

**(2011) 05 PAT CK 0115**  
**In the Patna High Court**  
**Case No : CWJC No. 8141 of 2010**

Dr. Pramod Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision :** 04-05-2011

**Acts Referred:**

Bihar State Universities Act, 1976 — Section 10, 10(1), 10(19), 10(2), 10(2)  
Constitution of India, 1950 — Article 14, 16, 222(1), 226, 233

**Citation :** (2011) 59 BLJR 2980 : (2011) 2 PLJR 1051

**Hon'ble Judges :** Ajay Kr. Tripathi, J

**Bench :** Single Bench

## Judgement

Ajay Kr. Tripathi, J.—This writ application has been filed by the two Petitioners who are Senior Teachers working under Universities of Bihar. Petitioner No. 1 also happens to be the President of the Bihar State University Teachers and Staff Welfare Association having registration No. 4-51/2000. They want quashing of appointment of two Vice-Chancellors of Veer Kunwar Singh University, Arrah and Magadh University, Bodh Gaya in light of the facts and materials which emerge. The appointments have been made by the Chancellor of the Universities by exercising power u/s 10(2) of the Bihar Universities Act, 1976 (hereinafter referred to as the said Act). They term the two appointments to be illegal and in clear violation of the said provision. When the writ application was filed, the Petitioners did not have the requisite notifications in their hand. Therefore, it was not brought on record initially but has been now annexed with I.A. No. 4865 of 2010 as Annexures-7 and 8. A prayer has also been made in the said I.A. to now quash these two notifications dated 9.4.2010 and 15.4.2010, respectively. I.A. No. 4865 of 2010, therefore, is allowed.

2. The primary question which has been raised and is required to be answered in the present writ application is whether the Chancellor of the Universities of Bihar has exercised the power of appointment of Vice-Chancellors in accordance with the laid down statutory provision or the appointment of the two Vice-Chancellors, namely, Respondent Nos. 5 and 6 are in breach thereof.

3. The relevant provision is required to be reproduced for ready reference as the submissions of the parties to the dispute hinges on the interpretation of the provisions laid down in the said section. Section 10(1) and (2) of the Act are reproduced hereinbelow:

10. The Vice-Chancellor.---(1) No. person shall be deemed to be qualified to hold the office of Vice-Chancellor unless such person is, in the opinion of the Chancellor, reputed for his Scholarship and academic interest, and No. person shall be deemed to be qualified to hold the office of Vice-Chancellor of Kameshwar Singh Darbhanga Sanskrit University unless such person is, in the opinion of the Chancellor, reputed for his Scholarship in Sanskrit or has made knowledgeable contribution to Sanskrit Education.

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

4. Opening submission on behalf of the Petitioners is that the appointment made to the two Universities, namely, Veer Kunwar Singh University, Arrah and Magadh University, Bodh Gaya under the purported exercise of power u/s 10(2) of the Act is in actual breach of the same because there is sufficiency of material to show that there was No. "consultation" with the State Government within the meaning of the Statute before the two notifications contained in Annexures-7 and 8 came to be issued. Learned Counsel for the Petitioners submits that this stand or assertion is being made not from the news-paper reports. which indicate that there was No. consultation but also from the information which the Petitioners had sought under the Right to Information Act from the Human Resources Development Department, Higher Education, Government of Bihar as well as the office of the Chancellor which clearly indicate that there was No. consultation with the State Government on the question of appointment of two Vice-Chancellors, which is mandatory u/s 10(2) of the Act.

5. Contention of the learned Counsel is that the said information does not stand in isolation but is supported by other circumstantial evidence which exist on record to show that the State Government was not consulted by the Chancellor before appointment of the two Respondents on the post of Vice-Chancellor because soon after the notifications were issued appointing them on the post, the Human Resources Development Department (hereinafter referred to as H.R.D.) issued a letter dated 19.4.2010 stating that it has come to the notice of the State Government that the Vice-Chancellor of Magadh University, Bodh Gaya and Veer Kunwar Singh University, Arrah have been appointed by the Chancellor u/s 10(2) of the Act. The said appointment has to be made by the Chancellor in consultation with the State Government. However, the consultation as envisaged under the said section have not taken place between the Chancellor and the State Government and as such the appointment, prima facie, appeared not to satisfy the requirement u/s 10(2) of the Act. The State Government, therefore, has actively considered the validity/procedural deficiency of the said appointment and the issue is under scrutiny. Therefore, pending such consideration and till

such time the State Government takes a final view, it is hereby ordered that the two Vice-Chancellors shall not exercise powers as are envisaged under the Act nor shall they take any decision having any future financial implications. This letter has been annexed as Annexure-1/A and has been issued on 19.4.2010 i.e. soon after the notifications appointing two Respondents came to be issued from the Chancellor's Secretariat at Raj Bhawan in Patna.

6. Yet another contention of the learned Counsel for the Petitioners is that such a strong decision by the State could not have been taken, if proper procedure had been adopted by the office of the Chancellor, before appointing the two private Respondents as Vice-Chancellors of the two Universities. He states that there has been a complete go-bye to the process of consultation and the appointment to the post of the Vice-Chancellors have been made at the level of the Chancellor without any consultation whatsoever with the State Government. If it is so, then any appointment in breach of Section 10(2) of the Act goes to the root of the matter and such appointments will have to be quashed and removal of the two persons have to be ordered. Allegations have also been made with regard to the two appointed persons but they are not required to be noted or gone into because the Court would like to keep the issue focused on the statutory provision based on which the Chancellor has exercised power of appointment.

