

(1976) 12 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : C.W.P. No's. 235 and 405 of 1976

Dr. Het Ram Kalla

APPELLANT

Vs

Himachal Pradesh University etc.
 Dr. K.P. Pandey Vs
Dr. V.S. Jogi etc.

RESPONDENT

Date of Decision : 14-12-1976

Acts Referred:

Allahabad University Act, 1921 — Section 11, 11(2), 11(4)
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10, 11,
14, 14(1), 14(11)
Constitution of India, 1950 — Article 226, 32

Citation : (1977) 6 ILR HP 17

Hon'ble Judges : T.U. Mihta, J

Bench : Single Bench

Advocate : P.N. Nag and K.D. Sood, in C.W.P. No. 235 of 1976 and Kamlesh Sharma and O.P. Thakur, in C.W.P. No. 405 of 1976, for the Appellant; H.L. Sibal, General, B. Sita Ram, Chhabil Dass, Inder Singh, Bhawani Singh, D.K. Khana and Kedar Ishwar, for the Respondent

Judgement

T.U. Mihta, J.—These two writ petitions are the out-come of the entanglement of the University, the temple of learning in Himachal Pradesh, in petty power politics after the departure of its first Vice-Chancellor, Dr. R.K. Singh, on leave preparatory to retirement as from 3-9-1975. The Petitioners of both these matters pray for a writ of quo warranto challenging the appointment of Respondent Dr. B.S. Jogi as the Vice-Chancellor of the University as from 9-1-1976. They have also prayed for consequential reliefs including one for an appropriate writ directing the Chancellor of the University to appoint some other person as Vice-Chancellor in place of said Dr. Jogi in accordance with the provisions of law.

2. C.W.P. No. 235 of 1976 is presented on 29-3-1976 by one Dr. Kalia who was, at the relevant time, working as the Dean of College of Agriculture and Associate Dean of Agricultural Complex Himachal Pradesh University at Palampur. This writ

was heard on 26-8-1976 by a Division Bench of this Court constituted by the Hon"ble the Chief Justice and Thakur, J., and the judgment was reserved. On 15-9-1976 the matter was fixed again for hearing the learned Advocates of the parties on some relevant judgment which subsequently came to the notice of the Court and the parties. Accordingly further arguments were heard in the matter on 29-9-1976 and the judgment was thereafter reserved.

3. In the meanwhile, that is, on 24-8-1976, the Petitioner of C.W.P. No. 405 of 1976, one Dr. Pandey, filed a similar writ challenging the appointment of Dr. Jogi as Vice-Chancellor of the University on similar grounds, and also challenging the action of the Executive Council of the University instituting a departmental inquiry as regards some allegations levelled against him, and in suspending him from service pending that inquiry. When this writ petition of Dr. Pandey came up for admission on 25-8-1976 before a Division Bench constituted by the Hon"ble the Chief Justice and Thakur J., the latter declined to hear the same for certain reasons with the result that it was ordered to be heard by a Bench of which he was not a member. Since Thakur, J. declined to hear this writ petition of Dr. Pandey, he also declined to participate in the decision of C.W.P. No. 235 of 1976, which is Dr. Kalia's writ petition, and which was reserved as per proceedings dated 29-9-1976. The result was that Dr. Kalia's writ was fixed for rehearing before another Division Bench constituted by the Hon"ble the Chief Justice and myself. That hearing was to commence on 22-11-1976. But before that date the Hon"ble the Chief Justice felt that he would not like to hear any of these two writ petitions "in view of certain facts and circumstances which have since come to light". Both the writs were accordingly listed for hearing before me, sitting as a Single Judge on due date of hearing. This is how both the matters have come up before me for hearing and disposal.

4. As already noted above, the common question which is involved in both these petitions is regarding the validity or otherwise of the appointment of Dr. Jogi as regular Vice-Chancellor of Himachal Pradesh University on 9-1-1976. In order to appreciate this common question it would be necessary to state shortly some basic facts which form the background of some relevant provisions of law on the subject.

5. The University of Himachal Pradesh was established in July 1970 under the provisions of the Himachal Pradesh University Act 70 of 1970 published on 25-7-1970. Dr. R. K. Singh was appointed on 1-1-1971 as its first Vice-Chancellor for a period of five years as per second proviso to Statute 1. His term of office expired on 31-12-1975. He, however, went on leave preparatory to retirement on 3-9-1975, on which date, Respondent Dr. B.S. Jogi was appointed by the Chancellor to act as Vice-Chancellor under Statute 1(2) till regular appointment of Vice-Chancellor was made.

6. The administration of the University is conducted as per provisions of the Himachal Pradesh University Act, 1970, and the Statutes as well as Ordinances framed and amended from time to time.

7. The appointments of Vice-Chancellors are made as per provisions of Statute 1 of the First Statutes, the relevant portion of which is as under:

1. Vice-Chancellor.--(1) The Vice-Chancellor shall be appointed by the Chancellor from a panel of not less than three persons recommended by a Committee as constituted under Sub-clause (2).

(2) The committee referred to in Sub-clause (1) shall consist of three persons, two of whom shall be persons not connected with the University or an institution recognised by, or associated with, the University nominated by the Executive Council and one member shall be a person nominated by the Chancellor. The Chancellor shall appoint one of the three persons to be Chairman of the Committee:

Provided that, if the Chancellor, does not approve of any of the persons so recommended, he may call for fresh recommendations:

Provided further that the appointment of the first Vice-Chancellor shall be made by the Chancellor for a term of five years and the third proviso to Sub-clause (4) of this Statute shall not be applicable to the person so appointed:

Provided, however, that till the appointment of the first Vice-Chancellor, the Chancellor shall exercise the powers and perform the duties of the Vice-Chancellor.

Thus according to this part of the Statute 1, every Vice-Chancellor, other than the first Vice-Chancellor, is required to be appointed by the Chancellor from a panel of not less than three persons. This panel is to be recommended by a Committee, which will hereinafter be referred to in this judgment as "Panel Committee". The Constitution of this Panel Committee is contemplated by Clause (2) of this Statute which says that two members of this Panel Committee shall be nominated by the Executive Council of the University. But these two persons should be such as are not connected either with the University, or with an institution recognised by or associated with the University. The third member of the Panel Committee is required to be appointed by the Chancellor, but so far as the choice of the Chancellor is concerned, no limitations are provided unlike the choice of the Executive Council. So far as these matters are concerned, it is necessary to emphasise that the two members of the Panel Committee who are required to be nominated by the Executive Council are those who do not suffer from any disqualification in form of any connection with "either the University or an institution recognised or associated with the University". It is, therefore, necessary as per the provisions of this Clause (2) of the Statute 1 that the Executive Council of the University is expected to nominate only those persons who are not found to be connected "with the University or its institution".

8. It is further necessary to note at this stage that after the Panel Committee recommends the names of not less than three persons to the Chancellor, the Chancellor is expected to choose any one of them as the regular Vice-Chancellor.

But if the Chancellor does not approve of any of the persons so recommended, he should, under the first proviso, refer the matter back to the Panel Committee and should call for fresh recommendations. Thus the choice of the Chancellor is necessarily confined to the names recommended by the Panel Committee.

9. In accordance with the provisions of the above referred Statute No. 1 the Chancellor called upon the Executive Council of the University to nominate two persons as contemplated by Clause (2). Pursuant to that, a meeting of the Executive Council of the University was called on 20-9-1975. At Annexure P.A. in Dr. Kalia's writ petition we find a copy of the agenda as well as the proceedings with regard to this subject. The agenda shows that the subject was stated as "to nominate the names of two persons on the Committee to form a panel for appointment of Vice-Chancellor as required by Statute 1(2) of the First Statutes". Then follows the necessary portion of Statute 1. It is said that the meeting of the Executive Council which met on 20-9-1975 did consider two names for the purpose of nomination to the Panel Committee. The case of the Respondents is that at that meeting the Council nominated the names of Mr. Justice D.B. Lal who was at that time functioning as one of the Judges of the Himachal Pradesh High Court, (Respondent No. 6), and Dr. G.S. Kalkat (Respondent No. 5), who was, at that time, functioning as Agriculture Commissioner, Ministry of Food and Agriculture, New Delhi. It should be mentioned here that so far as the Petitioners are concerned, they do not admit that the names of these two Respondents were actually selected by the Executive Council in its meeting of 20-9-1975. I shall advert to this controversy at the proper stage. For the present, however, it would be necessary to mention that the proceedings of the meeting of the Council of that date mention as under:

The Executive Council nominated two members under Statute 1(2) of the First Statutes. The Vice-Chancellor would communicate the names to the Chancellor.

These are the only proceedings with regard to this subject and reference to these proceedings show that though they mention that the Executive Council had nominated two members, they do not reveal the names of these two members.

10. Another meeting of the Executive Council was thereafter called on 18-10-1975. According to the rules of business, every member of the Executive Council is required to be informed of the action taken on the resolutions passed by the previous meeting. Therefore, one of the items of agenda for the meeting which was called on 18-10-1975 was about the action which was taken pursuant to the nomination of the two members who are said to have been selected on the previous meeting dated 20-9-1975. This action was stated in the agenda as under:

The Executive Council nominated two persons on the Committee which is said to be set up with one nominee of the Chancellor to form a Panel of three names for the appointment of the Vice-Chancellor. The Vice-Chancellor has communicated the names to the Chancellor.

Thus according to this agenda for the meeting on 18-10-1975 the names of the two persons who were nominated by the Council meeting on 20-9-1975 were actually communicated to the Chancellor. However, proceedings of the meeting on 18-10-1975 show that these two names were not actually communicated and, therefore, it was clarified that the Vice-Chancellor would be communicating the names to the Chancellor shortly. The explanation of the Respondents is that the fact about the actual communication of the names to the Chancellor was written in the agenda by the Registrar of the University under some bonafide mistake. But when the matter came up before the Council the above referred clarification was made and the Council was informed that the Vice-Chancellor would be communicating the names of the two nominees to the Chancellor "shortly".

11. Thereafter the meeting of the Executive Council was called in the month of November, and then it was called on 23-12-1975. It is found that the Petitioner Dr. Kalia by that time was newly nominated as a member of the Executive Council and, therefore, this was the first occasion to attend the meeting of the Executive Council on 23-12-1975. It should also be mentioned here that this could not be said about the Petitioner Dr. Pandey because he was a member of the Executive Council since 1972 and did attend the meeting of the Executive Council which is said to have nominated the two names on 20-9-1975.

12. In this meeting of 23-12-1975, one Mr. T.S. Negi, who was at that time a member of the Legislative Assembly, and who is found to be taking deep interest in the University affairs, raised some questions as regards the nomination of the two persons in the Panel Committee. The official proceedings of the meeting of this date do not reveal as to what actually transpired during the course of that meeting except showing the following:

On enquiry from one of the members, the Vice-Chancellor apprised the Executive Council about the two nominees, whose names had been communicated to the Chancellor under Statute 1(2).

These proceedings ex-facie show that one of the members of the Executive Council made some inquiry about the names of the persons who were nominated, and pursuant to that inquiry, the acting Vice-Chancellor Mr. Jogi "apprised" the Executive Council about the names of the two persons which were communicated to the Chancellor.

13. According to the Petitioners the names of the two nominees were for the first time revealed to the Executive Council by the Vice-Chancellor on this meeting on 23-12-1975.

14. At this stage it would be necessary to mention what is the case of the Petitioners. According to them, when the Council meeting was first held on 20-9-1975 and the proposal about the nomination of the names of two persons in the Panel Committee came up for consideration, some of the Council members, who are said to be of the group belonging to Dr. Jogi, proposed that the question of nomination of these two names should better be left to Dr. Jogi

himself. According to the Petitioners, this proposal was resisted by Mr. Negi, the petitioner Dr. Pandey, and some others. Ultimately it was resolved that some consensus formula should be evolved, and the acting Vice-Chancellor Dr. Jogi should contact each of the members of the Council, and try to find out the names which could be suggested on consensus. It is said that Dr. Jogi, however, never tried to take the real consensus, and on his own, suggested the two names of the persons who were congenial to him. The allegation of the Petitioner is that, Dr. Jogi was himself one of the candidates for Vice-Chancellorship, and looking to the fact that he was actually acting as the Vice-Chancellor of the University and was one of the leading figures in the Agriculture Complex it would be reasonable to believe that he considered himself as one of the candidates for Vice-Chancellorship. He, therefore, is said to have taken very active interest in seeing that the two members of the Panel Committee which were to be nominated by the Executive Council were such that they would be congenial to him, and would be helpful to him in suggesting his name in the panel. The Petitioners, therefore, allege that ultimately Dr. Jogi manoeuvred to send the names of Respondents Nos. 5 and 6 to the Chancellor without obtaining the consent of the Executive Council and faced the Executive Council with fait accompli. On 23-12-1975 when the inquiry about the names of these two nominees was made in the meeting of the Executive Council, it was faced with this fait accompli, and hence, there was some uproar in the members of the Council, but Dr. Jogi is said to have tried to pacify them in apologetic terms.

15. The record of the case reveals that four days after the above referred meeting dated 23-12-1975 of the Executive Council i.e. on 27-12-1975, Mr. T.S. Negi wrote one letter to Dr. Jogi as found at Annexure P.C. It is said that he also sent a copy of this letter to the Petitioner Dr. Kalia on 29-12-1975, and another copy of that letter to the Chancellor in order to apprise him about the happenings in the University as regards the names of the two nominees. The fact that this letter was written by Mr. Negi to Dr. Jogi, and that a copy thereof was sent to the Chancellor, is not disputed, though the contents of the letter are very much in dispute. Since this letter has formed a bone of contention between the parties, I think it would be necessary to reproduce the same in this judgment at this stage. It reads:

December 27, 1975.

Dear

I could not send this letter earlier, after the last meeting of the Council, because, the very next day I had to leave for my constituency.

2. I am writing this as a well wisher of yours in the context of the over all duty I owe to the Himachal Pradesh University.

3. Since you are yourself a candidate for the Vice-Chancellorship I had suggested that a committee of the Executive Council should handle the initial stages of the nomination of the two persons who would represent the Council on the Panel

Committee. Your own suggestion of names if any, would obviously have been treated with respect by this Committee of the Council. Then the names proposed by the Committee would be discussed in a confidential sitting of the Councils for the two names were finally communicated to the Chancellor. If I were in your place I would turn down any suggestion leaving myself personally to deal with this business. I may be wrong, but according to my views of the graces, decencies, dignities and ideals of an academic institution like a University it would not be fit for a Vice-Chancellor with a direct personal interest to himself to deal with such a delicate situation even if any one urged to him such a course of action.

4. In the personal consultations you were supposed to hold individually with the members of the Council, to ascertain the consensus, I had suggested Dr. Swaminathan, or if he, instead, suggested some one else, then the person proposed by him to represent the Agricultural side. At that time you concurred. In the meeting of the Council, on 23-12-1975, you explained that you had received three names from the Council members, viz., Dr. Swaminathan, Director General I.C.A.R., Dr. L.S. Negi, a Vice-Chancellor and Dr. Kalkat and that you had not consulted Dr. Swaminathan but had yourself chosen Dr. Kalkat. I have heard praise of Dr. Kalkat's knowledge and experience of the science of agriculture. If I am not wrong his rank is equivalent to only a Joint Secretary of the Govt, of India.

5. I have respected Mr. Justice D.B. Lal, as Chief Secretary I had formed a high opinion of him in his capacity as Judicial Secretary, I had proposed to you the idea that the second nominee had better be a renowned academician on the general side (as distinguished from the agricultural side). You had definitely promised that you would discuss the matter again before finally sending the names to the Chancellor and, on that clear understanding we had agreed that I would let you know my own suggestion of name/names on the general side at that time. You never gave me this opportunity.

6. You explained in the Council meeting on the 23rd instant that Mr. Justice Lal had been removed by you from the Board of Studies, Faculty of Law, the very day you had sent his name to the Chancellor. In other words this was done simply to remove the hitch that, otherwise, being connected with the University, he could not be appointed on the Panel Committee under the Statutes.

7. I purposely refrained from raising any controversies in the meeting on the 23rd instant.

8. Our Council has maintained the tradition of not allowing notes of dissent in the proceedings. Therefore, I am adopting this procedure of a D.O. letter to you to place my reactions on record.

Yours sincerely, Sever. S. NEGI)

Dr. B.S. Jogi, Vice-Chancellor, H.P. University, Summer Hill, Simla-5.

Copy forwarded to Dr. Kalia Sahib, with reference to his talk with me on the 23rd instant.

Sd/- Thakur Sen Negi, 29-12-1975.

It is an admitted fact that Dr. Jogi has not preferred to give any reply to this letter. It is also an admitted fact that the Chancellor has also not taken any step on this letter.

16. According to the Petitioners, the above referred letter of Mr. Negi shows that the names of the two persons were not actually decided by the Executive Council, and that these names were for the first time revealed in the meeting of the Executive Council by Dr. Jogi only on 23-12-1975. According to the Respondents, however, these names were already known to the members of the Executive Council because they had already decided upon these names in the meeting on 20-9-1975, and Mr. Negi has written this letter only out of the sense of injured vanity as he thought that he should have been consulted in the matter by Dr. Jogi.

17. Paragraph 6 of the above quoted letter of Mr. Negi refers to the explanation said to have been given By Dr. Jogi about the removal of Mr. Justice Lal from the Board of Studies, Faculty of Law, on the very day his name was sent to the Chancellor. This particular fact has assumed good deal of controversy in this latter and, therefore, at this stage some-what detailed reference to it is found necessary.

18. The case of the Petitioners is that even though, it is believed, for the sake of argument, that the names of the two nominees, Mr. Justice Lal, and Dr. Kalkat, were selected by the Executive Council in its meeting dated 20-9-1975, the nomination of Mr. Justice Lal in the Panel Committee was illegal and void ab initio because at that time Mr. Justice Lal was deeply connected with the University, and as such was totally disqualified from being a member of the Panel Committee. The connection in question is sought to be spelled out by the Petitioners from the fact that initially Mr. Justice Lal was appointed as a member of the Board of Studies, Faculty of Law, pursuant to the provisions of Ordinance 25.2, of the First Ordinances of the University for a period of two years as per University Notification dated 18-10-1973. A copy of this notification is found in Dr. Kalia's petition at Annexure P.C.-L According to this notification Mr. Justice Lal was to continue, and did in fact continue, as a member of the Board of Studies, Faculty of Law, upto 17-10-1975. The Petitioner, therefore, pointed out that on 20-9-1975 if his name was nominated to the Panel Committee, he was suffering from the disqualification for being so nominated in view of the fact that on that date he was continuing to be a member of Board of Studies, Faculty of Law.

