would apply even to reappointment, then the same would effectively mean that only those persons who are appointed as Vice-Chancellor at the age of fifty-five or below could be considered for reappointment – Such an interpretation would result in conditions being read into sub-section (10) which have

not been prescribed by the legislature – Had the intent of legislature been otherwise, sub-section (10) or the words "shall be eligible for re-appointment" would have been specifically qualified by or made subject to the words "sub-section (9)" or "provisions of this section" – If sub-section (9) is interpreted so as to be made applicable even to reappointment as provided in sub-section (10), then the result would be that any person who is appointed as Vice-Chancellor at the age of fifty-six or more would not be eligible for reappointment, thereby rendering sub-section (10) and its proviso completely otiose and meaningless in such cases – A purposive construction may be taken recourse to for the purpose of giving full effect to the statutory provisions – Thus, the outer age limit of sixty years provided in sub-section (9) of Section 10 of the Act 1996 will not apply, when it comes to reappointment under sub-section (10) of Section 10 of the Act 1996. [Paras 48, 50, 52, 53, 56, 57]

Kannur University Act, 1996 – s. 10(9) and s.10(10) – Whether the reappointment of the Vice-Chancellor has to follow the same process as a fresh appointment by setting up a selection committee under Section 10(1) of the Act 1996.

Held: Reappointment of Vice-Chancellor has been provided under sub-section (10) of Section 10 of the Act 1996 – The proviso to sub-section (10) of the Act 1996 further makes the intention of the legislature to provide for reappointment more clear – The legislature has not thought fit to prescribe any particular procedure or any particular mode or manner of reappointment – The UGC Regulations are also silent as regards the reappointment of Vice-Chancellor – In the case at hand, sub-section (10) of Section 10 of the Act, 1996, provides for reappointment and does not even contain the words "subject to provisions of this section" – This is as good as to reflect the legislature's intention of permitting reappointment without following the ordinary process of appointment of Vice-Chancellor – Thus, it is not necessary to follow the procedure of appointment as laid down in Section 10 of the Act 1996 for the purpose of reappointment. [Paras 58, 65, 66]

Kannur University Act, 1996 – s. 10(9) and s.10(10) – Did the Chancellor abdicate or surrender his statutory power of reappointment of the Vice-Chancellor.

Held: The facts make it abundantly clear that there was no independent application of mind or satisfaction or judgment on the part of the Chancellor

and the respondent No. 4 came to be reappointed only at the behest of the State Government – Although the notification reappointing the respondent No. 4 to the post of Vice-Chancellor was issued by the Chancellor yet the decision stood vitiated by the influence of extraneous considerations or to put it in other words by the unwarranted intervention of the State Government – It is the Chancellor who has been conferred with the competence under the Act 1996 to appoint or reappoint a Vice-Chancellor – No other person even the Pro-Chancellor or any superior authority can interfere with the functioning of the statutory authority and if any decision is taken by a statutory authority at the behest or on a suggestion of a person who has no statutory role to play, the same would be patently illegal – Thus, it is the decision-making process, which vitiated the entire process of reappointment of the respondent No. 4 as the Vice-Chancellor – The decision making process because in such a case the exercise of power is amenable to judicial review – As a consequence, the notification dated 23.11.2021, reappointing the respondent no.4 as the Vice-Chancellor of the Kannur University is quashed. [Paras 81,84, 85,86,87,90]

Words and Phrases – 'Tenure' and 'Tenure post' – Discussed.

Interpretation of Statutes – Doctrine/Principle – Doctrine of Purposive construction:

Held: The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to the statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable – The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context of the statute – Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose – The courts strongly lean against any construction which tends to reduce a statute to futility – The provision of the statute must be so construed as to make it effective and operative – The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out. [Para 56]

Administrative Law – Principle:

Held: It is a well settled principle of administrative law that if a statute expressly confers a statutory power on a particular body or authority or imposes a statutory duty on the same, then such power must be exercised or duty performed (as the case may) by that very body or authority itself and none other – If the body or authority exercises the statutory power or performs the statutory duty acting at the behest, or on the dictate, of any other body or person, then this is regarded as an abdication of the statutory mandate and any decision taken on such basis is contrary to law and liable to be quashed – It is important to keep in mind that, in law, it matters not that the extraneous element is introduced (i.e., the advice, recommendation, approval, etc. of the person not empowered by the statute is obtained or given) in good faith or for the advancement of any goal or objection howsoever laudable or desirable – The rule of law requires that a statutory power vests in the body or authority where the statute so provides, and likewise, the discharge of the statutory duty is the responsibility of the body or authority to which it is entrusted – That body or authority cannot merely rubberstamp an action taken elsewhere or simply endorse or ratify the decision of someone else. [Para 71]

Writ – Writ of Quo Warranto:

Held: Quo warranto is a remedy or procedure whereby the State inquires into the legality of the claim which a party asserts to an office or franchise, and to oust him from its enjoyment if the claim be not well founded, or to have the same declared forfeited and recover it, if, having once been rightfully possessed and enjoyed; it has become forfeited for mis-user or non-user – It is now well settled that a writ of quo warranto lies if any appointment to a public office is made in breach of the statute or the rules – In the case on hand, this Court is not concerned with the suitability of the respondent No. 4 – The "suitability" of a candidate for appointment to a post is to be judged by the appointing authority and not by the court unless the appointment is contrary to the statutory rules/ provisions. [Paras 30, 84]

LIST OF CITATIONS AND OTHER REFERENCES

The University of Mysore and Anr. v. C.D. Govinda Rao and Anr, [1964] 4 SCR 575 – followed.

High Court of Gujarat and Another v. Gujarat Kishan Mazdoor Panchayat and Ors, [2003] 2 SCR 799: (2003) 4 SCC 712; B. *Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn,* [2006] 5 Suppl. SCR 462:(2006) 11 SCC 731; *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and Ors.,* [2013] 14 SCR 621: (2014) 1 SCC 161; J.S. *Yadav v. State of Uttar Pradesh and Another,* [2011] 5 SCR 460: (2011) 6 SCC 570; *Union of India v. Kuldeep Singh,* (2004) 2 SCC 590: [2003] 6 Suppl. SCR 526; *Clariant International Ltd. and Another v. Securities & Exchange Board of India,* [2004] 3 Suppl. SCR 843:(2004) 8 SCC 524; *Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others v. Director General of Civil Aviation and Others,* [2011] 5 SCR 1019: (2011) 5 SCC 435 – relied on.

S.P. Gupta v. Union of India, [1982] 2 SCR 365 :(1981) Supp SCC 87:; *State of West Bengal v. Anindya Sundar Das,* (2022) SCC OnLine SC 1382; *State of Himachal Pradesh v. Kailash Chand Mahajan,* [1992] 1 SCR 917 :(1992) Supp (2) SCC 351; *Gambhirdan K. Gadhvi v. State of Gujarat,* (2022) 5 SCC 179; *Professor (Dr.) Sreejith P.S. v. Dr. Rajasree M.S.,* 2022 SCC OnLine SC 1473; *Dr. L.P. Agarwal v. Union of India and Others,* [1992] 3 SCR 567: (1992) 3 SCC 526; *Dept. of Commerce v. US House of Representatives,* 1999 SCC *OnLine US SC 10; State of U.P. v. Babu Ram Upadhya,* [1961] 2 SCR 679; *Express Newspaper (P) Ltd. v. Union of India,* [1959] SCR 12; *U.P. Power Corpn. Ltd. v. NTPC Ltd.,* (2009) 6 SCC 235: [2009] 3 SCR 1060; *Udai Singh Dagar v. Union of India,* (2007) 10 SCC 306: [2007] 6 SCR 707; *State of T.N. v. Hind Stone,* [1981] 2 SCR 742: (1981) 2 SCC 205; *Hotel Balaji v. State of A.P.,* [1992] 2 Suppl. SCR 182: 1993 Supp (4) SCC 536; *Yogendra Kumar Jaiswal v. State of Bihar,* [2015] 14 SCR 1037:(2016) 3 SCC 183; *State of Mysore v. H. Sanjeeviah,* [1967] 2 SCR 361; *Municipal Corpn. of Delhi v. Gurnam Kaur,* (1989) 1 SCC 101: [1988] 2 Suppl. SCR 929; *State of U.P. v. Synthetics and Chemicals Ltd.,* [1991] 3 SCR 64; *B.R. Kapur v. State of T.N. and Another* (2001) 7 SCC 231: [2001] 3 Suppl. SCR 191; *Bharati Reddy v. State of Karnataka and Others,* (2018) 6 SCC 162: [2018] 3 SCR 137; *P. Venugopal v. Union of India,*[2008] 8 SCR 1; *M. Pentiah v. Muddala Veeramallappa* [1961] 2 SCR 295; *S.P. Jain v. Krishna Mohan Gupta* [1987] 1 SCR 411; *RBI v. Peerless General*

Finance and Investment Co. Ltd., [1987] 2 SCR 1; *Tinsukhia Electric Supply Co. Ltd. v. State of Assam,* [1989] 2 SCR 544 :(1989) 3 SCC 709:; *UCO Bank v. Rajinder Lal Capoor,* (2008) 5 SCC 257: [2008] 5 SCR 775; *Grid Corpn. of Orissa Ltd. v. Eastern Metals and Ferro Alloys,* [2010] 10 SCR 779:(2011) 11 SCC 334; *Bhuri Nath and Others v. State of J&K and Others,* [1997] 1 SCR 138: (1997) 2 SCC 745 – referred to.

Hardwari Lal, Rohtak v. G.D. Tapase, Chandigarh and others, AIR 1982 Punjab and Haryana 439 – referred to.

Chief Constable of the North Wales Police v. Evans, (1982) 1 WLR 1155 : (1982) 3 All ER 141 (HL) - referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION : CIVIL APPEAL NO.7700 OF 2023

From the Judgment and Order dated 23.02.2022 of the High Court of Kerala at Ernakulam in WA No.1698 of 2021.

Appearances:

Dama Seshadri Naidu, George Poonthottam, Sr. Advs., Atul Shankar Vinod, Hiresh Choudhary, Ms. Surbhi Sharma, Kannan Gopal Vinod, K. Sai Teja, M.P. Vinod, Advs. for the Appellants.