7. No. doubt, under the statute, specially Section 10(1) of the Act power to make appointment on the post of Vice-Chancellor has been vested in the Chancellor but this power is not an absolute power because the "opinion" of the Chancellor with regard to suitability or otherwise of such person is subject to pre-condition that such appointments shall be made by the Chancellor on due consultation with the State Government. What emerges from the two provisions of Section 10(1) and (2) is that though appointment of Vice-Chancellors have to be made by the Chancellor based on his opinion, but this opinion has to be an objective opinion and not a subjective opinion. Further the opinion has to be based on consultation which the Chancellor shall have with the State Government because Section 10(2) of the Act categorically states that the Vice-Chancellor "shall" be appointed by the Chancellor "in consultation with" the State Government.

8. The word "opinion" or "consultation" have not been defined in the definition clause of the Act contained in Section 2 of the said Act but merely because these two words have not been defined, it does not mean that there are No. parameters or judicial pronouncements from where the Court can derive assistance on this score.

9. There can never be a dispute on the question that appointment of Vice-Chancellors is appointment on a public post. Any appointment on public post must satisfy the requirements of the constitutional provisions contained in Articles 14 and 16 of the Constitution besides the statutory provision which govern such appointments. If an appointing authority is given a discretion by the use of expression "opinion", this opinion is not in absolute terms but has to be read to mean objective opinion on the subject matter, based on materials which

shall be made available in the relevant context. This is to ensure that No. individual is picked up for conferment of benefit of appointment, to a public post, without due deliberations with regard to the suitability or otherwise of all such persons who may be claimant/applicant or come within the ambit of consideration for such appointment and have expressed interest in such appointments. There is a clear and categorical assertion in the writ application that both these Petitioners hold very senior positions in the University and were claimants for consideration for appointment on the post of Vice-Chancellors which were/are vacant in the State. This included the post of Vice-Chancellors of Veer Kunwar Singh University and Magadh University.

10. The Court does not want to go by the newspaper reports which do indicate that all had not been well on the issue of appointment of these two Vice-Chancellors between the State Government and the office of the Chancellor since there are various materials such as file notings, letters and communications which have now been brought on record even by the State Government in their counter affidavit to show that there was No. consultation. After the appointment of the two private Respondents as Vice-Chancellors, the State Government decided to curtail their powers and even wrote letters to Raj Bhawan for reconsideration of the decision. It would not have been so if there was consultation with the State.

11. Looking at the nature of the dispute which has been raised by the Petitioners, the Court directed not only the private Respondents to file their counter affidavit but even the State Government and the Chancellor to file their response to the vital questions of law which had been raised in the present writ application.

12. The stand of the private Respondents on the issue is that they have been properly and validly appointed by the Chancellor because power to appoint vests in the Chancellor. He is the best Judge on the issue of suitability of a person to hold the office of the Vice-Chancellor. Both the Respondents are highly accomplished people and the controversies which are sought to be created in the present writ application are mere figment of imagination of the Petitioners because they have their own axe to grind. Though the learned Counsel fairly did submit that whether there was consultation or No. consultation between the State Government and the Chancellor cannot be effectively answered by them because they were not privy to the decision and have No. personal knowledge with regard to the issue more so since all materials are within the domain of either the State Government or the office of the Chancellor. Yet another question which has been raised is with regard to the locus of the Petitioners to challenge the appointment of the two Respondents and the question whether a writ of Quo Warranto as such would be warranted in the present context because it cannot be said that the private Respondents are usurpers of office as they are legally appointed.

13. Learned Counsel for the Petitioners thereafter submits that the law on this question is well settled that any citizen has a right to raise such an issue of

appointment if it is otherwise illegal. In this regard reliance is placed in the case of Sunil Kumar Tiwary and Another Vs. The State of Bihar and Others, . Para 5 of the said decision states as under:

In my opinion, an application challenging the validity of an appointment to a public office shall be maintainable at the instance of any person, notwithstanding the fact that none of his fundamental or other legal right has been infringed, if the Court comes to the conclusion that in the interest of public the legal position with respect to usurpation of a public office deserves to be judicially declared nothing shall prevent this Court to issue a writ in the nature of quo warranto at the instance of any member of the public, unless it is shown that the petition lacks bona fide and the person questioning the appointment is a mere pawn in the game, having been set up by other. Petitioners in this proceeding are not seeking to enforce any of their right as such nor complaining non-performance of any duty to them, but this will not decide the issue. In a writ of quo warranto the question is of the right of the person to hold the office. Tested in the light of the aforesaid legal position it is difficult to hold that the Petitioner had acted mala fide and he has been set up by other. Accordingly, I overrule this objection.

Thus, the Division Bench has held that any citizen can approach the High Court on such an issue so long as the parameters as above are satisfied. In addition to that, it is also submitted by the learned Counsel representing the Petitioners that prayer in the writ petition is not limited to issuance of writ of Quo Warranto but it is also for any other appropriate writ or direction to quash the appointments of the two private Respondents in light of the fact that their appointment is in violation of the statutory provision, which is Section 10(2) of the Act and even these Petitioners had a right for consideration.