19. The Petitioners have further pointed out that apart from the fact that the appointment of Mr. Justice Lal as a member of the Board of Studies was continuing on 20-9-1975, the University issued another notification dated 14/29th November--3rd December, 1975, reappointing Mr. Justice Lal as a

member of the Board of Studies for a further period of two years. A copy of this second notification as regards the re-appointment of Mr. Justice Lal as a member of the Board of Studies is found at Annexure P.B. in Dr. Kalia's writ petition. The Petitioners contend that according to this last notification the term of office of Mr. Justice Lal as a member of the Board of Studies expired only on 2-12-1977. Thus the Petitioners contend that Mr. Justice Lal being a member of the Board of Studies was connected with the University and could, therefore, have not been appointed as a member of the Panel Committee which was supposed to submit to the Chancellor a Panel of not less than three names for being appointed as the Vice-Chancellor.

20. The Respondents met with this contention of the Petitioners by raising a plea that though it is true that Mr. Justice Lal was a member of the Board of Studies pursuant to the first notification of his appointment, on the date of the meeting of the Executive Council which was held on 20-9-1975, his services as the member of the Board of Studies were terminated on 29-11-1975 when Dr. Jogi sent the names of the two nominees of the Panel Committee to the Chancellor. It is an admitted fact that no formal notification or a circular letter was issued by the University evidencing the termination of the services of Mr. Justice Lal as a member of the Board of Studies as from 29-11-1975. The case of the Respondents is that this termination was done by addressing a D.O. letter to Mr. Justice Lal on 29-11-1975. A copy of this letter is found at Annexure R.E. in Dr. Kalia's writ petition. It is in the following terms:

D. No. 1-8/73-HPU (Genl.)

November 29, 1975.

My dear Jai Hind

In pursuance of the provisions of Ordinance 25.2 of the First Ordinances of the Himachal Pradesh University you were nominated as one of the members of the Board of Studies in Law for the University.

Since the Executive Council has been pleased to nominate you as one of the members of the Committee for recommending the panel of names for the appointment of Vice-Chancellor of the University (Statute 1(2) of the First Statutes of H.P. University refers], it is with regret that I have to drop your name out of the membership of the Board of Studies in Law.

For your kind information, I am to state that no meeting of the Board of Studies has been held after the issuance of the notification till this date.

With kind regards.

Yours sincerely, Sd/- B.S. Jogi.

Mr. Justice D.B. Lal, H.P. High Court, Simla.

Registrar.

Take steps to fill up the vacancy of Justice Lal.

Sd/- 29-11-1975.

The Respondents have in this connection relied upon the affidavit filed by Mr. Justice D.B. Lal in Dr. Kalia's case on 30-4-1976 wherein he has stated on oath that he was a member of the Board of Studies till 29-11-1975 "when my name was dropped by the Vice-Chancellor, Respondent No. 3, through a letter which was addressed to me, a copy of which is placed on the file as Annexure R-6A.

21. Thus according to the Respondents even if it is believed that Mr. Justice Lal was disqualified from being appointed as a member of the Panel Committee on 20-9-1975, the said disqualification was removed as from 29-11-1975, and as a result of the removal of this disqualification from this date, the nomination of Mr. Justice Lal in the Panel Committee was rendered quite legal and proper.

22. To proceed with the chain of main events, it is found that on 29-12-1975 Dr. Jogi sent the names of Mr. Justice Lal and Dr. Kalkat to the Chancellor as per his letter, the copy of which is found at Annexure R.F. After the receipt of these two names, the Chancellor appointed on some date (the actual date being unknown) one Mr. Bhagwan Sahai as a member of the Panel Committee, thus making the Panel Committee complete.

23. It is not in dispute that the Panel Committee had its meeting at Delhi on 22-12-1975, that is, a day prior to the meeting of the Executive Council dated 23-12-1975. In that meeting the Panel Committee prepared the panel of the following four names for the purpose of appointment to the post of Vice-Chancellor:

1. Mr. Bhagwati Charan, I.A.S.
2. Dr. B.S. Jogi (Respondent No. 3 in Dr. Kalia's writ petition).
3. Shri U.N. Sharma, (ex-Chief Secretary, Himachal Pradesh Government).
4. Dr. H.R. Kalia (the Petitioner of writ petition No. 235 of 1976).

After these names were sent to the Chancellor, the latter selected the name of Dr. Jogi for the purpose of appointment as a regular Vice-Chancellor, as from 9-1-1976 (vide notification found at Annexure P.F.).

24. At this stage a reference is necessary to one more notification issued by the University on 26th December, 1975, that is, four days after the selection of the panel made by the Panel Committee at Delhi on 22-12-1975. A copy of this notification is found at Annexure P.E. and shows that Kanwar Inder Singh an Advocate of this High Court was appointed as a member of the Board of Studies in the subject of Law "with effect from 29-11-1975 in place of Mr. Justice D.B. Lal who has since been dropped from the said Board with effect from the said date". So far as this notification is concerned the case of the Petitioners is that this notification operates retrospectively and not only seeks to make the appointment

of Shri Inder Singh from a retrospective date but also seeks to drop Mr. Justice Lal from the Board of Studies with retrospective effect. The case of the Respondents, however, is that the notification is merely meant to make the appointment of Shri Inder Singh with effect from 29-11-1975 and reference to drop Mr. Justice Lal with effect from that date is merely incidental to the appointment of Shri Inder Singh.

25. Before Dr. Jogi was regularly appointed as Vice-Chancellor, as stated above, on 9-1-1976, some developments took place which vitally affected the Petitioner Dr. Pandey of C.W.P. No. 405 of 1976 with the result that this Petitioner filed C.W.P. No. 139 of 1976 in this Court challenging certain actions taken by Dr. Jogi as acting Vice-Chancellor against him. This writ petition No. 139 of 1976 is already decided by a Division Bench of this Court on 3-5-1976. However, a short reference to some relevant facts of that writ petition will be necessary here because one of the preliminary objections to the writ petition No. 405 of 1976 filed by Dr. Pandey is with regard to the doctrine of res judicata.

26. This Petitioner Dr. Pandey joined the service of the Himachal Pradesh University as early as 7-10-1971 as "Director Correspondence Courses-cum-Professor of Education" and was serving as such at the relevant time.

27. In the month of December 1972, one Mr. Shanta Kumar, an M.L.A. gave some memorandum to the Chancellor complaining about the affairs of the Himachal Pradesh University. The Chancellor in his turn is found to have requested the University to make an inquiry about these allegations with the result that the University made an appointment of a committee which is known in the relevant circle as the "Negi Committee" because Mr. T.S. Negi, to whom reference is already made above, was one of the members and convener of that committee. This committee was appointed to enquire into various charges leveled against the administration of the University by Mr. Shanta Kumar. Some of these charges were also as regards the management of the Correspondence Courses done by the Petitioner Dr. Pandey. A copy of the full report of this Negi Committee which was submitted to the University on 9-5-1974 is produced in the record of writ petition No. 405 of 1976 at Annexure R-50.

28. Pending the report of the Negi Committee the then Vice-Chancellor of the University Mr. Singh had also ordered a special audit of the University affairs in the month of May 1973. In view of this special audit, the Negi Committee has observed in its report found at Annexure R-50 with regard to the allegations relating to the Correspondence Courses conducted by the Petitioner Dr. Pandey, that the report of the special audit should be awaited. Thus on some of the questions relating to the correspondence courses, the Negi Committee has preferred not to give any final opinion but to await till the report of the special audit was available.

29. It is revealed from the record that on 1/6th October 1975 the Accountant General, Himachal Pradesh, wrote a letter to Dr. Jogi as found at Annexure R-72

in writ petition No. 405 of 1976. This letter is in the following terms:

A special audit of the accounts of the Directorate of Correspondence Courses of the University was conducted by this office on the basis of a request to this effect from the University in May, 1973. During the course of audit, certain aspects pertaining to the publication and sale of a book titled "Programmed Learning" were noticed. A copy of a note in this regard is enclosed.

You may like to have this matter investigated and let us know the results thereof in due course.

At Annexure R-73 is the detailed note which is referred to in the above letter.

30. It is found that thereafter on 5-1-1976 the Petitioner Dr. Pandey was divested of all important official positions which he held till that date, on the ground that one Mr. Mathur, was appointed as a Professor of Education, and therefore, Dr. Pandey was no more entitled to act as Dean of Faculty of Education and to remain a member of the Executive Council in that status. Short facts relating to this aspect are that till the appointment of Professor Mathur the Petitioner was said to be officiating as a Professor of Education in the Education Department of the University and hence was treated as the Dean of Education Department. As such he was also member of the Executive Council of the University. However, on the appointment of Professor Mathur, he was divested of his position as a Dean of Education Department and as a member of the Executive Council. Being aggrieved by this, the Petitioner Dr. Pandey challenged the relevant notifications of the University in his above referred writ petition No. 139 of 1976 which was decided on 3-5-1976.

31. It is further found that on 6-1-1976 Dr. Jogi who was still a Vice-Chancellor in his acting capacity appointed a committee called Prakash Chand Committee to investigate into the above referred note of the Accountant General sent by him along with his above referred letter dated 1/6th October, 1975. The Petitioner Dr. Pandey, therefore, challenged even this notification regarding the appointment of Parkash Chand Committee in the above referred writ petition No. 139 of 1976.

32. This Court found in that writ petition No. 139 of 1976 that the Petitioner's challenge to the notification" which divested him of the position of Dean of the Education Department and member of the Executive Council could not succeed. This Court, however, held that the Vice-Chancellor of the University had no jurisdiction to order any inquiry against the Petitioner who was holding the status of a Professor because it was the Executive Council who had this legal authority. The Court, therefore, allowed the petition of Dr. Pandey in so far as it related to his challenge to the validity of the appointment of Parkash Chand Committee by the Vice-Chancellor.

33. Pursuant to the above decision given by the Court the Executive Council of the University passed one resolution on 22-5-1976 as found at Annexure P. 25 in writ petition No. 405 of 1976. By this resolution the Executive Council ordered a

departmental inquiry to investigate certain allegations of misconduct, financial irregularities and insubordination which were leveled against Dr. Pandey. It was thereafter on 24-8-1976 that Dr. Pandey filed the present writ petition No. 405 of 1976 wherein he has for the first time come forward with the challenge to the validity of the appointment of Dr. Jogi as well as the validity of the above referred resolution of the Executive Council dated 22-5-1976 Annexure P. 25.

34. The further fact which is required to be noted at this stage is that during the pendency of Dr. Kalia's writ petition No. 235 of 1976, the Petitioner Dr. Pandey made an attempt to intervene but the Court did not allow him to intervene.

35. The above facts show that Dr. Pandey has filed writ petition No. 405 of 1976 after both the parties stated their respective cases in Dr. Kalia's writ petition and produced necessary evidence and the matter was also fully heard by the Court. If a reference is made to the record produced by the parties in Dr. Pandey's writ petition No. 405 of 1976, it will be found that this record contains many improvements, embellishments and corrections in the versions presented by both the sides. This is obviously the result of the fact that both the parties knew the respective stand of the other side taken in the writ petition filed by Dr. Kalia.

36. The above are the short facts relating to both these writ petitions. As stated above, the common question in both the matters is as regards the writ of quo warranto seeking information as regards the legal authority of Dr. Jogi to hold the post of the Vice-Chancellor in the University of Himachal Pradesh. Briefly stated the grounds of challenge put forward by the Petitioners in both the matters are as under.

1. In fact the Executive Council had not nominated any person in its meeting dated 20-9-1975 or any other meeting because what was decided in the meeting of 20-9-1975 was that Dr. Jogi, acting Vice-Chancellor, should make efforts to find out some consensus about the names of the persons to be nominated in the Panel Committee.

2. Dr. Jogi ultimately sent the names of Mr. Justice Lal and Dr. Kalkat on his own and without ascertaining the wish of the Council, which act was, according to the Petitioners, not only motivated by self interest but was also highly illegal and improper.

3. Though the proceedings dated 20-9-1975 show on their face that some two names were selected by the Executive Council, these proceedings are wrong and do not represent the correct position as is evident from subsequent proceedings of the meeting held on 18-10-1975, and 23-12-1975. In this connection the Petitioners have relied upon the admitted position that it is not the practice of the Executive Council to note the voice of dissent etc. which would convey the full picture of the proceedings of a particular meeting.

4. Even if it is believed that at the meeting of 20-9-1975 or at any other meeting the Council had nominated two names in the Panel Committee, the said

nomination is bad in law as all the deliberations and decisions of the Council on the question of this nomination are vitiated because Dr. Jogi who was himself a candidate for the post of Vice-Chancellor not only presided over these meetings but also took part in these deliberations with a view to see that persons of his own choice were nominated.

5. According to both the Petitioners even if it is believed that the name of Mr. Justice Lal was selected by the Executive Council in its meeting dated 20-9-1975, the said selection was illegal and void because at the relevant time Mr. Justice Lal was connected with the University inasmuch as he was functioning as a member of the Board of Studies in Law Faculty of the University, as per notification dated 18-10-1973 and then as per notification dated 14/29th November/3rd December, 1975. According to the Petitioner Dr. Pandey Mr. Justice Lal was further connected with the University as, at the relevant time, he was also functioning as a member of the selection committee appointed for the purpose of making selection of law teachers for the University. Thus according to both the Petitioners the nomination of Mr. Justice Lal in the Panel Committee vitiates the constitution of that committee, and, therefore, also vitiates therecom-medations made by it to the Chancellor and the consequent decision of the Chancellor on these recommendations.

6. Dr. Pandey has further alleged in his petition that Dr. Jogi has tried to oblige Mr. Justice Lal by first appointing his daughter Miss Meera Lal, who is Respondent No. 31, on 29-9-1975 as temporary Evaluator as per Annexure P-20 and then by recruiting her as a Junior Lecturer on 23-3-1976 vide Annexure P-21 after he become regular Vice-Chancellor of the University. This particular fact is alleged by the Petitioner Dr. Pandey presumably to show the cordial relationship between Dr. Jogi and Mr. Justice Lal.

7. The further case of the Petitioner is that removal of Mr. Justice Lal from the Board of Studies could not have been made unilaterally by the Vice-Chancellor because, according to ordinance 25-4 Mr. Justice Lal was entitled to remain in the office as a member of the Board of Studies for a period of two years and according to Section 44 of the University Act it is only the Chancellor who could remove Mr. Justice Lal from the membership of the Board of Studies on the recommendation of the Executive Council.

8. The Petitioners do not admit the veracity of the D.O. letter dated 29-11-1975 by which services of Mr. Justice Lal are said to have been terminated as a member of the Board of Studies. According to the Petitioners, therefore, the disqualification from which Mr. Justice Lal suffered from being appointed as a member of the Panel Committee could not be held as removed before 26-12-1975 when notification of that date was issued appointing Kanwar Indar Singh, an Advocate of. this Court, retrospectively from 29-11-1975. The Petitioners contend that if this is so the disqualification from which Mr. Justice Lal suffered from being appointed as a member of the Panel Committee did not stand removed at any relavant time because the Panel Committee had already

made the selection of the names for Vice-Chancellorship on 22-12-1975.

9. The Petitioner Dr. Pandey in his writ petition has also challenged the nomination of Dr. Kalkat as a member of the Panel Committee on the ground that since Dr. Kalkat was at the relevant time connected with the Ministry of Food and Agriculture, he had many occasions to come in contact with Dr. Jogi. On account of this connection he should also be treated as being connected with the University.

37. The above in short are the contentions raised on behalf of the Petitioners. Shortly stated, the case of the Respondents against these contentions is that the names of Mr. Justice Lal and Dr. Kalkat were in fact selected by the Executive Council in its meeting dated 20-9-1975, that it is not true to say that these names were selected by Dr. Jogi on his own, that though it is true that notes of dissent are not recorded in the proceedings of the Executive Council, the proceedings as recorded are invariably circulated among the members of the Executive Council and it is found from the record of the case that none of the members of the Executive Council including Mr. Negi and Petitioner Dr. Pandey had taken any objection whatever to the recorded proceedings of the meeting of 20-9-1975 which show that two names were nominated by the Executive Council for appointment to the Panel Committee. The Respondents further contend with regard to the above stated fourth contention raised by the Petitioners that it is not correct to say that Dr. Jogi was a candidate for the post of Vice-Chancellor. In fact there is no procedure for sponsoring any candidature for this post and there is nothing in the record of the case to show that Dr. Jogi had any reason to believe that his name was likely to be considered for this post. According to the Respondents, it was a part of the statutory duties of Dr. Jogi, who was acting as Vice-Chancellor, to preside over the meeting of the Executive Council, and to take necessary interest in these proceedings. As regards the contention No. 5 of the Petitioners, the Respondents have pleaded that the functioning of Mr. Justice Lal in the Board of Studies did not evidence such connection which would disqualify him from being appointed as a member of the Panel Committee. But even if it is believed that the said connection was such as would be hit by the mischief contemplated by Statute 1(2), the said disqualification having been removed by D.O. letter, dated 29-11-1975, it was competent for Mr. Lal to work as a member of the Panel Committee and, therefore, the recommendations of the Panel Committee cannot be challenged as illegal or void. As far as the Petitioner Dr. Pandey's allegation, that Mr. Justice Lal was also member of the selection committee appointed for the purpose of selecting law teachers, the Respondents contend that this selection committee is being appointed occasionally whenever necessity arises and at the relevant time Mr. Justice Lal was not a member of any such committee.

38. As for point No. 6, the case of the respondents is that appointment of Miss Meera Lal was made only in due course of things and on merits and, therefore, it is not correct to say that the said appointment was made with a view to oblige

Mr. Justice Lal.

39. As far the Petitioner's contention No. 7, the Respondents' case is that Dr. Jogi acting as Vice-Chancellor was competent to make the appointment of Mr. Justice Lal to the Board of Studies as a member and was, therefore, equally competent to remove him from that post at any time. The Respondents contend that reference to Section 44 of the University Act is irrelevant because that section refers only to disciplinary action to be taken in case of certain offences.

40. As for point No. 8, the contention of the Respondents is that the notification dated 26-12-1975 is not retrospective but it only mentions the fact that Kanwar Indar Singh was appointed with effect from a particular date.

41. As for Petitioner Dr. Pandey's allegation against Dr. Kalkat, the Respondents' contention is that any official connection of the type which is alleged, does not amount to the connection which is envisaged by Statute 1(2).

42. The Respondents have also tried to construe statute 1 as showing that the disqualification which is contemplated by Clause (2) thereof is the disqualification which is found to exist at the time of the complete formation of the Committee. They have further contended that the provisions of Clause (2) of the Statute are directory and not mandatory, therefore, their substantial compliance would be sufficient.

43. Before dealing with the merits of the contentions raised by both the sides in both the petitions, it will be necessary to dispose of some preliminary contentions raised by the Respondents in both matters.

