
(1976) 11 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Writ Petition No. 580 of 1976

Dr. D.C. Jain

APPELLANT

Vs

The University of Jodhpur and Others

RESPONDENT

Date of Decision : 26-11-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 245
General Clauses Act, 1897 — Section 6
Jai Narain Vyas University Jodhpur Act, 1962 — Section 16, 16(2)
Jodhpur University (Amendment) Act, 1972 — Section 3
Rajasthan General Clauses Act, 1955 — Section 27

Citation : AIR 1977 Raj 89 : (1976) 9 WLN 820

Hon'ble Judges : M.L. Joshi, J

Bench : Single Bench

Advocate : L.R. Mehta, for the Appellant; C.L. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Joshi, J.—By this petition under Article 226 of the Constitution of India, petitioner challenges the validity of the appointment of non-petitioner No. 3 Dr. S. Divakaran as Professor Structural Engineering, Dean Faculty of Engineering and his nomination to the Syndicate in the capacity of Dean and prays for quashing the same. It has also been prayed that the petitioner be declared entitled to be nominated to the Syndicate instead.

2. The case of the petitioner as set up in the writ petition, briefly stated, is as follows:--

3. The petitioner was authorised to exercise the powers of Dean of Faculty of Law by the Vice Chancellor's order dated 8-10-1974 till further orders. The petitioner alleges that this order did not meet the requirement of Statute 4 (1), and was rather made with malice and bias which the Vice Chancellor bore against him as he did not like to nominate the petitioner on the Syndicate. The petitioner further avers that under Statute 4 of the University Statutes (in brief statutes) two

members were to be nominated from the Deans of Faculties by rotation in the order given in paragraph 6 of the writ petition. The Vice Chancellor nominated Professor Alliance, the Dean, Faculty of Commerce, on the Syndicate but did not nominate the petitioner on the Syndicate on the expiry of the term of the Dean of Faculty of Arts, Education, Social Science On October 28, 1974, although as per the order of rotation it was the turn of the Dean of Faculty of Law to be nominated on the Syndicate. Being aggrieved, the petitioner made representation to Chancellor who by his letter dated 27th January, 1971, directed the Vice-Chancellor to appoint the petitioner as full-fledged Dean and further to nominate him as member of the Syndicate vide Ex. 2. In pursuance of the aforesaid order of the Chancellor the petitioner was appointed as full-fledged Dean, Faculty of Law and also nominated on the Syndicate. Later on the Syndicate was dissolved as a result of promulgation of the Jodhpur University (Second Amendment) Act, 1975, by which it was ordained that the members of the Syndicate functioning before the commencement of the Act shall cease to hold office. By the same Act Section 16 of the University Act was substituted whereby constitution and terms of the members of the Syndicate were laid down afresh. Accordingly the Vice-Chancellor reconstituted the Syndicate in the light of the provisions of the University (Second Amendment) Act of 1975. He again nominated professor Alhance Dean, Faculty of Commerce, on the Syndicate but this time also he ignored the claim of the petitioner and nominated Dr. Divakaran Dean Faculty of Engineering on the Syndicate instead although it was the turn of the petitioner. It has been alleged that Dr. Divakaran did not possess requisite qualification as he was neither eligible for the post nor he was selected by a duly constituted selection committee for the reason that the experts on the selection committee were not experts in the subject. It has also been alleged that Dr. Divakaran could not have been appointed as Dean, Faculty of Engineering as Professor Bhadada was senior to him.

4. The petition has been opposed by the non-petitioners each of whom has filed a separate return. The University in its return has refuted the claim of the petitioner based on Statute 4 and has inter alia pleaded that the Statute 4 which was made in pursuance of original Section 16 stood impliedly repealed by the Jodhpur University Amendment Act of 1972 which substituted a new Section 16 in place of the original section. The newly substituted section according to the University laid down an exhaustive Code in regard to the constitution, terms of office of its members and quorum in regard to the meetings of the Syndicate. The claim of the petitioner on the principle of rotation has also been controverted as the principle of rotation recognised under the Amendment Act of 1972 was done away with by the Jodhpur University (Second Amendment) Act of 1975 which made a provision regarding the constitution of the Syndicate so also the terms of the office of the members afresh. It has been alleged by the University that under the Amendment Act of 1975 the provision relating to the principle of rotation was dropped and the scope of Clause 4 (1) (iii) was widened by taking two members under that sub-clause from either of the category of the Deans or

the Principal/the Director.

5. The University has also controverted the challenge thrown by the petitioner against the nomination of Dr. Divakaran on one and all the grounds raised by the petitioner in that behalf and has asserted that Dr. Divakaran was eligible for the post of a professor in Structural Engineering and was selected by a duly constituted selection committee. It has further been pleaded that the petition has been brought with ulterior motive and in view of the conduct of the petitioner revealed in his letter dated 23rd of August, 1975, to Dr. Divakaran, the petitioner has disentitled himself to any relief by writ of quo warranto against Dr. Divakaran.

6. The stand of Dr. Divakaran in reply to the writ petition in his reply affidavit is that he was eligible for the post of a professor in Structural Engineering and was selected by a duly constituted selection committee. It has been further averred by Dr. Divakaran that the petition has been brought against him maliciously and mala fide and so it could not be entertained at this stage meaning thereby that the petition is belated and deserves to be dismissed.