14. Counter affidavit on behalf of Respondent No. 1 i.e. the State of Bihar was filed on 7.2.2011. The stand of the State is that a plain reading of the provisions relating to appointment of Vice-Chancellor or Pro-Vice-Chancellor would show that consultation with the State by the Chancellor on matters of such appointment was a sine qua non and a condition precedent for any lawful appointment to the post, either of Vice-Chancellor or Pro-Vice-Chancellor. They take a stand in the counter affidavit that there was No. consultation with the State Government on the issue of appointment of two Vice-Chancellors with the Minister of H.R.D. as the Minister himself has recorded in his own pen that there has been No. consultation for filling up the post of Vice-Chancellor or Pro Vice-Chancellor in the discussion, if any held with the Chancellor. However, a stand was taken on behalf of the Chancellor that there was consultation with the Minister. In other words, there are two kinds of stand, both coming from high functionaries, contradicting each other on the issue, which in the opinion of the Court is not a very happy position because two constitutional functionaries, at least, cannot be so diverse in their stand on the issue of consultation, if there was one.

15. Since in the earlier counter affidavit filed on behalf of the State adequate

evidence in this regard was not produced, the Court directed not only production of the records by the State Counsel but even by the Office of the Chancellor. State Government decided not only to produce the original file relating to the issue of appointment of the Vice-Chancellors but also decided to supplement it by filing a supplementary counter affidavit on 31.3.2011 re-asserting their position with supporting materials. What emerges from the supplementary counter affidavit is that there is sufficiency of material to show from various file notings as well as some of the letters written by the then Minister of H.R.D. and the Secretary of the Department to the Office of the Chancellor to show that there was No. occasion for having any consultation on the issue of appointment of Vice-Chancellor muchless the appointment of the two private Respondents. There is a clear averment in paragraph 9 of this affidavit that on 16.12.2009 (wrongly typed as 16.12.2010) the screening committee had met twice and evaluated the candidature of 28 persons for filling up the post of Vice-Chancellor and Pro-Vice-Chancellor and a panel was prepared. The Secretary of the Department forwarded the said file to the Principal Secretary who in turn endorsed the said file to the Hon"ble Minister of H.R.D. on 5.1.2010. Soon thereafter the Principal Secretary of the Department put up a note dated 13.1.2010 endorsing the file to the Minister of H.R.D. for approval of the panel so prepared, for filling up the post of Vice-Chancellors and Pro-Vice-Chancellors in the four Universities whose names figure in the said note. The then Minister duly approved the panel on 15.1.2010 and the file was endorsed for approval of the Hon"ble Chief Minister on 18.1.2010. While approval of the Chief Minister was still pending, the State Government learnt that the Chancellor has made appointments in the two Universities on the post of Vice-Chancellors. This is even before any panel or material was forwarded by the State Government to the Office of the Chancellor. When the issue came to the knowledge of the Hon"ble Chief Minister, vide noting dated 14.4.2010 the Chief Minister desired to know as to with whom consultation had been made in respect to the said appointments. Accordingly, the Principal Secretary put up a note on 17.4.2010 before the then Minister of H.R.D. to apprise him as to whether any consultation at his level had been made with the Chancellor or not before such appointments, as the Chief Minister desired to know the actual state of affair.

16. The then Minister, H.R.D. vide his note dated 19.4.2010 stated that before making appointment to the two Universities, there was No. consultation between him and the Chancellor on the issue. These notes have been annexed as Annexure-1 series in support by the State.

17. The State Government even sought an opinion from the Advocate General on the issue of the two appointments and the legal position in this regard. The Advocate General gave his opinion that though the ultimate power to appoint Vice- Chancellors is vested with the Chancellor u/s 10 of the Act but such appointment cannot be without proper and effective consultation with the State Government. He further opined that since there is sufficiency of material to show in the file that neither the Minister Incharge of the Department nor the

Department itself had been consulted by the Chancellor before deciding to make appointments to the posts, he concluded that in No. eventuality it was open to the Chancellor to make any appointment to the post of Vice-Chancellor without consulting the State Government.

18. Annexure-1/B is the letter which has been written by the Principal Secretary, HRD to the Principal Secretary to Governor, Raj Bhawan, Patna on the issue of appointment of the two Vice-Chancellors. This letter is dated 22.4.2010. It reiterates the governmental position that they have heard that appointments to the two Universities i.e., Magadh University, Bodh Gaya as well as Veer Kunwar Singh University, Arrah have been made but they have not received any copy of the notifications in this regard. It reiterated the position that consultation with the State was a must and in absence of such a consultation the matter required reconsideration at the level of the Chancellor.

