

(2011) 11 KAR CK 0266

In the Karnataka High Court

Case No : Writ Petition No. 67682 of 2010 (S-PRO)

Dr. Shivayogeppa B. Hinchigeri

APPELLANT

Vs

The Chancellor Karnataka University Rajbhavan, State of
Karnataka, Professor H.B. Walikar Chairman, Dept of
Computer Science Karnataka University and Karnataka
University Dharwad

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Universities Act, 2000 — Section 14, 14 (4), 3

Citation : (2011) 11 KAR CK 0266

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : D.N. Nanjunda Reddy, for Sri. S.S. Patil, for the Appellant; Udaya Holla and Sri. Aravind Kulkarni for R-1, Sri. K.M. Nataraj, Addl. A.G. for R-2, Sri. Ravivarma Kumar, for R-3 and Sri. K.L. Patil, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Mrs. Justice B.V. Nagarathna

1. This writ petition raises a short, but important question regarding the appointment of a Vice-Chancellor of a University under the provisions of the Karnataka Universities Act, 2000 (hereinafter referred to as "the Act", for the sake of brevity). The petitioner has assailed the notification dated 18.10.2010 issued by the first respondent-Chancellor produced at Annexure-E and has sought consequential directions. The petitioner is stated to be an eminent academician having obtained M.Sc., in Bio-Chemistry in first class and Ph.D., from Simon Fraser University, Canada. He is said to be the senior most professor in the 4th respondent-Karnataka University (hereinafter, referred to as "the University") established u/s 3 of the Act. The achievements of the petitioner are stated at Annexure-A. He is, presently, the Registrar of the respondent-University.

2. The Vice-Chancellor of the University retired on the forenoon of 25.10.2010 on expiry of his term. As such, steps were initiated for the appointment of a Vice-Chancellor in terms of Section 14 of the Act. Accordingly, the State Government constituted a Search Committee comprising of four persons, consisting of a nominee of the Chancellor, a nominee of University Grants Commission (UGC), a nominee of State Government and the nominee of the syndicate of the University. The nominee of the State Government was appointed as a Chairman of the committee. The Search Committee met on 28.9.2010 and after due deliberations recommended a panel of three names in alphabetical order to the State Government as per Annexure-B dated 11.10.2010. The names are as follows:

1. Hinchigeri S.B. (Petitioner)
2. Thimmegowda. B
3. Walikar H.B. (Third respondent)

3. After considering the said names recommended by the Search Committee, the State Government thought that the petitioner was the most competent and suitable person and made a recommendation to the Chancellor of the University-the first respondent herein, indicating that out of the three names suggested by the Search Committee, the petitioner was to be appointed as the Vice-Chancellor of the University vide Annexure-C. The first respondent-Chancellor, however, did not accept the said name suggested by the State Government and instead exercised power under sub-section (4) of Section 14 of the Act and appointed the third respondent as the Vice-Chancellor of the University and accordingly, notification dated 18.10.2010 (Annexure-E) was issued which is assailed by the petitioner herein. The grievance of the petitioner is that there has been non-compliance of sub-section (4) of Section 14 of the Act inasmuch as the Chancellor can appoint a Vice-Chancellor only with the concurrence of the State Government and in the instant case, there being no such concurrence, the appointment of the third respondent is vitiated. In this context, reliance is placed on the communication dated 19.10.2010 (Annexure-F) addressed by the Minister for Higher Education to the Principal Secretary to His Excellency the Governor, who is the ex officio Chancellor of the respondent-University. Being aggrieved by the appointment of the third respondent, the petitioner has assailed the same by raising various contentions.

4. In response to the said writ petition, first respondent has filed statement of objections, referring to the relevant provisions of the Act and also the UGC Regulations having a bearing on the appointment of the Vice-Chancellor of the university, to contend that the appointment has been made under the provisions of the UGC regulations and not under the provisions of the Act. Certain averments have also been made as to why the candidature of the petitioner was not accepted by the Chancellor and the third respondent was more suitable for the post. While denying various allegations made in the writ petition, the first

respondent has sought dismissal of the same.

5. The second respondent-State has also filed statement of objections supporting the petitioner in approaching this court by contending that the Chancellor has not accepted the name of the petitioner indicated by the State Government for the appointment to the post of Vice-Chancellor of the respondent-university. That the appointment of the third respondent as the Vice-Chancellor is without the concurrence of the State and therefore, the same is vitiated as the Chancellor has not followed the procedure contemplated under the Act. Therefore, the State has requested the court to pass appropriate orders in the matter.

6. Third respondent has also filed statement of objections supporting the notification issued by the Chancellor by contending that the Chancellor has appointed the third respondent keeping in mind merit, equity and social justice. It is also contended that the Search Committee can only suggest three best candidates and submit the panel of names to the State Government. The role of the State Government is restricted to only forwarding the panel of names to the Chancellor and that the State Government has no right to recommend any particular name to the Chancellor. That the Chancellor has the power to select the candidate to be appointed as the Vice-Chancellor. Having regard to Sub-section (4) of Section 14, the word "concurrence" found in the said sub-section would not imply that the State Government has to accept the name selected by the Chancellor for appointment of the Vice-Chancellor. That the third respondent is far superior than the petitioner and able to hold the post of Vice-Chancellor. Therefore, the Chancellor was justified in appointing the third respondent as Vice-Chancellor of the University having regard to merit, equity and social justice. The third respondent has, therefore, sought dismissal of the writ petition.