7. The respondent No. 2 in his return has endorsed the stand of the University by showing his concurrence in it and has further denied the allegations of malice imputed against him. The petitioner has reiterated his stand in the rejoinders filed by him to the reply of the University as well as of Dr. Divakaran.

8. The petitioner rests his case principally on two grounds viz. (i) that under Statute 4 he is entitled to be nominated on the Syndicate as a Dean of Faculty of Law and (ii) that the nomination of Dr. Divakaran on the Syndicate is invalid as in the first place he was not eligible for the post of Professor and, therefore, not for the Deanship and further it was the turn of the petitioner to be appointed on the Syndicate. Secondly, Dr. Divakaran was not selected by a duly constituted committee as envisaged by Statute 19.

9. The petitioner's claim as to his nomination on the Syndicate rests on statute No. 4 of the University Statutes hereinafter called the Statutes. Section 16 as it originally stood in the Jodhpur University Act, hereinafter referred to as the Act, related to the constitution of the Syndicate. It provided that the syndicate shall be the executive body of the University and its constitution and the terms of office of members other than ex-officio members shall be prescribed by the statutes. From the bare reading of Section 16, it appears that Section 16 envisaged the framing of the statutes for making provision as to the constitution of the Syndicate and the terms of the office of its members other than ex-officio members. Section 21 as it originally stood made provision for the scope and field relating to which statute may be made. Clause (a) of Section 21 inter alia made provision as to "the constitution, powers and duties of the senate, the syndicate, the academic council, the financial committee and such other bodies as it may be deemed necessary to constitute from time to time." Clause (b) of the said section further made provision as to "the election and continuance in office of the members of the said bodies including the filling of the vacancies of the members

and on other matters relative to these bodies for which may be necessary or desirable to provide" besides other provisions which are not necessary for our purpose to mention here. Section 22 made provision for the procedure for making the statutes. It is provided therein that the first statute under this Act shall be made by the State Government as provided in Section 22 and thereafter senate may subject to the provisions of this Act from time to time make new or additional statutes or amend or repeal existing statutes in the manner provided in the section. The procedure has been laid down in this section as to how the statutes are to be proposed and finalised. Now to carry out the object of Section 16, Statute 4 came to be framed by the State Government in exercise of its powers u/s 22 of the Act. Statute 4 as framed by the Government provided for the composition and term of office of the members of the syndicate and allied matter. In the scheme of composition as laid down by the statute No. 4, the syndicate consisted of 11 members under seven distinct items. Item No. 3 of statute No. 4 (1) provided for the nomination of two Deans by the Vice-Chancellor in rotation. It is this item on which the petitioner basically rests his claim for his nomination as Dean on the Syndicate.

10. Section 16 of the principal Act was amended by Section 3 of the Jodhpur University (Amendment) Act, 1972 and a new section was substituted in its place whereunder the provisions were made in regard to the composition of the Syndicate, the terms of office of the elected and nominated members. It further provided that the members of the Syndicate who are continuing as such at the commencement of the Amendment Act shall remain as such members for the remaining term as if they are elected or nominated under the provisions of this section. Section 3 of the Amendment Act further provided quorum of the meetings of the Syndicate. It will be useful to reproduce Section 3 of the Amendment Act which substituted Section 16 of the Principal Act by a new section. Section 3 of the Amendment Act is as follows:--

"Section 3. Amendment of Section 16, Act XVII of 1962 :-- Section 16 of the Principal Act shall be substituted by the following section, namely:--

(i) the Vice-Chancellor.

(ii) The Chief Justice, Rajasthan High Court, Jodhpur.

(iii) two Deans nominated by the Vice-Chancellor in rotation:

Provided that no Dean shall be nominated for two successive terms.

(iv) the Director of College Education, Rajasthan.

(v) two educationists to be nominated by the Chancellor.

(vi) two University Professors nominated by the Vice-Chancellor.

Provided that no University Professor shall be nominated for two successive terms.

(vii) two members of the Senate being non-teachers, elected by the Senate, one of whom shall be a registered graduate.

(viii) two persons elected by the Senate from amongst persons who are elected as "Other Members" of the Senate under Clause (xxiv) of sub-division III of Subsection (2) of Section 15, and

(ix) two members of the State Legislature nominated by the Speaker.

(2) The term of office of the elected and nominated members shall be three years, but the members who have been elected or nominated under the provisions of the Statutes and are continuing as such shall remain as such members for their remaining term as if they are elected or nominated under the provisions of this section.

(3) Five members of the Syndicate shall form a quorum."

From the perusal of Section 16 as substituted by Section 3 of the Amendment Act of 1972 it will appear that the strength of the members of the Syndicate was raised from 11 to 15. Further Section 16 as substituted by the Amendment Act of 1972 laid down the exhaustive Code as to the number of the members of the Syndicate, the terms of the office of its elected or nominated members and further gave life to the existing members elected or nominated under the Statute 4 by deeming provision contained in Sub-section (2) of the substituted Section 16 and further made provision as to the quorum of the Syndicate. The substituted Section 16, therefore, made a complete and exhaustive Code on the subject of Syndicate and did not leave room for the operation of statute No. 4 as besides containing all the items and contents of the Statute 4 it made provision by increasing the strength of the members of the Syndicate and the continuance of the old members elected or nominated under Statute 4 as if they were elected under the provisions of substituted Section 16.