19. From the very noting which has been annexed as Annexure-1/C it is evident that the State Government did not receive any response from the Office of the Chancellor and a decision was taken to send a reminder. There is again a reiteration of the stand of the State in the file notings annexed to show that there was No. consultation with the State Government in terms of Section 10(2) of the Act. The Minister in his noting dated 9.6.2010 recorded in so many words as under:

DINANK 29.3.10 KO MANNIYA KULADHIPATI MAHODAYA SE MULAKAT KE DAURAN MUJH SE SIRF VISHWAVIDAYALAYA PRADHIKARAN GATHAN KE SAMBANDH MEIN VIMARSH HUA HAL BIHAR KE VISHWAVIDAYALAYON KE RIKT KULPATI EVAM PRATIKULPATI KE PADON KO BHARNE KE SAMBANDH MEIN MANNIYA KULADHIPATI MAHODAYA SE VISHWAVIDAYALAYA ADHINIYAM KE AALOK MEIN IN PADON KO BHARNE KE LIYE MUJHSE KOI VARTA NAHIN HUI HAI.

SD/- HARINARAYAN SINGH

20. Yet another document of significance is the letter of the then H.R.D. Minister dated 9.6.2010 which is Annexure-1/D. This is a D.O. letter addressed to the Chancellor reiterating his stand that there was No. consultation with him on the issue of appointment of Vice-Chancellors. 21. From the noting of the Minister dated 9.6.2010 it is evident that the Minister did have a meeting with the Hon"ble Chancellor on 29.3.2010 but that meeting related to the issue of constitution of an University Tribunal and the pending Bill before His Excellency, the Governor for his assent but there was No. "consultation" on the issue of appointment of Vice-Chancellors muchless the two appointments which are subject matter of challenge in this writ application.

22. There are other communications also addressed to the Chancellor by the present H.R.D. Minister making request for appointment, so that consultations could be effected for making appointments on the post of Vice-Chancellors to the various Universities of the State but till date there is No. progress or development on this count.

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

24. Now, let us take notice of the stand taken by the Office of the Chancellor on whose behalf counter affidavit dated 23.3.2011 was initially filed. This counter affidavit has been sworn by one Kumar Braj Kishore Sahani, who is stated to be the Joint Secretary in the Governor's Secretariat and he has stated that he was well acquainted with the facts and circumstances of the case. The affidavit also states that he has been authorized to swear affidavit in this case on behalf of Respondent No. 2 i.e. Chancellor of Universities, Raj Bhawan, Patna. What is relevant in this affidavit is paragraph-5 which is being reproduced for ready reference:

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

25. A stand has been taken on behalf of the Chancellor that since the notification itself talks in terms of consultation with the State Government on 29.3.2010, then it is a complete answer to the controversy which have been created in the matter of appointment of two Vice-Chancellors because nothing more is required to be seen beyond the notification.

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

27. In this background, the Court directed production of the file relating to consultation which supposedly took place with the State Government on 29.3.2010.

28. Learned Senior Counsel representing the Chancellor, namely, Mr. Y.V. Giri tendered a file for perusal by the Court to show that there was consultation with the then H.R.D. Minister on the issue, based on which the Chancellor made the appointments of the two Vice-Chancellors. The file in question is file No. ACT-1/10 which has an endorsement "Bihar State Universities Tribunal Act".



Reliance was placed by the learned Senior Counsel representing the Chancellor to pages 51, 52 and 53 of the said file. The Court observed that since the file in question did not relate to appointment of Vice-Chancellors but with regard to constitution of a University Tribunal and the objections of the Governor to ratification of the said bill. The relevant pages, namely, page Nos. 51, 52 and 53 of the said file was ordered to be brought on record by way of an affidavit so that all the parties to the dispute including the Court had the benefit of looking into the same closely on the question of consultation with the State.

29. A counter affidavit again on behalf of Respondent No. 2 i.e. the Chancellor duly sworn by Kumar Brij Kishore Sahani, Joint Secretary in the Governor's Secretariat dated 18.4.2011 was filed annexing the said pages as Annexure-R-2/1. This is supposed to be the portion of the file in which the so-called consultation for appointment of Vice-Chancellors took place or its evidence is reflected though the main minutes in the file deals with constitution of Bihar Universities Tribunal.

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

1. The File was sent to Govt. for consideration with certain observations on 23.03.2010 and it was returned to Chancellor's Secretariat on 25.03.2010. Since not indicated in File, it appears to have not been considered duly by the HRD Department and the Govt., but returned hurriedly signed by an official, saying "Govt."s comments are as follows:" Comments received are not satisfactory, and the Bill needs to be reconsidered and suitably amended.

2. The Bill is even without its integral "Statement of Objects and Reasons" which is a legislative requisite for taking up any new legislation.

3. This Bill cannot perhaps at all be modelled on the CAT Act, in as much as it would affect adversely the academic interests of the State to do so, and as it relates to settlement of disputes among employees and teachers of Universities, and Colleges of diverse disciplines and among employees and the Universities. The larger questions of maintenance or erosion of sacrosanct autonomy of Universities and Colleges for higher education are also involved with the constitution of the Tribunal. The Govt. in HRD Department as well as the Cabinet would perhaps like to consider in depth the advisability of constituting multiple and parallel permanent Benches, besides the Principal Tribunal, initially in place of circuit Benches on ad-hoc and need-based basis. It is Tribunal structure centric rather than fostering educational-interests centric.

4. The Bill has not specified the jurisdictional field of the Tribunal and its limits. Obviously, it may not be an Ombudsman jurisdiction over all manner of disputes arising in Universities in their academic and administrative affairs. Resolution of disputes over academic matters and academic administration needs certainly to

be kept out of the Tribunal's jurisdiction.

