
(1961) 09 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.P. No. 229 of 1961

Barat, S.C

APPELLANT

Vs

Chancellor, Jabalpur University

RESPONDENT

Date of Decision : 08-09-1961

Acts Referred:

Jabalpur University Act, 1956 — Section 9, 9(2)

Citation : (1961) JLJ 1132

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : R.S. Dabir, V.S. Dabir and R.P. Sinha, for the Appellant; K.A. Chitale and H.L. Khaskalam, Addl. Government Advocate, K.B. Sinha, Y.S. Dharmadhikari for Interveners, for the Respondent

Judgement

P.V. Dixit, C.J.—In this application under Article 226 of the Constitution for quashing by a suitable writ an order made by the respondent No. 1, the Chancellor of the Jabalpur University, appointing the, respondent No: 4, Shri Avadh Bihari Mishra, as Vice-Chancellor and for the issue of suitable directions to the Chancellor for the appointment of, Vice-Chancellor of the University in accordance with law, Shri Chitale, learned counsel appearing for the Chancellor, has raised the preliminary objection that this Court has no jurisdiction to entertain any proceeding whatever or issue any direction under Article 226 whatever against the Chancellor. The objection rests on Article 361 and has been raised as the Governor of the State is the Chancellor of the University.

2. Before stating the arguments advanced by learned counsel appearing for the parties and examining their tenability, it is necessary to refer briefly to the facts and circumstances in which this petition has been filed. u/s 9 of the Jabalpur University Act, 1956, the Governor of Madhya Pradesh is the Chancellor. The Chancellor, by virtue of his office is the Head of the University and President of the Court, and when present is required to preside at the meetings of the Court and at any convocation of the University. Sub-section (2) of Section 9 of the Act

says that the Chancellor shall have such powers as may be conferred on him by or under the Act. The procedure for the appointment of Vice-Chancellor is laid down in Section 11. According to that provision the Vice-Chancellor is appointed by the Chancellor from a panel of not less than three names recommended by a Committee constituted in accordance with sub-section (2). This Committee is constituted by the Chancellor and consists of three persons. One person is nominated by the Chancellor and the other two are appointed by the Executive Council. Sub-section (2) of Section 11 requires that two members "shall be appointed by the Executive Council by single transferable vote from amongst persons not connected with the University or a College..." The Committee constituted under sub-section (2) is required to submit its panel within one and a half month from the date of its constitution. The petitioners' contention is that the Committee, which was constituted by the Chancellor u/s 11 (2), was not validly constituted in that Shri Shriman Narain Agarwal, who was one of the members appointed by the Executive Council on the Committee, was disqualified from becoming a member of the Committee as he was a member of the Managing Body of the Govindram Sakseria Commerce College, Jabalpur, and was thus connected with a college; and that consequently the panel of names including that of the respondent No. 4 submitted by the said Committee was invalid and no person selected from that panel could be validly appointed as Vice-Chancellor to succeed the present Vice-Chancellor, Shri Kunjilal Dubey (respondent No. 3), on the expiry of his term. The petitioners pray that the appointment of the respondent No. 4 as Vice-Chancellor be cancelled by a suitable writ, and that the Chancellor and the other respondents be restrained from giving effect to the appointment of the respondent No. 4 as Vice-Chancellor and the Chancellor be required to exercise his power under the Act to appoint a Vice-Chancellor in accordance with law.

3. The argument of Shri Chitale was that Article 361 gave absolute personal immunity to the Governor for all his public acts and partial immunity for all private acts; that the immunity under clause (1) of Article 361 was not only in respect of the exercise and performance of the powers and duties under the Constitution of his office by the Governor or for any act done or purported to be done by him in exercise of these powers and duties but also in respect of the exercise and performance of the power and duties conferred on the Governor under any Act or rule and for any acts done or purported to be done in exercise of those powers; and that there were in clause (1) no words to limit the protection given by that clause to the exercise and performance of the powers and duties under the Constitution of his office by the Governor or to acts done in the exercise of those powers. It was said that Section 9 of the Jabalpur University Act made the Governor the Chancellor of the University by virtue of his office as Governor and the powers which the Act conferred on the Chancellor were thus the powers conferred on the Governor; and that, therefore, under clause (1) of Article 361 the Chancellor of the University was not answerable to any Court for the exercise and performance of the powers and duties of his office