11. It has now to be seen whether in presence of the exhaustive Code made in respect of the constitution of the Syndicate, the Statute 4 still survived or stood repealed by implication. A serious controversy has been joined on this point by the learned counsel for the parties. Mr. Mehta has contended that Statute 4 did not stand impliedly repealed as Section 16 as substituted by the Amendment Act of 1972 at the best could be taken to be a case of mere temporary interception without obliterating the existence of the statute No. 4 or it may be a case of mere bypassing by the substituted Section 16, On the other hand Mr. Agarwal has vehemently contended that Section 16 of the principal Act having been repealed the statute framed thereunder falls on the ground of the repeal. He further argued that as the legislature itself stepped in the field and laid down the exhaustive Code in regard to the subject-matter of Syndicate the statute will automatically fall to the ground and it will be taken to be impliedly repealed.

12. Now the question which calls for determination is whether by substitution of Section 16 in the Principal Act by the Amendment Act of 1972, the Statute 4

stood impliedly repealed or not. It hardly requires to be said that whether a statute either in its entirety or in part has been repealed by implication depends upon the intent of the legislature. It is within the domain of the Court to ascertain this intent from the terms and provisions of the later enactment. It is of course true that the Courts will not recognise the implied repeal unless the intent to repeal clearly appears as ordinarily there is a presumption against the intention of the legislature to repeal legislation by mere implication. The presumption however is not irrebuttable and is overthrown if the new law is inconsistent with or repugnant to the old law for the inconsistency or repugnancy reveals an intent to repeal the existing law. The inconsistency or repugnancy may arise between the provisions of the old and new statutes if they cannot be reconciled and made to stand together. The repugnancy or inconsistency need not be between other provision of the two Acts as implied repeal may operate on the part of the statute as well as on its entirety. If the repugnancy relates to the part of the statute that part of the statute will stand repealed only to the extent of the repugnancy. An implied repeal may of course not take place unless two statutes or the part of the statute is/are inconsistent and irreconcilable. The inconsistency may however be presumed to be intended by legislature when it makes a complete substitute for the old one. In *Trust Mai Lachmi Sialkoti Bradri Vs. The Chairman, Amritsar Improvement Trust*, it has been held that in order to evince the intention to repeal on the Part of the legislature there must be inconsistency between two Acts of such a nature that the two cannot stand together. It has of course been said that where two enactments are identical and enactments run parallel to each other there would be no scope for the application of the doctrine of implied repeal. In *Mathra Prashad and Sons Vs. State of Punjab*, it has been held that no repeal can be implied unless there is an express repeal of an earlier Act by a later Act or unless the two Acts cannot stand together. In *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, it has been laid down that where a statute provides in express terms that its enactment will repeal an earlier Act by reason of its inconsistency with such an earlier Act the latter may be treated as repealed even where the later Act does not contain such express words, the criteria laid down by their Lordships is that if the co-existence of the two sets of provisions is destructive of the object with which the later Act was passed the Court would treat the earlier provision as impliedly repealed. A later Act which confers a new right would repeal an earlier right if the fact of the two rights coexisting together produces inconvenience for in such a case it is legitimate to infer that a legislature did not intend such a consequence. In *State of Orissa Vs. M.A. Tulloch and Co.*, it has been laid down that two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. Their Lordships observed that "the test of two legislations containing contradictory provisions is not however the only criteria of repugnancy, for, if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactment of the other legislature whether passed before or after would be over-run on the ground of repugnancy. Where such is the position, the

inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of two pieces of legislation." The test of inconsistency or repugnancy has also been explained by Nicholas in his Australian Constitution where amongst others it has been said that the repugnancy may arise (i) on account of there being inconsistency in the actual terms of the competing statutes, (ii) though there may be no direct conflict between a State law and Commonwealth law but if the Commonwealth law is intended to be a complete exhaustive Code, (iii) even in the absence of intention a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter.

Issacs, J. in (1926) 37 Com-W LR 446 laid down one test of inconsistency as conclusive.

"If however a competent legislature expressly or impliedly evinces its intention to cover the whole field that is a conclusive test of inconsistency where another legislature assumes to enter to any extent upon the same field."

Although this case relates to the principle of occupied field under the Constitution but the principles regarding repugnancy and inconsistency are equally applicable to determine the inconsistency between the subordinate legislation vis a vis a parent legislation. While judging as to whether there is a repugnancy or inconsistency between the two statutes it should be seen (i) whether there is a direct conflict between the two provisions; (ii) whether the legislature intended to lay down an exhaustive Code in respect of the subject-matter replacing the earlier law and (iii) whether the two laws occupy the same field.

13. Keeping in mind the above principles it has now to be seen whether the Statute 4 did not stand impliedly repealed. It is well to remember here that formerly composition and constitution of the Syndicate was covered by Statute 4 which owed its existence under the provisions of old Section 16 of the parent Act as it provided that the constitution of the Syndicate shall be such as prescribed by the statute. Obviously therefore Statute 4 had its roots in Section 16 of the parent Act. However, Section 16 was substituted by Section 3 of the Amendment Act of 1972 as reproduced earlier. The legislature itself stepped in and laid down a complete, elaborate and exhaustive Code as to the constitution, composition, terms of its members and the quorum of the meetings of the Syndicate. Sub-section (2) of the newly substituted Section 16 made further provision that the old members either nominated or elected under the statute will be deemed to continue as if they have been elected or nominated under newly substituted Section 16 as amended by Amendment Act of 1972. Sub-section (2) of Section 16 evinces the legislative intent that Statute 4 stood repealed and therefore the legislature had to make provision under the newly substituted Section 16 (2) for continuance of the members nominated or elected under the statutes by deeming provision by way of legislative fiction. Had the statute No. 4 still been in existence there could have been no occasion for enacting a saving clause.