5. No. provision has been made in the Bill to resolve the conflicts that are most likely to arise while exercising powers by the Chancellor Under Sections 9(7)(III), 9(8), 10(19) and 12A(7) of the Bihar State Universities Act, 1976 and by the Tribunal in exercising jurisdiction within its defined and laid down jurisdictional limits.

6. In fact, this Bill, in the best judgment, needs to be reconsidered by the Govt. in depth and in If He, socio-educational circumspection and needs to be redrafted and recast for legislation.

7. H.R.D. Minister was called in today. He came and I discussed with him about the role of one of his officials in submitting & resubmitting the Tribunal Bill to H.E. for Legislation. He told me the observations of Raj Bhavan were not placed before him at all by the Secretary and the Principal Secretary, H.R.D. also did not know about resubmitting the Bill without discussion in the department and Govt. I told him I am returning, it for 2nd time to Govt. for reconsideration and final decision for Legislation. During our one-hour discussion I also discussed and consulted with him about the appointment of four Vice Chancellors. He wanted me to go ahead and complete the work by 20th April when he will be back from Mumbai. He wanted me to take decision by putting good and efficient VCs specially in Magadh and Patna Universities. He mentioned the name of Dr. Simadri in this regard for Patna. He was removed with great disrespect and wrongly putting blame on him. He did much work in Patna University - a great administrator he was. He wanted me to remove Shyam Lal from Patna University at the earliest. He wanted me to decide the Magadh Vice Chancellor also without much delay. H.E. is to decide from whatever lists or applications he gets for VCs from whichever quarters. It is fully Chancellor's prerogative and authority to make the final choice for VCs for improvement of higher education in Universities. He said internal resources of Universities should also be made apart of University Budget and University be made accountable for its collection and expenditure for University's improvement.

(Devanand Konwar) Governor of Bihar 79.03.2010 7.30 P.M.

31. Learned Senior Counsel representing the Chancellor bases his entire submission on this piece of evidence to dispel all the controversies or the allegations that there was No. consultation held by the Chancellor before appointing the two Vice-Chancellors to their respective posts. If there is material to show that the issue of appointment of Vice-Chancellors was discussed with the Minister, then No. further debate ought to be entertained by the Court on this issue.

32. The Court has meticulously gone through the said note of the Chancellor which has been purportedly made in his own pen. The first thing which the Court notices is that the note does not have any initial of the Minister and it has been incorporated in a file not even related to the question of appointment of Vice-

Chancellors to the Universities of Bihar muchless the Universities in question. There is obvious evidence that the visit of the Minister to the Raj Bhawan and the discussion he had with the Chancellor, primarily, related to the objections the Governor had in giving his assent to the Universities Tribunal Bill, which was pending approval of His Excellency for many a months, if not more than a year. Another significant aspect which emerges from the noting is that No. separate Minutes came to be drawn up on a separate file or piece of paper as if Chancellor's Secretariat lacks stationery or Secretarial assistance. It was not even sent to the Minister for his signature or acknowledgment of what was recorded. It also shows that even a file was not opened on the issue of appointment to such important posts of Vice-Chancellors. What was the compelling circumstance under which such a noting was done remains a mystery wrapped in an enigma. A reading of the said note, even if it is accepted as evidence of the so-called consultation, it does not show that the two names were even mentioned for appointment as Vice-Chancellors to the two Universities, namely, Magah University or Veer Kunwar Singh University, in the so-called discussion. There is generality of discussion that vacancies are existing in the Universities and there was some urgency of filling up those vacancies on due priority. But that by itself did not mean by giving a go-bye to the law.

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

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

35. No. further comments on the issue as well as the so-called material of consultation is required to be offered by the Court. Inferences are obvious. The Court can now well appreciate the background to the H.R.D. Minister's notings and letters denying any consultation on the issue of appointment of Vice-Chancellors. Though he does accept that his visit to Raj Bhawan related to discussion on the Tribunal Bill and that alone, the stand of the Minister stands corroborated and seems more closer to the actual state of affairs, as noting by the Chancellor is in the file relating to the University Tribunal Bill and that too on

the page of the Minutes dealing with the Tribunal Bill.

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

37. Learned Senior Counsel representing the Chancellor thereafter submits that the issue should be allowed to rest now because the appointments have already been made and the Hon'ble Chief Minister of the State has already accepted that position because the State Government never challenged such appointments before any judicial forum. The Court ought not to entertain such writ application at the behest of the two Petitioners because the issue basically relates between the State and the office of the Chancellor. A lot of emphasis is placed by the learned Senior Counsel on a note which has also been brought on record which is a noting of the Chief Minister annexed with the second supplementary counter affidavit as Annexure-1/G, filed on behalf of Respondent No. 1 i.e. the State on 11.4.2011. The noting indicates that the Chief Minister did have a talk with the Chancellor on 10.6.2010. He informed the Chief Minister that there was discussion with the H.R.D. Minister on the question of appointment of the two Vice-Chancellors. However, the said Minister had denied and endorsed on the relevant file of having had No. consultation but keeping the totality of the situation, he advised that the issue should be allowed to rest.