R. Venkataramani, AG, K. K. Venugopal, Basavaprabhu S. Patil, Sr. Advs., Venkita Subramoniam T.R., Nishe Rajen Shonker, Mrs. Anu K. Joy, Alim Anvar, Shailesh Madiyal, Vaibhav Sabharwal, Akshay Kumar, Ms. Divija Mahajan, Anirudh Sanganeria, Samarth Kashyap, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

J. B. PARDIWALA, J.

For the convenience of the exposition, this judgement is divided in the following parts: -

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*Ed Note : Pagination is as per original judgment.

" 'Intention of the Legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

[***Lord Watson in Salomon v. Saloman & Co.,*** (1897) AC 22, 38]

1. We are tempted to preface our judgment with the aforesaid observations of Lord Watson in Soloman (supra), as we need to keep in mind the principle of law as explained therein for the purpose of interpretation of Section 10(9) and Section 10(10) respectively of the Kannur University Act, 1996 (for short, "the Act 1996"). In other words, the object or the intention behind enacting the two provisions referred to above.

2. This appeal is at the instance of two unsuccessful original writ petitioners before the High Court. The appellant No. 1 herein in his capacity as the elected member of the Senate of Kannur University and the appellant No. 2 herein in his capacity as the member of the Academic Council of the

said University together questioned the legality and validity of reappointment of the respondent No. 4 herein, namely, Dr. Gopinath Ravindran as the Vice-Chancellor of the Kannur University by filing Writ Petition (C) No. 26975 of 2021 in the High Court of Kerala, primarily on the ground that the respondent No. 4 was not eligible for reappointment as the Vice-Chancellor of the Kannur University. The writ application referred to above came to be rejected by the learned Single Judge of the High Court vide the judgment and order dated 15.12.2021. The judgment rendered by the learned Single Judge of the High Court was challenged before a Division Bench of the High Court by filing the Writ Appeal No. 1698 of 2021. The challenge in the appeal also failed. The Division bench dismissed the appeal vide the judgment and order dated 23.02.2022 thereby affirming the judgment and order passed by the learned Single Judge declining to issue a writ of Quo Warranto.

A. FACTUAL MATRIX

3. The facts are jejune. The respondent No. 4 herein was appointed as the Vice-Chancellor of the Kannur University vide the Notification dated 24.11.2017 duly issued by the Chancellor of the Kannur University. The tenure of the respondent No. 4 as the Vice-Chancellor was for a period of four years. As the tenure of the respondent No. 4 as the Vice-Chancellor of the University was coming to an end, the Chancellor initiated steps for selection and appointment of a new Vice-Chancellor in the said University. The first step in the said process was the issue of a Notification dated 27.10.2021 constituting a Selection Committee of three members. The Notification dated 27.10.2021 reads thus:

"No.G53 1283/2021 *Governors Secretariat*
Kerala Raj Bhavan
Thiruvananthapuram
27th October 2021

NOTIFICATION

In exercise of the powers conferred under Section 10, read with sub sections (1)(2) and (3) of the Kannur University Act, 1996, the Chancellor of the University is pleased to constitute a Selection Committee comprising of the following members to make

recommendation (s) towards the selection and appointment of a new Vice Chancellor in the said University.

1. Dr. B. Ekbal - (Nominee of the University Senate)

(Former Vice Chancellor, University of Kerala and former Member, State Planning Board)

2. Prof. B. Thimme Gowda - (Nominee of the University Grants Commission)

Vice Chairman, Karnataka State Higher Education Council

(Former Vice Chancellor, Bangalore University & Karnataka State Rural Development and Panchayat Raj University

3. Prof. VK Ramachandran (Nominee of the Chancellor)

Vice Chairperson, Kerala State Planning Board

(Former HoD, Economic Analysis Unit, Indian Statistical Institute, Bengaluru)

I, Prof. VK Ramachandran shall be the Convener of the Committee and the Committee shall tender its recommendation within three months from the date of this order as laid down in sub section (4), Section 10 of the Kannur University Act, 1996.

By Order of the Governor/Chancellor

Sd/-

(Dr. Devendra Kumar Dhodawat, IAS)

Principal Secretary to Governor/Chancellor"

4. Thereafter, Notification dated 01.11.2021 was issued by the Additional Chief Secretary, Higher Education, State of Kerala inviting applications from eligible candidates. The Notification dated 01.11.2021 reads thus:

"B2/88/2021/H. EDN *Dated: 1.11.2021*

NOTIFICATION

In exercise of the powers conferred by Section 19(1) (2) and (3) of the Kannur University Act,1996, the Chancellor, Kannur University

has constituted a Selection Committee to make recommendations for the appointment of a new Vice Chancellor, in the Kannur University.

Applications are invited by the Selection Committee for the selection of Vice Chancellor, Kannur University from eligible candidates. The qualification and experience are as prescribed in Clause 7.3(i) of the UGC notification dated 18.7.2018. Applicants should not have completed sixty years of age as on the date of notification, as provided in section 10 of Kannur University Act, 1996.

Applications in hard copy and soft copy (by e mail only) with bio data, proof of experience, qualifications etc., in the attached format should reach the Additional Chief Secretary to Government, Higher Education Department, Government Secretariat, Annexe II. Fourth Floor, Thiruvananthapuram - 695001 and highereducationbdepartment@gmail.com on or before 5 PM on 30.11.2021.

Sd/-

Dr. Venu, IAS

Additional Chief Secretary

Higher Education, Environment

Archaeology, Archives & Museum Departments."

5. It appears that in the meantime, the Minister for Higher Education and Social Justice in her capacity as the Pro-Chancellor addressed a letter to the Governor/Chancellor dated 22.11.2021 recommending reappointment of the respondent No. 4 herein for a second term as the Vice-Chancellor of the University. The letter dated 22.11.2021 reads thus:

"D.O. LETTER NO. 401/2021/M (H.Edn & SJ) DATED 22/11/2021

Honourable Governor,

Kind attention of Honourable Governor is invited to the fact that the term of office of Ex. Vice Chancellor of Kannur University is ending on November 23,2021 Notification for the selection of new Vice Chancellor was issued on November 1.2021.

Dr. Gopinath Raveendran is currently holding the post of Vice Chancellor. He is an eminent academician and able administrator. He has ushered the University to greater heights. A learned professor with an excellent academic record, he was Professor of History of Jamia Millia Islamia, Delhi. He has also been Academic Visitor, Dept. of Social Police, London School of Economics and Political Science and has administrative experience as Honorary Director, Nelson Mandela Centre for Peace and Conflict Resolution, Jamia Millia Islamia and as Member secretary, ICHR. He has indeed been an asset to Kannur University, an institution still in its infancy.

The remarkable achievements of the university in academic rating is the result of the hard work put in by the faculty and staff of the University under the able leadership of Dr. Gopinath Raveendran. The NAAC has upgraded the status of the University from B to B. He was instrumental in digitizing the University by introducing Digital Document Filling System (DDFS) and enthusiastically directed the University to amend its status in tune with UGC Regulations, 2018. He also initiated steps for starting a separate Research Directorate with the aim of improving research standards in the University. During his tenure, the University signed several MOUs with reputed national and international organization. Under his stewardship, the University also started a Business incubation Centre and established an Institution's Innovation Council to encourage the innovative potential of researchers and students.

Kannur University under his able leadership, rose to eminence as one of the premier university in the country. It is therefore my considered opinion that Dr. Gopinath Raveendran may be allowed to continue for another term as Vice Chancellor. Its continuation will immensely benefit Kannur University Section 10 (10) of Kannur University Act provides for the reappointment of incumbent Vice Chancellor for a second term and· does not stipulate any restriction on age.

I request your Excellency to be pleased to cancel the notification dated 27.10.20 appointing a Search-cum-Selection committee for identifying the person to be appointed as Vice Chancellor. I also request Your Excellency's pleasure in cancelling the notification dated 1.11. 2021

and in re-appointing Dr. Gopinath Raveendran for a continuous second term as Vice Chancellor of Kannur University. Thank you.

Sincerely,

Dr. R. Bindu

Minister for Higher Education and

Social Justice and Pro-Chancellor

Sri Arif Mohammed Khan

Excellency The Governor of Kerala Bhavan"

6. It is pertinent to note that on the very same day and date i.e., 22.11.2021, the Additional Chief Secretary to the Government, recalled the Notification dated 01.11.2021 referred to above. The Notification dated 22.11.2021 recalling the earlier Notification dated 01.11.2021 inviting applications from the eligible candidates reads thus:

" *NOTIFICATION*

DATED: 22.11.2021

The notification no. B2/88/2021/H.EDN dated 01/11/2021 inviting application for the selection of Vice-Chancellor to Kannur University is withdrawn.

Dr. V. Venu, IAS

Additional Chief Secretary to Government.

Higher Education Department."

7. On 22.11.2021, the Pro-Chancellor/Minister for Higher Education addressed one another letter to the Chancellor which reads thus:

"D.O. LETTER NO. 406/2021/M (H.Edn & SJ) DATED 22/11/2021

Honourable Chancellor,

The term of Dr. Gopinath Raveendran, Vice Chancellor of Kannur University will cease on 23 November 2021.

As per D.O. No. GS3-1283/2021 dated 22.11.2021 from the office of

your Excellency, steps have been taken to withdraw notification inviting applications to select a Vice Chancellor for Kannur University. As Pro Chancellor of Kannur University. I consider it my privilege to propose the name of Dr. Gopinath Raveendran, the present incumbent Vice Chancellor to be re-appointed as Vice Chancellor of Kannur University for a second continuous term beginning from 24.11.2021.

Thank you,

Sincerely,

Dr. R. Bindu

Pro-Chancellor, Kannur University

Minister for Higher Education

Sri Arif Mohammed Khan

His Excellency, The Governor of Kerala

Chancellor, Kannur University."