14. It is also significant to mention that provisions of Statute 4 and the Act and new Section 16 as substituted by Amendment Act of 1972 cannot stand together because under the statute the strength of the members of the Syndicate is 11, whereas under the Amendment Act of 1972 the strength of the members of the Syndicate has been raised to 15 and then to 16 and, therefore, there is an inconsistency writ large which is demonstrated by the increased strength. Moreover the legislature itself stepped in and made whole, elaborate and exhaustive Code in regard to the constitution, the quorum and other allied matters on the entire subject of the Syndicate in regard to its constitution and other allied matters including all the matters contained in Statute 4. The legislature is an authority of superior efficacy and it has not only covered the whole subject-matter covered by the rule-making body of inferior efficacy but has widened the field relating to the constitution of the Syndicate. On this account also, in view of the ratio laid down in *State of Orissa Vs. M.A. Tulloch and Co.*, the Statute 4 stood impliedly repealed.

15. This aspect of the matter can be looked from another angle. Section 18 as amended by Act of 1972 stood on a higher footing in comparison to the statutes as Section 16 was enacted by the legislature whereas the Statute 4 was a subordinate piece of legislation having been made by the delegate of the legislature. Section 16 which was substituted by a legislature could only be modified by the legislature and not by its delegate whereas the statute could be modified by a subordinate legislative body as envisaged by Section 22 of the Act without legislative intervention. Maxwell in his treatise on the Interpretation of Statutes (12th Edn.) at page 18 has observed that "When an Act is repealed any delegated legislation made under the Act falls to the ground with the statute unless it is expressly preserved." To the similar effect is the legal position summarised in *Craies on Statute Law* (7th Edition) at page 336 as under :--

"If the statute under which bye-laws are made is repealed those bye-laws are impliedly repealed and ceased to have any validity unless the repealing statutes contain some provision preserving the validity of the bye-law notwithstanding the repeal. This follows from the rule --when an Act of Parliament is repealed it must be considered as if it had never existed."

Bhandari J. in *Municipal Council Ajmer v. Satyanarain* RLW 1962 360 has held that when a bye-law framed under a repealed law is inconsistent with any of the provisions of law the old byelaw can-not be saved. Mr. Mehta, however, contended that the Statute 4 will be saved by Section 27 of the Rajasthan General Clauses Act. Section 27 is analogous to Section 24 of the General Clauses Act, 1897.

16. Section 27 provides that when the Rajasthan Act or Regulation is repealed or re-enacted without modification then unless it is otherwise expressly provided any appointment, notification or scheme, rule, forum or bye-law made or issued under the repealed order or regulation shall so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been made

or issued under the provisions so re-enacted. As already pointed out earlier Statute 4 is inconsistent with Section 16 as substituted by Amendment Act of 1972 or Section 16 as substituted by the Amendment Act of 1975 and it could not completely fit in with those sections or stand together with them. Therefore, Section 27 of the General Clauses Act cannot be availed of to save Statute 4 in presence of the Amendment Act of 1972 or Second Amendment Act of 1975.

17. Mr. Mehta next argued that Statute 4 (1) would only govern Clauses (1) to (6) of Section 16 as amended by the Amendment Act of 1972. It is submitted by him that amended Section 16 consists of two parts, first Clauses (1) to (6) and the second consists of the remaining clauses. The above two parts of Section 16 are independent of each other and, therefore, Statute 4 can stand together with the first part of the amended part of Section 16 and cannot be said to be inconsistent with it. Section 16 is not capable of bifurcation as sought to be done by Mr. Mehta. It is to be read in its entirety in an integrated manner and if so read then Statute 4 is certainly inconsistent with the amended Section 16 as substituted by the Amendment Act of 1972.

18. It was next argued by Mr. Mehta that Section 21 (a) of the principal Act of the Jodhpur University was also amended in 1972 along with Section 16 which fact unmistakably shows the intention of the legislature to continue the provisions of Statute 4 (1), (2) and (3), now incorporated in Clause (1) to Clause (6) of the Amended Section 16 (1). I fail to understand how the amendment of Section 21 (a) will give rise to the legislative intention to continue the provisions of the Statute 4 (1), (2) and (3). The whole Statute 4 has been replaced by Section 16 as amended by the Amendment Act of 1972 which has provided exhaustive scheme in the matter of constitution of the Syndicate, the terms of its members and other allied matters. There is therefore no room to infer that despite the exhaustive scheme provided by the legislative provision, the subordinate legislation still exists and can stand along with it. As stated earlier we have to see the spirit of both the respective provisions not by detailed comparison but with the background and in the context of the legislative intention; the legislature having provided the elaborate scheme regarding the constitution of the Syndicate and the allied matters, the statute of inferior efficacy could no more survive in the presence of provisions of superior legislative efficacy. The contention of Mr. Mehta in this behalf has therefore no merit in it.