38. It is on this noting that the learned Counsel for the Chancellor submits that No. further controversy should be allowed to be raised on the two appointments. If the Chief Minister of the State has reconciled to the issue, the two Petitioners must do the same.

39. Learned Counsel representing the State thereafter submits that looking at the majesty of the office of Chancellor in question, the Chief Minister of the State did show grace in putting the issue to rest at his level but if a citizen raises the question whether such appointments have been made in conformity with the law, then the State has a duty to state the correct facts before the Court and it is best left to the Court to decide whether a decision taken within the public domain stands the scrutiny of law and satisfies the requirement of the Statute which is Section 10(2) of the Act.

40. Learned Counsel representing the Petitioners also submits that merely because the Chief Minister had reconciled to the issue, it does not mean that a decision taken by the Chancellor, in clear violation of the Statute and with overwhelming evidence of lack of "consultation" be allowed to exist and whether an illegal order per se should remain untouched so as to allow the two Vice-Chancellors to hold office in clear breach of law? and whether it shall have the effect of perpetuating illegality?

41. There is some force in the submissions made on behalf of the Petitioners as

well as the State. The Court has already noted above that the appointment relates to a public office and the Chancellor exercises such authority under a legislation of the State. There is a specific provision in the said Statute as to how the appointment on the post of Vice-Chancellor is to be made and if there has been a breach committed, then the Court will have to see whether such appointments can be allowed to be made or such appointees can be permitted to continue in office?

42. The broad factual matrix has already been taken note of in the earlier part of the order. The Court now comes down to the question as to what amounts to "consultation" and whether the so-called material produced on behalf of the Chancellor constitutes consultation within the ambit of law.

43. Learned Counsel for the Petitioners relies on a Constitution Bench decision of the Hon'ble Supreme Court in the case of *Union of India v. Sankalchand Himatlal Sheth and Anr.* reported in AIR 1977 S.C. 2328. Learned Counsel submits that the word "consultation" has been used in the Constitution of India at many a places and one of the places which was subject matter of adjudication before the Hon'ble Supreme Court was the provision laid down in Article 222(1) of the Constitution of India. Though the issue related to transfer of High Court Judge, the Constitution Bench has dealt with the word "consultation" extensively and reliance is now being placed on paragraphs 37, 38, 39 and 40 which are as follows:

37. Article 222(1) which requires the President to consult the Chief Justice of India is founded on the principle that in a matter which concerns the judiciary vitally, No. decision ought to be taken by the executive without obtaining the views of the Chief Justice of India who, by training and experience, is in the best position to consider the situation fairly, competently and objectively. But there can be No. purposeful consideration of a matter, in the absence of facts and circumstances on the basis of which alone the nature of the problem involved can be appreciated and the right decision taken. It must, therefore, follow that while consulting the Chief Justice, the President must make the relevant data available to him on the basis of which he can offer to the President the benefit of his considered opinion. If the facts necessary to arrive at a proper conclusion are not made available to the Chief Justice, he must ask for them because, in casting on the President the obligation to consult the Chief Justice, the Constitution at the same time must be taken to have imposed a duty on the Chief Justice to express his opinion on nothing less than a full consideration of the matter on which he is entitled to be consulted. The fulfilment by the President, of his constitutional obligation to place full facts before the Chief Justice and the performance by the latter, of the duty to elicit facts which are necessary to arrive at a proper conclusion are parts of the same process and are complementary to each other. The faithful observance of these may well earn a handsome dividend useful to the administration of justice. Consultation within the meaning of Article 222(1), therefore, means full and effective, not formal or unproductive, consultation,

(emphasis mine).

38. In Words and Phrases (Permanent Edn., 1960, Vol, 9, p. 3) to "consult" is defined as "to discuss something together, to deliberate". Corpus Juris Secundum (Vol. 16-A, Edn. 1956, p. 1242) also says that the word "consult" is frequently defined as meaning "to discuss something together, or to deliberate". Quoting Rollo v. Minister of Town and Country Planning and Fletcher v. Minister of Town and Country Planning Stroud's Judicial Dictionary (Vol. 1. Third Edn. 1952. p. 596) says in the context of the expression "consultation with any local authorities" that "consultation means that, on the one side, the Minister must supply sufficient information to the local authority to enable them to tender advice, and, on the other hand, a sufficient opportunity must be given to the local authority to tender advice". Thus, deliberation is the quintessence of consultation.

That implies that each individual case must be considered separately on the basis of its own facts. Policy transfers on a wholesale basis which leave No. scope for considering the facts of each particular case and which are influenced by one-sided governmental considerations are outside the contemplation of our Constitution

(emphasis mine).