as Chancellor or for any act done or purported to be done by him in the exercise and performance of those powers and duties. Learned counsel submitted in the alternative that if the immunity under clause (1) was held as not extending to the exercise and performance of the powers and duties conferred under any Act on the Governor not qua Governor but in any other public capacity such as that of Chancellor of an University, and if Section 9 of the Jabalpur University Act were to be construed so as to mean that the Governor held the office of the Chancellor not by virtue of his office as Governor but because of the prestige and eminence attached to his personality by the very fact of holding the office, then the Chancellor's acts under the Jabalpur University Act were acts done or purported to be done by the Governor in his personal capacity within the meaning of clause (4) of Article 361 and no proceeding could be instituted Against the Chancellor without giving two months' notice which was not done in the present case. According to the learned counsel, the words "personal capacity" must be read as meaning "private capacity" as well as "public capacity" other than that of Governor. He proceeded to say that if clause (1) was limited in its application to official acts of the Governor whether under the Constitution or under any Act conferring powers on the Governor qua Governor, then the words "personal capacity" occurring in clause (4) must be construed widely as the object of Article 361 was to uphold the dignity and prestige of the office of the Governor and to afford protection to the Head of the State for all acts, whether official or non-official, public or private. Learned counsel referred to the marginal note of Article 361 as indicative of the extent of protection given to the Heads of States. It was said that the framers of the Constitution could not have intended to give protection to the Governor solely for acts done in his public capacity as Governor or for acts done in his private capacity leaving his acts done in other public capacity unprotected. Referring to Section 110 of the Government of India Act, 1915, and Section 306 of the Government of India Act, 1935, learned counsel said that the restricted protection given by the former provision to the Governors was extended by Section 306 of the Government of India Act, 1935, to all acts of the Governor of whatever nature done by him whether in a personal capacity or otherwise, whether in his capacity as Governor or in any other public capacity; that Section 306 of the Government of India Act, 1935, was before, the framers of the Constitution and it would not be legitimate to think that they intended to curtail the range of protection given by that section by leaving unprotected the acts of a person holding the office of Governor done in any other public capacity. Learned counsel placed strong reliance on *Gnanamani vs. Governor of Andhra* AIR 1954 AP 9.

4. Shri Dabir, learned counsel appearing for the petitioners, replied to the objection by saying that the immunity given by Article 361 was confined to the exercise and performance of the powers and duties by a Governor under the Constitution and to acts done by him in private capacity: that personal capacity meant private capacity and it would be a contradiction in terms to say that "personal capacity" included "public capacity" albeit non-Governmental.

Learned counsel further said that Section 306 of the Government of India Act, 1935, undoubtedly gave protection to the Heads of the States in respect of their acts done in any public capacity and acts done in personal capacity, but that if knowing the extent of wide protection given by Section 306 of the Government of India Act, 1935; by the use of the words of widest amplitude, namely, "whether in a personal capacity or otherwise" the framers of the Constitution chose to use a different language in Article 361 so as to restrict the immunity to the exercise and performance of the powers and duties under the Constitution of his office by the Governor and to acts done by him in his personal capacity, then the scope of the immunity given by the Article could not be extended by reading into the Article some words which were not there: that the intention of the Constitution-makers must be gathered from the language used in Article 361: that it was on account of the office he holds that the Governor has been given protection under Article 361 for maintaining the prestige and dignity of his office, but the immunity did not affect the right of any person to bring appropriate proceedings against the Government of the State for challenging the acts of the Governor when performed: and that Article 361 being a provision conferring exceptional privileges abridging general rights should be strictly construed and a construction that would have the effect of abridging the right of a person under Article 226 of the Constitution should not be accepted. In regard to *Gnanamani vs. Governor of Andhra* (supra) relied on by the learned counsel for the respondent No. 4, it was said that the observations in that case with regard to the scope of Article 361 were obiter and that the view taken in that case was not correct.