44. As against Dr. Pandey's writ petition it is contended by the Respondents by way of preliminary objection that so far as the information in the nature of quo warranto is concerned, this Petitioner's writ is barred by the principles of res judicata as he could have challenged the validity of the appointment of Dr. Jogi in his previous writ petition No. 139 of 1976. However, since he has not done so, he could now not be allowed to raise any plea as regards the validity of that appointment in his present writ petition No. 405 of 1976.

45. Another preliminary objection to the writ petition filed by Dr. Pandey is" that the writ of quo warranto is not issued as a matter of course and if it is found that the Petitioner is motivated by extraneous and selfish considerations and has disentitled himself by his previous conduct and by contributing to the wrong which he complains of, the court should refrain from granting to him any relief in nature of quo warranto.

46. I will first deal with these two preliminary objections to Dr. Pandey's prayer for information in nature of quo warranto regarding the appointment of Dr. Jogi as Vice-Chancellor of the University.

47. So far as the question of res judicata is concerned, it has been well settled ever since the decision given by the Supreme Court in Daryao and Others Vs.

The State of U.P. and Others, and Devlal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others, that the basis of the rule of constructive res judicata is founded on the considerations of public policy and, therefore, it would not be right to ignore these principles even in writ Petitioners filed under Article 226 of the Constitution. Therefore, it cannot be doubted that the principle of res judicata would apply to the writ petition filed by Dr. Pandey. However, this principle applies only if it is found that the party concerned ought to have raised a plea which he now raises, in the previous proceedings. A reference to the prayer clause of the writ petition No. 139 of 1976, which is found at Annexure R-97, shows that the prayers in that writ petition were principally confined to the documents which were annexed as Annexures E, E.I., E.2 and K. The document Annexure "K" was the notification by which inquiry committee was appointed by the Vice-Chancellor as regards the allegation levelled against Dr. Pandey. The notification Annexures E, E.I and E.2 are dated 5-1-1976 and the notification Annexure K is dated 6-1-1976. On both these dates Dr. Jogi was discharging his functions not as a regular Vice-Chancellor but as acting Vice-Chancellor. It is found that he, by a subsequent order passed on 9-2-1976, enlarged the scope of enquiry ordered by him. As a result of this, Annexures 1 and 11 were also challenged in that writ petition. On 9-2-1976, the date of these last two Annexures, he was undoubtedly functioning as a regular Vice-Chancellor but the basis of these two documents was his previous order Annexure "K" dated 6-1-1976. Therefore, in essence what Petitioner Dr. Pandey was challenging in his previous writ petition No. 139 of 1976 was some actions taken by Dr. Jogi in his capacity as acting Vice-Chancellor and not as a regular Vice-Chancellor. That being the position the Petitioner was not expected to challenge in that writ petition the regular appointment of Dr. Jogi as Vice-Chancellor. Under the circumstances, I am of the opinion that the principle of constructive res judicata does not apply in writ petition No. 405 of 1976 to the Petitioner to challenge the regular appointment of Dr. Jogi as Vice-Chancellor.

48. So far as the second preliminary objection is concerned, it relates to the question whether the Petitioner Dr. Pandey can be entrusted with the writ of quo warranto in view of his previous conduct and as well as in view of his motive with which he has filed this writ petition. So far as the writ of quo warranto is concerned, it is an established position in law that it is never issued as a matter of course and it is always within the discretion of the Court to decide, after having considered the facts and circumstances of each case, whether the Petitioner concerned is the person who could be entrusted with such a writ which is always issued only in the interest of the public in general. In this connection I find the following relevant observations in para 281 of Halsbury's Laws of England, Third Edition, Volume 11:

When, therefore, the title to a corporate office was in question, the Court, in accordance with these principles, would not grant leave to a relator to file a quo warranto information as a matter of course simply because a reasonable doubt as to the legal validity of the title was shown, but the Court would take into

consideration the consequences which would be likely to follow should the information be granted, and also all the circumstances of the application. Thus the Court would refuse to disturb the peace and quiet of a corporation by granting leave to file an information where to do so would be merely vexatious, as where there had been an irregularity in the election to the office which was without any material result, or which could not be shown to have been productive of harm. Again, where the circumstances of the application was such as to throw suspicion upon the motives of the relator, the Court would not grant an information the consequences of which might be to dissolve the corporation, similarly where there was ground for supposing that the relator was not the real prosecutor but was the instrument of other persons who were incompetent as relators, or that he was applying in collusion with strangers.

49. Judicial decisions on the subject show that the court has discretion to grant writ of *quo warranto* according to the facts and circumstances of each case. They show that the Court may refuse to grant a writ of *quo warranto* if it is vexatious or where the Petitioner is guilty of laches, or where he has acquiesced or concurred in the very act against which he complains or where the motive of the relator is suspicious. In *Miss Aw J. Cama v. Ban-wari Lal* AIR 1953 Nag. 81 it was held that before granting a writ of *quo warranto*, it is necessary to show that the relator is a fit person to be entrusted with this writ. It was further observed in that case that the court will not listen to a candidate who has acquiesced or concurred in very act which he afterwards comes to complain of when it suits his purpose. The similar view is taken in many other cases including *A.R.V. Achar v. Madras State* AIR 1954 Mad. 563 , *Rajendar Kumar Chandanmal Vs. Government of State and Others*, *A.P. Kadirvelu v. K.M. Lakshmana Mudaliar* AIR 1962 Mad. 314, (where inquiry into the motives of the relator was considered relevant) and *Hari Singh v. State of Punjab* 1964 PLR 1000.

50. Now on a reference to the facts of the present case I find that the Petitioner Dr. Pandey was one of the members of the Executive Council and attended its meeting of 20-9-1975 about which he makes a grievance in this writ petition. It is further found that at the time when the proceedings of this meeting were circulated to him, he did not make any grievance about the fact that no names were selected. He did not raise any objection on this account at any subsequent meetings also, and has come forward to make this grievance only in the month of August 1976 when he filed writ petition No. 405 of 1976. The record of this petition shows that he considers himself a rival of Dr. Jogi for the post of Vice-Chancellor. If that was so, one should have expected him to resort to the course of action now adopted by him at the earliest opportunity. He is also found to have made a very vain attempt to intervene in the writ petition of Dr. Kalia. But even after he failed in doing so he has not taken care to approach this Court with such writ petition immediately and has come to this Court with this writ petition only after he found that the Executive Council had taken some departmental steps against him. Thus he has not only acquiesced in the recorded proceedings of the meeting of 20-9-1975 but has also contributed to the wrong which he is

now complaining of. His motives in filing this writ petition are too clear to be emphasised because it is evident that but for the departmental proceedings taken against him, he would not have cared to show any public spirit of challenging the appointment of Dr. Jogi. Under these circumstances I am of the opinion that it is not proper to entrust a writ like the writ of quo warranto to this Petitioner.

51. Under these circumstances, the fact alleged in writ petition No. 405 of 1976 by Petitioner Dr. Pandey pertaining to the validity of the appointment of Dr. Jogi as well as the facts relied on by the Respondents in reply to that petition should be taken out of consideration and the attention should be focused on the record produced in Dr. Kalia's writ petition bearing No. 235 of 1976.

52. This brings me to the points raised in Dr. Kalia's writ petition. The Respondents have in this petition raised some preliminary objections which can be classified as two, namely: (1) objection on the ground of delay and laches and (2) objections on the ground that the writ involves the questions of facts which are highly disputed and which should, therefore, not be decided in a summary manner.

53. So far as the contention of delay and laches against the Petitioner Dr. Kalia is concerned, the facts are that, as already noted above, Dr. Jogi was appointed as a regular Vice-Chancellor on 9-1-1976. Few days thereafter there was vacation in this Court which began from 16-1-1976 and ended on 29-2-1976. It is an admitted fact that Dr. Kalia was on a foreign tour from 11-2-1976 to 9-3-1976. Thereafter Dr. Kalia filed this present petition on 29-3-1976. The question is whether on these facts it is possible to say that the petition filed by Dr. Kalia suffers from the vice of delay and laches. In my opinion, the above facts show that no case of delay or laches can be said to have been made out by the Respondents. In ordinary course one cannot be expected to rush to the Court during vacation unless there is an urgency in the matter. After Dr. Kalia returned from his foreign tour on 9-3-1976 he is found to have acted expeditiously because some time would necessarily be taken in getting the writ of this nature drafted and in collecting facts relating thereto. Under the circumstances, so far as the facts are concerned, I do not see any case of delay and laches.

54. So far as the case law on the subject is concerned, there are decisions going to show that if a particular person is found to be occupying a public office of substantive nature without any authority then the wrong committed by him is a continuing wrong which occurs day-to-day and, therefore, each day on which he functions illegally gives a fresh cause of action. Under these circumstances, ordinarily, delay and laches would be no ground for a writ of quo warranto unless the delay in question is inordinate. This particular view is found to have been taken by the High Court of Bombay in *Sonu Sampat Shewale v. Jalgaon Borough Municipality* ILR 1958 Bom.113, wherein the following observation are found:

If the appointment of an officer is illegal, everyday that he acts in that office a

fresh cause of action arises, there can, therefore, be no question of delay in presenting a petition for a writ of quo warranto in which his very right to act in such a responsible post has been questioned.

This view of the Bombay High Court is followed by the Allahabad High Court in *Baij Nath Singh Vs. The State of Uttar Pradesh and Others*, and also by Gauhati High Court in *Rashik Ch. Deb Barma v. The Government of Tripura and Anr.* AIR 1976 Gau. 87. In view of this legal position also, Dr. Kalia's writ petition cannot be dismissed on the ground of delay and laches. It was further contended on behalf of the Respondents that Dr. Kalia has acquiesced in the wrong which he complains of and, therefore, his writ is not maintainable. Here also I find myself unable to accept this contention as correct. Facts of the case show that Dr. Kalia was not a member of the Executive Council when the crucial meeting of that Council took place on 20-9-1975. These facts further show that Dr. Kalia for the first time attended the meeting of the Executive Council on 23-12-1975 when the Council was for the first time "apprised" of the names of the persons who were nominated in the Panel Committee. It is also found that four days after this meeting of 23rd December, Mr. T.S. Negi had written the above referred letter to Dr. Jogi complaining about the nomination as well as about the alleged removal of the disqualification of Mr. Justice Lal. A copy of this letter was sent to Dr. Kalia, the Petitioner. Dr. Kalia was evidently knowing that a copy of this letter was also sent by Mr. Negi to the Chancellor. Under the circumstances, one would not expect Dr. Kalia to rush to the court at once and it cannot be said that he acquiesced in any situation about which he complains in this writ petition. It should be recalled here that when Dr. Kalia attended the meeting of the Executive Council for the first time on 23rd December, the Panel Committee had already finished its job on 22nd December and Mr. Negi's letter was pending the decision of the Chancellor. I, therefore, find that it is not possible to dismiss Dr. Kalia's petition on the ground of acquiescence.

55. Some arguments were advanced to show that motives of the Petitioner, Dr. Kalia, are not such that he should be entrusted with a writ of quo warranto. It was pointed out that Dr. Kalia was one of the persons whose names were suggested by the Panel Committee for the post of Vice-Chancellor and, therefore, Dr. Kalia waited for more time and it was only when he found that his name was not selected as Vice-Chancellor, he came to this Court by filing this writ petition. I do not find any substance in any of these contentions. Because there is no evidence to show that Dr. Kalia was knowing that his name was in the panel of the persons recommended for the post of Vice-Chancellor. There is also no evidence to show that this Petitioner has any devious or selfish motive to get the information in nature of quo warranto. If Dr. Kalia wins in this petition he does not stand to gain in any manner. Under these circumstances the Respondents' contention that Dr. Kalia should not be entrusted with any writ looking to his motive is clearly unacceptable.

56. Another preliminary objection raised on behalf of the Respondents is that this

writ involves contested questions of facts, and in a summary inquiry like this, the court should refuse to go into these contentious questions of facts and should dismiss the same. In support of this contention the learned Counsel of the Respondents has put reliance upon the decision given by the Supreme Court in D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others, Their Lordships of the Supreme Court in that case were confronted with the disputed and complicated questions of basic facts and law arising therefrom and, therefore, decided that the right course for the High Court to follow was to dismiss the writ petition on the preliminary ground without entering into the merits of the case. Further reliance on this point was put on the decision given by this Court in B.S. Sindhu v. Union of India 1971 (1) SLR 600 wherein it is observed that when there is a seriously disputed question of fact and it cannot be satisfactorily decided without detailed production of evidence, it is not the practice of the Court to decide it on a writ petition. Reliance was also placed on the Supreme Court decision in Ramchandra Shankar Deodhar and Ors. v. The State of Maharashtra 1974 (1) SLR 470 wherein the Supreme Court found that it was not possible to resolve disputed questions of facts on affidavits and, therefore, proceeded on the basis of the facts alleged by the opposite party. Relying upon these decisions it was contended that since the question whether the Executive Council of the University nominated two names in its meeting dated 20-9-1975 and the question whether the disqualification of Mr. Justice Lal was removed on 29-11-1975, are seriously disputed questions of facts, the present writ petition should be dismissed only on this preliminary ground.

57. After considering the whole range of case law on the subject I find that a bald proposition, that because disputed questions of facts arise to be determined in a writ petition the court should throw away the writ petition and refer the Petitioner to his remedy in a civil court, is never accepted by any High Court trying a writ petition under Article 226 or by the Supreme Court trying a writ petition under Article 32 of the Constitution. Disputes involving questions of facts arise in almost every writ petition and the courts have resolved these disputes by reference to the affidavits filed by the parties. In some cases the Courts have also resorted to taking viva voce examination of material witnesses. As observed by the Allahabad High Court in Raja Himanshu Dhar Singh Vs. Additional Registrar, Co-operative Societies and Another, there is no law which prevents the court from investigating the pure questions of facts while exercising writ jurisdiction under Article 226. The only limitation which the court has generally accepted on this question is that when greatly complicated questions of facts arise, and affidavits filed by the parties are not found sufficient to solve some salient features of the questions in dispute without further inquiry, the courts should refrain from recording final decision on such disputed questions and would, if possible, proceed to decide the matter on the basis of the facts admitted by the Respondents. This however, is a rule of prudence and not a rule of law. As pointed by a Special Bench of Calcutta High. Court in Jyoti Prokash Mitter Vs. The Hon'ble Mr. Justice H.K. Bose, Chief Justice of High Court,

Calcutta, and subsequently by the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, the question whether a disputed question of fact should be resolved in a writ filed under Article 226, is really one of discretion and convenience, and not of jurisdiction. In *Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others*, the Supreme Court was confronted with disputed questions of facts in a writ filed under Article 32 of the Constitution. Speaking of the powers of the Supreme Court under Article 32 of the Constitution the Court observed that the proposition that on an application under Article 32 the Supreme Court may decline to entertain the same on the simple ground that it involves determination of disputed questions of facts or on any other ground cannot be countenanced. The Supreme Court has further observed that questions of facts can and very often are dealt with by affidavits, and if the petition, and the affidavits in support thereof, are not convincing, and the court is satisfied that the Petitioner has failed to establish his fundamental right or breach thereof, the court may dismiss the petition on the ground that the Petitioner has not discharged the onus that lay on him. The court may in some appropriate cases be inclined to give an opportunity to the parties to establish their respective cases by filing further affidavits, or by issuing commission, or even by setting the application down for trial on evidence, as has often been done in the original sides of the Bombay and Calcutta High Courts, or by adopting some other appropriate procedure. In the opinion of the Supreme Court such action would however be rare and such rare cases should not be regarded as cogent reasons for refusing to entertain the petition under Article 32 on the ground that it involves disputed questions of facts. It is true that in this decision, the Supreme Court has specifically refrained from expressing any opinion if a disputed question of fact arises before a High Court under Article 226, but the subsequent development of the case law shows that the courts, including the Supreme Court, have never been of the view that the moment a disputed question of fact arises in a writ under Article 226, the High Court should feel itself unable to do any justice to the parties. Of course, the matter would be different if the High Court itself finds that the factual questions are so complicated that they cannot be resolved by the summary procedure of appreciating evidence in form of the affidavits filed by the parties.

58. In *Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others*, the Supreme Court has observed that the High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the Petitioner's right to relief, question of fact may fall to be determined as, in a petition under Article 226, the High Court has jurisdiction to try issues both of fact and law. In this case, the Court has further observed that when the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. This decision thus emphasises the fact that the question whether the disputed question of fact can

be decided in a writ petition or not, is purely one of convenience, and not that of jurisdiction. Recently, in *Babubhai Muljibhai Patel v. Nand Lal Khodidas Barot and Ors.* (1974) (2) SC 706 again such a question arose before the Supreme Court. Though in that case the High Court had allowed certain deponents, who had filed their affidavits, to be cross-examined, it did not do so with regard to other deponents. The question which arose before the Supreme Court was whether such a procedure adopted by the High Court was proper and whether it was proper for the High Court to decide disputed and complicated questions of fact in a writ petition. Speaking of the bare principle, Khanna and Begi J. endorsed the above referred observations of the Supreme Court in *Smt. Gurwant Kaur and Ors. v. Municipal Committee, Bhatinda and Ors.* (supra), and further observed that refusal of the High Court to consider the questions of facts involved in that matter would have resulted in grave injustice because reference of the disputed questions to a civil court would have rendered the remedy quite illusory as by the time the original Petitioner would succeed in the Civil Court the term of the office of the person whose legal right to hold that office was challenged would already expire. This argument applies with equal force to the facts of the case before me. In this matter it would be trite to suggest that the Petitioner should be referred to a Civil Court to avail of his remedy because it is well known that a remedy through a regular channel of a civil suit in such cases would not take any time less than 10 years to reach the final decision, by which time, the Respondent Vice-Chancellor would have already served his tenure twice over. As Krishna Iyer J. has pointed out in *B.M. Patel's* case (supra), had the aggrieved party in that case been driven to the hierarchy of courts, he would have lost, not on the merits, but by the sands of time running out before ultimate victory was in sight. His Lordship rightly pointed out that time and tide does not wait for the tardy course of Indian justice. Speaking of evidence by affidavits, their Lordships have observed in that case that normally writ petitions are decided on the basis of affidavits and in some cases, however, where it is not possible for the Court to arrive at a definite conclusion on account of there being affidavits of either side containing allegations and counter-allegations, it would not only be desirable,, but also in the interest of justice to summon a deponent for cross-examination in order to arrive at the truth. Speaking about the oral evidence, Krishna Iyer J. has pointed out in that case that it adds enormously to inconvenience, expense and delay to insist on oral evidence for proof of every little relevant fact in judicial proceedings by suit or writ. His Lordship has rightly observed that faith in viva-voce examination tested by severe cross-examination has some times been reduced to a legal superstition. In view of these observations it is now too late in the day to contend that the contested questions of facts can be decided only through viva-voce examination and not by perusing the affidavits filed by the parties. This decision of the Supreme Court emphasises the fact that in writs of quo warranto where the alleged usurper is to hold the public office in question for a limited term, an order to direct the Petitioner to avail of his remedy through a civil court on the ground that the disputed questions of facts have arisen before the Court, virtually amounts to a refusal to do real justice.