39. It may not be a happy analogy, but it is commonsense that he who wants to "consult" a doctor cannot keep facts up his sleeve. He does so at his peril for he can receive No. true advice unless he discloses facts necessary for the diagnosis of his malady. Homely analogies apart, which can be multiplied, a decision of the Madras High Court in R. Pushpam v. State of Madras furnishes a good parallel. Section 43(b), Madras District Municipalities Act, 1920, provided that for the purpose of election of Councillors to a Municipal Council, the Local Government "after consulting the Municipal Council" may determine the wards in which reserved seats shall be set apart. While setting aside the reservation, made in respect of one of the wards on the ground that the Local Government had failed to discharge its statutory obligation of consulting the Municipal Council, Justice K. Subba Rao, who then adorned the Bench of the Madras High Court, observed: "The word "consult" implies a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct, or at least, a satisfactory solution". In order that the two minds may be able to confer and produce a mutual impact, it is essential that each must have for its consideration full and identical facts, which can at once constitute both the source and foundation of the final decision, (emphasis mine)

40. In Chandramouleshwar Prasad v. Patna High Court a question arose in an Article 32 petition whether there was due compliance with Article 233(1) of the Constitution which provides that appointments of persons to be, and the posting and promotion of District Judges in any State shall be made by the Governor of the State "in consultation with the High Court" exercising jurisdiction in relation

to such State. While holding that a Government notification appointing the Petitioner as an officiating District and Sessions Judge was in violation of Article 233, a Constitution Bench of this Court observed:

Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter proposal in his mind which is not communicated to the proposer the direction to give effect to the counter proposal without anything more, cannot be said to have been issued after consultation. (emphasis mine)

44. Some other decisions have also been relied upon by the learned Counsel representing the Petitioners on the issue as to what constitutes consultation but since the basic essence emerges from the Constitution Bench decision of the Supreme Court in the paragraphs which have been reproduced above in the case of Sankalchand Himatlal Sheth (supra) the Court does not want to repeat the same because similar view was also expressed by the Hon"ble Supreme Court even in the case of S.P. Gupta and Ors. v. President of India and Ors. reported in AIR 1982 S.C. 149.

45. Learned Additional Advocate General representing the State has also relied on certain decisions as to what amounts to consultation and some of those decisions are (1947)2 All E.R. 496 and (1948)1 All E.R. 13 with emphasis on pages 15 and 17. These two decisions have also been taken note of by the Hon"ble Supreme Court in the case of Sankalchand (supra). So, are not being separately discussed.

46. Yet another decision of significance where reliance has been placed is the case of R v. Secretary of State for Social Services, ex parte Association of Metropolitan Authorities. (1986) 1 All E.R. 164. The opinion of the Queen's Bench speaking through Justice Webster, J. surely gives us an insight as to what is the general principle relating to consultation and what amounts to consultation. The order reads as follows:

But in any context the essence of consultation is the communication of a genuine invitation to give advice and a genuine consideration of that advice. In my view it must go without saying that to achieve consultation sufficient information must be supplied by the consulting to the consulted party to enable it to tender helpful" advice. Sufficient time must be given by the consulting to the consulted party to enable it to do that, and sufficient time must be available for such advice to be considered by the consulting party. Sufficient, in that context, does not mean ample, but at least enough to enable the relevant purpose to be fulfilled. By helpful advice, in this context. I mean sufficiently informed and considered information or advice about aspects of the form or substance of the proposals, or their implications for the consulted party, being aspects material to the implementation of the proposal as to which the Secretary of State might not be

fully informed or advised and as to which the party consulted might have relevant information or advice to offer. (emphasis mine)

47. Attention of the Court has also been drawn to a decision of the Hon''ble Supreme Court in the case of Gauhati High Court and Another Vs. Kuladhar Phukan and Another, . In this case the issue was again consultation and the power of superintendence and control of the High Court over Subordinate Courts. Learned Additional Advocate General relies on the observation of the Bench in paragraph 14 of the said decision.

48. The Division Bench of the Apex Court in paragraph 14 states as under:

The Governor cannot proceed to act in any matter relating to subordinate judiciary and bypass the process of consultation merely because the High Court though "informed", did not act or respond. The consultation here means meaningful, effective and conscious consultation. In *Tej Pal Singh v. State of U.P.* it was held that in a matter affecting the service career of a judicial officer ordinarily the initiative for an action must come from the High Court and even otherwise in the absence of recommendation of the High Court, an action taken by the Governor would be illegal and devoid of constitutional validity. Such error, if committed, would be incurable and even an ex-post facto approval would not cure the invalidity. (emphasis mine)

49. The basic reliance on this decision on behalf of the State is that if a decision taken by the Chancellor in exercise of his power under the Statute has been done without consultation with the State Government, then even if for the sake of argument, the Hon''ble Chief Minister wanted the matter to rest but the illegality cannot get cured. If the appointment of the two Vice-Chancellors were per se illegal and in violation of the statutory provision, the effort at burying the controversies, in No. manner has the effect of curing a defect in the decision making process or the decision itself.

50. With the plethora of decisions which have been taken note of, it is evident that there ought to be material available between the State and the Chancellor on which consultation have to be made and there has to be material showing deliberations. Even If the so-called noting of the Chancellor showing consultation is taken into account, it does not show that there was any substantive material which was discussed between the erstwhile Minister of H.R.D, and the Chancellor with regard to the appointment of the two Vice-Chancellors of the respective Universities. There Is nothing to show that even the basic bio-data and the achievements of the two Vice-Chancellors were placed before the Minister which may have been within the knowledge of the Chancellor. Whether such material was even discussed or deliberated upon is not evident from any record or affidavit filed on behalf of the Chancellor muchless the so-called file noting of Chancellor. Generality of discussions or the need for filling up the posts on the vacant positions cannot be termed to be consultation within the meaning of the law There is sufficiency of material to show that the State Government never



passed on any opinion, information or material to the office of the Chancellor by way of recommendation because the so called panel prepared by the State was still pending with the State for approval of Hon'ble the Chief Minister, when appointments from the blue by way of notifications issued at the level of Raj Bhawan came to the knowledge of the State.