8. Ultimately the final notification came to be issued dated 23.11.2021 by order of the Governor/Chancellor reappointing the respondent No. 4 herein as Vice-Chancellor of the Kannur University for a period of four years w.e.f. 24.11.2021. The Notification dated 23.01.2021 reads thus:

"GOVERNMENT'S SECRETARIAT

KERALA RAJ BHAVAN

NOTIFICATION

No.GS3.1283/2021(3)

Dated: Thiruvananthapuram 23rd November, 2021

In exercise of the powers conferred under the Kannur University Act, 1996 and the UGC Regulations, 2018, the Chancellor of the University is pleased to re-appoint Dr. Gopinath Ravindran (Professor, Department of History, Jamia Millia Islamia, New Delhi) as the Vice Chancellor of the Kannur University, for a period of four years, with effect from 24th November, 2021.

By order of the Government/Chancellor

(Dr. Davendra Kumar Dhodawat, IAS)

Principal Secretary to Government/Chancellor."

9. The above referred Notification dated 23.11.2021 was made the subject matter of challenge by the appellants herein before a learned Single Judge of the High Court. The challenge to the notification referred to above, reappointing the respondent No. 4 as the Vice-Chancellor for a further term of four years was essentially on two grounds. First, in view of Section 10(9) of the Act 1996, no person who is more than sixty years of age can be appointed as Vice-Chancellor. In other words, the outer age limit for being appointed as the Vice-Chancellor of the University being sixty years, the respondent No. 4 could not have been reappointed as the Vice-Chancellor having crossed the age of sixty years. Secondly, even for the purpose of reappointment, the entire procedure necessary for being appointed as the Vice-Chancellor for the first time should have been undertaken. In other words, the procedure prescribed in Section 10 of the Act 1996 ought to have been followed even at the time of reappointment.

B. RELEVANT OBSERVATIONS MADE BY THE LD. SINGLE JUDGE

10. As noted above, the challenge before the learned Single Judge failed. The writ petition came to be dismissed by the learned Single Judge holding as under:

> *"6. From the perusal of the provisions of Section 10, it is evident that Vice-Chancellor can be appointed by Chancellor on the recommendation of the committee appointed by him which consists of three members with one elected by Senate, another by Chairman of the University Grants Commission and third by the Chancellor. The chancellor shall appoint one of the members of the committee to his convenience and committee shall make its recommendation within a period of three months of appointment. University is not precluded to unanimously recommend the name of only one person and in that process, Chancellor shall appoint that person to be Vice- Chancellor, but, it may submit a panel of three names within the period and the Vice-*

Chancellor shall be appointed from among the persons in the panel. The aforementioned procedure at the time of the initial appointment, for a period of four years, in 2017 was followed. The first term was expiring after the completion of four years and it is in that background, notice Ext.P2 was published but the Secretary of Department of Higher Education notified of withdrawal with immediate effect, for as per provisions of Sub section (10), Vice-Chancellor can be re-appointed, but the term is restricted to two (2).

It is now to be seen as to whether on the basis of statutory procedure provided in the Act ibid and on analysis of judgments cited, can this Court interfere in the process of appointment or not.

xxx xxx xxx

10. The expression 'appointment' and 're-appointment' have different connotation; for undergoing the re-appointment the qualifications are prescribed under Clause 7.3 of the UGC regulations ibid and there is no age bar and for reappointment, criteria of age would not be applicable. No doubt, for appointment, the entire procedure prescribed under Section 10 is to be followed. At the time of the initial appointment, in the year 2007, all the parameters were considered for appointment as per the procedure laid down therein but for re-appointment as per proviso to sub-Section (10) there is no requirement for undertaking the task of constitution of a Selection Committee as was done during the initial appointment. As per the pleading and submissions, there has not been any incident or lack of integrity, transparency as provided in the UGC regulations. Considering the provisions of applicable laws to my mind, notice Ext.P2 was withdrawn vide Ext.P3 on 22.11.2021 for the simple reason the party respondent i.e., the 4th respondent was not disqualified at the time of initial appointment. It cannot be said that there was any violation of the statutory provisions for reconsideration for the purpose of re-appointment, thus, in such circumstances, writ of quo-warranto cannot be issued."

(Emphasis supplied)

C. RELEVANT OBSERVATIONS MADE BY THE DIVISION BENCH IN APPEAL.

11. The writ appeal filed by the appellants herein before the Division Bench of the High Court also failed. The Division Bench in its impugned judgment held as under:

"20. On an analysis of the said provision, it is clear that the Vice-Chancellor shall be appointed by the Chancellor on the recommendation of a committee appointed by him for the purpose. In the case on hand, the appointment of the 4th respondent in the year 2017 for a period of 4 years in contemplation of sub-Section 10 of Section 10, and in contemplation of law is admitted. It is also an ·admitted fact that the eligibility and qualification of the 4th respondent at the initial stage of appointment is undoubted. It is also quite clear and evident from the provisions of Section 10 that a clear cut procedure and modalities are prescribed in the said provision to select the Vice Chancellor.

21. One of the important aspects that is to be noted is that as per sub-Section 9 of Section 10, it is clearly specified that no person who is more than sixty years of age shall be appointed as Vice-Chancellor. But, when it comes to sub-Section 10 of Section 10, it is made explicit that the Vice-Chancellor shall hold office for a term of four years from the date on which he enters upon his office and shall be eligible for re-appointment. However, interdiction is made as per the proviso thereto, by making it clear that, a person shall not be appointed as Vice Chancellor for more than 2 terms. It is significant to note that sub-Section 10 of Section 10 of Act, 1996 is conjunctive in nature and not distinctive. Which thus means, the statute itself has made a clear cut procedure with respect to the re-appointment and has made it clear that the Vice Chancellor who holds the office for a term of 4 years consequent to the initial appointment, shall be eligible for re-appointment.

22. No doubt, if there is any manner of shortcomings on the part of the Vice Chancellor initially appointed, so as to affect the academic excellence, moral issues or otherwise to have any adverse consequence to hold the post of Vice Chancellor, it would be different. But, this is a case where the appellants have not raised any sort of such allegations against the 4th respondent. Merely because a notification

was issued to conduct a selection, that by itself will not dissuade the Government/Chancellor to recommend and re-appoint the existing Vice Chancellor."

xxx xxx xxx

30. Therefore, after assimilating the factual and legal situations and understanding the issues, we are of the considered opinion that in the matter of re-appointment, the age bar prescribed under Section 10(9) for appointment of the Vice Chancellor would not come into play, because the Vice Chancellor who has appointed before attaining the age of 60 years, is entitled to continue for a term of four years and shall be eligible for re-appointment.

31. Taking into account all the above intrinsic aspects with regard to the appointment of the Vice Chancellor, eligibility, qualification etc., and also the relevant inputs of the UGC Regulations, 2018, we have no hesitation to hold that the learned single Judge was right in dismissing the writ petition. Even though various contentions were advanced and several judgments were cited by the respective Senior Counsel in regard to the intricacies of issuance of a writ of quo warranto, we are not inclined to go into that question, since we find that the re-appointment of the 4th respondent was made in accordance with law, and therefore he can never be said to be an usurper to the post. Having rendered the findings as above, the arguments advanced strenuously by the learned Senior Counsel Sri. George Poonthottam, relying upon the term 'eligibility', contained under Section 10(10) of the Act 1996 in the matter of making reappointment by referring to various legal dictionaries, we do not find much force in the same.

32. Before we part with the judgment, it is only appropriate that the Press release issued by the office of the Chancellor (Honourable Governor) of the University is discussed. On a perusal of Annexure A2 Press Release dated 03.02.2022, it is clear that right from the publication of selection notification dated 01.11.2021 issued on behalf of the selection committee uptill the reappointment are narrated.

33. Be that as it may, it is clearly specified in the Press Release that on 23rd November, 2021, Kerala Raj Bhavan issued a notification re-

appointing the 4th respondent as the Vice Chancellor of the Kannur University. Other aspects are also dealt with in the Press Release, which we do not propose to traverse through, being unnecessary.

34. Taking into account the factual and legal circumstances deliberated above, we are of the clear and considered opinion that the appellants have not made out any case of jurisdictional error or other legal infirmities susceptible to be interfered with in the judgment of the learned single Judge."

*(*Emphasis supplied)

12. In such circumstances referred to above, the appellants (original writ petitioners) are here before this Court with the present appeal.

D. SUBMISSIONS ON BEHALF OF THE APPELLANT(S)

13. Mr. Dama Seshadri Naidu and Mr. George Poonthottam, the learned Senior Counsel appearing for the appellants made the following submissions: -

a. The impugned judgment proceeds on an erroneous assumption that once an appointment to the post of Vice-Chancellor is made through proper channel, the reappointment of the same incumbent to such office upon expiry of the first term can be made bypassing the original procedure prescribed, including the constitution of a Search-cum-Selection Committee as mandated by the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2018 (for short, 'the **UGC Regulations'**). While doing so the High Court has assumed that there is a distinction in procedure for 'appointment' and 'reappointment', whereas there is no such distinction recognised under the service law jurisprudence.

b. If the impugned judgment is to be upheld, then for reappointment as a Vice-Chancellor under the proviso to Section 10(10) of the Kannur University Act, there is no requirement for undertaking the exercise of forming and consulting the Selection Committee

as mandated under the UGC Regulations and as was done during the initial appointment. Going by this rationale, a person can be reappointed, even though there may be better qualified and more deserving candidates eligible and qualified to hold the office. This obviously is not the letter and spirit of the Kannur University Act and the **UGC Regulations,** which aims at providing the highest standards of education. In such circumstances, it is essential to follow the entire selection process, even in cases of reappointment.

c. On the date of reappointment i.e., 24.11.2021, the respondent No. 4 had crossed the age of 60 years which is the outer age limit for being appointed to the post of Vice-Chancellor under Section 10(9) of the Kannur University Act. Therefore, the respondent No. 4 was not eligible for being reappointed as the Vice-Chancellor in 2021.

d. The notification dated 01.11.2021 was withdrawn only with a view to overcome the hurdle of the age limit, and thereby, bypass the prescribed procedure for appointment.

e. Section 10(10) of the Kannur University Act is very specific and clear. The language of the provision unequivocally spells out the legislative intent that if a person is once given an appointment, it would only enable him an opportunity to be considered for fresh appointment for one more term. The express language of the provision does not grant a candidate, who is already appointed as the Vice-Chancellor, to evade the mandatory eligibility criteria and to be appointed as the Vice- Chancellor again. The distinction drawn by the High Court between the terms "appointment" and "reappointment" relying on Section 10(10) is totally perverse.