59. The above discussion leads us to the following principles to guide us when disputed questions of facts arise in a writ petition filed under Article 226:

(1) It would be abdication of Court's duty to do real justice to throw away the Petitioner merely because questions of facts are disputed by the parties.

(2) This would be more so in a writ like a writ of quo warranto wherein the public office in question is to be

held by the alleged usurper for a limited period and remedy by way of a civil suit is found to be illusory.

(3) If the Court finds that the affidavits filed by the parties do not throw sufficient light on some salient features of the case the Court may call some of the deponents, who have filed affidavits, for viva voce examination for the clarification.

(4) If such a course is not adopted, and if on a particular dispute involving questions of fact the Court does not find it possible to record a clear finding on that dispute the court may refuse to record a clear finding, and proceed to decide the matter before it on the basis of admitted facts, if the same is possible. I shall proceed to dispose of the petition on these principles.

60. There were two other preliminary objections raised against Dr. Kalia's petition by the learned Advocates of the Respondents. I will presently refer to them.

61. One contention was that the Executive Council which is the authority which nominates two members in the penal committee is not joined as a party to this writ. This plea is not available to the Respondents as the same is not raised in the reply, but even otherwise, the University itself is joined as a party, and the Executive Council being an organ of the University, it matters not if it is not separately joined as a party. So far as the writ of quo warranto is concerned the Courts have accepted the principle that in such writs only the alleged usurper is the necessary party, and in all cases the appointing authority is not a necessary party. If any decisions are required on this point they would be found in *G.D. Karkare v. T.L. Shevde and Ors.* AIR 1952 Nag 330 , *Ashgar Ally Vs. Dr. Birendra Nath Dey*, and *P.L. Lakhanapal v. Ajit Nath Ray* AIR 1975 Delhi 66. In view of these decisions this preliminary objection is not available to the Respondents.

62. Another preliminary objection was that the Petitioner had an alternative remedy u/s 45 of the University Act and since this remedy is not availed of this writ petition cannot lie.

63. Section 45 of the Act is in the following terms:

If any question arises whether any person has been duly appointed or elected as, or is entitled to be, a member of authority or other body of the University, the matter shall be referred to the Chancellery whose decision thereon shall be final.

Obviously this section cannot apply with regard to the question of appointment of Dr. Jogi who is Respondent No. 3 in this writ petition. However, the argument advanced on behalf of the Respondent was that the challenge in this petition is primarily based on the challenge to the appointment of Mr. Justice Lal in the panel committee, and since that challenge could have been raised before the Chancellor u/s 45 the present challenge against the appointment of Dr. Jogi cannot succeed.

64. This contention cannot be sustained as the challenge to the appointment of Mr. Justice Lal in the panel committee is merely incidental to the challenge to the appointment of Respondent No. 3 Dr. Jogi.

65. Moreover, the panel committee cannot be considered as a "body of the University" as contemplated by Section 45. The words "Body of the University" are not defined in the Act. Section 18 of the Act describes as to what are the authorities of the University. Similar description of the Bodies of the University is nowhere given. However, reference to Section 38 shows that the Act contemplates that the Statutes may provide for the constitution, powers and duties of the Executive Council, the Academic Council, the Board of Management and other authorities of the University and such other "bodies" as may be deemed necessary to constitute from time to time. Section 21 of the Act shows that the Executive Council shall be the "executive body" of the University and Section 22 shows that the Academic Council shall be the "academic body" of the University. From this and another sections of the Act it becomes apparent that the bodies of the University are those which form part of the structure of the University. The question is whether the panel committee appointed for the purpose of preparing a panel of names for the purpose of selecting the Vice-Chancellor can be considered to be such a body of the University which is part and parcel of its structure. In my opinion, it cannot be so considered.

66. In Dr. (Mrs.) Shabbir Fatima and Others Vs. The Chancellor, University of Allahabad and Others, Pathak, J. as then he was, has observed that such a panel committee can be considered as a body of the University but a Division Bench of the same High Court has held in Kashi Nath Misra Vs. Chancellor, University of Allahabad and Another, that such a panel committee cannot be considered as a body of the University. The same view is also taken by the Madhya Pradesh High Court in Dr. S.C. Barat and Another Vs. Hari Vinayak Pataskar and Others, Both these decisions were sought to be distinguished on the ground that the body of the University is equated with the authority of the University but this distinction is of no help to the Respondents in view of the fact that when Section 45 uses the expression "body of the University" it contemplates that body which is an integral part of the structure of the University, and since the panel committee is appointed for a limited objective without having any connection either with the structure, or with the day-to-day administration of the University, I am of the opinion that it cannot be considered as a body of the University.

67. Apart from what is stated above, as I have already observed, Dr. Kalia, the

Petitioner, knew that Mr. Negi had sent a copy of his letter dated 27th December to the Chancellor, and the Chancellor had not taken any action on the letter, therefore, it was futile to approach the Chancellor for the alleged alternative remedy. Therefore, even this preliminary objection is found to be without substance.

68. I have just disposed of all the preliminary objections raised against the petition of Dr. Kalia. I will now proceed to consider some disputed points on the merits of the case.

69. The first disputed question is whether, in the Council's meeting held on 20th September, 1975, the Council had actually nominated two names in the panel committee as alleged by the Respondents or whether it had postponed the nomination with a view to arrive at a consensus. As already stated above, these proceedings clearly stated that two names were nominated by the Council, though what these names were, is not disclosed by these proceedings. From the fact that these proceedings were circulated for confirmation and yet none of the members of the Executive Council had raised any objection to the non-disclosure of these names in the proceedings there seems to be some substance in the Respondents' contention that the Executive Council had developed a convention to keep the names of the certain appointees secret. I have referred to in sufficient details the proceedings as regards the subsequent meetings dated 18-10-1975 and 23-12-1975 as well as to Mr. Negi's letter dated 27-12-1975. As to what transpired in all these meetings some light is sought to be thrown by the Petitioner from Mr. Nagi's affidavit which is found at P.F.I. This affidavit was produced by the Petitioner along with his rejoinder and, therefore, a question arose as to whether this new material should be accepted on the record of the case. For this purpose C.M.Ps. 840 and 841 of 1976 were preferred by the Respondents. The Court has kept both these C.M.Ps. open for decision. I find that no party should be allowed to introduce new material in rejoinder without the permission of the Court and if the Court gives permission to a Petitioner to allege some new facts in rejoinder then the other party should get an opportunity to meet with those new facts. Since Mr. Nagi's affidavit on crucial facts has been filed at a late stage along with the rejoinder without the permission of the Court, I am of the opinion, that the Petitioner should not be allowed to put in reliance on this affidavit. I, therefore, keep this affidavit out of consideration and proceed to decide the question as to what actually happened at the council's meeting of 20th September, 1975, on the basis of the remaining record.

70. Now so far as the recorded material is concerned I do find certain strong indications which go to corroborate the stand taken by the Petitioner with regard to the proceedings of the meeting of 20th September, 1975. I will presently indicate these circumstances:

(1) If the names of the two nominees were decided as early as 20th September, 1975, the pertinent question which arises to be considered is why these names were not communicated to the Chancellor for more than two months, that is, till

29th November, 1975.

(2) Another question which arises to be considered is why more than two months were taken in dropping the name of Mr. Justice Lal from the Board of Studies if the decision to nominate him in the panel committee was really taken on 20th September, 1975.

(3) If actually the members of the Executive Council had nominated the names of the two nominees in the meeting of 20th September, 1975, obviously, all of them must be knowing who these person were. In that view of the matter the question which arises is what was the need to "apprise" the members of the Executive Council about these names in the meeting of 23rd December, 1975.

(4) The fact that Mr. Negi had written his letter Annexure P.C. on 27th December and that it was received by Dr. Jogi is not in dispute. The contents of this letter show that till 23rd December, 1975, the names of the two nominees were not agreed upon. With a view to challenge the contents of this letter Dr. Jogi has come forward with an allegations that Mr. Negi is hostile to him because he has sponsored an enquiry into the question as to the number of committees in which Mr. Negi sat as a member and drew his allowances as such and also because he had refused to publish one of Mr. Negi's books at the cost of the University. In this connection my attention was drawn to Dr. Pandey's letter found at Annexure R.N. whererin Dr. Pandey has complained about the non-publication of Mr. Negi's book. I find that Mr. Pandey's letter to which my attention is drawn is dated 1-1-1976 and the Agenda of the meeting, in which enquiry about the number of committees in which Mr. Negi was sitting as a member was made, is dated 8-3-1976. Both these things are found to be bearing the dates subsequent to 27th December, 1975, which is the date of Mr. Negi's letter under discussion. It is pointed out on behalf of the Respondents that Dr. Pandey's letter dated 1-1-1976 is with reference to an earlier letter which bears the date of December, 1975, and hence there are reasons to believe that relations between Mr. Negi and Dr. Jogi must have deteriorated from the month of December, 1975. However that letter of December 1975 is not in the record of the case and, therefore, it is not possible to say that the relations between Mr. Negi and Dr. Jogi worsened from the month of December 1975 on the question of publication of Mr. Negi's book. In fact the contents of Mr. Negi's letter dated 27th December, 1975, contain an inherent evidence to show that till 23rd December, 1975, the relations between Mr. Negi and Dr. Jogi were quite normal if not cordial. Under the circumstances the plea of the Respondents that Mr. Negi was hostile to Dr. Jogi in the month of December, 1975, is not acceptable and if that is so, the contents of Mr. Negi's letter of 27th December do assume good deal of importance.

(5) An overriding fact which should not escape the attention of the Court in this connection is that Dr. Jogi has not preferred to give any reply to the above referred letter of Mr. Negi. If the names of the two nominees to the panel committee were decided upon in the meeting of 20-9-1975, I should have

expected Dr. Jogi to have refuted all which Mr. Negi has preferred to allege in his letter dated 27th December. Therefore, this letter of Mr. Negi is another piece of evidence which gives some credence to the contention of the Petitioner with regard to the meeting of 20th September, 1975.

(6) Lastly if the Executive Council had really nominated Mr. Justice Lal as a member of the panel committee of 20th September it is difficult to comprehend as to what was the necessity of re-appointing Mr. Justice Lal as the member of the Board of Studies on 14th November, 1975, and thereafter dropping him on 29th November, 1975, by a D.O. letter.

These are some of the legitimate questions which arise to be considered from the record of this case on the question as to what actually transpired at the meeting of 20th September, 1975. Want of satisfactory answers to these questions would lead one to doubt the correctness of the proceedings of the said meeting. However, I find that it is an admitted position that the Petitioner Dr. Kalia has no personal knowledge as to what transpired in the said meeting of the Executive Council. The affidavit of Mr. Negi who was present in that meeting cannot be taken into consideration for the reasons already stated above. Moreover, it is an admitted position that Mr. Negi has not objected to the proceedings of 20th September at the time of their confirmation. No other member of the Executive Council is found to have objected to the said confirmation. Thus all the members of the Executive Council including Mr. Negi and Dr. Pandey have suffered the proceedings of 20th September, which show on their face that the names of the two nominees to the panel committee were settled. It is this counter-balancing aspect of the matter which really makes the facts complicated, and the complications created thereby cannot be resolved without seeking explanation of the persons concerned in viva-voce examination or otherwise. Therefore, in my opinion, the question as to what actually happened in the meeting of 20th September involves complicated questions of fact and cannot be resolved in a summary manner. I, therefore, propose to proceed on the basis that the names of the two nominees were decided in the Council meeting of 20th September as contended by the contesting Respondents.

71. The contention of the Petitioner is that even if it is found that the names of the two nominees were decided in the Council meeting of 20th September the resolution of the Council regarding that nomination is vitiated as the Council became biased on account of the active participation in its deliberations by Dr. Jogi who was himself a candidate for the post of Vice-Chancellorship. On behalf of the Petitioner it was contended that the fact that Dr. Jogi was one of the candidates cannot be seriously disputed because he himself was acting as Vice-Chancellor and was one of the persons who could be legitimately selected for the post. It was pointed out that Mr. Negi had also hinted on this aspect of the matter in his letter dated 27th December. According to the Petitioner, therefore, Dr. Jogi should not have presided over the Council meeting of 20th September and should not also have taken any interest in the deliberations of that meeting.

According to the Petitioner, since Dr. Jogi has actually presided over the meeting the proceedings of the meeting are vitiated.

72. I do not find myself in agreement with any of these contentions for the simple reason that though Dr. Jogi could be considered as a potential candidate for Vice-Chancellorship it cannot be positively said that he was a candidate for the said post. Moreover the Council was not considering any lis between any parties. Under the circumstances Dr. Jogi could not have refused to shoulder the responsibility of conducting the deliberations of the Council meeting on 20th September, 1975.

73. The next question is whether Mr. Justice Lal was qualified to be nominated as a member of the panel committee of 20th September, 1975. This question arises because the Respondents have contended that even if Mr. Justice Lal was a member of the Board of Studies on that date his connection with the University was not of that type which would be covered by the mischief contemplated by Statute 1(2) of the first Statutes.

74. It is an admitted fact that Mr. Justice Lal was appointed as a member of the Board of Studies on 18th October, 1973, for a period of two years as per Annexure P.C./I. His term of office as a member of the Board, therefore, expired on 17th October, 1975. It, therefore, cannot be disputed that when the Executive Council took its decision on 20th September he was a member of the Board of Studies.

75. Now the first argument which was advanced on behalf of the Respondents was that the connection which is prohibited by the Statute 1(2) is the connection which is obtaining at the time when the panel committee is completely formed and comes into legal existence. This argument is based on the fact that Sub-clause (2) of Statute 1 speaks of the "committee" which can be said to have come into existence only after it is completely formed. The contention was that the requirements of Sub-clause (2) are that the "committee" should not consist of those two persons who though nominated by the Executive Council are connected with the University. Thus the constitution of the committee is envisaged only at the stage when the committee is completely formed and not before that. According to the learned Advocate of the Respondents, therefore, if a member who is nominated by the Executive Council suffers from any disqualification on the date of his nomination but if the said disqualification is removed at subsequent date and before the actual formation of the committee, then the provisions of Sub-clause (2) of Statute 1 cannot be said to have been infringed.

76. I do not find it possible to accept this contention as correct for the simple reason that Sub-clause (2) Statute 1 clearly indicates that the disqualification concerned should not exist even at the time when the Council makes the nomination. The language of Sub-clause (2) uses the words "shall consist of" and it further indicates that the disqualification concerned should be taken into

account at the time of nomination by the Executive Council. Under the circumstances when the Executive Council proceeds to nominate a member in the penal committee it should be seen whether the person so nominated does not suffer from any disqualification as contemplated by Sub-clause (2). But suppose a person is not found to be disqualified at the time of nomination by the Council but incurs some disqualification before the formation of the committee is complete, the question which would then arise is whether such a person would be entitled to sit as a member of the panel committee. In my opinion, the answer is in an obvious negative, because, Sub-clause (2) says that the committee as completed shall not consist of a person nominated by the Council who suffers from the disqualification of being connected with the University. Thus in my opinion the correct interpretation of Sub-clause (2) of Statute 1 is that the disqualification concerned should neither be at the time of nomination nor should it be at any point of time during the whole course of the existence of the panel committee. The Respondents' insistence on looking only at one point of time, namely, the formation of the committee is not borne out by the language of Sub-clause (2). Under the circumstances it must be held that on 20th September, 1975, the Council could not have nominated Mr. Justice Lal as a member of the panel committee if Mr. Justice Lal was found to be connected with the University as contemplated by Sub-clause (2).

77. In this connection I may refer to Travancore-Cochin case of Govindra Panicker v. K. Balakrishna Marar and Anr. AIR 1955 TRA-Co. 42 wherein it is held on facts more or less similar to the present one that the material date with reference to which the existence or otherwise of disqualification should be considered, is the date of the nomination and election and not on the date on which the person nominated assumed office as a member of the Board.

78. It was next contended on behalf of the Respondents that even if it is held that on 20th September 1975 Mr. Justice Lal was a member of the Board of Studies that fact does not amount to any "connection" with the University because, to be a member of the Board of Studies at the invitation of the Vice-Chancellor of the University gives connection of the type which is too tenuous and casual to fall within the mischief of Sub-clause (2) of Statute 1. The contention was that in the Board of Studies in a particular faculty certain members are invited on the footing that they possess expert knowledge about the subject concerned and if such experts allow their services to be rendered as a member of the Board of Studies they oblige the University by rendering such service and their casual connection with the University as an expert member of the Board of Studies would not render them liable to any pressure or would not prevent them from discharging their duties independently. It was pointed that the connection which is visualised by Sub-clause (2) of Statute 1 is the connection of the type which makes the person connected pliable to some undue pressure, or renders him unable to act independently in the discharge of his duties. According to the learned Advocate of the Respondents an expert member of the Board of Studies in a particular faculty of University is not a person of this

type and, therefore, it cannot be said that his connection with the University is the one which is contemplated by Sub-clause (2) of Statute 1. In support of this contention reliance is placed on several decisions to which I will make a reference at a subsequent stage.

79. Before referring to these decision, however, it would be proper to note what place the Board of Studies occupies in the structure of the University.

80. The incorporation of the University is contemplated by Section 3 of the Act. Sub-section (2) of Section 3 provides that the first Chancellor, the first Vice-Chancellor of the University and the first members of the Court, the Executive Council, the Academic Council and the Board of management, and all persons who may hereafter become such officers or members so long as they continue to hold such office or membership are constituted as a body corporate by the name of "Himachal Pradesh University". This Sub-section (2) which gives an indication about the different bodies and persons who constitute the University, makes a specific reference to the Academic Council. Reference to Section 22 shows that the Academic Council shall have the control for the purpose of maintaining standards and methods of instruction, evaluation, education, examination and research in the University. It is also expected to prescribe courses of study. Thus a particular faculty of a particular branch of knowledge is expected to be controlled by the Academic Council. Statute 13 provides for the different faculties out of which one is the Faculty of Law. Clause 4 of this Statute says that the faculties shall have such powers and shall perform such duties as may be assigned to them by these Statutes and Ordinances. They shall also consider and make recommendations to the Academic Council on any question pertaining to their respective spheres of work, as may appear to them necessary or on any matter referred to them by the Academic Council. Then follows Statute 15 which provides for Boards of Studies. It says that there shall be Boards of Studies for different subjects or groups of subjects and that the constitution, the powers and functions of the Boards of Studies shall be, as prescribed by the Ordinances. Statute 27 says that the Court, the Executive Council, the Academic Council, the Board of Management and any other Authority of the University may appoint boards or committees and any such board or committee may deal with any subject assigned to it subject to subsequent confirmation by the authority which appointed it. Ordinance 1.1 contemplates the Departments of Studies to be assigned to the various Faculties. One of these faculties is the Faculty of Law. Chapter XXIV of the First Ordinances deals with the Faculties. Ordinance 24.4 of this Chapter is rather important as it deals with the recommendatory power of the Board of Studies. It provides as under:

No Faculty shall take any decision on any of the matters referred to in paragraph 24.3 without considering the recommendation of the concerned Board(s) of Studies. In case the Faculty does not agree with the recommendation of the Board(s) of Studies, it shall refer the matter back to the concerned Board(s) of Studies with its views for reconsideration, and in case the difference of opinion

cannot be resolved even then, the matter shall be referred to the Academic Council, whose decision shall be final.