5. The answer to the question raised by the preliminary objection turns solely on the true construction of Article 361. A consideration of that Article must be prefaced by the observation that the provision has to be construed in the same manner as the provisions of any other statute by applying the cardinal rules of construction. The intention of the Constitution-makers must be ascertained from the language of the provision and its construction must be by reference to its terms and language and these alone. A constitutional provision has the greatest claim to be construed "*Ut res magis valeat quam pereat*," and it is the duty of the Court to see that as far as possible the intention of the makers of the Constitution is effectuated to the fullest extent (see *M.S.M. Sharma Vs. Sri Krishna Sinha and Others*, at p. 410). To arrive at the real meaning of the provision it is also legitimate to consider how the law on the subject stood immediately before the Constitution and the defect which the old law contained and the remedy provided by the Constitution to remove that defect (see *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, at p. 674. Article 361, so far as is material here, is as follows -

361. (1) The President, or the Governor of a State, shall not be answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and duties:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2)

(3)

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any Court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefore, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

Taking clause (1) first, it in plain terms gives complete immunity to the Governor in respect of the exercise and performance of the powers and duties of his office and for any act done or purporting to be done by him in the exercise and performance of those powers and duties. The immunity is not restricted during his term of the office but continues even after the Governor ceases to hold the office. It is thus personal. The extent of the immunity is to be found in the scope of the expression "the exercise and performance of the powers and duties of his office". On the very words of this expression, it is clear that the immunity is in respect of the exercise and performance of the powers and duties of the office of the Governor under the Constitution and for acts done thereunder and not merely in respect of the powers and duties under the Constitution of the office. It is important to note the distinction between the powers and duties under the Constitution of the office of the Governor and the powers and, duties of the office under the Constitution. Now, the "powers and duties of the office" embrace the powers of the Governor expressly conferred by the Constitution as well as those conferred by any law or statutory rules. There are several Articles in the Constitution conferring certain powers on the Governor. To name some, Article 161 dealing with the power of the Governor to grant pardons, reprieves etc., Article 164 under which the Chief Minister is appointed by the Governor, Article 165 giving to the Governor the power to appoint the Advocate General, Article 166 (3) giving to the Governor the power to make rules for the more convenient transaction of the business of the Government of the State, Article 192 empowering the Governor to decide questions as to disqualifications of members of the Legislature, Article 200 dealing with the Governor's assent to a Bill passed by the Legislature, Article 213 concerning the power of the Governor to promulgate Ordinances, Article 309 giving to the Governor the power to make rules regulating the recruitment and conditions of service of persons serving the State, Article 316 which gives the Governor the power to appoint members of the State Public Service Commission. These are all powers expressly conferred by

the Constitution. But besides these powers and duties of the office, there are some powers and duties of the office which, though not expressly provided by any Article of the Constitution, result from the working of several Articles in the Constitution.

6. Under Article 154 the executive power of the State is vested in the Governor and is exercised by him either directly or through the officers subordinate to him according to the Constitution. Article 162 lays down that the executive power of the State shall extend to the matters with respect to which the Legislature of the State has power to make laws. Under Article 166 (1) all executive action of the Government has to be expressed to be taken in the name of the Governor. The Constitution confers powers on the State Legislature to make laws with respect to any of the matters enumerated in Lists II and III in the Seventh Schedule. The State Legislature is not prevented from conferring by law any functions on the Governor. The effect of all these provisions is that certain powers, duties and functions may be conferred on the Governor qua Governor under any Act or rules made thereunder. The powers and duties conferred by such Acts and rules on the Governor qua Governor are "the powers and duties of his office". They are not conferred in so many words by any Article of the Constitution, but they flow from the working of several Articles of the Constitution. Such powers and duties when conferred on the Governor qua Governor are also exercised by him on the advice of the Council of Ministers except in so far as he is by or under the Constitution required to exercise his functions in his discretion. The action taken by the Governor is the executive action of the Government which is expressed in the name of the Governor. The protection given by clause (1) of Article 361 covers the exercise and performance of the powers and duties conferred on the Governor qua Governor by any law or rules made under any law. That the personal immunity extends not only to the exercise of his functions by the Governor in his discretion but also to the exercise of his functions on the advice of the Council of Ministers becomes further clear by the second proviso to Article 361. That proviso says that clause (1) shall not be construed as restricting the right of any person to bring appropriate proceedings against the Government of the State. There would have been no need for such reservation if the protection given by clause (1) did not ensure to the acts of the Governor done in the exercise and performance of the duties of his office under the Constitution or under any Act or rules thereunder in relation to the State Government as executive action or the Government of this State expressed in his name.