f. The High Court erred in proceeding on the premise that since the respondent No. 4 was eligible for appointment on the first occasion, he was also entitled for reappointment and thus the entire process for appointment need not be undertaken afresh. This appears to be the logic behind the withdrawal of Notifications calling for fresh applications.

g. The High Court ought to have appreciated that the constitution of the Select Committee and preparation by the panel is prerequisite for the appointment of Vice-Chancellor of University. If the contention that the UGC Regulations do not impose any age restriction for appointment as the Vice-Chancellor is accepted, then the UGC Regulations do not provide for the reappointment of the Vice-Chancellor as well.

h. Section 10(10) of the Kannur University Act contemplates reappointment and not an extension of the term of the Vice-Chancellor. For this reason, the notification dated 01.11.2021 was issued calling for applications from eligible candidates for the post of Vice-Chancellor. The said notification stipulated that the candidate must satisfy the eligibility criteria mentioned in Clause 7.3(i) of the UGC Regulations, and should not be more than 60 years of age on the date of issuing the notification. When appointment is made by virtue of Section 10(10), the law does not provide an exemption to be followed in the case of an incumbent who is holding the post of Vice-Chancellor.

i. The reliance placed by the High Court on the decisions of the Rajasthan High Court and Jammu & Kashmir High Court, in its impugned judgment is not correct as the two High Courts had failed to take into consideration the UGC Regulations which provides for the method and procedure for appointment of the Vice-Chancellor. The appointment of the Vice-Chancellor can only be done in accordance with the procedure as laid therein and the central legislation fully occupies the issue.

j. The reappointment was based on the request of the State Government and not on any independent evaluation. Such a request is wholly unwarranted as the State Government has no say in the appointment or reappointment of the Vice-Chancellor.

k. The initial appointment of the respondent No. 4 as the Vice-Chancellor was also contrary to the provisions of the UGC Regulations 2010 more particularly Clause 7.3, which stipulates that the appointment shall be made after following the due process of identification of 3 to 5 names by the Search-cum-Selection

Committee. However, the minutes of the Search-cum-Selection Committee dated 20.11.2017 indicates that only one single name, i.e., the name of respondent No. 4, was recommended. Hence, the initial appointment itself being void ab initio, the reappointment is also void.

14. With a view to fortify the aforesaid submissions the learned Senior Counsel placed reliance on the following decisions:

(i) ***S.P. Gupta v. Union of India (First Judges Case),*** 1981 Supp SCC 87,

(ii) ***State of West Bengal v. Anindya Sundar Das,*** 2022 SCC OnLine SC 1382,

(iii) ***State of Himachal Pradesh v. Kailash Chand Mahajan,*** 1992 Supp (2) SCC 351,

(iv) ***Gambhirdan K. Gadhvi v. State of Gujarat,*** (2022) 5 SCC 179,

(v) ***Professor (Dr.) Sreejith P.S. v. Dr. Rajasree M.S.,*** 2022 SCC OnLine SC 1473,

(vi) ***Dr. L.P. Agarwal v. Union of India and Others,*** (1992) 3 SCC 526,

(vii) ***Dept. of Commerce v. US House of Representatives,*** 1999 SCC OnLine US SC 10,

15. In such circumstances referred to above, the learned Senior Counsel prayed that there being merit in the appeal, the same may be allowed and the Notification reappointing the respondent No. 4 as the Vice-Chancellor of the Kannur University be set aside.

E. SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2 - THE STATE OF KERALA

16. Mr. K.K. Venugopal, the learned Senior Counsel appearing for the State of Kerala made the following submissions:

a. The seminal issue which arises in the present case is the conflict between the provisions of the UGC Regulations, which is a subordinate legislation made under Section 26(1)(e) and (g)

respectively of the University Grants Commission Act, 1956 (**'UGC Act'**), and the State laws made under Entry 25 of List III dealing with education.

b. The UGC Regulations make express provisions for the manner in which a selection has to be made for the appointment of a Vice-Chancellor through a Search-cum-Selection Committee consisting of persons of eminence in the sphere of higher education and who are not connected in any manner with the University concerned or its colleges. The Visitor/Chancellor shall appoint the Vice-Chancellor out of the Panel of three-five names recommended by the Search-cum-Selection Committee.

c. The different state laws made under Entry 25 of List III dealing with the same subject have provisions which give a dominant status to the State Governments, and do not provide for the identical procedure provided for by the UGC Regulations.

d. It has been held recently, in a judgment of this Court in Gambhirdan K. Gadhvi (supra) (2 Judges) which is followed in Anindya Sundar Das (supra) (2 Judges), that the UGC Regulations form a part of the UGC Act, 1956 for the reason that it requires that the regulations made under the Act shall be laid before the Parliament. Even though Section 26 of the UGC Act does not provide for these regulations being part of the Act, nevertheless the Court held that the mere fact of laying would result in the regulations being made part of the Act.

e. A catena of judgments of this Court have held to the same effect. What has been missed in holding so is that the subordinate legislation, whether of rules or regulations, could be read as part of the Act, but, for different purposes. The real effect of this statement of the law is that Article 254 of the Constitution would have to be read as – where a law made by Parliament as well as the regulations or rules made under any Central Act is repugnant to the provisions of a law made by the legislature of a State, the law made by Parliament as well as the regulations or rules made under any Central Act will prevail. The provision will now mean that the law made by Parliament, or the regulations or

rules made under any Central Act, if repugnant to the law made by the legislature of a State, then the law made by the State, to the extent of the repugnancy, shall be void.

f. By reading as aforesaid, the consequences would be far reaching. For this purpose, one should look at the very nature and source of making regulations or rules under the Central Act. The Government of India (Allocation of Business) Rules, 1961 would allocate the particular subject of the Act to a particular minister, who would then have to decide on what the rule should be. It is possible, as in the case of the UGC Act, that many of the provisions made in the rules or regulations may not find a place in the body of the Act, and, the only provision, which could be possibly invoked would be the main provision of sub-section (1) of the rule making section, in which it would be stated that the regulations or rules may be made for the purposes of the Act. In the case of the UGC Act, the regulation making power is conferred upon the UGC, a statutory body acting under the Government, and not on the Government itself.

g. The result is that a vast unbridled arbitrary power is vested in the executive where no definite guidelines are provided for in any particular section of the Act, and where the Act is totally silent on the aspects that are covered by the legislations. Such an arbitrary unguided power by itself would violate Article 14 of the Constitution of India, and the regulation making power would have to be struck down.

h. Additionally, the procedure and method of making regulations or rules which have to be laid before the House is contained in Rule 235 of "the Rules of Procedure and Conduct of Business in Lok Sabha", which states: "The Speaker shall, in consultation with the Leader of the House, fix a day or days or part of a day as the Speaker may think fit for the consideration and passing of an amendment to such regulation, rule, sub-rule, bye-law etc., of which notice may be given by a member:"

i. In 'Parliamentary Procedure: Law Privileges Practice and Precedents' by Subhash C. Kashyap, Third Edition Page 596,

it is stated that where a statute provides that rules shall be laid before Parliament and shall be subject to a modification made by Parliament, if a member gives a notice for modification of the Rules, the Government is bound to find time for discussion of the motion. The motion for modification contains a recommendation to the Rajya Sabha for concurrence, and the effect of the passing of the motion by both the Houses is that the Government is bound to amend the rules accordingly.

j. It has been held in the judgment in Gambhirdan K. Gadhvi (supra) that the UGC regulations, though not so stated in the UGC Act, are part of the UGC Act, and hence, would prevail over the repugnant sections of the State Act, which would be rendered void to the extent of the repugnancy.

k. A series of judgments of this Court state that subordinate legislation becomes a part of the Act, even though the section itself does not say so. These include ***State of U.P. v. Babu Ram Upadhya,*** (1961) 2 SCR 679, ***Express Newspaper (P) Ltd. v. Union of India,*** 1959 SCR 12, ***U.P. Power Corpn. Ltd. v. NTPC Ltd.,*** (2009) 6 SCC 235, ***Udai Singh Dagar v. Union of India,*** (2007) 10 SCC 306, and ***State of T.N. v. Hind Stone,*** (1981) 2 SCC 205.

l. On the other hand, there is a line of judgments which states that unless the Act provides that the rules be deemed as enacted in the Act, a provision of the rule cannot be read as a part of the Act. This includes ***Hotel Balaji v. State of A.P.,*** 1993 Supp (4) SCC 536, ***Yogendra Kumar Jaiswal v. State of Bihar,*** (2016) 3 SCC 183, and ***State of Mysore v. H. Sanjeeviah,*** (1967) 2 SCR 361.

m. None among these aspects which are crucial to the interpretation of Article 254 of the Constitution have been considered anywhere in the judgments on this issue, of whether the UGC Regulations are equivalent to the laws made by Parliament or not. This being so, the judgments being sub silentio, would not have any binding precedent.

n. The judgments of this Court relating to the UGC Act in ***Gambhirdan K. Gadhvi*** (supra) and ***Anindya Sundar Das*** (supra) are sub silentio and would not have any binding precedent, as great violence is being done to the Constitution, far beyond the intention of the founding fathers of the Constitution.

The reliance was placed on the decisions of this Court in ***Municipal Corpn. of Delhi v. Gurnam Kaur,*** (1989) 1 SCC 101, para 12 and ***State of U.P. v. Synthetics and Chemicals Ltd.,*** (1991) 4 SCC 139, para 41.

F. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 3 - KANNUR UNIVERSITY

17. Mr. Shailesh Madiyal, the learned counsel appearing for the Kannur University made the following submissions:

a. The High Court has rightly observed that the age bar prescribed under Section 10(9) for appointment of the Vice-Chancellor would not be applicable at the time of reappointment as the Vice-Chancellor who was appointed before attaining the age of 60 years, is entitled to continue for a term of four years and shall be eligible for reappointment under Section 10(10) of the Act 1996.

b. Section 10(9) of the Act 1996, clearly specifies that no person who is more than sixty years of age shall be appointed as Vice-Chancellor. But, when it comes to Section 10(10) of the Act 1996, it states that the Vice-Chancellor shall hold office for a term of four years from the date on which he enters upon his office and shall be eligible for reappointment. However, the proviso makes it clear that a person shall not be appointed as Vice-Chancellor for more than 2 terms. Section 10(10) of the Act should be read conjunctively and not distinctively. The statute itself has provided for the procedure with respect to the reappointment and has made it clear that the Vice-Chancellor holding office shall be eligible for reappointment. The other eligibility criteria prescribed do not, therefore apply to 'reappointment' under Section 10(10). Hence, the reappointment is not to be considered as a fresh appointment upon completion of the first term.

c. The age limit has been fixed even in the matter of reappointments in the Mahatma Gandhi University Act, 1985; Kerala Agricultural University Act, 1971; APJ Abdul Kalam Technological University Act, 2015; and the Thunchath Ezhuthachan Malayalam University Act, 2013. Therefore, the statute would explicitly specify the age limit in case of reappointments and when the statue does not provide for it, the age limit prescribed for appointment cannot be applied even in the case of reappointments.

G. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 4 – VICE CHANCELLOR.

18. Mr. Basavaprabhu S. Patil, the learned Senior Counsel appearing for the respondent No. 4 made the following submissions:

a. The questions of law, as formulated by the appellants are procedural in nature.

b. This Court in ***Anindya Sundar Das*** (supra) on similar facts concerning reappointment of Vice-Chancellor of Calcutta University, clarified that reappointment does not entail the same procedural formalities as appointment and there is a clear distinction in law between the two.

c. The High Court proceeded on the correct premise that Section 10(10) read with Clause 7.3 of the UGC Regulations only prescribes the procedure for the initial appointment to the post of Vice-Chancellor. The respondent No. 4 at the time of initial appointment fulfilled all the necessary qualifications required to be appointed, and therefore, even at the time of reappointment such eligibility conditions stood fulfilled. Clause 7.3 does not talk of reappointment and thus would not be applicable to the respondent No. 4 since the reappointment was not a fresh appointment by any stretch of imagination.

d. Section 10(9) and Section 10(10) respectively are two separate & distinct provisions and as such should be read conjunctively and not disjunctively.

e. Neither Section 10(10) nor the UGC Regulation prescribe for any limitation on reappointment of a person as Vice-Chancellor.

Section 10 (9) only specifies that no person shall be 'appointed' as Vice- Chancellor above the age of 60. The term reappointment has, in the wisdom of the legislature, not been used in the Statute for the express purpose that Section 10(10) existed and to facilitate the continuation of eligible, qualified and experienced person on such post.

H. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1- CHANCELLOR

19. The learned Attorney General for India appearing for the Chancellor made the following submissions:

a. The plain reading of regulation 7.3, indicates that the selection of Vice- Chancellor should be through proper scrutiny of merit by a panel of 3 to 5 persons (Search-cum-Selection Committee) through a public notification. The Search-cum-Selection Committee should be of persons of eminence in the sphere of Higher Education and the members should not be in any manner connected with the university concerned or its colleges. The Regulations further mandate that one of the members of the Search-cum-Selection Committee shall be nominated by the UGC for selection of Vice-Chancellor of State. In the present case, Regulation No. 7.3 of the UGC Regulations has not been complied with at all and therefore on this ground alone the reappointment of the respondent No. 4 as the Vice-Chancellor should be cancelled by a writ of quo-warranto.

b. The State Government having adopted the UGC Regulations, the Regulations made by the Parliament under Entry 25 of List III shall prevail over the State legislation. Once the UGC Regulations prescribe the procedure and method for appointment of Vice-Chancellor, the University has to comply with the Regulations, which has not been followed in the present case. Therefore, the High Court erred in not following the UGC Guidelines.

20. The learned Attorney General invited the attention of this Court to a press release issued by the Kerala Raj Bhavan dated 03.02.2022 which is at Annexure P-18 at page 136:

"03 February 2022

PRESS RELEASE

Kannur Varsity: Facts grossly distorted.

Kerala Raj Bhavan strongly refutes the claim in some news reports that it was on the direction of Hon'ble Governor that the name of Dr. Gopinath Ravindran was suggested for reappointment as Vice Chancellor, Kannur University. The truth is that the same was initiated by the Chief Minister and Higher Education Minister.

To set the record straight, Raj Bhavan would like to place the chronology of events on the 21st, 22nd and 23rd of November, 2021.

The tenure of the Vice Chancellor, Kannur University was to end on the 23rd of November. A selection committee had already been constituted vide notification dated 27.10.2021 to select and appoint a new Vice Chancellor.

The Additional Chief Secretary, Higher Education Department, Government of Kerala had also issued a notification dated 01.11.2021 on behalf of the Selection Committee to invite the applications to the post of the Vice Chancellor.

While this process was on 21st November 2021, as deputed by Chief Minister, Shri K.K. Raveendranath, Legal Adviser to Chief Minister, met Hon'ble Governor at Kerala Raj Bhavan at 11.30 am. He conveyed to Hon'ble Governor, the Government's desire to reappoint Dr. Gopinath Ravindran as Vice Chancellor and informed that a formal request to this effect from the Minister for Higher Education was on the way to Raj Bhavan.

Hon'ble Governor, who had a different view on the matter, informed him that the proposal appeared legally untenable since the due process of selection was already in motion. On this, the Legal Advisor informed that the Government has examined the matter in detail and that the request was legally sound to withstand any legal scrutiny. He informed that Government had the legal advice and produced some typed papers.

Hon'ble Governor inquired about its source, as it was unsigned.

The Legal Advisor to the Chief Minister said it was the opinion of the Advocate General of Kerala and repeated the plea to consider the request of the Government to reappoint Dr. Gopinath Ravindran as Vice Chancellor, Kannur University.

At this juncture, Hon'ble Governor said the instant opinion said to be from Advocate General but without his signature and seal, was of no significance.

To this, the Legal Advisor said that he will produce the legal opinion bearing the signature and seal of Advocate General without delay.

As submitted by Legal Advisor to the Chief Minister earlier, a letter written by Dr. R. Bindu, Minister for Higher Education reached Raj Bhavan at 01.30 pm on 22.11.2021. The letter had highlighted Dr. Gopinath Ravindran's capabilities and desirability to be appointed for another term as Vice Chancellor.

In this letter, she had clearly requested Hon'ble Chancellor to "be pleased to cancel the notification dated 27.10.2021 appointing a Search-Cum-Selection Committee for identifying the person to be appointed as Vice Chancellor".

She also requested Hon'ble Chancellor's "pleasure in cancelling the notification dated 01.11.2021 and in re-appointing Dr Gopinath Ravindran for a continuous second term as Vice Chancellor of Kannur University".

On 22nd November by 12.10 pm, Shri R. Mohan, Officer on Special Duty to Chief Minister and the Legal Advisor to Chief Minister had met the Hon'ble Governor, repeated their request and in support, submitted the signed legal opinion of the Advocate General which was addressed to the Additional Chief Secretary, Higher Education Department.

This opinion of the Advocate General substantially endorsed the request made earlier by Legal Advisor to Chief Minister in the personal meeting with the Governor and the request of the Higher Education Minister in her letter.

The eight-page opinion of the Advocate General which is addressed to the Additional Chief Secretary, Higher Education Department says

that there was no legal bar in reappointing Dr. Gopinath Ravindran as Vice Chancellor, Kannur University, and that the age bar of 60 years fixed in the Kannur University Act, in as much as the same is contrary to the UGC Regulations, is without the authority of law and as such, inapplicable. The Advocate General summed up his opinion as under:-

"1. If the Hon'ble Chancellor accepts this recommendation, the notification dated 27.10.2021, appointing a Search Committee for identifying the person to be appointed as Vice Chancellor of the Kannur University may be withdrawn.

2. Pro-Chancellor may be permitted to submit necessary proposal for the re-appointment of the present incumbent of the post of Vice-Chancellor of the Kannur University as Vice Chancellor of the said University for a further continuous term of four years".

This opinion of the Advocate General was also forwarded separately to Kerala Raj Bhavan by the Minister for Higher Education on 22.11.2021 itself.

In the light of the legal opinion thus received from the Advocate General, the file was processed and Hon'ble Governor agreed to accept the proposal of the Higher Education Minister.

At 04.30 pm, Principal Secretary to Governor wrote to Additional Chief Secretary, Higher Education, conveying the decision of the Hon'ble Chancellor "to withdraw the Notification dated 27.10.2021 and subsequent Corrigendum dated 03.11.2021" and "to permit the State Government to submit necessary proposal for the reappointment of the present incumbent in the post of Vice Chancellor Kannur University".

At 10.10 pm on the same day Kerala Raj Bhavan received the next letter from the Minister for Higher Education, informing that "steps have been taken to withdraw notification inviting applications" and that as Pro Chancellor, she was proposing the name of Dr. Gopinath Ravindran, the present incumbent Vice Chancellor to be re-appointed as Vice Chancellor of Kannur University for a second continuous term beginning from 24.11.2021.

Accordingly, on 23rd November, 2021, Kerala Raj Bhavan issued notification reappointing Dr. Gopinath Ravindran as Vice Chancellor, Kannur University.

Thus, the argument in the news reports that the 'Minister had only proposed a name in response to the Governor's letter', is far from the truth, which is clear from the chronology of events (which was also mentioned in Hon'ble Governor's letter to Chief Minister on 08th December 2021).

In brief, the process of selection of Vice Chancellor, Kannur University which was set in motion vide Kerala Raj Bhavan notification dated 27.10.2021 came to an end consequent to the request from the Minister Higher Education, OSD to Chief Minister and Legal Advisor to the Chief Minister duly supported by the legal opinion of the Advocate General, Kerala, culminated in the reappointment of Dr. Gopinath Ravindran as Vice Chancellor, Kannur University."

(Emphasis supplied)

21. In such circumstances, the learned Attorney General for India prayed that the reappointment of the respondent No. 4 as the Vice-Chancellor being contrary to the UGC guidelines, the same deserves to be set at naught by issue of writ of quo warranto.