Thus this Ordinance makes it amply clear that the Faculty cannot easily ignore the recommendation made by the Board of Studies with regard to the matters referred to in Ordinance 24.3. Now what are the matters referred to in Ordinance 24.3 becomes clear from that paragraph which is in the following terms:

24.3 Subject to the provisions of the Act, the Statutes and the Ordinances, each Faculty shall have the following powers, duties and functions:

(a) to formulate, modify and revise the courses of study, syllabi and curricula and to prescribe text-books and teaching methods,

(b) to prescribe minimum qualifications required for admission to various examinations,

(c) to lay down the system of examination, evaluation, holding of examinations or tests,

(d) to make recommendations to the Academic Council, who in turn shall make recommendations to the Executive Council regarding:

(i) starting, organising and abolition of colleges, departments, specialised centres and institutes maintained by the University,

(ii) creation or abolition of teaching and research posts,

(iii) conditions for granting and conferring of degrees, academic distinctions, diplomas and certificates, (iv) drafting of Statutes and Ordinances relating to various examinations assigned to the Faculty,

(e) to act as a co-ordinating agency between the different Boards of Studies for subjects relating to the Faculty,

(f) to approve programmes for teaching and research in the inter-disciplinary areas, as recommended by the Heads of Divisions,

(g) to perform such other duties and functions as the Executive Council and the Academic Council may from time to time assign.

The width and amplitude of these subjects are self-evident and need not be dilated upon.

81. Chapter 25 of the Ordinances relates to the Board of Studies. Ordinance 25.2 provides for the composition of the Boards of Studies and Clause (iv) of sub-clause (a) shows that it is the Vice-Chancellor who can nominate five persons in the Board of Studies for their expert knowledge of law. Thus it is evident from this Ordinance that the appointment of an expert member in the Board of Studies is made by the Vice-Chancellor himself. Ordinance 25.4 is about the term of office of a member of the Board of Studies and Ordinance 25.7 describes the

duties and functions of each Board of Studies as under:

25.7. The duties and functions of each Board of Studies shall be as under:

- (a) to recommend courses of study and reading and detailed syllabi for the various courses,
- (b) to recommend books for being prescribed as textbooks or books for study,
- (c) to recommend books and learned journals for reading and to draw up list of essential books, required for a college library,
- (d) to make recommendations for the publication of text-books by the University,
- (e) to prepare lists of minimum apparatus and equipment required for science laboratories in the case of Science subjects,
- (f) to make recommendations about instructional methods and evaluation procedures for the subjects concerned,
- (g) to suggest measures for periodical assessment of the educational standards in the subject,
- (h) to suggest measures for the improvement of the standar of teaching and research,
- (i) to frame model question papers and organise question banks,
- (j) to act as a consultative body in regard to all questions referred to it by the Faculty and the Academic Council,
- (k) to carry out such other functions and duties as may be< required by the Executive Council, the Academic Council or the Faculty.

All these relevant provisions of Acts, Statutes and Ordinances go to show that the Board of Studies is part and parcel of the Faculty which is controlled by the Academic Council and the Academic Council is a necessary constituent of the incorporate body which is the University. Thus it cannot be disputed that the structure of the University is not complete without the existence of the Board. It also cannot be disputed that the Board plays a very vital role not only in prescribing the curriculum for a particular branch of knowledge but also in various other matters as described in Ordinance 25.7 and Ordinance 24.4 read with Ordinance 24.3. In this view of the matter, it cannot be said that the structural concept of the University is complete without the existence of the Board. Therefore, being an integral part and parcel of the University, the Board is obviously closely and intimately connected with the University. The members of this Board of Studies who constitute it are, therefore, equally connected with the University. It is, therefore, difficult to comprehend how such an intimate connection with regard to the matters of importance of the University can be

treated as casual, or tenuous.

82. The argument of the learned Advocate of the Respondents is that the connection as visualised by Statute 1(2) is the connection where one takes pressure or is unable to work independently, and since Mr. Justice Lal who is a sitting Judge of High Court is trained to look at the problems coming before him judiciously and objectively, cannot be said to be a person who would take pressure and who would be unable to act independently, it is not possible to say that he was connected with the University. It was contended that in fact it was Mr. Justice Lal who was obliging the University by his presence as an expert in the Board of Studies and, therefore, he would not be the person who would take pressure or who would act without independence.

83. In my opinion this approach of interpreting the provisions of law with reference to the personality of an individual is not correct. Statute 1(2) prohibits connection with the University not on any personal level. It puts a total and absolute ban on having connection with the University whatever be the moral and material status of the person concerned. The legislative authority which has framed this Statute has, by putting the ban in such absolute terms, only recognised the fallibility of human nature. It is the recognised truth that howsoever highly placed the person concerned may be, he is likely to be influenced by the guiles and grouses of the groups and cross sections prevailing in the institution, and he is also likely to try to safeguard his position in the University by maintaining proper balance between such groups and cross divisions. It need not be emphasised that all the persons who are highly placed, and all those who are experts in their profession, do not necessarily possess high standards of ethics, morality and independence of out-look in every walk of life. On the contrary, a man of straw from material standards, would be possessing an exemplary character and independence of out-look. It is in recognition of this aspect of human nature that, irrespective of the subjective character of the personality involved, the Statute 1(2) has provided that if the person concerned has "connection" with the University, the matter ends and he should not be nominated in the panel committee. This would be so even if the said person has obliged the University by rendering his valuable services as an expert because sometimes even continuous rendering of obligation results in a connection which is very intimate. Reliance was placed by both the sides on some judicial pronouncements on the subject. Since both the sides have relied upon the same set of decisions. It would be proper to make a brief reference to them.

84. The words "connected with the University" seem to have first come for interpretation before the Allahabad High Court in Dr. (Mrs.) Shabbir Fatima and Others Vs. The Chancellor, University of Allahabad and Others, Pathak J. (as then he was) while interpreting these words has made the following observations which have been subsequently followed in different decisions:

It is true that the expression "connected with" is capable of wide meaning. The expression, in itself, does not indicate the confines within which its use must be

limited. Whenever an expression of such wide connotation is employed in a statute, it is necessary for the Courts to draw the lines between which its meaning must be confined. This task is necessarily one of judicial interpretation and must be discharged by reference to the context in which the expression occurs, the object sought to be advanced by the enactment and the mischief sought to be suppressed. The object behind the enactment of Section 11 seems to be to ensure that the names recommended to the Chancellor, from which he must appoint a Vice-Chancellor, will be suggested by an impartial and independent Committee so constituted as to preclude the possibility of the recommendations being influenced by the hope of favour or the fear of prejudice from the person who may be appointed Vice-Chancellor.

Further explaining the object of the provision the learned Judge has observed as under:

The Legislature was at pains to ensure that the Committee should not consist of persons who might desire the favour or apprehend the prejudice of whoever might be appointed Vice-Chancellor. That seems to me to be the test for determining who is a person who can be said to be connected with the University and the other bodies mentioned in Clause (a). To my mind only such person can be said to be connected with the University and those bodies who holds an office therein or enjoys a pecuniary or some other benefit from them.

These observations were made with reference to Section 11(4) of the Allahabad University Act (Act No. 3 of 1921) which had, to a certain extent, the provisions similar to those found in our Statute for the appointment of panel committee. After the selection of the Vice-Chancellor in Allahabad University was already made, the matter again was taken to the High Court and the same question came to be considered by a Division Bench of that Court in *Kashi Nath Misra v. Chancellor, University of Allahabad and others* AIR 1967 All 101. The said Division Bench has observed as under while discussing the meaning of the expression "connected with" used in the said Section 11 of the Allahabad University Act:

The election of Shri Sri Prakash was also challenged on the ground that he was ineligible for election, being a registered graduate and thus a person connected with the University within the meaning of Section 11(4)(i)(a) of the Act. A registered graduate does not hold a post of profit in the University. He is not an officer of the University or a Constituent College or an Associate College or Hostel. He has no concern with the administration of the University and has no dealing with it. There are no favours that a Vice-Chancellor can bestow on him. All that he is entitled to is, along with other registered graduates, to elect twenty-five persons to the Court. In our judgment the word "connected" means intimately connected or connected in a manner so as to take pressure or be unable to act independently. The scheme of Section 11 of the Act is that in the selection of the Vice-Chancellor independent persons should have a hand.

85. In both these decisions the question before the Court was whether a registered graduate could be considered to be connected with the University by virtue of the fact that he was a graduate of that University. The Courts have answered the question in the negative on the ground that the connection of a registered graduate with the University is such that he cannot be considered as an intimate part of the institution, or cannot be considered as one who would either take pressure or would be influenced by the authorities of the University. Referring to these tests, therefore, it was pointed out by Shri Sibal the learned Advocate of the Respondent University, that all these tests which are provided by the above two decisions are satisfied in case of Mr. Justice Lal, because, as a member of the Board of Studies he was not an officer of the University deriving any pecuniary benefit out of his office, nor was he possessing such a status that he would take pressure from any quarter, or would be unable to act independently. In my opinion, it is obvious that the tests which are provided in "the above quotations taken from the two decisions can never be considered as exhaustive. In fact when the Legislature intentionally refrains from giving an exhaustive definition of a particular word or phrase, and leaves the matter" to be decided by judicial interpretation, the judicial interpretation made in a particular case can never be exhaustive. All cases coming before a Court of law are necessarily to be decided with reference to their own peculiar facts. By reference to these facts the Courts do sometime formulate general principles for their guidance and do provide certain workable tests, but these tests by their very nature cannot be exhaustive and cannot be treated as such. Therefore, the different tests which are mentioned in the above referred Division Bench case of Kashi Math Misra v. Chancellor, University of Allahabad and others should not be taken as exhaustive tests. Nonetheless one of these tests does prescribe the test of being intimately connected. Therefore, if in a particular case it is found that the person concerned could not have been pressurised by any authority of the University, or was capable of acting independently, just as Mr. Justice Lal must necessarily be, if the court finds that he is intimately connected with the University, then that intimate connection by itself would be sufficient to disqualify him from acting as a member of the panel committee. In a subsequent decision of that very High Court in case Narbada Prasad Srivastava and Ors. v. Chancellor, University of Allahabad and Ors. reported in 1968 ALJ 533 another Division Bench has held that the word "connected" appearing in Sub-section (4) of Section 11 of the Allahabad University Act contemplates a connection which is real and substantial and not for fetched or incidental. Thus the test of the "connection" being real and substantial is a further test provided by this subsequent decision. I find myself in respectful agreement with the learned Judges in providing this test, and since, in my opinion, Mr. Justice Lal's membership in the Board of Studies in the Faculty of Law amounted to the connection with the University which was real and substantial, I find no escape from the conclusion that he was disqualified to sit as a member of the Panel Committee. The same principle has been followed by the High Court of Madhya Pradesh in Vasudev v. His Excellency Shri K.C. Reddy, Chancellor, Vikram

University and Ors. reported in 1970 Madhya Pradesh Law Journal 34. L, therefore, conclude that the Executive Council of the University could not have appointed Mr. Justice Lal as a member of the panel committee on 20th September, 1975, on account of the disqualification referred to above.

86. The next question which is highly controversial is whether the disqualification of Mr. Justice Lal was removed on 29th November by virtue of the D.O. letter of that date, or whether it was removed on 26th December, 1975, when the notification Annexure P.E. of that date was issued appointing Shri Indar Singh as a member of the Board of Studies as from 29th November, 1975. As already noted, after the termination of office of Mr. Justice Lal as a member of the Board of Studies on 17-10-1975, a fresh notification appointing him for a further period of two years was issued on 14/29 November/3rd December, 1975. That term was expected to expire either on 13th November or on 2nd December, 1977 (vide Annexure P.D.). If a reference in this connection is made to subsequent notification found at Annexure P.E. it will be noticed that it seeks to modify the above notification Annexure P.D. while making the appointment of Shri Indar Singh as a member of the Board of Studies. The case of the Respondents is that though Mr. Justice Lal was re-appointed for a further period of two years as a member of the Board of Studies on 14th November, 1975, this re-appointment was cancelled as per D.O. letter dated 29th November, 1975, found at Annexure R.E. It is pointed out that this D.O. letter was written to Mr. Justice Lal on the same date on which the nominated names were sent to the Chancellor. Annexure R.F. is the letter addressed by Dr. Jogi to the Chancellor and a reference to it also shows that it bears the date of 29th November. In support of their stand that this D.O. letter was actually and really addressed to Mr. Justice Lal on 29th November, the Respondent take support from Mr. Negi's letter dated 27th December (Annexure P.C.) wherein, referring to the proceedings of the meeting of the Executive Council on 23rd December, he has admitted that the Vice-Chancellor Dr. Jogi had clarified in that meeting that the disqualification of Mr. Lal to be appointed as a member of the Panel Committee was removed on the date on which the letter to the Chancellor intimating the names of the nominated members of the panel committee was written. Thus according to the Respondents, the name of Mr. Justice Lal was dropped as a member of the Board of Studies on 29th November, 1975.

87. As already noted above, the Petitioner has challenged this D.O. letter as a concocted document produced and fabricated with a view to make sure that Mr. Justice Lal's disqualification to sit as a member of the panel committee was removed before the nominated names were sent to the Chancellor.

88. In this connection the Petitioner has further contended that Mr. Justice Lal having once been appointed by virtue of notification, Annexure P.E. dated 14th/29th December, 1975, he could not be unilaterally removed for two years and hence he still continues in the office. It was alternatively contended that, at the best, it can be held that he was removed from the membership of the Board

of Studies only on 26th December, 1975, as per Annexure P.E.

89. So far as the Petitioner's contention regarding the question whether the appointment of Mr. Justice Lal could have been unilaterally cancelled by the Vice-Chancellor, Dr. Jogi, I find that the question is more or less of academic interest if it is found that Mr. Justice Lal has accepted the said cancellation and has acted accordingly. The reason is that even if it is believed that his appointment could not be cancelled unilaterally Mr. Justice Lal's acceptance thereof would be tantamount to either abandonment of office or resignation from office which he was holding as a member of the Board of Studies. In view of this position I do not propose to go further into the question of law raised by the parties on this point.

90. Reference to the affidavit filed by Mr. Justice Lal shows that he has accepted the position that his membership of the Board of Studies stands cancelled. The real question, therefore, which arises to be considered is, on what date the membership of Mr. Justice Lal was actually cancelled. Mr. Justice Lal's affidavit filed in Dr. Kalia's case does not throw any light on the date on which he received the D.O. letter Annexure R.E. on which the contesting Respondents have placed reliance. Be that as it may, the fact remains that so far as the official public record of the University is concerned, the only document which evidences the removal of Mr. Justice Lal's membership from the Board of Studies is the notification Annexure R.E. which is dated 26-12-1975. On the face of it, this document seeks to remove Mr. Justice Lal from the Board of Studies with retrospective effect from 29-11-1975. This is patently illegal because no person can be removed from a post with retrospective effect. Even the Respondents do not claim that Mr. Justice Lal was removed from the Board of Studies on 26-12-1975 with retrospective effect from 29-11-1975, because their case is that he was removed on 29-11-1975 itself by the above referred D.O. letter.

91. This D.O. letter which is thus the basic document evidencing the removal of Mr. Justice Lal from the Board of Studies on a particular date is pleaded by the Respondents. Whether this D.O. letter came into existence on a particular date or not is a fact within the special knowledge of Dr. Jogi who has written the same. This document being a D.O. letter was not circulated or published and has remained a private document between Mr. Justice Lal and Dr. Jogi.

92. The veracity of this document is seriously challenged by the Petitioner. According to the Petitioner, the circumstances attending to this document show that this has been brought into existence subsequently with a view to create evidence that the disqualification which attached to Mr. Justice Lal's appointment to the Panel Committee was removed at the time when the names of the two nominated members of that committee were sent to the Chancellor.

93. Thus the document on which the Respondents want to put reliance to show that the disqualification attached to the appointment of Mr. Justice Lal was removed on 29-11-1975, is found to be a piece of evidence the credibility of

which is seriously disputed.

94. The question, therefore, is whether such a disputed piece of evidence can form the basis of the judgment of this Court in this writ petition. This question must necessarily be answered in the negative because if the Petitioner cannot succeed on the strength of disputed questions of facts without sufficient evidence to support them, then even the Respondents cannot succeed on the same ground unless they produce cogent and satisfactory evidence to show that this document is a credible piece of evidence which can be safely relied upon.

95. But that apart, I find that even on the basis of the record which is produced in this case there are strong circumstances which tend to cast a genuine doubt as regards the veracity of this document. I will presently deal with this aspect of the matter.

96. The resolution nominating the two names to the Panel Committee was passed on 20-9-1975 and it was decided by that resolution that the names of the nominees should be sent to the Chancellor. If that is so, it is difficult to understand why more than two months were required to remove the disqualification which was attached to Mr. Justice Lal for being nominated to the Panel Committee. In this connection it would be of some interest to note the explanation which is given by Dr. Jogi for this delay in his reply to the writ petition. Reference to paragraph 11 of this reply shows that he has given the following explanation:

After the names of the Respondents 5 and 6 were approved by the Executive Council in its meeting on September 20, 1975, the Respondents Nos. 5 and 6 were contacted by the replying Respondent personally as well as on phone to obtain their consent to become the nominees of the Executive Council. Several attempts were made in this direction and the Respondents Nos. 5 and 6 could not be contacted and lastly round about 25th November, 1975, they gave their consent to act as nominees of the Executive Council and immediately thereafter on November 29, 1975, their names were communicated to the Chancellor. The consent of the Respondents 5 and 6 was necessary to be obtained before their names were communicated to the Chancellor, had they refused the matter would have to be reported back to the Executive Council.

Thus the explanation of Dr. Jogi is that he could not contact Mr. Justice Lal from 20th September to 25th November though he made several attempts to see him personally and to contact him on phone. There is nothing in record to show that during this period Mr. Justice Lal was out of Simla or was on leave. Even Mr. Justice Lal does not say so in his affidavit. It can, therefore, be safely presumed that Mr. Justice Lal was on his duty, daily attending the court. Under these circumstances, it is simply naive to believe that Dr. Jogi could not contact him either personally or on phone in spite of repeated efforts which he continued to make during the period of two months especially when both of them were in Simla. I am, therefore, of the opinion that the above explanation given by Dr.