7. There was some argument at the Bar on the question whether the said proviso was by way of an exception qualifying clause (1) or whether it was by way of a clarification inserted *ex majori cautela*. In *Kandaswami Mudaliar Vs. The Province of Madras and Another*, a somewhat similar proviso to Section 306 (1) of the Government of India Act, 1935, was treated as providing an exception to Section 306 (1). On the other hand, in *P.V. Rao Vs. Khushaldas S. Advani*, it was regarded as providing a clarification because of the use of the words "shall be construed as restricting" instead of the words "shall restrict". It is

unnecessary to consider whether the second proviso to Article 361 (1) provides an exception or a classification. Whichever way it is regarded, it does not alter the position that clause (1) of Article 361 gives personal immunity to the Governor in regard to all his acts done as the Head of the State Executive in whose name all the executive authority of the State is exercised and done in the exercise and performance of the powers and duties of his office conferred by the Constitution or under any Act or rule made thereunder. Incidentally it may be stated here that the proviso pointedly shows that while the object of Article 361 is to give personal immunity to the Governor, it at the same time reserves the right of any person to bring appropriate proceedings against the Government for any action taken by the Governor as the Head of the State. It would be pertinent here to refer to the observations of Rao J. in *G. D. Karkare vs. T. L. Shevde* ILR 1952 Nag. 409. He said:-

The immunity afforded by Article 361 is personal to the Governor. That Article does not place the actions of the Governor purporting to be done in pursuance of the Constitution beyond the security of the Courts. What the Constitution establishes is supremacy of law and not of men, however high-placed they might be. Unless there be a provision excluding a particular matter from the purview of the Courts, it is for the Courts to examine how far any act done in pursuance of the Constitution is in conformity with it.

8. The view expressed in *Ghanamani vs. Governor of Andhra* (supra) as to the extent of the immunity given by clause (1) is no different from that taken by us. In that case the learned Chief Justice classified the powers and duties of the Governor under three categories. In the first category he placed the powers and duties conferred on the Governor under the Constitution as also the powers and duties conferred on the Governor qua Governor under Acts or rules thereunder. Dealing with the powers conferred on the Governor under any Act or rules made thereunder, the learned Chief Justice observed:-

The Executive Government may also in exercise of the powers conferred on them by statutes make rules, conferring certain powers or imposing certain duties on the Governor. The constitution also expressly enables the Governor under Art. 309 to make rules regulating the recruitment and conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature. Further certain Acts passed or rules made by competent bodies before the making of the Constitution of India may, by reason of the transitory provisions, continue to have constitutional validity and binding force.

Such Acts or rules may contain provisions conferring certain powers on the Governor. Therefore there are many ways by which a power may be conferred on the Governor qua Governor, which will enable him to exercise that power by virtue of his office as Governor. All the powers exercisable by a Governor by virtue of his office can be exercised only on the advice of the Ministers, except in so far as the Constitution expressly or perhaps by necessary implication says

that he can exercise those powers in his individual discretion.

Then he pointed out that under Article 361 (1) there was absolute immunity for all Acts of the Governor done in the exercise and performance of the powers and duties included in the first category.