I. RELEVANT PROVISIONS OF THE KANNUR UNIVERSITY ACT, 1996 & THE UGC REGULATIONS, 2018

22. Before adverting to the rival submissions canvassed on either side, we must look into the relevant provisions of the Kannur University Act as well as the relevant regulations of the UGC.

23. Section 10 of the Kannur University Act reads thus:

"(1) The Vice-Chancellor shall be appointed by the Chancellor on the recommendation of a committee appointed by him for the purpose (hereinafter referred to as the committee).

(2) The committee shall consist of three members, one elected by the Senate, one nominated by the Chairman of the University Grants Commission and the third nominated by the Chancellor.

(3) The Chancellor shall appoint one of the members of the committee to be its convener.

(4) The committee shall make its recommendation within a period of three months of its appointment or within such further period, not exceeding one month, as the Chancellor may specify in this behalf.

(5) In case the committee unanimously recommends the name of only one person, the Chancellor shall appoint that person to be the Vice-Chancellor.

(6) In the case the committee is unable to recommend a name unanimously, it may submit a panel of three names to the Chancellor within the period specified in or under sub-section (4) and the Chancellor shall appoint one of the persons in the panel to be the Vice-Chancellor.

(7) In case the committee fails to make a unanimous recommendation as provided in sub-section (5) or to submit a panel as provided in sub-section (6), each member of the committee may submit a panel of three names to the Chancellor and the Vice-Chancellor shall be appointed from among the persons mentioned in the panels.

(8) Non-submission of a panel under sub-section (7) by any member of the committee shall not invalidate the appointment of the Vice-Chancellor.

(9) No person who is more than sixty years of age shall be appointed as Vice-Chancellor.

(10) The Vice-Chancellor shall, hold office for a term of four years from the date on which he enters upon his office and shall be eligible for re-appointment:

Provided that a person shall not be appointed as Vice-Chancellor

for more than two terms."

24. Section 10 of the Act 1996 referred to above, envisages distinct situations namely:

(a) Appointment of a Vice-Chancellor by the Chancellor out of a panel of three names recommended by the search committee constituted by the State Government;

(b) No person above sixty years of age is eligible to be appointed as a Vice-Chancellor;

(c) Reappointment in respect of which, the power is vested in the Chancellor under Section 10(10); and

(d) The proviso attached to sub-section (10) of the Section 10 stipulating that a person shall not be appointed as Vice-Chancellor for more than two terms.

25. Regulation 7.3 of the UGC Regulations deals with Vice-Chancellors and reads as follows:

"7.3. VICE CHANCELLOR:

A person possessing the highest level of competence, integrity, morals and institutional commitment is to be appointed as Vice-Chancellor. The person to be appointed as a Vice-Chancellor should be a distinguished academician, with a minimum of ten years' of experience as Professor in a University or ten years' of experience in a reputed research and / or academic administrative organisation with proof of having demonstrated academic leadership.

ii. The selection for the post of Vice-Chancellor should be through proper identification by a Panel of 3-5 persons by a Search-cum-Selection-Committee, through a public notification or nomination or a talent search process or a combination thereof. The members of such Search-cum-Selection Committee shall be persons' of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the Search cum-Selection Committee shall give proper weightage to the academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance, to be given in writing along with the panel to be submitted to the Visitor/Chancellor. One member of the Search cum Selection Committee shall be nominated by the Chairman, University Grants Commission, for selection of Vice Chancellors of State, Private and Deemed to be Universities.

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

iv. The term of office of the Vice-Chancellor shall form part of the service period of the incumbent making him/her eligible for all service related benefits."

(Emphasis supplied)

26. Few salient features of the Regulation 7.3 of the UGC Regulations referred to above are thus:

(a) The selection of the Vice-Chancellor should be through proper identification by a panel of 3-5 persons by constituting a Search-cum-Selection Committee through a public notification or nomination or a talent search process or a combination of all the four.

(b) The members of the Search-cum-Selection Committee should be persons of eminence in the field of higher education and they shall not be connected in any manner with the university concerned or its colleges.

(c) The Selection Committee for the purpose of preparing the panel shall give proper weightage to the academic excellence, exposure to the higher education system in the country and abroad and adequate experience in academic and administrative governance. The panel shall place its recommendation before the Chancellor.

(d) One member of the Selection Committee would be nominated by the Chairman, UGC.

J. WRIT OF QUO WARRANTO

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

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

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

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

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

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

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

31. In ***B.R. Kapur v. State of T.N. and Another*** reported in (2001) 7 SCC 231, after referring to Halsbury's Laws of England, Words and Phrases and leading decisions on the point, it was observed that a writ of quo warranto is a writ which lies against the person who is not entitled to hold an office of public nature and is only a usurper of the office. Quo warranto is directed to such person who is required to show by what authority he is entitled to hold the office. The challenge can be made on various grounds, including the ground that the possessor of the office does not fulfill the required qualifications or suffers from any disqualification, which debars him to hold such office. It was further stated that on being called upon to establish valid authority to hold a public office, if such person fails to do so, a writ of quo warranto shall be directed against him. It shall be no defence by the holder of the office that the appointment was made by the competent

authority, who under the law is not answerable to any court for anything done in performance of duties of his office. The question of fulfilling legal requirements and qualifications necessary to hold a public office would be considered in the proceedings independent of the fact as to who made the appointment and the manner in which the appointment was made.

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

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

34. Through a line of cases, this Court has laid out the terms on which the writ of quo warranto may be exercised. In ***The University of Mysore and Anr. v. C.D. Govinda Rao and Anr.,*** a Constitution Bench of this Court, speaking through Justice Gajendragadkar (as he then was), held that: (1964) 4 SCR 575

> *"Broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the Executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the Executive or by reason of*

its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.

(Emphasis supplied)

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

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

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

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

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

xxx xxx xxx

51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the

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

(Emphasis supplied)

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

"21. …the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.

(Emphasis supplied)

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

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

K. QUESTIONS OF LAW FORMULATED.

40. Having heard the learned counsel appearing for the parties and having gone through the materials on record the following questions of law fall for our consideration:

(i) Whether reappointment is permissible in respect of a tenure post?

(ii) Whether the outer age limit of sixty years for the appointment of Vice-Chancellor as stipulated under sub-section (9) of Section 10 of the Act 1996 is to be made applicable even in the case of reappointment of the Vice-Chancellor for one more term of four years?

(iii) Whether the reappointment of the Vice-Chancellor has to follow the same process as a fresh appointment by setting up a selection committee under Section 10(1) of the Act 1996?

(iv) Did the Chancellor abdicate or surrender his statutory power of reappointment of the Vice-Chancellor?

L. ANALYSIS

i) Whether reappointment is permissible in respect of a Tenure Post?

41. It was argued on behalf of the appellants that in the case of a tenure post such as the post of Vice-Chancellor, there can be no reappointment. In other words, at the end of the tenure the appointment automatically comes to an end and there can only be a fresh appointment and not reappointment.

42. In the aforesaid context, it is necessary to understand what is meant by a "tenure post". The word "Tenure" is derived from the Latin word *tenere* which means "to hold". The Black's Law Dictionary defines "tenure" in the context of a post or office as follows [See: Henry Campbell Black on "Black's Law Dictionary", 1968, 4th Edition Pg. 1639]: -

"TENURE IN OFFICE. Right to perform duties and receive emoluments thereof."

43. This Court in its decision in ***Dr. L.P. Agarwal*** (supra), while examining what is meant by a "tenure post" held that it is a post where the person appointed to it is entitled to continue in it till his term is complete unless it is curtailed for justifiable reasons. The relevant observations read as under: -

"16. ...Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. ..."

44. A similar view as aforesaid was taken by this Court in ***P. Venugopal v. Union of India*** reported in (2008) 5 SCC 1.

45. In another decision of this Court in ***J.S. Yadav v. State of Uttar Pradesh and Another*** reported in (2011) 6 SCC 570, it was held that a person appointed to a tenure post only goes out once the tenure is completed. The relevant observations are reproduced below: -

"17. An employee appointed for a fixed period under the statute is entitled to continue till the expiry of the tenure and in such a case there can be no occasion to pass the order of superannuation for the reason that the tenure comes to an end automatically by efflux of time...."

46. We are not impressed with the submission canvassed on behalf of the appellants that the post of the Vice-Chancellor being a "tenure post" reappointment is not permissible. The statute itself has provided for reappointment with some object in mind. The ordinary meaning that can be ascribed to the term "reappointment" is the act or process of deciding essentially that someone should continue in a particular job. Ordinarily, the object behind providing for reappointment is twofold. First is "retention" i.e., where the incumbent to the office/post during his term is found to be extraordinary and has established himself or herself to be an asset to the institution, then in such circumstance, such person is retained with a view to allow him to continue on the same post for one more term. Secondly,

having regard to the nature of the post the organization or institution may not be in a position to fill up the post in a time bound manner and in such circumstances, the provision for reappointment may enable the organization or institution to relieve itself of the tedium of going through the entire selection process afresh every time the post becomes vacant.

47. In view of the aforesaid, we hold that reappointment is permissible even in case of a tenure post.

ii) Whether the outer-age limit stipulated under sub-section (9) of Section 10 of the Act 1996 is applicable in case of reappointment of the Vice-Chancellor?

48. On a plain reading of sub-section (9) of Section 10 of the Act 1996, it appears that the person sought to be appointed as a Vice-Chancellor must not be more than sixty-years of age at the time of appointment i.e., it provides the outer age limit for appointment. While sub-section (10) of Section 10 of the Act 1996 provides that upon appointment, the term of the Vice-Chancellor would be for four years and that he shall be eligible for reappointment. The proviso attached to sub-section (10) stipulates that no person shall be appointed as Vice-Chancellor for more than two terms.

49. A close reading of the statutory provisions of Section 10 of the Act 1996 would reveal that sub-section (9) deals with a situation prior to or leading upto the appointment of Vice-Chancellor whereas sub-section (10) contemplates a situation after the appointment of Vice-Chancellor has been made. This is discernible from a very fine but pertinent distinction between the language of the two provisions. Sub-section (9) which provides the outer age limit for appointment uses the word "*person*". This connotes that the Vice-Chancellor is yet to be appointed whereas sub-section (10) uses the word "*Vice-Chancellor"* which connotes that it is applicable to the incumbent holding the office of Vice-Chancellor or *simpliciter* the Vice-Chancellor after having been appointed.