Jogi to explain this delay is merely an after thought.

97. As already noted above, Mr. Justice Lal's appointment to the Board of Studies expired on 17-10-1975. The new notification reappointing him for a further period of two years dated 14-11-1975 found at Annexure P.D. was admittedly not conveyed to him before 3rd December, 1975. Here the case of the Respondents is that 3rd December, 1975 which is found to be fixed on this document by a rubber stamp is the date on which this notification was dispatched to several persons including Mr. Justice Lal. Thus if the first appointment of Mr. Justice Lal to the Board of Studies expired on 17-10-1975 and if till 3rd December, 1975 he was not informed about his reappointment, it is difficult to understand what was the necessity of writing any D.O. letter at all intimating to him that his reappointment as a member of the Board of Studies was cancelled. Obviously, on 29-11-1975 the first appointment of Mr. Justice Lal stood automatically terminated on 17-10-1975 and the matter rested there and hence the only thing which was required to be done was to prevent the publication of the fresh notification reappointing him for a further period of two years.

98. It was contended that since the notification Annexure P.D. reappointing Mr. Justice Lal to the Board of Studies for a further period of two years was sanctioned by Dr. Jogi on 14th November, Dr. Jogi must obviously have been under an impression that that appointment was required to be cancelled and, therefore, he wrote the above referred D.O. letter on 29th November. If this be true, I find that the method adopted by Dr. Jogi for removal of the name of Mr. Justice Lal from the Board of Studies was surely unusual. When a person is appointed or removed from a position in which the whole institution like the University and the concerned members of the public are interested, the action is never known to have been kept private and confidential for about more than two months. Here the matter remained strictly confidential between Dr. Jogi and Mr. Justice Lal even though on 3rd December, 1975, the notification reappointing Mr. Justice Lal for a further period of two years to the Board of Studies, was in fact circulated to all the concerned officers and departments of the University. It was also circulated to Mr. Justice Lal himself. This is rather very unusual. In this connection if a reference is made to the endorsement found under the D.O. letter, it is apparent that the Registrar of the University was instructed to take action for the fresh appointment in place of Mr. Justice Lal. There is no satisfactory explanation to show why no such fresh action was taken till 26th December when Mr. Inder Singh was placed in the vacancy of Mr. Justice Lal in the Board of Studies. It was contended that when the D.O. letter was written the Registrar of the University was one Mr. Sharma and the said Registrar retired on the next day and, therefore, the fresh Registrar who took his charge must have necessarily taken some time in taking action on the D.O. letter. Even presuming that the fresh Registrar would take some time in getting himself acquainted with the administrative affairs of the University, it is difficult to believe that in such important matters he would have taken time upto 26th December 1975. Even

the notification dated 26th December does not make any reference to this D.O. letter and does not say that the appointment of Mr. Justice Lal was terminated with effect from 29th November by virtue of a D.O. letter.

99. If the name of Mr. Justice Lal was dropped from the Board of Studies on 29th November, it means that according to Dr. Jogi this removal was required in order to make Mr. Justice Lal fully competent and qualified to act as a member of the Panel Committee. In other words, according to Dr. Jogi himself, the removal of this disqualification was a very important matter. If that was so one should have expected Dr. Jogi to see to it that the notification Annexure P.D. by which Mr. Justice Lal was reappointed for a further period of two years, was not circulated at all. However, he is not found to have taken any such care which means that this care was not taken by him probably because the D.O. letter was not in existence at all and came into existence at a suitable opportunity subsequently.

100. As stated above, the notification Annexure P.D. by which Mr. Justice Lal was reappointed to the Board of Studies for a further period of two years was circulated even to Mr. Justice Lal himself. Now, if Mr. Justice Lal had received the D.O. letter cancelling his appointment on 29th November, he would have surely objected to the inclusion of his name in the notification showing his reappointment for a further period of two years as a member of the Board of Studies, and if this is so he would have surely drawn the attention of the Vice-Chancellor Dr. Jogi to the fact that in view of the D.O. letter dated 29th November, his name should not have been shown as reappointed member of the Board in the notification Annexure P.D. But nothing of this type has happened and no steps are found to have been taken to set the position right till the notification of 26th December was issued.

101. It is further found that even though the Executive Council is said to have selected the name of Mr. Justice Lal as a member of the Panel Committee, the Vice-Chancellor Dr. Jogi is not found to have disclosed to that Council at least till 23rd December that Mr. Justice Lal could not have been appointed as he suffered from a disqualification inasmuch as he was a member of the Board of Studies and, therefore, his said disqualification was removed by him by writing a D.O. letter dated 29th November. Surely at least the Executive Council which has made this nomination was expected to know about the existence of this D.O. letter much before 23rd December. But it is difficult to understand why Dr. Jogi has preferred to keep this D.O. letter secret between him and Mr. Justice Lal till 23rd December, 1975.

102. It is important to note that reference number which this D.O. letter bears shows, the same reference number which the file containing the appointments of members of the Board of Studies bears. In other words, the subject matter of the D.O. letter and the subject matter of the other notifications by which the appointments to the Board of Studies is made, is the same. In ordinary circumstances, therefore, this D.O. letter should find its place in the main file. The Petitioner had made attempt to get this main file produced. But the

University could not produce this file on the plea that the file was destroyed in fire along with many other documents. The fire took place in the night between 18th and 19th December, 1975. However, the University has been able to produce the office copy of this D.O. letter. The explanation was that this D.O. letter being confidential was not placed on the main file which was with the Registrar and which was burnt. This being confidential, it was kept in a separate file in the custody of the Vice-Chancellor himself. In view of this I wanted to look at that file which was shown to me by the Respondents. I am prepared to believe that file of D.O. letter can be kept separate from the main file. I am also prepared to believe that such confidential correspondence would not be handed over to the Registrar and would be kept by the Vice-Chancellor in his personal custody. But after seeing the so called file I find that it contains only one document, viz., a copy of this D.O. letter. Therefore, the question is, can it be said that in the whole career of about six years of this University, only one D.O. letter was addressed by the concerned Vice-Chancellor. When this file contains the copy of only this disputed D.O. letter, I find there are sufficient reasons to believe that this file is maintained only for one paper and that is this disputed D.O. letter.

103. These are some very important circumstances which cast serious doubt on the veracity of this document. The burden of convincing this Court that Mr. Justice Lal's appointment to the Board of Studies was terminated or cancelled on a particular date, is on the contesting Respondents. If they fail to discharge this burden the date of cancellation of Mr. Justice Lal's membership from the Board of Studies cannot be taken as 29th November, 1975.

104. The learned Advocates of the Respondents contended very seriously that there is no reason to doubt the veracity of this document especially when Dr. Jogi states on oath that it was delivered to Mr. Justice Lai on 29th November, and Mr. Justice Lal does not controvert that statement in his affidavit found at page 83 in the file. It is contended that Mr. Justice Lal himself accepts that he had received this D.O. letter and he took membership in the Board of Studies as terminated as from 29th November, 1975 and, therefore, this Court must accept the date of 29th November, 1975 as the date of termination of his service from the Board of Studies. I see no force in this contention. Apart from the fact that Mr. Justice Lal does not say in his affidavit as to on what date he received this disputed D.O. letter, I am of the opinion that all the circumstances which are discussed above are sufficient to induce the court to reject the document as not worthy of credence in spite of what Dr. Jogi and Mr. Justice Lal have preferred to state in their affidavits.

105. It was further contended that the circumstances that on 29th November the Chancellor was informed about the names of the two nominees and the further circumstances that Mr. Negi himself admits in his letter dated 27th December that during the course of the proceedings of the Executive Council's meeting on 23rd December, Dr. Jogi had disclosed that the disqualification of Mr. Justice Lal

was removed on the date on which the Chancellor was informed about the names of the two nominees, should be considered as sufficient for proving that the D.O. letter in fact came into existence on 29th November. I find myself unable to accept this contention. It is no doubt true that it transpires from Mr. Negi's letter dated 27th December that Dr. Jogi revealed to the Executive Council in its meeting on 23rd December that the disqualification of Mr. Justice Lal was removed on the date on which the Chancellor was informed about the names of the two nominees. But this does not help the case of the contesting Respondents, in any manner because this amounts at the most to an admission made by Dr. Jogi on 23rd December in his own favour. Repeated admissions of this type would not improve the quality of the intrinsic nature of the evidence which is already discussed above. As Iready noted above, it is difficult to understand why before 23rd December Dr. Jogi did not enlighten the Council about the initial disqualification and its subsequent removal on 29th November.

106. Thus if the D.O. letter dated 29th November is not treated as a realiable piece of evidence, and is to be kept out of consideration, what remains in the record of the case to show the date on which the disqualification of Mr. Justice Lal was removed, is the notification dated 26th December, 1975. This notification is regularly circulated to all concerned and since the existence of this document is not in dispute it would be safe to conclude that Mr. Justice Lal's membership in the Board of Studies came to an end on the date of this notification, that is on 26th December, 1975.

107. The major part of the contention raised on behalf of the Respondent University by its learned Advocate Shri Sibbal, was focussed on his plea that, if it is held that the disqualification from which Mr. Justice Lal suffered from being nominated to the Panel Committee was removed on 29th November, 1975, by the above discussed D.O. letter, the present writ petition is liable to be dismissed because the Petitioner could not have succeeded in obtaining any information in the nature of a writ of quo warranto against Mr. Justice Lal after 29th November as his disqualification stood removed from that date. The argument was further strersed and it was contended that if a direct petition for a writ of quo warranto against Mr. Justice Lal could not have succeeded after 29th November, 1975, the present challenge to his nomination as a member of the Panel Committee should also not succeed because what could not have been done by the Petitioner directly, should not be allowed to be dude by him indirectly in this petition.

108. This contention is not available to the contesting Respondents in view of my finding that they have failed in showing that Mr. Justice Lal's services as a member of the Board of Studies were cancelled from 29th November, 1975.

109. Apart from that, this contention is also not acceptable on merits even if it is believed, for the sake of argument, that Mr. Justice Lal's services as a member of the Board of Studies were terminated on 29th November as contended by the Respondents. The discussion which now follows shows that the contention of Shri Sibbal in this connection is based on two serious misconceptions.

110. It should be remembered that the basic fact in a writ of quo warranto is that it operates personally against the alleged usurper of public office, and hence the inquiry in such a writ is confined only to the legality or otherwise to the appointment of the said alleged usurper. Other questions which arise in such an inquiry are all incidental. It is undoubtedly true that in this case the question as regards the validity of the nomination of Mr. Justice Lal to the Panel Committee forms the basis of the Petitioner's attack on the validity of the appointment of Dr. Jogi as Vice-Chancellor of the University. But that fact does not change the intrinsic character of the present writ wherein the accountable person is Dr. Jogi and not Mr. Justice Lal. The writ which this Court might grant in this petition is not going to operate against" Mr. Justice Lal. Therefore, the consideration whether a direct writ of quo warranto against the appointment of Mr. Justice Lal would have succeeded or not, is not relevant to the present inquiry.

111. The second misconception is that the stigma of a legality which intially attached to the nomination of Mr. Justice Lal to the Panel Committee is not washed away even if it is believed that the Court would not have granted the writ in the nature of quo warranto against his nomination in a direct challenge if the removal of the disqualification was made on 29th November. It is true that there is a chain of decisions holding that if the holder of a public office was intially disqualified to hold that office, the writ quo warranto would not be issued if it is found that at a subsequent stage that disqualification was removed and after the removal of the disqualification the incumbent concerned could have been appointed on the same post. Such decisions are undoubtedly given in Hari Shankar Prasad Gupta Vs. Sukhdeo Prasad and Another, , Sukhdeo Narayan and Others Vs. Mahadevananda Giri, , Prabhudutt Sharma v. State of Rajasthan 1971 Lab. I.C. 556, P.L. Lakhanpal v. Ajit Nath Ray AIR 1975 Del. 66 and Gunanidhi Mohapatra Vs. The Chairman, N.A.C. and Others, on which reliance was placed by Shri Sibbal during the course of hearing. The contention of the learned Advocate of the Petitioner in reply to this was that all these decision were given in the cases wherein disqualification was the result of some irregularity which was subsequently cured, and therefore, they have no application to the facts of the present case wherein the nomination of Mr. Justice Lal to the Panel Committee is found to be void ab initio and hence non est.

112. I find that it is not necessary to consider the merits of this contention because even if these decisions are interpreted as desired by the learned Advocate of the Respondent University, it is evident that they are based on the doctrine of futility. The doctrine on which the Courts have given these decisions is that in cases where the initial disqualification is removed it would be open to the authorities concerned to appoint the same person immediately even if the court grants the writ of quo warranto as desired by the Petitioner. The general principle which is accepted by the courts without any demur is that the court would not pass any writ or any decree which becomes futile. Thus all these decisions on which reliance is placed are the decisions based on the doctrine of futility. But the fact remains that merely because in a particular case the court acting on the

doctrine of futility refuses to give any writ the original stigma of legality does not get removed. Under these circumstances, I find that the contention raised by Shri Sibbal on this point suffers from another misconception that simply because the court would not refuse to grant any writ in direct challenge to the appointment of Mr. Justice Lal as a member of the Panel Committee, the stigma which initially attached to his nomination as a member of this Committee gets removed and the appointment becomes legal.

113. It was next contended that the requirement of Statute 1(2) that the member nominated by the Executive Council in the Panel Committee should not be connected with the University is directory in its nature and not mandatory and hence a substantial compliance thereof would be sufficient. According to the learned Advocate of the Respondents substantial compliance with the provisions of the said Statute can be said to have been made if it is believed that the disqualification of Mr. Justice Lal was removed on 29th November by which date the formation of the Panel Committee was not yet over.

114. This argument would now not be available to the Respondents in view of my finding as regards the D.O. letter above referred to.

115. However, I do not find it possible to subscribe to the Respondents' contention that the requirement of Statute 1(2) as regards the want of connection with the University is directory in character. In order to decide whether a particular requirement of law is directory or mandatory, it is now well settled that it is the principle object of the Legislation which should be taken into account and which should ultimately decide the question whether the requirements are directory or mandatory. The real question, therefore, is what is the object of making a provision that the two members of the Panel Committee, who are to be nominated by the Executive Council, should not be connected with the University or with an institution recognised by or associated with the University. The obvious object of making this provision is to see that the members of the Panel Committee should be totally independent so that they can suggest the name of a Vice-Chancellor without any prejudice or predilections. The Clause (2) of Statute 1 serves two purposes, namely; (1) it enables the University itself to have a voice in the selection of members of the Panel Committee and (2) at the same time it ensures that the Executive Council which is to make this selection, and which is likely to be dominated by one or the other of the rival groups working within the municipal administration should not suggest the name of any person who is likely to be influenced by the rival forces within the University, and who, at the same time, would be able to take some independent judgment keeping the overall interest of the University in mind. These are the two main principal objectives which the Legislation appears to have in mind in providing in Clause (2) of Statute 1 that the persons nominated by the Executive Council should not be connected with the University. If this requirement is considered to be merely directory then the very object of Clause (2) would be frustrated. It is the basic principle of interpretation that no

provision of law should be so construed as would result in the frustration of its original object. Obviously Sub-clause (2) of Statute 1 embodies in itself a definite public policy, and when a provision of law clearly evidences a public policy, it is generally construed as mandatory in its nature. In this connection a reference be made to an earlier decision of the Calcutta High Court in *Gour Chand Mullick Vs. Pradyumna Kumar Mullick and Another*, wherein it is observed that the question whether a particular violation of the provision of a statute can be waived or not depends for its answer on the further question, namely, whether that provision of the statute is obligatory or merely directory. To determine this question says the said Calcutta decision, the ultimate test is whether the particular statute or the particular provision in that statute is based on grounds of public policy or whether it was intended only for the benefit of a particular person or class of persons. It is held in that case that if it is based on the ground of public policy, it is obligatory, and cannot be waived and a contravention of such a provision must be treated as a nullity. On the other hand, if it is not based on the ground of public policy, but it is intended for the benefit of an individual person or class of persons, then it is only directory and can be waived because every one has a right to agree to waive the advantage of a law or rule made solely for the benefit of protection of the individual and a contravention of such a provision will amount only to an irregularity. I find myself in respectful agreement with this proposition.

116. I further find that the point is now well settled through various decisions of the Supreme Court the most important of which is *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*. This decision summarises all the important principles with a view to decide whether a particular provision of law should be treated as mandatory or directory. It says that when a statute-uses the word "shall", as is used in Clause (2) of statute 1, the provision should prima facie be treated as mandatory. However, mere use of the word "shall" or "may", would not be a final determinant factor because the court is expected to ascertain the real intention of the legislation by carefully attending to the whole scope of the statute. For the purpose of ascertaining the intention of the legislation, the Supreme Court says, the court may consider, inter alia, the nature and design of the statute and the consequences which would follow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance that the statute provides for a contingency of the non-compliance of the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom and above all whether the object of the legislation will be defeated or furthered. The emphasis on the question whether the object of the legislation will be defeated or furthered is too obvious to be repeated. The same view is taken by the Supreme Court in *Banwari Lal Aggarwala v. State of Bihar and Ors.* reported in the same volume of the AIR 849 SC has observed that in each case the court has to decide what is the legislative intent behind making the particular provision. In *Seth Bikhraj*

Jaipuria Vs. Union of India (UOI), again the same principle is repeated and the Supreme Court has emphasised that it is principally the intention of the legislature which should be looked into especially in cases wherein consequences for non-compliance of the requirement in question are not set out. This case, therefore, furnishes good answer to the Respondents' contention that Clause (2) of statute 1 does not provide for the consequences of the non-compliance with the requirement of want of connection with the University and, therefore, it should be construed as merely directory.

117. Shri Sibbal, the learned Advocate of the Respondent University, put reliance upon the following observations made by the Supreme Court in *State of Punjab Vs. Satya Pal Dang and Others* and *Baldev Parkash and Others*, In paragraph 30 of the reported judgment the following observations are found:

For our purpose it is necessary to emphasise only one distinction, (the distinction between mandatory and directory nature of provisions). In those cases where strict compliance is indicated to be a condition precedent to the validity of the act itself, the neglect to perform it is indicated as fatal. But in cases where although a public duty is imposed and the manner of performance is also indicated in imperative language, the provision is usually regarded as merely directory when general injustice or inconvenience results to others and they have no control over those exercising the duty.