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

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

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

54. The two Petitioners also had a legal right, at least for consideration and if the exercise had been carried out in a fair and proper manner, then all the eligible persons at least had a fair chance for consideration including the Petitioners. If by following the procedure contrary to the Statute the Chancellor has appointed the two Vice-Chancellors in an illegal manner de hors the law, both the appointments would be required to be quashed and are being quashed.

55. This writ application is allowed. Annexures-7 and 8 dated 9.4.2010 and 15.4.2010 respectively appointing the two private Respondents as the Vice-

Chancellors of Veer Kunwar Singh University, Arrah and Magadh University, Bodh Gaya respectively are hereby quashed and is declared to be void ab initio because there is sufficiency of material to show that No. "consultation" whatsoever took place between the State and the Chancellor before the notifications in question were issued from Raj Bhawan in the purported exercise of power u/s 10(2) of the Act.

56. Before parting the Court is compelled to take note of the observation of a Division Bench of this High Court in the case of Prafull Ranjan and Others Vs. The Chancellor and Others, . The anguish expressed by the Bench on the state of affairs of the Universities of the State of Bihar, a decade and a half ago remains No. different even in the present context. Things have only got out of hand over the years instead of looking up. Relevant portion of paragraph 3 of the decision is reproduced hereunder:

We can take judicial notice of the fact that the system of education as it exists in this State is in a shamble. There are over a dozen Universities in the State, some created recently. There are large number of Colleges, and thousand of teachers, casting a heavy burden on the State exchequer, yet there is No. education in the State of Bihar. There are many reasons which contribute to this unfortunate state of affairs and, perhaps, some harsh decisions have to be taken before some semblance of discipline is restored in the University campus. At the same time to restore the glory of Universities, and to restore the academic atmosphere, which is completely absent, all concerned must be compelled to follow a code of conduct. Discipline Is lacking not only in the student of the Universities but even In the teaching and non-teaching staff of the Universities, The Vice-Chancellor of the University who has a crucial role to play in the affairs of the University must be restored his due status and respect. Unfortunately, the Vice-Chancellor, who in the days gone by, commanded grantd respect and status, has been reduced to a mere official at the beck and call of the powers that be in the Secretariat, not necessarily political but also bureaucratcs. Having lost his Importance in the functioning of the University, he is content with his designation, and apathetic towards the affairs of the University knowing fully well that he cannot make any useful contribution in that direction. This State boasts of the largest number of Professors in the country, and some tend to believe that the number of Professors engaged in the different Universities of Bihar outnumber the total number of Professors engaged in the other Universities of the country. Large number of teachers have been illegally appointed without following any procedure and without even caring about their eligibility and qualifications. Large number of Colleges, which do not even qualify to be called an educational institution, have been declared constituent Colleges of the various Universities. Reasons, purely political and monetary, are at the bottom of this pathetic situation, and education is the first casualty. It is, therefore, not surprising that there is exodus of serious minded students from the State, and it is not surprising that most of them performed brilliantly in other Universities of the country. Only the less fortunate ones are left behind, and it would be not an

exaggeration to say that many of them complete three years course sometime in five years, sometimes in six years and sometimes in seven years. A sense of frustration, therefore, is prevalent in the student community of the State, and unless the situation is arrested, the Government may have to perform the unpleasant duty of closing down the Universities. Frequently, the examinees boycott the examination or staged a walkout. The grounds on which such walkouts are staged are shocking. Sometime, it is said that the investigation is too strict, meaning thereby that the examinees have a right to adopt unfair means. Sometimes, a walkout is staged because it is said that the questions asked are difficult, meaning thereby that the questions asked are not the questions in the guess papers and answers which are available in the market. Very often a walkout is staged because it is said that one or two questions are out of course. These are more excuses to boycott the examination in the hope that another examination will be held, and may be, in more congenial circumstances so that the examinees may have No. reason to protest. But, after all is said, it must be accepted that such walkouts are not encouraged by the serious minded students. Unfortunately, they do not assert their rights, and in the hope that another examination will be held, they also act in tune with others and join the walkout. Such is the situation that prevails in the Universities of this State.

57. This Court has the unpleasant task of reminding both the State as well as the Chancellor that the time has come to put their head together and make a determined effort to pull the higher education out of the morass it is in. They can do wee bit of service by appointing non-controversial, competent, honest persons with impeccable reputation having due diligence to run the affairs of the Universities specially on the post of Vice-Chancellors and Pro-Vice-Chancellors by adhering to the requirements of the law as envisaged u/s 10(2) of the Act and getting rid of ad hoc arrangements.

58. The sooner the exercise is started the better it shall be for one and all including the stakeholders who have an honest interest in the betterment of higher education, for sake of the future of the generation next. For, after all the next generation is an impatient generation who have dreams in their eyes and hopes in their heart and are racing against time to reach where they want to with the best of education. We can't grudge them. In fact we all owe it to them.