19. It was then argued by Mr. Mehta that Section 16 as substituted by the Jodhpur University Amendment Act of 1972 did not repeal Statute 4 (1) to (3) but it merely suspended the operation of the provisions of Statute 4 and when the Act of 1972 was repealed by the University Second Amendment Act of 1975 by substituting a new Section 16, Statute 4 again revived. The argument of Mr. Mehta is that Section 16 was merely in the nature of bypassing the Statute 4 and it did not abrogate the Statute 4 but kept it untouched and unaffected. He has relied upon Harishankar Bagla and Another Vs. The State of Madhya Pradesh,

That case arose under Essential Supplies (Temporary Power) Act, 1946. In that case there was Section 6 whereunder the Parliament itself had declared that an order made u/s 3 of the Essential Supplies (Temporary Power) Act shall have effect notwithstanding any inconsistency in the order with an enactment other than this Act. In view of the express legislative provision of the Parliament, Mahajan, C. J. held that Section 6 did not either expressly or by implication repeal any of the provisions of any preexisting laws and observed that it was simply a case, of bypassing the law and not of superseding it. It was in that context that it was held that merely bypassing a certain law does not necessarily amount to its repeal or its abrogation. But this is not the case here. In our case, Section 16 has not merely bypassed the Statute 4 as it has not made a saving provision, as made in the case discussed above. This contention of Mr. Mehta has therefore no substance in it.

20. It was then argued by Mr. Mehta that on a conspectus and conjoint reading of Statute 4 and Section 16 of the University Amendment Act of 1972, it would appear that the amending Act did not repeal or obliterate the Statute 4 but it only suspended its operation. It is, therefore, argued that as soon as Section 16 as amended by University Amendment Act of 1972 was replaced by Section 16 of the Jodhpur University Second Amendment Act of 1975. Statute 4 revived proprio vigore. He placed reliance on India Tobacco Co. Ltd. Vs. The Commercial Tax Officer, Bhavanipore and Others, I have carefully gone through this case. That case is entirely based on different facts and has not even remotest affinity with the case before me in any way. That was a case where the provisions of the Act were not repealed but were merely suspended and therefore the case is clearly distinguishable. Even in that very case it has been observed by their Lordships in paras. 15 and 16 of the judgment that "the general rule of construction is that the repeal of a repealing Act does not revive anything repealed thereby. This rule of course is not absolute and is subject to the appearance of a different intention in the repealing statute." It has been further laid down by their Lordships in that case that it is well settled that a repeal connotes abrogation or obliteration of one statute by another from the statute book as completely as if it has never been passed. This principle is equally valid in case of implied repeal of a statute or a section.

21. Mr. Mehta alternatively argued that an amendment Act of 1972 is merely an interception and it stood repealed by the University Second Amendment Act of 1975 and on its repeal the Statute 4 again revived on the repeal of the amendment Act of 1972. There is no substance in this argument either. The University Second Amendment Act of 1975 does not evince implied or explicit intention to revive the Statute No. 4 which admittedly stood repealed by implication. It may be mentioned here that under Statute 4 the strength of the members of the Syndicate was 11. It was then raised to 15 by the amendment Act of 1972 and was further raised to 16 by University First Amendment Act of 1975, Thereafter under the University Second Amendment Act of 1975, the existing Syndicate was dissolved and its members ceased to hold office and the

strength of the members of the Syndicate under the University Second Amendment Act of 1975 was reduced to 9 only. From the reading of Second University Amendment Act of 1975 it will be evident that the Statute 4 in no way fits in or can stand together with the newly substituted Section 16 by the University Second Amendment Act of 1975. Both of them are irreconcilable and cannot stand together either with the Act of 1972 or Second Amendment Act of 1975. Thus Statute 4 being repugnant to both University Amendment Act of 1972 and University Second Amendment Act of 1975 the petitioner's case on the basis of Statute 4 is wholly unsustainable in law.

22. While parting with this aspect it is worthwhile to mention that under the University Second Amendment Act of 1975 the nomination under Item No. 2 of Section 16 is not confined to the Deans of Faculties but has been extended to Directors of the constituent colleges or recognised colleges also, The argument that there are no constituent or recognised colleges as yet has no merit in it because the rule cannot be ignored because it cannot be ruled out that such Colleges may come into existence and therefore on that account also there is a repugnancy between the Statute 4 and Section 16 of the Jodhpur University Second Amendment Act of 1975.

23. Moreover under the University Second Amendment Act of 1975 the principle of rotation has been done away with altogether. Mr. Mehta the learned counsel for the petitioner however, submitted that the principle of rotation contained in Statute 4 was merely a mode of nomination and even If Statute 4 is assumed to be repealed by implication, the mode of nomination by rotation cannot be presumed to be repealed as that part of the statute is severable. In my view this argument is wholly misconceived, In fact the principle of rotation contained in Statute 4 is an integral part of the provisions relating to the constitution of the Syndicate and it is futile on the part of the learned counsel for the petitioner to contend that it is severable one. The learned counsel in this connection has relied upon The Managing Committee of the Digambar College, Diba Vs. The Vice-Chancellor, Meerut University and Another, and Dr. Ram Singh Saini Vs. Dr. H.N. Bhargava, I have carefully perused these cases. They are based on entirely different set of facts and are not at all near the point raised before me. The ratio laid down in those cases is in the context of the facts contained in them The ratio laid down in a decision has to be judged in the background and facts of the case and cannot be indiscriminately applied even though it has no affinity with the points involved in the case in hand, These cases are therefore not at all directly on the point and are of no avail to the petitioner.