These observations were pressed on the submission that in this case the members of the Panel Committee who are nominated by the Executive Council had no control over the Executive Council which exercised its duty which was public in its nature and, therefore, the requirement as regards the want or connection with the University stipulated by Clause (2) of statute 1 should be treated as directory and not mandatory. I find that these observations on which reliance is placed have originally been taken and approved by the Supreme Court from Maxwell's book on Interpretation of Statutes. However, if a reference is made to the original observations found in this book it will be noticed that these observations contain some more sentences which make the whole difference. These observations of Maxwell in his book were first approved by the Privy Council in *Mountreal Street Railway Company v. Normandin* reported in AIR 1917 P.C. 142 at page 144. In this connection the Privy Council is found to have observed as under:

The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statutes must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th ed. P. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has

been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

(emphasis supplied).

The portion emphasised shows that even if it is found that the others to whom inconvenience has resulted had no control over the exercise of the public duty by the body which is expected to perform the said public duty, the court has further to enquire whether the main object of the Legislature gets promoted or not. The above quoted observations of the Supreme Court in *Montreal State Railway Company* and the commentary found in Maxwell's book on Interpretation of Statutes have been consistently approved in the same language by the Supreme Court in *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, and subsequently in *State of U.P. Vs. Manbodhan Lal Srivastava*. Thus, it is obvious that even according to the Supreme Court, the question of mandatory or directory character of a particular requirement is primarily to be decided with reference to the object of the statute, and if by putting the construction that the particular requirement is merely directory the court finds that the main object of the Legislature is thereby frustrated, then it is not permissible for the court to come to the conclusion that it is merely directory.

118. The fact of the matter is that in *Dr. S.C. Barat and Another Vs. Hari Vinayak Pataskar and Others*, the similar provisions of the Jabalpur University Act came to be considered and the contention that these provisions were merely directory were emphatically repelled by a Division Bench of that Court. After considering the law on the subject the Court has observed on this question in that case as under:

The object of the provision is clearly to place beyond the pale of parochial or local influence or improper pressure the matter of the selection of the Vice-Chancellor giving at the same time the University, through its executive body viz., the Executive Council, an indirect voice in the matter of selection. The Vice-Chancellor is u/s 8 of the Act an officer of the University. Ordinarily, therefore, the proper authority to select and appoint the Vice-Chancellor would be the University Court or the Senate. But it is common knowledge that in Universities where the Vice-Chancellor is selected by a process of election by the University Court or the Senate the selection is in many cases not entirely free from the trammels of political or party associations or parochial influence. Very often this has resulted in the appointment of a person not well-qualified or suited to fill the high office of the Vice-Chancellor. In order to avoid the play of these forces in the selection of a person for appointment as the Vice-Chancellor and to secure the services of a person of learning, qualifications and independence and standing for the University the Legislature devised the mode prescribed in Section 11.

The Court has further observed in para 9 of the reported judgment that the question whether a statutory provision is absolute or merely directory has to be determined not only on the language of the provision but also on the relation of

that provision to the general object intended to be secured by it. Speaking about the specific provisions which were under consideration, the Court has finally observed as under:

The provision that the nominees of the Executive Council shall be "from amongst persons not connected with the University or a college" is one prescribing a qualification and as disqualifying persons connected with the University or a college from being appointed as nominees of the Executive Council. This provision is clearly mandatory. Section 11(2) does not say that the persons to be appointed by the Executive Council shall so far as possible be persons not connected with the University or a college. There is, therefore, no question of substantial compliance with the qualification prescribed. A person is either qualified or he is not. There can be no degrees of compliance in this respect.

The provisions which the Madhya Pradesh High Court examined in this decision are quite similar to the provisions which are before me. Under the circumstances, this decision of the Madhya Pradesh High Court completely covers the facts of the present case.

119. There is one more aspect of the matter which should be taken into account in this connection. It is that out of the three names of the panel committee, two name are required to be nominated by the Executive Council and one name is required to be nominated by the Chancellor. There is no condition imposed by the Statute with regard to the preference which the Chancellor is expected to make. Such a condition exists only in case of nominations which are required to be made by the Executive Council of the University. Since the Executive Council is expected to nominate two nominees, it follows that the persons nominated by the Executive Council would be in majority. Therefore, if these persons are connected with the University, then they would reflect only that group which commands the majority in the Executive Council. In other words, the persons nominated by the Executive Council would reflect the interest of only the majority in the Executive Council and not of the University as a whole. And if even the Chancellor nominate a person who is connected with the University or an institutio recognised by or associated with the University, all the thr members- of the Panel Committee would be the persons connected with the University. Such a situation would totally frustrate the whole object of Statute 1(2). But if the two persons nominated by the Executive Council are not connected with the University, then the object of the Statute would be carried out even if the nominee of the Chancellor is connected with the University. This aspect of the matter emphasises the fact that the requirement of Clause (2) of the Statute 1 must be treated as mandatory and not directory.

120. This covers all the points which are raised by the parties in Dr. Kalia's petition and the result of the conclusion which I have arrived at is that the Petitioner Dr. Kalia should succeed in obtaining a writ of quo warranto against the appointment of Dr. Jogi as a regular Vice-Chancellor of the University. It is found that the constitution of Panel Committee was basically illegal inasmuch as Mr.

Justice Lal as connected with the University and was, therefore, disqualified to sit as a member of the Panel Committee. The action taken by the Panel Committee is, therefore, intrinsically illegal and the appointment of Dr. Jogi as a consequence of this action should also be treated as illegal. In the writ petition No. 235 of 1976, therefore, it is ordered that the Respondent No. 3, Dr. Jogi, is not entitled to hold the post of Vice-Chancellor, Himachal Pradesh University as a regularly appointed Vice-Chancellor. Consequent to this, the Respondent No. 2, the Chancellor of the University, is directed to make a fresh appointment of Vice-Chancellor in accordance with the provisions of law. The Respondent No. 3 is restrained from further functioning as the Vice-Chancellor of the University.

121. The Petitioner has prayed for quashing the notification Annexure P.E. dated 26th December, 1975. As already observed by me, this notification operates prospectively and there is no necessity of quashing the same. Therefore, this prayer of the Petitioner is rejected. The Petitioner Dr. Kalia becomes substantially successful in this writ petition and, therefore, it is ordered that the contesting Respondents shall bear their own costs as well as the costs incurred by Dr. Kalia in this writ petition.

122. This brings me to the writ petition No. 405 of 1976, filed by Dr. Pandey. Prayer clauses Nos. 1 to 4 of Dr. Pandey's writ petition are relating to the writ of quo warranto which he has asked for against Dr. Jogi. As already stated above, this Petitioner is not found fit to be entrusted with this writ. Therefore, prayers made in prayer clauses No. 1 to 4 are rejected.

123. As already stated in the proceedings dated December 9, 1976, the prayer contained in prayer clause No. 9 is withdrawn. Therefore, what remains to be decided is the merits as regards the prayers made in prayer clauses 5 to 8, 10 and 11.

124. These prayers are with regard to the constitution of the Executive Council of the University as on May 22, 1976, as well as the legality of the actions taken by that Council in its meeting dated May 22, 1976, as per its resolution No. 9.

125. As already stated above this Court held in writ petition No. 139 of 1976 that the Vice-Chancellor had no jurisdiction to order any inquiry against the Petitioner Dr. Pandey. As a result of this decision the meeting of the Executive Council of the University was held on 22-5-1976. That meeting was attended to by 20 persons including the Registrar of the University and it passed the resolution which is shown against item No. 9 in Annexure P-25. Reference to this annexure shows that several documents were put before the Executive Council for its consideration on the question as to what departmental action was required to be taken against the Petitioner. Annexure P-25 lists six categories of documents which were placed before the Executive Council for its consideration. After considering this material the council is found to have recorded its conclusion as under:

Whereas this Executive Council being the competent authority with regard to Dr.

K.P. Pandey, Director, Correspondence Courses, has considered the material before it and is satisfied that there is a prima case against him for misconduct, financial irregularities and insubordination; and for that an Enquiry is necessary and in order to have fair and impartial enquiry the Executive Council considers it necessary that Dr. K.P. Pandey be suspended, pending enquiry, which the Executive Council orders forthwith under Ordinance 35.7 and 35.45.

126. During the period of this suspension, Dr. K.P. Pandey shall under Ordinance 35.46 receive one-half of the emoluments that he was drawing immediately before his suspension, and he shall be subject to all laws of the University during the period of suspension. The Headquarters of Dr. K.P. Pandey during the period of suspension shall be University Office, Summer Hill, Simla, and he will not be permitted to enter the Directorate of Correspondence Courses, Ava Lodge, without the" permission in writing of the Registrar.

127. If Dr. K.P. Pandey wants to have any clarification with regard to any matter arising out of this order, he may get the same from the Vice-Chancellor and the Vice-Chancellor is hereby authorised to do so on behalf of the Council,

128. In view of the suspension of Dr. K.P. Pandey, Shri Hem Chand, District and Sessions Judge (Retd.) Mandi is appointed the Enquiry Officer and Shri A.L. Kaushik, Finance Officer, will act as the Presenting Officer.

This resolution of the Council shows that on 22-5-1976 it was found that prima facie case existed against the Petitioner for misconduct, financial irregularities and insubordination, that therefore, a departmental enquiry was necessary. The resolution also shows that the petitioner was at once suspended with immediate effect. It further shows that the appointment of an enquiry officer was made and the appointment of a Presenting Officer was also made on that very day.

129. Pursuant to this resolution an office order was passed on the same day suspending the Petitioner from service (vide Annexure P-26 at page 86). One Mr. Hem Chand, retired District and Sessions Judge, was also appointed on the very same day as Enquiry Officer as per Annexure P-27.

130. The Executive Council is thereafter found to have framed charge sheet on 4-6-1976 and it was served on the Petitioner on 11-6-1976. It is further found by reference to Annexure P-37 at page 138 that the Petitioner had addressed letters to the Executive Council on 21-6-1976, and 2-7-1976 for the supply of some documents in order to enable him to file his written statement. During the course of hearing some more record was produced at the instance of the court by the University to show that on 17-7-1976 a meeting of the Executive Council was held and during the course of that meeting the Petitioner's letter dated 21-6-1976 requesting inspection of some documents was considered. On that very date the Registrar of the University seems to have sent by post the information to the Petitioner allowing inspection (vide Annexure P-42 at page 158). Ultimately the Petitioner is found to have submitted his reply to the charge sheet on 23-7-1976 as per Annexure P-38 (page 130). But this written

statement is admittedly not put before the Executive Council for its consideration

131. These are the short facts forming the background of Petitioner's contention as regards the resolution passed by the Executive Council on 22-5-1976.

132. The following are the contentions raised on behalf of the Petitioner with regard to the above referred resolution of the Executive Council:

1. The Executive Council has ordered the departmental enquiry without applying its mind to the necessary materials.
2. The Executive Council has ordered the departmental enquiry being prompted by malice at the instance of Dr. Jogi and Respondents Nos. 6, 7, 9, 20 and 21.
3. The Executive Council had not before it sufficient materials to order this departmental enquiry.
4. The Executive Council was not legally and properly constituted as seven of its thirteen members who had voted for the resolution were not eligible to become its members.
5. Rule of procedure contemplated by Rule 14(5) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which applies to the facts of this case was infringed as the written statement of the defence filed by the Petitioner on 23-7-1976 was not placed before the Executive Council for consideration and the Enquiry Officer as well as the Presenting Officer were appointed before the proper stage for the same.
6. Suspension of the Petitioner from service could not have been ordered on 22-5-1976 because actual enquiry had not started on that day.

133. These are the six points which arise for consideration. Before taking up these points it should be noted that the Himachal Pradesh University Act came into force on 22-7-1970. The First Statutes of the University came to be applied on 8-8-1970. The Central Civil Services (Classification, Control and Appeal) Rules, 1965, were adopted by the University on 6-7-1972 as per resolution of the Executive Council found at Annexure R-164 which is dated 6-7-1972. It is in the following terms:

Item No. 6: To consider the proposal to adopt the Government of Himachal Pradesh Rules namely,

(i) leave rules, (ii) conduct rules, (iii) classification, control and appeal rules, (iv) medical reimbursement rules, (v) liveries rules, as amended from time to time and in so far as they are not inconsistent with the Himachal Pradesh University Act and Statutes, by the University till its own rules are framed, with such modifications as may be considered necessary in the interest of the smooth functioning of the University.

The Rules shall cover all the past cases also.

The proposal was approved.

Thereafter First Ordinances were applied on 30-6-1973 and then on 26-4-1974 the Executive Council passed the following resolution regarding the application of Government rules and regulations and procedure to be followed in service matters (Annexure R-165):

Item No. 17. To consider the proposal that where specific provision for any matter does not exist in the Statutes and the Ordinances, the Government rules and regulations and procedures be followed in all such matters.

The proposal was considered and it was resolved that in such situations, the Government rules, regulations and procedures be followed *mutatis mutandis*.

134. So far as the first contention as regards the application of mind by the Executive Council is concerned, it is difficult to understand on what basis the Petitioner contends that the Executive Council has not applied its mind to several documents which were placed before it. If a reference is made to the details of these documents given in Annexure P-25, it becomes clear that all the relevant material was placed before the Executive Council before it took its decision on 22-5-1976. Therefore, I see no force in the first contention.

135. As for the second contention, it was argued that the Executive Council was prompted by malice at the instance of the Vice-Chancellor Dr. Jogi and Respondents Nos. 6, 7, 19, 20 and 21. The Petitioner has tried to bring some evidence in the record to show that Respondents Nos. 6, 7, 19, 20 and 21 were inclined against him. But presuming that these Respondents were inclined against the Petitioner there is absolutely no evidence in the record to show that the decision of the Executive Council was secured by these Respondents. Under these circumstances - I do not propose to go into the facts which were alleged against Respondents Nos. 6, 7, 19, 20 and 21. I, therefore, see no point even in the second contention raised on behalf of the Petitioner.

136. So far as the third contention is concerned, it was pointed out that each document which was placed before the Executive Council when it took its decision on 22-5-1976 is explainable in favour of the Petitioner and therefore, it should be held that the Executive Council had not before it sufficient materials to order enquiry against the Petitioner. This contention relates to the merits of the material placed before the Executive Council. Merits of this material will be considered by the Enquiry Officer and it is not for this Court to enter into these merits at this stage. Therefore, I see no force even in contention No. 3.

137. So far as contention No. 4 is concerned, the argument was that the Executive Council was not legally and properly constituted as seven of its members including the Vice-Chancellor were not entitled to sit as the members of the Council. Here it is necessary to note the voting pattern when this resolution was passed. It is an admitted position that out of 19 members of the Council, who were present at the meeting, 13 voted for the resolution and 3

voted against it. According to the Petitioner 3 members remained neutral, while according to the Respondents two remained neutral. For the present we proceed on the presumption that three members remained neutral. Out of 13 members who voted for the resolution, the Petitioner has challenged on various ground the right of six members as also the right of the Vice-Chancellor to sit in the council. This challenge obviously comes at a belated stage. However, even if it is believed that six of the 13 members, who voted for the resolution, were incompetent to sit as members of the Executive Council, the fact remains that six members who were admittedly competent to sit, had voted for the resolution, and three against the same. On the limited aspect, the point number 4 which is raised on behalf of the Petitioner fails, as, even accepting the contention put forward by the Petitioner as regards the validity of the appointment of six members, the Council is found to have accepted the resolution by a majority of six as against three. Therefore, it cannot be said that the resolution has been illegally passed.

138. Apart from this, I find that there is absolutely no substance in the challenge given by the Petitioner to the right of these six members to sit as members of the Council on 22-5-1976. I will presently deal shortly with this aspect of the matter.

139. The case of the Petitioner is that apart from Vice-Chancellor Dr. Jogi, Respondents Nos. 2 to 5, 35 and 43 were not validly appointed to the Executive Council. I will first take up the case of Respondent No. 5, whose name is Vinod Kumar. He was previously the Secretary of Students Council which is envisaged by Statute 15-A. As such, he was ex-officio member of Court which is constituted as per provisions of Statute 8. According to Statute 8(3) a student member should hold office as a member of the Court for one year or till the end of the academic year whichever is earlier. While this Respondent was still a member of the Court, he was elected by the Court as a member of the Executive Council as per provisions contained in Statute 10(1)(vii)(vide Annexure R-88). This election was made on 30-12-1974. Now the contention of the Petitioner is that this Respondent ceased to be a member of the Students' Council and, therefore, automatically ceased to be a member of the Executive Council on the date on which he ceased to be a member of the Students' Council. Under the circumstances, the date on which the impugned resolution was passed by the Executive Council, that is on 22-5-1976, he was not entitled to continue as a member of the Executive Council. This contention of the Petitioner is not acceptable in view of the provisions contained in Clause (2) of Statute 10 which says that the term of office of the member of the Executive Council other than ex-officio members shall be three years. Respondent No. 5 being elected as a member of the Executive Council by the Court was obviously not an ex-officio member and his election to the Executive Council did not depend upon his membership or Secretary ship of Students' Council. Under the circumstances, even though he ceased to be the Secretary of the Student's Council "once he was elected as a member of the-Executive Council he Was entitled to continue for a period of three years from 30-12-1974. Therefore, this challenge against

the Respondent No.1 5 does not survive. It was contended on behalf of the Petitioner that since the right of this Respondent to sit as a member of the Court depended upon his right to become the Secretary of the Students' Council, his election by the Court as a member of the Executive Council should be dependant up on his continuance as a Secretary of the Students' Council. It was further contended that this is the only manner in which the purpose of the relevant Statute could be carried out. I find this contention unacceptable because there is nothing to show in any of the relevant Statutes that the purpose of election, of this Respondent to the Executive Council was to give representation to the Students' Council.

140. Then I take up the case of Respondents Nos. 3 and 4. Both of them were previously lecturers and members of the Academic Council. Statute 12(1)(xii) provides that Academic Council shall consist of 15 teachers of affiliated colleges including colleges--seven by election in accordance with the system of proportional representation by means of single transferable vote and eight by rotation according to seniority. Statute 10(1)(PI) provides that three members of the Executive Council shall be elected by Academic Council from amongst it & teacher-members; Now it is an admitted fact that the term of the membership of Respondents Nos. 3 and 4 in the Academic Council was for two years [vide Statute 12(2)]. This term of the membership in the Academic Council admittedly expired in February 1975. As per provisions of Statute No. 1(vi) these two Respondents were elected in the Executive Council on 24-11-1973 (vide Annexure R-89 and R-90). Now the contention of the Petitioner is that since the term of membership of these two Respondents in the Academic Council expired in the month of February 1975 they automatically ceased to be the members even of the Executive Council on that date. In this connection may attention was drawn on behalf of the Petitioner to the fact that even the University virtually admitted this position because these two Respondents were declared by the University as having ceased to be the members of the Executive Council on the expiry of the term of their membership in the Academic Council. This admission of the University on a point of law cannot be considered as binding. So as far legal position is concerned, I find that there is nothing in any of the Statutes to show that with the expiry of the terms of membership of these Respondents in the Academic Council, their membership in the Executive Council would automatically come to an end. As stated above, according to Clause (2) of Statute 10 once a member is elected in the Executive Council, his membership survives for three years from the date of the said election, even though he is elected for the Executive Council by other bodies such as Academic Council or the Court. Therefore, the challenge to the continuance of these two Respondents in the Executive Council on the date of the impugned resolution should also fail.