50. Thus, in our view sub-section (9) of Section 10 of the Act 1996 will apply only at the stage of appointment of Vice-Chancellor and would have no application whatsoever when it comes to reappointment of Vice-Chancellor under sub-section (10). This is reinforced from the words "*shall be eligible for re-appointment"* occurring in sub-section (10) which connotes that the

same is an enabling provision whereby the Vice-Chancellor by virtue of holding his office is deemed eligible for reappointment irrespective of the other provisions.

51. We are conscious of the fact that, the proviso to sub-section (10) which provides that the Vice-Chancellor shall not be appointed for more than two terms also uses the word "*person*" which in our opinion is a deliberate choice. We say so because the proviso deals with a situation where the Vice-Chancellor has demitted office by virtue of lapse of his tenure.

52. The aforesaid aspect may be looked at from one another angle. If we were to hold that the outer age limit provided in sub-section (9) would apply even to reappointment, then the same would effectively mean that only those persons who are appointed as Vice-Chancellor at the age of fifty-five or below could be considered for reappointment. Such an interpretation would result in conditions being read into sub-section (10) which have not been prescribed by the legislature. Had the intent of legislature been otherwise, sub-section (10) or the words "*shall be eligible for re-appointment"* would have been specifically qualified by or made subject to the words "*sub-section (9)" or "provisions of this section*".

53. If sub-section (9) is interpreted so as to be made applicable even to reappointment as provided in sub-section (10), then the result would be that any person who is appointed as Vice-Chancellor at the age of fifty-six or more would not be eligible for reappointment, thereby rendering sub-section (10) and its proviso completely *otiose* and meaningless in such cases.

54. This would also severely curtail the scope of the selection committee while considering candidates for the post of Vice-Chancellor, as the selection committee in such case would be inclined to consider younger candidates over older and possibly more qualified and experienced ones who may be more suitable considering the coveted nature of the post and the duties expected to be discharged. Moreover, it would inhibit a Vice-Chancellor who has already held office and proven himself to be a valuable asset during his tenure from being reappointed if he happens to be of more than sixty-years of age. This would frustrate the very purpose of 'reappointment' which given the nature of the post of Vice-Chancellor is all the more important as it is the Vice-Chancellor who is responsible for the day-to-day functioning as well as the overall performance of the University, its faculty, students etc.

55. Even otherwise, the interpretation as sought to be placed by the appellants would lead to a very absurd situation, where a Vice-Chancellor of sixty-one years age cannot be reappointed to hold the office of Vice-Chancellor, however, at the same time another person would still be able to hold the office of Vice-Chancellor at the very same age of sixty-one years only by reason of him being appointed at the age of fifty-nine years. This appears to be bereft of any logic, more particularly when sub-section (9) does not say that a person shall hold office of Vice-Chancellor till he attains the age of sixty years and rather uses the expression *"No Person who is more than sixty years of age shall be appointed as Vice-Chancellor"*.

56. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to the statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative. The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter and the obvious intention of the legislature does not stand defeated unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo,* and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico. The court must give effect to the purpose and object of the Act for the reason that legislature is presumed

to have enacted a reasonable statute. (Vide ***M. Pentiah v. Muddala Veeramallappa*** [AIR 1961 SC 1107], ***S.P. Jain v. Krishna Mohan Gupta*** [(1987) 1 SCC 191], ***RBI v. Peerless General Finance and Investment Co. Ltd.*** [(1987) 1 SCC 424], ***Tinsukhia Electric Supply Co. Ltd. v. State of Assam*** [(1989) 3 SCC 709], SCC p. 754, para 118, ***UCO Bank v. Rajinder Lal Capoor*** [(2008) 5 SCC 257] and ***Grid Corpn. of Orissa Ltd. v. Eastern Metals and Ferro Alloys*** [(2011) 11 SCC 334].)

57. Thus, in view of the aforesaid, we hold that the outer age limit of sixty years provided in sub-section (9) of Section 10 of the Act 1996 will not apply, when it comes to reappointment under sub-section (10) of Section 10 of the Act 1996.

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

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

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

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

61. In the aforesaid context, we may refer to a decision of this Court in the case of ***Anindya Sunder Das*** (supra), authored by one of us Dr. D.Y. Chandrachud, CJI. In the said case, the High Court at Calcutta had allowed a petition under Article 226 of the Constitution seeking a writ of quo warranto against the Vice-Chancellor of Calcutta University. The High Court held that the State Government had no authority to appoint or reappoint the Vice-Chancellor under Section 8 of the Calcutta University Act, 1979 (for short, "the Act 1979") or by taking recourse to the residuary provisions of Section 60 of the Act 1979. As a consequence, the order issued by the Special Secretary to the Government of West Bengal reappointing the incumbent Vice-Chancellor of Calcutta University was set aside. The High Court held that the Vice-Chancellor had no authority to hold that office on the basis of the order of appointment. The judgment of the Calcutta High Court was challenged before this Court in Civil Appeal No. 6706 of 2022. One of the issues that fell for consideration of this Court in the said case was, whether the same procedure which was provided for appointment of a Vice-Chancellor under Section 8(1) was required to be followed at the time of reappointment.

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

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

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

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

(Emphasis supplied)

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

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

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

iv) Did the Chancellor abdicate or surrender his statutory power of reappointment of the Vice-Chancellor?

67. Before we proceed to answer the question whether the Chancellor abdicated or surrendered his statutory power of reappointment, we must try to understand the stance of the Chancellor in the present litigation as discernible from the counter-affidavit filed by him. We are quite perplexed with the stance of the Chancellor. The Chancellor wants this Court to allow the appeal and declare that the reappointment of the respondent No. 4 as Vice-Chancellor is not sustainable in law. The Chancellor says so because according to him the reappointment of the respondent No. 4 is in conflict with the UGC Regulations.

68. The UGC Regulations are enacted by the UGC in exercise of powers under Sections 26(1)(e) and 26(1)(g) of the UGC Act 1956. The Regulations framed under the said Act, are laid before each House of the Parliament. Therefore, being a subordinate legislation, the UGC Regulations becomes a part of the Act. In case of any conflict between the State legislation and the Central Legislation, the Central Legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the Constitution as the subject "Education" is in the Concurrent List (Entry No. 25 of List III) of the VII Schedule of the Constitution. Therefore, any appointment or reappointment as a Vice-Chancellor contrary to the provisions of the UGC Regulations could be said to be in violation of the statutory provisions. However, the moot question is whether in the present case, there is any conflict between the State Legislation and the UGC Regulations? The UGC Regulations more particularly the Regulation 7.3 which, we have referred to in the earlier part of our judgment only talks about appointment of Vice-Chancellor. The UGC Regulations provide for the procedure to be adopted for appointment of Vice-Chancellor. The UGC Regulations are silent in so far as reappointment of the Vice-Chancellor is concerned. There is no specific procedure prescribed by the UGC under its regulations for the purpose of reappointment of Vice-Chancellor. The entire focus of the Chancellor is on the aforesaid. However, nothing has been said in the counter-affidavit

filed on behalf of the Chancellor as regards Chancellor's own independent satisfaction or judgment for the purpose of reappointment of the respondent No. 4 as Vice-Chancellor.

69. It is in such circumstances that we have thought fit to pose a question whether the Chancellor abdicated his statutory power?

70. It has been stated by Wade and Forsyth in *Administrative Law,* 7th Edn. at pp. 358-59 under the heading "*Surrender, Abdication, Dictation*" and sub-heading "*Power in the wrong hands*" as below:

> *"Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them….*
>
> *Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise…."*

(Emphasis supplied)

71. It is a well settled (and indeed, bedrock) principle of administrative law that if a statute expressly confers a statutory power on a particular body or authority or imposes a statutory duty on the same, then such power must be exercised or duty performed (as the case may) by that very body or authority itself and none other. If the body or authority exercises the statutory power or performs the statutory duty acting at the behest, or on the dictate, of any other body or person, then this is regarded as an abdication of the statutory mandate and any decision taken on such basis is contrary to law and liable to be quashed. It is important to keep in mind that, in law, it matters not that the extraneous element is introduced (i.e., the advice, recommendation, approval, etc. of the person not empowered by the statute is obtained or given) in good faith or for the advancement of any goal or

objection howsoever laudable or desirable. The rule of law requires that a statutory power vests in the body or authority where the statute so provides, and likewise, the discharge of the statutory duty is the responsibility of the body or authority to which it is entrusted. That body or authority cannot merely rubberstamp an action taken elsewhere or simply endorse or ratify the decision of someone else.

72. The concept of discretionary power and the mode of its exercise by statutory functionaries was an issue considered by this Court in ***Union of India v. Kuldeep Singh*** reported in (2004) 2 SCC 590, where in paragraphs 20, 21 and 22, it was held thus;

> *"20. When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law. (See Tomlin's Law Dictionary). In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty or power of acting without control other than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore, whoever hath power to act at discretion, is bound by the rule of reason and law. (See Tomlin's Law Dictionary.)*
>
> *21. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not*

arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself (per Lord Halsbury, L.C., in Sharp v. Wakefield [(1891 AC 173: (1886-90) All ER Rep 651 (HL)]. (Also See S.G. Jaisinghani v. Union of India (AIR 1967 SC 1427).

22. The word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in it implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes a heavy responsibility...."

(Emphasis supplied)

73. Again, in ***Clariant International Ltd. and Another v. Securities & Exchange Board of India*** reported in (2004) 8 SCC 524, this Court reiterated these principles thus;

"27. In Kruger v. Commonwealth of Australia [(1997) 146 Aus LR 126] it is stated:

"Moreover, when a discretionary power is statutorily conferred on a repository, the power must be exercised reasonably, for the legislature is taken to intend that the discretion be so exercised. Reasonableness can be determined only by reference to the community standards at the time of the exercise of the discretion and that must be taken to be the legislative intention....."

28. The discretionary jurisdiction has to be exercised keeping in view the purpose for which it is conferred, the object sought to be achieved and the reasons for granting such wide discretion (See Narendra Singh v. Chhotey Singh [(1983) 4 SCC 131 : 1983 SCC (Cri) 788].