24. It was further argued that Statute 4 is still alive and it is bounden duty of the Vice Chancellor u/s 12 of the University Act to comply with the statute. There is no quarrel about the proposition that the Vice Chancellor is bound by the statutes if they are in force u/s 12 of the University Act. But the question is whether the Statute 4 still survived.

25. Mr. Mehta argued that from perusal of Exts. 2 and 7 it will appear that

Statute 4 still survives. Ex. 2 is a letter from the Secretary to the Chancellor with an enclosure letter of the Law Secretary. The enclosure letter Ex. 7 contains the advice of the Law Secretary which has been forwarded by the Secretary to the Chancellor to the Vice Chancellor, In the advice of Law Secretary a reference has been made to Statute 4 even after the replacement of Section 16 by the amendment Act of 1972. On the basis of Ex. 2 it has been argued by Mr. Mehta that the Chancellor has decided that Statute 4 is still alive. I am not very much impressed with this argument. The Secretary to the Chancellor has written to the Vice Chancellor to take action in the light of the advice given by the Law Department, The Law Secretary appears to be ignorant of the newly substituted Section 16 which was a complete Code in respect of the constitution of the Syndicate and terms of its members and was En existence when the Law Secretary gave his advice. Be that as it may merely because the reference to Statute 4 is found in the advice of the Law Secretary by Itself cannot give a life to the Statute 4 which otherwise stood repealed by Section 16 as substituted by the University Amendment Act of 1972. The answer as to whether Statute 4 survives cannot be given on the basis of the advice of the Law Secretary but has to be given on the well settled principles of the interpretation of statutes and as discussed above according to well settled principles of interpretation of statutes there is no room to argue that Statute 4 still retained its efficacy even when Section 16 was substituted by the University Amendment Act of 1972 and later on by the University Second Amendment Act of 1975.

26. From the foregoing discussions I am definitely of the opinion that the petitioner has no right to be nominated under Statute 4 of the Syndicate as a Dean Faculty of Law.

27. I now take up the question as to whether the appointment of Dr. Divakaran 39 professor and Dean of Structural Engineering is valid or not. The petitioner has led two-fold attack against the validity of the appointment of Dr. Divakaran as Professor of Structural Engineering. First, that he was not eligible for the post of structural Engineering. Secondly, that Dr. Divakaran was not selected by a duly constituted committee as contemplated under Statute 19. The reason given in this behalf by the petitioner is that the selection committee which selected Dr. Divakaran did not contain two expert members in the subject of structural Engineering as required by Statute 19.

28. First question that arises for consideration is whether Dr. Divakaran was eligible for the post of Professor in Structural Engineering. I may state that the petitioner has not challenged the eligibility of Dr. Divakaran in the main writ petition but has confined his attack against his selection as professor of Structural Engineering merely on the ground that his selection was not made by a properly constituted selection committee in terms of Statute 19. This Court would not have allowed new plea which was not finding place in the writ petition. But as Dr. Divakaran has justified his eligibility for the post of Professor in his reply affidavit and the petitioner has controverted the facts regarding his

eligibility by way of rejoinder and looking to the fact that this new plea would not take Dr. Divakaran by surprise I have allowed this plea to be raised even without insisting for amendment of the writ petition in this regard. As regards the merits of the plea I may state that Dr. Divakaran in his reply affidavit has categorically stated on oath that he secured the degree of Master of Engineering from McMaster's University, Canada, in 1964 in Civil Engineering in the following subjects :--

- (i) Engineering Mechanics I (PCC).
- (ii) Engineering Mechanics II (PCC).
- (iii) Structural Mechanics and Design (PCC).

He has further stated in his affidavit that all the above subjects are of structural Engineering though the degree is styled as ME (Civil Engineering). He has further stated in para. No. 9 of his affidavit that he carried research work in the University of Toronto in Canada, and secured the degree of Ph.D. from the said University in 1966. He has submitted the copy of the Diploma which is said to be in Latin and is Ex. R/3/3. In para. 10 of his affidavit Dr. Divakaran has stated that his subject of research work was local instability of thin-walled columns with formed longitudinal stiffeners which is a subject of Structural Engineering. Further in para. No. 12 of his affidavit he has deposed that at the relevant time he was working as Reader in Structural Engineering in the Faculty of Engineering in the Jodhpur University. He has also stated in his affidavit that after coming from Canada in 1966 he again joined the said post as Reader in Structural Engineering in the Faculty of Engineering of the University of Jodhpur. It has been further stated on oath by him that when in April 1967 Professor S. C. Goyal who was the professor in Structural Engineering in the Faculty of Engineering of the University of Jodhpur went on deputation to Govind Ballabh Pant Agricultural University, Pantnagar (U. P.), he was appointed as professor of Structural Engineering on the recommendation of the selection committee on the post temporarily vacated by professor S. C. Goyal and worked as Professor in Structural Engineering from 1967-69 till professor Goyal returned from his deputation in April 1969. The petitioner has filed a rejoinder to this reply but has no courage to deny these facts but has simply tried to brush them aside by saying that they are not relevant and are not sufficient to qualify Dr. Divakaran to the post of professor in Structural Engineering.