9. Learned counsel for the Chancellor, however, invited us to hold further and say that the immunity extended even to the exercise and performance of the powers and duties conferred on the Governor under any Act not in his capacity as Governor, but in a different capacity held by him by virtue of his office as Governor. On the other hand, learned counsel for the petitioners sought to restrict the immunity only to the exercise and performance of the powers and duties conferred under the Constitution on the Governor. We are unable to accept this extension or curtailment of the scope of the immunity afforded by Article 361 (1). When an Act confers power on the Governor not qua Governor but in a different capacity held by him by virtue of his office as Governor, the powers and duties so conferred are not the powers and duties of the office of the Governor. They are the powers and duties of a different office which the Governor holds by virtue of his office as Governor. It is altogether erroneous to say that as the other office is held by the person who is the Governor of the State by virtue of his office as Governor, therefore the powers and duties he exercises or performs of that other office under the relevant Act are the powers and duties of his office as Governor. In *Gnanamani vs. Governor of Andhra* (supra) such powers conferred on the Governor not qua Governor but in a different capacity occupied by him by virtue of his office as Governor were classified as the second category of the powers, and it was said that Article 361(4) gave a limited immunity in respect of the acts done in the exercise and performance of such powers and duties. We will show presently that this view is not correct. We say this with all respect to the learned Chief Justice. The curtailment urged by Shri Dabir, learned counsel for the petitioners, cannot be accepted when clause (1) speaks of immunity in relation to the "exercise and performance of the powers and duties" of the office of the Governor under the Constitution and does not contain any words of limitation to restrict the immunity to the exercise and performance of the powers and duties only under the Constitution. There is nothing ambiguous about the width of the expression "the exercise and performance of the powers and duties of his office." There is no justification for the introduction of any limiting words which would have the effect of depriving the words "the powers and duties of his office" of their full meaning and content.

10. Now, Section 9 of the Jabalpur University Act, 1956, does not make the Governor of the Chancellor of the University by virtue of his office Governor. It says that the Governor of Madhya Pradesh shall be the Chancellor. The plain meaning of this provision is that the person who is for the time being the Governor of the State shall be the Chancellor. Section 9 (1) does not say that the Governor shall be the Chancellor by virtue of his office as Governor or that the Governor shall ex-officio be the Chancellor. It is noteworthy that Section 10 (1)

of the Act uses a different language in connection with the office of the Pro-Chancellor. It says that the Minister of Education shall ex-officio be the Pro-Chancellor. Where as u/s 9(1) it is the prestige and personality of the person filling the office of the Governor that is made the basis of his appointment Chancellor, u/s 10(1) it is the office itself that is made the criterion for the appointment of the Minister of Education as the proChancellor. The distinction between these two modes of appointment is a real one. Thus the powers and duties that the Chancellor exercises or performs under the Act are not any powers or duties conferred on the Governor qua Governor, or of a capacity which he occupies by virtue of his office as Governor, They are the powers and duties of a public capacity held by the personage who is also the Governor. The Chancellor's powers under the Jabalpur University Act are thus not the powers and duties of the office of the Governor and consequently the protection provided by Article 361(1) cannot be invoked by the Chancellor in respect of the exercise and performance of the powers and duties of his office as Chancellor under the Jabalpur University Act. The extention of immunity under clause (1) to the Chancellor would lead to the strange result that while in respect of an action of the Governor as the Head of the State Executive appropriate proceedings against the State would be open, it would not be permissible for any person to question the action of the Chancellor in any proceedings, for the reason that the Chancellor's action not being the action of the Governor as the Head of the State Executive the second proviso would have no applicability.

11. Turning now to the alternative submission of Shri Chitale that if the Chancellor could not claim immunity under clause (1) then he enjoyed a qualified immunity under clause (4), effect can only be given to the contention if the words "personal capacity" as used in clause (4) are read as meaning private capacity" as well as "public capacity" other than that as a Governor. It was argued that "personal capacity"; must be so construed as the antithesis of "public capacity" was private, capacity and not personal capacity"; that Section 306 of the Government of India Act, 1935, gave protection to a Governor not only for all acts done in his personal capacity but also in respect of all acts of whatever nature done in his public capacity of any kind; and that the Constitution-makers could not have intended to whittle down this wide protection given by Section 306. It was said that in the expression "whether in a personal capacity or otherwise", which occurred in Section 306 of the Government of India Act, 1936, the words "personal capacity" had been used in the sense of "private capacity" as well as "public capacity" and the word "otherwise" had ejusden generis sense; and that, therefore, merely because the phrase "personaly capacity or otherwise, had not been adopted in Article 361 it would not be said that the framers of the Constitution intended to withdraw the immunity given by Section 306 to a Governor while functioning in a capacity other than gubernatorial.