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29. A discretionary jurisdiction, furthermore, must be exercised within the four corners of the statute. [See Akshaibar Lal (Dr.) v. Vice-Chancellor, Banaras Hindu University [(1961) 3 SCR 386 : AIR 1961

SC 619] and also para 9-022 of de Smith, Woolf and Jowell: Judicial Review of Administrative Action, 5th Edn., p.445]."

74. Similar are the principles laid down in ***Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others v. Director General of Civil Aviation and Others*** reported in (2011) 5 SCC 435, where it has been held that:

"26. … It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the statutory authority. In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision-making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (Vide Purtabpore Co. Ltd. v. Cane Commr. of Bihar [(1969) 1 SCC 308 : AIR 1970 SC 1896], Chandrika Jha v. State of Bihar [(1984)2 SCC 41 : AIR 1984 SC 322], Tarlochan Dev Sharma v. State of Punjab [(2001) 6 SCC 260 : AIR 2001 SC 2524] and Manohar Lal v. Ugrasen [(2010) 11SCC 557 : (2010) 4 SCC (Civ)524 : AIR 2010 SC 2210].

27. Similar view has been reiterated by this Court in Commr. of Police v. Gordhandas Bhanji (AIR 1952 SC 16), Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia [(2004) 2 SCC 65 : AIR 2004 SC 1159] and Pancham Chand v. State of H.P. [(2008) 7 SCC 117 : AIR 2008 SC 1888] observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any

guideline or direction to the authority under the statute to act in a particular manner."

(Emphasis supplied)

75. In ***Hardwari Lal, Rohtak v. G.D. Tapase, Chandigarh and others*** reported in AIR 1982 Punjab and Haryana 439 (Full Bench) the powers of the Governor with respect to the appointment/removal of the Vice-Chancellor of Maharshi Dayanand University, Rohtak under the Maharshi Dayanand University (Amendment) Act, 1980 were considered wherein a direction was sought with regard to the renewal of the term of the Vice-Chancellor of the said University. Certain promises had been made in connection with the same while making such appointment. The Court held that as the Governor was the *ex officio* Chancellor of the University, therefore, by virtue of his office, he was not bound to act under the aid and advice of the Council of Ministers. Under Article 154 of the Constitution, the executive powers of the State are vested in the Governor which may be exercised by him either directly, or through officers subordinate to him, in accordance with the provisions of the Constitution. Article 161 confers upon the Governor, a large number of powers including the grant of pardon, reprieves, respites or remissions of punishment, etc. Such executive power can be exercised by him only in accordance with the aid and advice of the Council of Ministers. Article 162 states that the executive power of the State shall extend to all such matters with respect to which the Legislature of the State has the power to make laws. Therefore, the said provision widens the powers of the Governor. Article 166(3) of the Constitution further bestows upon the Governor the power to make rules for more convenient transactions of business of the Government of the State and also for the purpose of allocating among the Ministers of State such business. There are several ways by which, a power may be conferred upon the Governor, or qua the Governor, which will enable him to exercise the said power by virtue of his office as Governor. Therefore, there can be no gainsaying that all the powers that are exercisable by the Governor by virtue of his office can be exercised only in accordance with the aid and advice of the Council of Ministers except insofar as the Constitution expressly, or perhaps by necessary implication, provides otherwise.

76. Thus, in such a situation, the statute makes a clear-cut distinction between two distinct authorities, namely, the Chancellor and the State Government. When the legislature intentionally makes such a distinction, the same must also be interpreted distinctly, and while dealing with the case of the Vice-Chancellor, the Governor, being the Chancellor of the University, acts only in his personal capacity, and therefore, the powers and duties exercised and performed by him under a statute related to the University, as its Chancellor, have absolutely no relation to the exercise and performance of the powers and duties by him while he holds office as the Governor of the State.

77. ***Hardwari Lal*** (supra) has been referred to and relied upon by this Court in ***Bhuri Nath and Others v. State of J&K and Others*** reported in (1997) 2 SCC 745. In the said case, the question that arose was in relation to whether the Governor was bound to act in accordance with the aid and advice of the Council of Ministers, or whether he could exercise his own discretion, independent of his status and position as the Governor, by virtue of him being the *ex officio* Chairman of the Shri Mata Vaishno Devi Shrine Board under the Shri Mata Vaishno Devi Shrine Act, 1988. The Shrine Board discharges functions and duties, as have been described under the Act in the manner prescribed therein, and thus, after examining the scheme of the Act, this Court held that, "*In **Hardwari Lal case** [AIR 1982 P&H 439 : (1982) 1 SLR 39] , a Full Bench of the Punjab and Haryana High Court was to consider whether the Governor in his capacity as the Chancellor of Maharshi Dayanand University was to act under Maharshi Dayanand University Act, 1975 (Haryana Act No. 25 of 1975) in his official capacity as Chancellor or with aid and advice of the Council of Ministers. The Full Bench, after elaborate consideration of the provisions of the Act and the statutes, came to observe in para 121 at p. 476 that the Act and the statutes intended that the State Government would not interfere in the affairs of the University. The State Government is an authority quite distinct from the authority of the Chancellor. The State Government cannot advise the Chancellor to act in a particular manner. The University, as a statutory body, autonomous in character, has been given certain powers exercisable by the Chancellor in his absolute discretion without any interference from any quarter. In the appointment of the Vice-Chancellor or the Pro-Vice-Chancellor, the Chancellor is not required to consult the Council of Ministers. Though by*

virtue of his office as Governor, he becomes the Chancellor of the University, but while discharging the functions of his office, he does not perform any duty or exercise any power of the office of the Governor individually. However, while discharging the functions as a Chancellor, he does every act in his discretion as Chancellor and he does not act on the aid and advice of his Council of Ministers. The performance of the functions and duties under the Constitution with the aid and advice of the Council of Ministers is distinct and different from his discharge of the powers and duties of his office as Chancellor of the University. Under the Act and the statute, the Chancellor has independent existence and exercises his powers without any interference from any quarter. Therefore, the office as a Chancellor held by the Governor is a statutory office quite distinct from the office of the Governor. Same view was taken by the Andhra Pradesh High Court in Kiran Babu case [AIR 1986 AP 275 : (1986) 1 An LT 36].".

78. Bearing the aforesaid principles of law in mind, we proceed to consider whether there was any independent application of mind or satisfaction on the part of the Chancellor in reappointing the respondent No. 4 as Vice-Chancellor. The facts narrated by us in the earlier part of our judgment speak for themselves. The Chancellor had already initiated the steps for appointment of a new Vice-Chancellor and this is evident by the fact that a selection committee was also constituted *vide* Notification dated 27.10.2021. It appears that at that point of time reappointment of the respondent No. 4 as Vice-Chancellor in accordance with sub-section (10) of Section 10 of the Act 1996 was not in the mind of the Chancellor.

79. The State of Kerala issued Notification dated 01.11.2021 inviting applications from eligible candidates. All of a sudden, the Minister for Higher Education and Social Justice in his capacity as the Pro-Chancellor addressed a letter to the Chancellor dated 22.11.2021 recommending reappointment of the respondent No. 4 herein for a second term as Vice-Chancellor. It is also pertinent to note that on 22.11.2021 itself the notification inviting application from the eligible candidates was withdrawn. On the same date, the Minister addressed one another letter to the Chancellor stating that the respondent No. 4 be reappointed as Vice-Chancellor of Kannur University. On the very same day i.e., on 23.11.2021, the notification reappointing the respondent No. 4 as Vice-Chancellor was issued.

80. It appears from the press release issued by the Kerala Raj Bhavan dated 03.02.2022 that the opinion of the Advocate General was also sought for in connection with reappointment of the respondent No. 4 as Vice-Chancellor. The very first para of the press release states that "***Kerala Raj Bhavan strongly refutes the claim in some news reports that it was on the direction of Hon'ble Governor that the name of Dr. Gopinath Ravindran was suggested for reappointment as Vice Chancellor, Kannur University. The truth is that the same was initiated by the Chief Minister and Higher Education Minister.***" The last part of the report is also relevant. It states that the process of selection of Vice-Chancellor which was set in motion *vide* Notification dated 27.10.2021 came to an end consequent to the request from the Minister of Higher Education and the opinion of the Advocate General, State of Kerala.

81. The aforestated facts make it abundantly clear that there was no independent application of mind or satisfaction or judgment on the part of the Chancellor and the respondent No. 4 came to be reappointed only at the behest of the State Government.

82. Under the scheme of the Act 1996 and the statutes, the Chancellor plays a very important role. He is not merely a titular head. In the selection of the Vice-Chancellor, he is the sole judge and his opinion is final in all respects. In reappointing the Vice-Chancellor, the main consideration to prevail upon the Chancellor is the interest of the university.

83. The Chancellor was required to discharge his statutory duties in accordance with law and guided by the dictates of his own judgment and not at the behest of anybody else. Law does not recognise any such extra constitutional interference in the exercise of statutory discretion. Any such interference amounts to dictation from political superior and has been condemned by courts on more than one occasions.

M. FINAL CONCLUSION

84. It is now well settled that a writ of quo warranto lies if any appointment to a public office is made in breach of the statute or the rules. In the case on hand, we are not concerned with the suitability of the respondent No. 4. The "suitability" of a candidate for appointment to a post is to be judged by the appointing authority and not by the court unless the

appointment is contrary to the statutory rules/provisions. We have reached to the conclusion that although the notification reappointing the respondent No. 4 to the post of Vice-Chancellor was issued by the Chancellor yet the decision stood vitiated by the influence of extraneous considerations or to put it in other words by the unwarranted intervention of the State Government.

85. It is the Chancellor who has been conferred with the competence under the Act 1996 to appoint or reappoint a Vice-Chancellor. No other person even the Pro-Chancellor or any superior authority can interfere with the functioning of the statutory authority and if any decision is taken by a statutory authority at the behest or on a suggestion of a person who has no statutory role to play, the same would be patently illegal.

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

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

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

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

89. In view of the aforesaid, we allow this appeal.

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

91. Pending application(s) if any shall stand disposed of.

Headnotes prepared by:
Ankit Gyan

Appeal allowed.