29. The University on the other hand has taken the stand that the entire discipline of Civil Engineering is called the Engineering and the degree that is awarded in many of the Universities is ME (Civil) although the person has qualified the subject in Structural Engineering. It has been alleged by the University that the Engineering discipline consists of two Departments Civil Engineering and Structural Engineering. A professor of even Structural Engineering and a professor specialised in any of the subjects taught in Structural Engineering is also styled as a professor in Civil Engineering in number

of Universities. It has been further asserted by the University in its reply that the professorship goes against the name of the discipline in Civil Engineering itself and further merely because the degree is granted in Civil Engineering it does not imply that the degree is not in structural Engineering. The University has further asserted that the subjects which Dr. Divakaran has cleared are the part of Structural Engineering. Professor S. C. Goyal who is admittedly expert in Structural Engineering and is duly qualified person has submitted his reply wherein he has concurred with the stand taken by the University in this behalf. There is thus assertion by both the University and Dr. Divakaran that Dr. Divakaran possesses degree in Structural Engineering and the subjects cleared by him cover the field of Structural Engineering. This fact finds corroboration from the reply filed by professor S. C. Goyal the Vice Chancellor of the University who has concurred with the reply filed by the University, professor Goyal is admittedly an expert in Structural Engineering. The petitioner has however denied this fact but his is a bare denial as he has no special knowledge in the subject. He has not produced any cogent evidence to refute the claim of the University and Dr. Divakaran which is corroborated by Professor S. C. Goyal the Vice Chancellor of the University. It cannot be disputed that Dr. Divakaran had worked as Reader in Structural Engineering prior to 1966 before his departure for Canada. It cannot further be disputed that Dr. Divakaran worked as professor in Structural Engineering from 1967-89 when professor S.C. Goyal who was then professor in Structural Engineering had gone to Govind Ballabh Pant Agricultural University on deputation. These facts have not been denied by the petitioner. Merely because the degree does not ex facie show it to be in structural Engineering by itself does not necessarily lead to an inference that Dr. Divakaran does not fulfil the necessary qualification of a professor in structural Engineering, The University's stand that in many Engineering Colleges even a professor securing postgraduate degree in Structural Engineering is awarded degree in Civil Engineering has not been rebutted by the petitioner by any convincing reply based on any cogent reliable evidence. The dispute in this behalf relates to a complicated question of fact relating to a matter which is of a highly technical nature requiring expert knowledge in the subject in question, and the High Court is not expected to adjudicate upon such complicated disputed questions of fact which necessarily require technical knowledge of a particular speciality moresoever when there are very meagre materials on the record to arrive at a definite conclusion. The learned counsel for the petitioner has] only referred to me the University Hand Book of India and Commonwealth University Hand Book which contain the profiles of the various persons holding the postgraduate degrees in Engineering but the evidence contained in the aforesaid Books and the other evidence brought on the record is too meagre and not at all sufficient to arrive at a definite finding that Dr. Divakaran does not hold a post-graduate degree in Structural Engineering. On the other hand there are positive facts on the record which tend to dislodge the claim of the petitioner. Admittedly Dr. Divakaran had been Reader in Structural Engineering. Further undisputedly he was selected temporarily as Professor in Structural Engineering and worked in

that capacity in the year 1967-69 when Professor S. C. Goyal had gone on deputation to Govind Ballabh Pant Agricultural University. It cannot be gainsaid that under Article 226 of the Constitution the High Court does not enter upon a determination of question which involves investigation into a disputed question relating to complicated facts more specially in regard to topic of technical nature. It is also settled law that the High Court in exercise of its extraordinary jurisdiction would not embark upon the enquiry into the disputed question of fact involving elaborate investigation. As stated earlier the question involved in this case is serious disputed question of fact requiring special technical knowledge in technical subject. The petitioner is not an expert in the subject. He has neither personal knowledge nor special knowledge regarding the qualification of Dr. Divakaran. Having regard to the totality of all the facts and circumstances I am not prepared to hold that Dr. Divakaran does not possess requisite qualifications of a professor in Structural Engineering.

30. The next attack against the validity of the appointment of Dr. Divakaran is that he was not selected by a selection committee duly constituted under Statute 19 as experts Mr. A. K. Niyogi, Mr. B. C. Rajanna and Mr. S. P. Brahme were not experts in the subjects of structural Engineering. The University has denied the allegation in its reply and has reiterated that the entire discipline of Civil Engineering is quoted as Civil Engineering and the degree that is awarded in many of the Universities is ME (Civil) and that the discipline ME (Civil) consists of two departments Civil Engineering and Structural Engineering. As stated earlier the University has taken the stand that a professor of even Structural Engineering and professor specialised in any of the subjects taught in Structural Engineering is also styled as professor in Civil Engineering in number of Universities. The University has further replied that professor A. K. Niyogi was professor in Civil Engineering of Jadavpur University and his field of specialisation was railway, highway and transportation. Likewise professor B. G. Rajanna is a professor in Civil Engineering of Bangalore University and his field of specialisation is Structural Engineering. As regards Mr. S. P. Brahme it has been stated by the University in its reply that he was a professor in Civil Engineering at Birla Institute of Technology and his field of specialisation was highway and social mechanics. According to the University the fields of specialisation of all the three experts were within the orbit of Structural Engineering. The Vice-Chancellor Mr. S.C. Goyal who is admittedly an expert and specialist in Structural Engineering and had remained as professor in Structural Engineering has endorsed the reply of the University by showing his concurrence with the University in his reply to the writ petition which is accompanied by an affidavit. On the other hand the petitioner has unduly assumed that the University has admitted that the experts on the selection committee were not experts in the concerned subject and so were not eligible for appointment as experts. I have considered this aspect of the matter very carefully. From para. 15-A of the writ petition it will appear that the petitioner is not certain about the qualification of the aforesaid three experts and has, therefore, qualified his statement in that para by stating that the experts of