12. The fourth clause of Article 361 no doubt gives a partial immunity to a Governor in respect of his personal acts in that no civil proceedings can be

instituted against him during his term of office in any court in respect of any act done or purporting to be done in his personal capacity until the expiration of the period of the notice prescribed in that Clause. The immunity that is given to the Governor is "in respect of any act done or purporting to be done by him in his personal capacity." We are unable to assent to the argument of the learned counsel for the Chancellor that "personal capacity" means "private capacity" as well as "public capacity" other than as a Governor. In our opinion, no warrant whatever exists for giving the words "personal capacity" any more extended meaning than they have in their ordinary connotation. The word "personal" means: "pertaining to or concerning or affecting the individual person, individual, private." By capacity is meant a position which enables a person or renders him capable to do something, that is, an act in law or a juristic act. "Personal capacity", therefore, means a position in which a person is able to act as an individual or private person and to give effectiveness to his individual and private acts and to acquire rights and incur obligations as an individual. In other words, it means no more than "private capacity". The antithesis of "public capacity" is no doubt "private capacity". But from this it does not follow that "personal capacity" is no "private capacity" or that it imports "public capacity" also. The act of a person of accepting the office of Governor is undoubtedly an act done in his personal capacity. So also his becoming a Chancellor may be an act done by him in his personal capacity. But after the acceptance of the office his acts as Chancellor are no more acts done by him in personal capacity than are his acts as a Governor. The acts of the Chancellor or of the Governor derive their effectiveness from the title of the person to the office. It is in his capacity as Chancellor and not in his personal capacity that the Chancellor is able to give legal effectiveness to his acts as Chancellor and to acquire rights or incur obligations in that capacity. There is thus a clear cut distinction between the personal capacity of an individual and the public capacity he has when he holds a public office such as the Chancellor of an University.

13. In *Gnanamani vs. Governor of Andhra* (supra) there is no doubt a statement to the effect that the acts done by the Governor in a different capacity which he occupies by virtue of his office as Governor enjoy limited immunity under clause (4). The learned Chief Justice did not, however, give any reasons to show as to how such acts done by the Governor holding an ex officio office were acts done by him in his personal capacity. In the Andhra case, an Assistant Engineer had been served with an order of the Government imposing on him the penalty of compulsory retirement. He preferred an appeal to the Governor who by an order transferred it to the Secretary to the Government for disposal. Thereupon the Engineer prayed for the issue of a writ of certiorari against the Governor for quashing his order. It was held that the Governor was not answerable for his act of sending the appeal for disposal to the Secretary and that he was also not responsible to the Court for the manner of disposal of the appeal as no process could be served on him. Thus the question raised for decision in the Andhra case involved a consideration of clause (1) only. But after putting into one category

the powers and duties conferred on the Governor under the Constitution and under Acts or rules thereunder on the Governor qua Governor and the acts done by the Governor in the exercise and performance of these powers and duties, the learned Chief Justice proceeded to classify the acts which the Governor may do in a different capacity occupied by him by virtue of his office as Governor and acts which he may do in his personal capacity, and observed-

There may be a second category of powers conferred on the Governor qua Governor but in a different capacity, though he occupies that capacity by virtue of his office as Governor. A statue may confer on a Governor the ex-officio Presidentship of a charitable institution. A third category of acts may be exercised by the Governor in his personal capacity. He may borrow money and execute a promissory note. He may make a speech as the President of a meeting or write an Article defaming or slandering others. He may commit breaches of contract entered into with third parties.

Under Article 361, there is an absolute immunity for the first category of acts but only a limited one in respect of the other two.