141. So far as Respondent No. 2 is concerned, he was appointed as a Professor of Education on 25-8-1975. Being the head of his department, he was a Dean, and as such, he was a member of the Executive Council. The resolution of the Executive Council appointing this Respondent is found at Annexure R-126. Now

with regard to this Respondent the contention of the Petitioner is that he does not fulfil the minimum qualifications which are required for the appointment of a teacher. It may be noted here that the word teacher includes a Professor. Ordinance 35.54 provides for the minimum qualification for the appointment as teachers of the University. So far as the Professors are concerned the minimum qualifications are:

1. Ph. D. or an equivalent degree,
2. Five years" post-graduate teaching or five years" posts-doctoral research in a University or a Research institute, and
3. Distinguished research work.

It was contended that the recruitment of this Respondent as a Professor, Department of Education was bad inasmuch as he did not hold any of these minimum qualifications. At page 565 of the record we find a return filed by this Respondent. Reference to this return shows the various qualifications and the width of experience which this Respondent possesses. It is true that the list of qualifications and experience which is possessed by this Respondent does not cover the above referred three minimum qualifications which are mentioned in Ordinance 35.54. However, the case of the Respondent is that in every case it is not necessary to have the minimum qualification prescribed in Ordinance 35.54 in view of the proviso which is attached to this Ordinance. This proviso says:

Provided that the Executive Council may, if necessary, relax the above qualifications on the recommendation of the Vice-Chancellor or the Selection Committee, as the case may be.

Looking to the quality of experience and other qualifications which are held by this Respondent, the then Vice-Chancellor Mr. Singh seems to have relaxed the requirement of minimum qualification at the time of the appointment of this Respondent. In fact the appointment letter which is produced by this Respondent along with his return shows that he was specially invited for the job under the provisions contained in Clause (6) of Statute No. 17 which provides for special mode of appointment. Under these circumstances, the challenge to the appointment of this Respondent as Professor of Education fails and, therefore, the challenge to his right to sit in the Executive Council on the date on which the impugned resolution was passed also fails.

142. So far as Respondent No. 35 is concerned, he was working as a Professor in the Chemistry Department. He was elected by the Academic Council as a member of the Executive Council on 24-11-1973. Before the impugned resolution was passed there was a break in his service, but on 31-8-1974 the Executive Council passed the resolution, found at Annexure R-91 and 92 reappointing him and condoning the break in his service. The contention was that on account of the break in his service this Respondent was not entitled to continue as a member of the Executive Council. This contention is not acceptable because the

Respondent was elected member of the Executive Council, and as such, irrespective of any other consideration such as break in service, he was entitled to continue as a member of the Executive Council for a period of three years from the date of his election. Therefore, here also the Petitioner fails.

143. So far as Respondent No. 43 is concerned, he was Principal, Government College, Hamirpur on 29-9-1975 when he was taken as a member of the Executive Council. The contention of the Petitioner is that as per document found at Annexure P-34 dated 30-10-1972 he was to be treated as a Principal. According to the Petitioner he was senior to this Respondent No. 43 and, therefore, instead of this Respondent he should have been appointed to the Executive Council pursuant to the provisions contained in Statute 10(1)(v) which says that three Principals of the affiliated college/colleges, maintained by the University shall be appointed to the Council by rotation on the basis of seniority. Even this contention is not available to the Petitioner because reference to the contents of Annexure 34 on which reliance is placed shows that the Director of Correspondence Courses was ordered to be treated as Principal "for such functions as are required to be performed by the principal of an affiliated college". Obviously this does not mean that for all the purposes of the University the Petitioner was required to be treated as Principal.

144. Thus the challenge given by the Petitioner to the right of the above referred Respondents to remain members of the Executive Council on the date of the impugned resolution fails and, therefore, the challenge to the constitution of the Council on the date of that resolution also fails.

145. So far as the fifth point is concerned, the learned Advocate of the Petitioner has drawn my attention to the scheme of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and has contended, that the appointment of the Enquiry Officer and the Presenting Officer could not have been made by the Executive Council on 22-5-1976, the date on which the impugned resolution was passed, but should have been made only after the written statement of the defence was placed before the disciplinary authority, that is, the Executive Council, under Sub-rule (5). The relevant provisions of Rule 14 are as under:

14. Procedure for imposing major penalties:

(1) No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an enquiry held, as far as may be, in the manner provided in this rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the

case may be, an authority to inquire into the truth thereof.

Explanation.--Where the disciplinary authority itself holds the inquiry, any reference in Sub-rule (7) to Sub-rule (2) and in Sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge,

(ii) a statement of the imputations of misconduct or misbehaviour: in support of such article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant,

(b) a list of documents by which, and a list of witnesses by whom, the articles, of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations or misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint, under Sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15.

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under Sub-rule (2), an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charges, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presiding Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority,

forward to the inquiring authority:

- (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour,
- (ii) a copy of the written statement of defence, if any, submitted by the Government servant,
- (iii) a copy of the statements of witnesses, if any, referred to in Sub-rule (3),
- (iv) evidence proving the delivery of the documents referred to in Sub-rule (3) to the Government servant, and
- (v) a copy of the order appointing the "Presiding Officer".

Sub-rule (2) of this rule shows that whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour, it may itself inquire into this imputation, or it may appoint some other authority to inquire into the imputation. This Sub-rule (2) does not prescribe any stage at which the authority to inquire into the imputation is required to be appointed. A perusal of Rule 5(a) shows that on receipt of the written statement of the defence the disciplinary authority may itself inquire into the articles of charge which are served upon the delinquent concerned, or if it consideis necessary to do so it may appoint under Sub-rule (2) an inquiring authority for that purpose. Clause(c) of Sub-rule (5) contemplates the appointment of a presenting officer and that appointment should ordinarily follow after the written statement is considered by the disciplinary authority and the inquiry, either by itself or by any other authority, is found necessary. Thus reading the provisions of Sub-rule (5) of Rule 14, it becomes clear that in ordinary course the appointment of the inquiring authority as well as the presenting officer should be at a stage which follows the consideration of the written statement of defence by the disciplinary authority. In this case the written statement of the defence was filed by the Petitioner on 23-7-1976, and, therefore, in ordinary course the appointment of inquiring officer as well as the presenting officer should have been made after this written statement of defence was considered by the disciplinary authority, that is, the Executive Council. But it is an admitted position that the written statement of defence was not placed before the Executive Council, and that the appointments of inquiring officer and the presenting officer were made on the date on which the impugned resolution was passed, that is, on 22-5-1976. Therefore, the question is whether this appointment of Enquiry Officer and the Presenting Officer can be treated illegal or as merely irregular.

146. Reference to Sub-rule (1) of Rule 14 shows that the procedure which is prescribed for making inquiry in this rule is to be followed "as far as may be". These words "as far as may be" clearly connote the idea that the provisions contained in Rule 14 are directory. I should hasten to state that mere use of the expression "as far as may be" would not be determinative of the question

whether a particular provision contained in Rule 14 is mandatory or directory because, when the question as to whether a particular provision is mandatory or directory is raised before the court for consideration, the court has primarily to look to the intention of the Legislature in making a particular rule of procedure. Therefore, it cannot be said that all procedural steps which are contemplated by Rule 14 are either directory or mandatory. But so far as the question of appointments of inquiring authority and presenting officer are concerned, I find that even though ordinarily they could have been appointed only after the written statement was considered by the disciplinary authority, there is no illegality involved in the adopted procedure because this provision about the appointments of these two officers is merely directory. As a matter of fact no prejudice is found to have resulted to the Petitioner in making the appointment of the enquiry officer and presenting officer before a proper stage thereof arrived.

147. In this connection: my attention was drawn to the decision given by the Assam and Nagaland High Court in *Anil Kumar Das v. Senior Superintendent of Post Offices* reported in AIR 1969 A&N 99, wherein it is observed that Rule 14(1) goes to show that the inquiry envisaged under it has to be made "as far as may be" in the manner provided in this rule and Rule 15". It was further observed in this decision that the expression "as far as may be" may admit of some variation but not if such variation leads to the prejudice of the Government servant or results in an ineffective representation of his case before the authority. In that case the court was concerned with the provisions contained in Sub-rule (11) of Rule 14 and came to the conclusion that the compliance with the provisions of Sub-rule (11) was mandatory. In the case before me, Sub-rule (11) of Rule 14 has no relevance. The Assam and Nagaland High Court has, with respect, correctly decided that the application of the expression "as far as may be" may have various shades while considering different tests of procedure contemplated by Rule 14.

148. It was next contended on behalf of the Petitioner that since the written statement of defence, filed by the Petitioner on 23-7-1976, was not placed before the Executive Council as provided by Clause (a) of Sub-rule (5) of Rule 14, the Petitioner is prejudiced inasmuch as he had no opportunity to convince the Executive Council that there was no necessity of ordering an inquiry. Now in this connection, as already noted by me above, the Petitioner had addressed one letter to the Executive Council on 21-6-1976 and this letter was placed before the Executive Council for consideration. The contention of the contesting Respondents is that this letter of the Petitioner dated 21-6-1976 amounted to a written statement of defence, and since it was placed before the Executive Council in its meeting held on 17-7-1976, it does not matter whether the subsequent written statement of the defence filed by the Petitioner on 23-7-1976 was not placed before the said Executive Council for consideration.

149. The letter of the Petitioner dated 21-6-1976 is addressed to the" Registrar of the University and it is in the following terms:

Sir,

Kindly refer to the correspondence resting with my letter No. Pr/15/76 of 15-6-1976. Although the last date of filing the written statement would expire today, yet I have not been supplied the requisite documents nor has the time for filing the written statement been extended as was requested by me in the stated circumstances.

2. It is once again requested that the documents may kindly be supplied at the earliest and thereafter 3 weeks time be granted to me for filing the written statement so as to provide me the proper opportunity for making the defence.

3. Notwithstanding the above position, and there being no alternative, I am to submit that the enquiry is without jurisdiction, mala fide, illegal, against natural justice and all the charges contained therein are denied in toto.

Kindly convey the above said position to the authorities concerned.

Obviously this letter cannot be treated as a written statement of the defence. It is merely a request for the supply of certain documents as stated in para 2 thereof. Therefore, the contesting Respondents' plea that this letter amounted to the written statement of defence should fail.

150. However, the real question of law which arises to be considered is how far the non-consideration of the written statement of defence which was subsequently filed by the Petitioner is fatal to the inquiry in view of the fact that the above referred letter dated 21-6-1976 makes the total denial of the allegations contained in the charge-sheet. This inquiry leads to the interpretation of Clause (a) of Sub-rule (5) of Rule 14. In my opinion, the object of the consideration of the written statement of defence by the disciplinary authority which is contemplated by Clause (A) of Rule 14(5) is very limited. That object is not to consider the written statement of defence on merits but to know whether any of the articles of charge mentioned in the charge-sheet are admitted by the delinquent official or not. This is clear from the plain reading of Clause (a) of Rule 14(5). However, there is one more indication in support of this view, and this indication is obtained from Sub-rule (3) which begins with the words "where it is proposed to hold an inquiry". It should be remembered that Sub-rule (3) is with regard to the drawing up of a charge and therefore, it follows that the charge is drawn up only after it is proposed to hold an inquiry. In other words the proposal to hold an inquiry precedes the consideration of written statement contemplated by Clause (a) of Rule 14(5). If that be so, the only purpose for which the written statement is required to be considered is, not to consider whether the inquiry should be made in the matter, but only to consider whether any of the charges levelled against the delinquent official are admitted or not. If this is the purpose of Clause (a) of Rule 14(5), the real question which arises for consideration is whether this purpose was fulfilled by the consideration of the Petitioner's letter dated 21-6-1976 by the Executive Council or not. It may be repeated here at this stage that this letter states in unequivocal terms that the Petitioner was making

a clear denial of all the charges levelled against him. Thus the Executive Council in its meeting held on 17-7-1976 came to know by this letter that the Petitioner was denying all the charges levelled against him in the charge-sheet. Under the circumstances, the object of Clause (a) of Rule 14(5) to place the written statement before the disciplinary authority was completely fulfilled when the Petitioner's letter dated 21-6-1976 was placed before the Executive Council and the Executive Council considered the same. In view of the above discussion, I find that the "Petitioner cannot succeed even on point No. 5.

151. The last point is whether the suspension of the Petitioner could have been validly ordered by the disciplinary authority, that is the Executive Council, on 22-5-1976 or not. It is obvious from the resolution passed by the Executive Council on 22-5-1976 that the Council had only "contemplated" to institute a departmental inquiry in the allegations levelled against the Petitioner. The fact remains that the actual inquiry was not pending on 22-5-1976. The stage of instituting this actual inquiry could not arrive before the disciplinary authority, that is, the Executive Council, came to know whether the charges levelled against the delinquent Petitioner were denied by him or not. If the charges were not denied, there was no question of making any further inquiry. The question of instituting actual inquiry obviously arose only when the Executive Council knew that the charges were denied by the Petitioner. Under the circumstances, when the impugned resolution dated 22-5-1976 was passed, the departmental inquiry in question was "contemplated" but was not "actually instituted".

152. The provision as regards suspension found in the Central Civil Services (Classification, Control and Appeal) Rules, 1965, are contained in Rule 10, which says that the appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a government servant under suspension when a disciplinary proceeding against him "is contemplated" or "is pending". According to this rule, therefore, the delinquent concerned can be put under suspension even at a stage when the disciplinary proceeding is "contemplated". If the matter rested here, there would have been no difficulty, because, in this case, the Petitioner has been suspended actually on the date on which the disciplinary proceedings were "contemplated" by the Executive Council. But as per the above quoted two resolutions found at Annexures Rule 164 and Rule 165 the Central Civil Services (Classification, Control and Appeal) Rules apply only in so far as "any matter which does not exist in the Statutes and Ordinances" of the University. Therefore, the real question is, whether there is anything in the Statutes or Ordinances which regulates the question of suspension of an officer of the University. I find that there is one such Ordinance which is Ordinance No. 35.45. It is in the following terms:

35.45. The competent authority may place an employee under suspension pending an enquiry, if it is satisfied that there is a prima facie case against him of insubordination, intemperance or other misconduct, of any breach or non-

performance of his duties, or non-compliance of any of the provisions of the conduct rule applicable to him:

Provided that the competent authority shall place an employee under suspension in case the employee is arrested for a criminal offence involving moral turpitude.

A charge-sheet shall ordinarily be served on the employee within 15 days of his suspension and the enquiry shall ordinarily be completed within six months of the date of the suspension, unless the period is extended by the Executive Council.

In case of suspension involving arrest and prosecution of an employee in connection with a criminal offence, involving moral turpitude, the suspension shall remain in force till the final decision of the case against him.

The first paragraph of this Ordinance clearly shows that the competent authority may place an employee under suspension "pending an inquiry". The only correct interpretation of this portion of the Ordinance is that suspension of a delinquent can be ordered only during the pendency of inquiry. However, paragraph 3 of this Ordinance prescribes for the service of charge-sheet and says that the charge-sheet shall ordinarily be served on the delinquent within 15 days of his suspension. This means that the suspension can precede the charge-sheet. But reading paragraphs 1 and 3 together it should follow that though suspension can precede charge-sheet it cannot precede the actual start of the inquiry.

153. Under these circumstances the important question which arises for determination is when the inquiry can be said to have started. Speaking about this case, can it be said that the inquiry started on 22-5-1976 when the impugned resolution was passed by the Executive Council. My answer to this question is in the negative because on 22-5-1976 no inquiry started though some inquiry was contemplated. The contemplation of enquiry is not the start of it as held by the Supreme Court in P.R. Nayak Vs. Union of India (UOI), Like the facts of this Supreme Court case, in the instant case also it is an admitted position that the suspension involves some penal consequences inasmuch as certain restrictions are put on the movements of the delinquent and the delinquent is given only subsistence allowance during the period of his suspension.

154. In my opinion, the actual inquiry can be said to have started only when charges are drawn up and decision is taken to deliver these charges to the delinquent as contemplated by Sub-rule (4) of Rule 14. Such a decision was taken in this case on 4-6-1976. The refore, the Executive Council had no authority to suspend the Petitioner from service on any date before 4-6-1976. In my opinion, therefore, the Petitioner's suspension from service from 22-5-1976 to 4-6-1976 is illegal. The suspension after 4-6-1976 is, however, found to be legal.

155. Thus it is found that the Petitioner Dr. Pandey partially succeeds only on the

question of suspension as stated above. Other reliefs which are sought by him cannot be allowed,

156. I thus conclude that most of the prayers found in the Writ petition of Dr. Pandey fail except his prayer as regards his suspension for the period from 22-5-1976 to 4-6-1976. It is declared that this suspension is illegal. I find that there was no justification for joining Respondents Nos. 6, 7, 14, 15, 16 to 19, 21, 29, 30 and 31. Out of these Respondents only Respondent No. 6 and 7 have contested. Against them the allegations of mala fides were made by the Petitioner but these allegations have failed. In my opinion, therefore, the Petitioner should bear one set of costs for all the contesting Respondents except the Respondent Executive Council, and the members thereof. So far as the Executive Council and members thereof are concerned, they shall bear their own costs.

157. Before parting with both these matters, I would bring to the notice of the parties before me the following words of warning uttered by Krishna Iyer J. while deciding the case of Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others,

Kalol is not alone nor is the politics of jockeying a local syndrome. If the municipal microcosm has put self above service, wearing the mask of public office, the national microcosm will eventually magnify the vice; and once popular mistrust of democracy spreads, voices in the whispering gallery will be heard:

Mischief, thou art the life of the fable, take what course thou wilt". If this small municipality needs policemen to hold its meetings, periodically exercises itself in the fine art of defection and false minutes, perhaps allows the interests of a Mill to sway its affairs and compels the holding of public meetings to command its elected representatives to behave themselves, political democracy is moving towards the evening of long shadows. Laws and courts are not the remedy for this malady, but better men and basic morality when ballots are sought. "Remember", said John Adams, "remember, democracy never lasts long. It soon wastes, exhausts and murders itself. There never was a democracy that did not commit suicide".

This warning of historical significance issued to the local bodies applies with equal force even to the corporate bodies like University which are wedded to the cause of learning and culture of this country. The learned doctors who are entrusted with the noble task of culturing human material which is expected to shape the future destiny of this nation, and who are, even otherwise, emissaries of light and learning, can ill-afford to play the role of power-hungry politicians, because the likely casualty of this role is the light and the learning themselves. Would it, therefore, be out of place to expect that the above quoted words of warning coming from the highest temple of justice in this country will find their echo in the highest temple of learning in this State?