the above selection committee were professors of Civil Engineering. "and none of them "so far as known to the petitioner is a professor of Structural Engineering." While swearing his affidavit the petitioner has sworn this part of his affidavit to be true to his personal knowledge which is obviously not correct as the petitioner could not have personal knowledge regarding the qualification of the above expert members. Further all that Statute 19 requires is that the persons sitting in the selection Board should be experts in the subject concerned. From the materials brought on the record it cannot be said that the aforesaid three experts are not experts in the concerned subjects. At any rate there is a serious controversy on this fact which relates to a specialised field of Structural Engineering the determination of which requires expert, specialised and skilled knowledge on the subject of Structural Engineering. It is very difficult for this Court to determine such point in its extraordinary jurisdiction on very scanty and meagre materials brought on the record. In these circumstances it is very difficult to accept the contention of the petitioner that Dr. Divakaran's appointment as Professor in Structural Engineering and his nomination to the Syndicate is invalid.

31. The contention that Dr. Divakaran could not have been appointed as Dean Faculty of Engineering as Professor Bhadada was senior to him. The petitioner has absolutely failed to show by cogent evidence that Professor Bhadada was senior to Dr. Divakaran. On the contrary it is evident on the record that the substantive appointment of Dr. Divakaran 19 earlier to the one that of Professor Bhadada, Moreover, Professor Bhadada has not raised any grievance in this behalf and the petitioner has no right to put in such a grievance to challenge the validity of appointment of Dr. Divakaran.

32. The matter does not stop at that. It is well to remember that the writ of quo warranto is not a writ which issues as a matter of course and as a matter of right. Indeed it is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case. This Court would inquire into the conduct and motive of the petitioner and the Court might in its discretion decline to grant quo warranto information where the petitioner is moved by extraneous consideration and not in public interest. In the present case circumstances exist which warrant the refusal of issue of quo warranto at the instance of the petitioner. In the first place the petitioner is guilty of laches. He is challenging the appointment of Dr. Divakaran over a period of more than three years and that too being moved by extraneous motive. He has otherwise no grievance against the appointment of Dr. Divakaran but for his being nominated on the Syndicate. Indeed he is aggrieved against the validity of the appointment of Dr. Divakaran simply on account of the fact that Dr. Divakaran has been nominated on the Syndicate. This is evident from his letter R/2 dated 23-8-1975 in which he has asked Dr. Divakaran to decline the membership of the Syndicate or In the alternative to face the Court. It will be appropriate to reproduce the letter which reflects upon his oblique motive. It is as follows:--

"Personal & strictly confidential.

Dear Prof. Divakaran,

23-8-1975.

I rang you up twice on the 20th and then wished to visit you on 21st morning but as there were some visitors at your residence, I did not think it proper to call on you. My visit would have been for a strange purpose. I wished not only to congratulate you for your nomination to the Syndicate but to say something more and make an extraordinary request, The background story of your nomination is a long one. By excluding me the V. C. will try to show that he is very strong but the facts are known to him and what methods and tattles he has adopted and ordeals by has gone through for achieving my exclusion from the Syndicate will one day come to light.

The V. C. is now determined to see that I am not made the Professor. My membership of the Syndicate would have been a check on him, but that was not to be. I am now seriously thinking of approaching the Court. I have got the matter legally examined by eminent lawyers. The recent nominations are in violation of the statutory provisions on which the V. C. is bound. I have high regards for you and I am in a fix for my writ will ultimately be against you and if I am forced to do so, lawyer in me will like to raise the issue of the validity of your Deanship since your seniority vis a vis Prof. R. Bhadada is obviously in doubt. May be I may be able to find some legal lacuna in your professional appointment as well. I very much wish to avoid this unpleasant situation. There are three ways opens one rests with you -- to decline the membership of the Syndicate, the other alternative is that I quit the University or very reluctantly I follow the third alternative go to the Court but it will be doing what the V. C. has deliberately planned -- a conflict between two friendly Deans. The final decision rests with you.

With regards.

Your sincerely,

Sd/- D C. Jain

Prof. S. Divakaran,"

The above letter clearly reflects against the conduct of the petitioner and exposes his oblique and ulterior motive. From this letter it appears that the petitioner is otherwise reconciled to the appointment of Dr. Divakaran if he would agree to decline the membership of the Syndicate to make room for him to be nominated as the member of the Syndicate. The petitioner has, therefore, obviously not initiated these proceedings in public interest. The petitioner's conduct there-fore certainly disentitles him to any relief by way of quo warranto against Dr. Divakaran. Looking to the facts and circumstances of the case I do not see any justification to issue a writ of quo warranto against Dr. Divakaran in

the exercise of my extraordinary jurisdiction.

33. In the result I do not see any force in the writ petition. It is dismissed with costs.