It may be pointed out that there is some typographical error in the statement. "There may be a second category of powers conferred on the Governor qua Governor but in a different capacity, though he occupies that capacity by virtue of his office as Governor". It seems to us that the word "not" which should have preceded the word qua has been inadvertently omitted. Without that negative the statement reads-"Powers conferred on the Governor in the capacity of Governor but in a different capacity, though he occupies that capacity by virtue of his office as Governor" and is incomprehensible. Be that as it may, the said observations of the learned Chief Justice do not contain any reason for the conclusion that the acts done in the exercise of the powers conferred on the Governor in a different capacity which he occupies by virtue of his office as Governor have a limited immunity. If we may say so with all due deference to the learned Chief Justice, these observations were really not necessary for the decision of the case before him and are obiter. In P.V. Rao Vs. Khushaldas S. Advani, , while considering the meaning of the words "In a personal capacity or otherwise" as used in Section 306 of the Government of India Act, 1935, Tendolkar J. expressed the opinion that "personal capacity" meant private capacity as an individual, and "otherwise" meant public capacity but again as an individual. In our opinion, the words "personal capacity" cannot be given the wider meaning contended for by the learned counsel for the Chancellor.

14. It is quite true that the protection given u/s 110 of the Government of India Act, 1915, which was confined to acts done in public capacity was enlarged by Section 306 of the Government of India Act, 1935, by the use of the words "whether in a personal capacity or otherwise". But the suggestion that even in Section 306 "otherwise" meant capacity of the same kind as personal capacity and that, therefore, "personal capacity" carried the meaning of private as well as public capacity; cannot be accepted, when the rule of ejusdem generis could not

be applied to the construction of the word in the context in which it had been used and when "otherwise" expressly means "in a different way".

15. Shri Chitale's argument for attributing a wider meaning to the words "personal capacity" really rests on certain general reflections which do not seem to us to make up into any legal principle of construction. If we understood his argument rightly, it contained the suggestion that Article 361 was inserted in the Constitution for maintaining the dignity and prestige of the person holding the office of the Governor and that if on a true construction of clause (1) no immunity could be afforded to the Chancellor for his acts as Chancellor, then clause (4) should be construed in the manner indicated by him so as to give partial immunity to the acts of the Governor done in his public capacity other than that as a Governor. As to this, it is sufficient to say that the width or narrowness of the scope of immunity under clause (1) cannot touch the construction of clause (4). Further it was said that it would be altogether anomalous if the Governor enjoyed a qualified immunity under clause (4) in respect of his acts done in his personal capacity and was denied that immunity in respect of his acts done in public capacity other than that of a Governor. It is no doubt anomalous. But these reflections must have occurred to the Constituent Assembly when it inserted Article 361 in the form it is to be found in the Constitution. It is reasonable to think so and also to think that the provisions of Section 306 of the Government of India Act, 1935, must have been before the framers of the Constitution when they considered the draft of Article 361. In our judgment, these are reflections which cannot control the construction of Article 361 (4) when there is nothing in the text of the Constitution justifying the enlarged meaning of the expression "personal capacity" sought for. Merely to say that the framers of the Constitution cannot be presumed to have intended to bring about the consequence which many people might think to be unjust or anomalous is not, in our opinion, a principle of construction. We are quite conscious of the necessity and importance of maintaining the dignity and prestige of the Head of the State. It is trite to say that the authority and respect that the Government or a dignitary can command depends to a large extent on its prestige. But when by a deliberate choice of the language used in Article 361 (4) does not afford immunity to the Head of the "State while functioning in a public capacity other than that as a Governor, the intendment of the language used must prevail over general considerations about the maintenance of the prestige of the Head of the State. It may well be that having regard to the fact that in our democratic set up the Head of the State is called upon to fill in a number of public capacities besides his capacity as a Governor, the Constitution-makers thought that while functioning in such public capacities the Head of the State should be susceptible and sensitive to public opinion in conducting himself and no immunity was necessary in respect of acts done by a Governor in his public capacity other than that as a Governor. We are clearly of the opinion that no immunity is attached under clause (4) of Article 361 to the respondent No. 1-Chancellor's acts.

16. For all these reasons, the preliminary objection raised on behalf of the Chancellor must be and is overruled.