7. The petitioner has filed a rejoinder stating that if the UGC Regulations are to apply, then the setting up of the Search Committee itself is vitiated and therefore, the entire process has to be re-done. On the other, the appointment of the third respondent is under the provisions of the Act, but the procedure contemplated u/s 14 has not been complied with. Therefore, petitioner has sought for quashing of note dated 18.10.2010 (Annexure-E).

8. I have heard learned senior counsel, Sri. D.N. Nanjunda Reddy, for Sri. S.S. Patil, for the petitioner, learned senior counsel, Sri. Udaya Holla and Sri. Aravind D. Kulkarni, for M/s. Holla & Holla, for the first respondent, learned Addl. Advocate General, Sri. K.M. Nataraj for the second respondent and learned senior counsel, Sri. Ravivarma Kumar, for the third respondent and learned counsel, Sri. K.L. Patil for the fourth respondent.

9. Learned Senior Counsel appearing for the petitioner submitted that since the Vice-Chancellor was to retire on attaining the age of superannuation, steps were initiated u/s 14 of the Act for appointment of a new Vice-Chancellor. The said section envisages constitution of a Search Committee by the State Government to submit a panel of three persons who are eminent academicians in alphabetical

order to the State Government. The State government, has to, in turn forward the panel to the Chancellor, who shall, keeping in view merit, equity and social justice and with the concurrence of the State Government appoint one person from the panel as the Vice-Chancellor. If the Chancellor is of the view that a second panel is necessary, then, with the concurrence of the State Government, the Search Committee can submit a second panel, which is final. Therefore, the Chancellor has to select the name from the panel, on the basis of merit, equity and social justice and when once the Chancellor selects a person, it is only with the concurrence of the State Government that the said person can be appointed as a Vice-Chancellor.

10. Drawing my attention to Annexure-B dated 11.10.2010, he stated that the panel of three names were sent by the State Government along with a submission note indicating that the State Government had recommended the name of the petitioner to be the candidate to be selected as the Vice-Chancellor of the respondent-University as per Section 14(4) of the Act. However, the respondent-Chancellor totally ignored the recommendation made by the State Government and instead appointed the third respondent to be the Vice-Chancellor and a notification to that effect was issued on 18.10.2010. The Chancellor has not only ignored the recommendation made by the State Government, but has also not taken the concurrence of the Government before appointing the Vice-Chancellor to the 4th respondent-University. He submitted that though the power has been purportedly exercised u/s 14(4) of the Act by the Chancellor, nevertheless, by ignoring the recommendation made by the Government and appointing the third respondent, without the concurrence of the State Government, is in total violation of the procedure prescribed u/s 14 of the Act. He, therefore, submitted that the appointment of the third respondent in the instant case is illegal and arbitrary and hence, the same may be quashed.

11. While drawing my attention to the expression "concurrence of the State Government in sub-section (4) of Section 14, he submitted that originally the Karnataka University Act, 1949 was applicable to the respondent-University under which, Section 10 prescribed the procedure for the appointment of Vice-Chancellor by way of an election. The said Act was repealed and substituted by 1976 Act under which, Section 11 provided for the appointment of the Vice-Chancellor, whereby the Chancellor from out of a panel of not less than three persons recommended by a committee consisting of four persons, had to appoint one person to be the Vice-Chancellor, provided if the Chancellor did not approve any of the persons recommended by the committee, then he could call for fresh recommendation by the committee. However, under the present Act, the Chancellor has to appoint the Vice-Chancellor from the panel of names forwarded by the State Government having regard to merit, equity and social justice and with the "concurrence of the State Government". Therefore, concurrence of the State Government to the person selected by the Chancellor to be appointed as the Vice-Chancellor is a mandatory requirement. Drawing my attention to the word "concurrence", he stated, that it means "approval" by placing reliance on All

Bihar Christian Schools Association and Another Vs. State of Bihar and Others, Such approval need not be prior approval, it could also be subsequent approval. Placing reliance on Black's Law Dictionary (8th Edition), he stated that "concurrence" means "agreement" or "assent" and to concur would mean to agree or to consent. P. Ramanatha Aiyar's Law Lexicon is also referred to where the definition of the word "concur" means to coincide and concurrence is the action of concurring. He, therefore, submitted that unless concurrence of the State Government i.e., consent was obtained by the Chancellor, no appointment of a Vice-Chancellor could be made. According to the learned senior counsel, in the instant case, there being no such concurrence, the appointment is vitiated and hence, the writ petition has to be allowed by quashing the said appointment.

12. Per contra, learned senior counsel appearing for the first respondent-Chancellor initially drew my attention to UGC regulations and submitted that the appointment has been made under the said Regulations and not under the Act. As an alternative submission, he stated that concurrence of the State Government is not a mandatory requirement u/s 14(4) of the Act, it is only directory as no penal consequences in the absence of concurrence of the State Government have been prescribed in the section. He, therefore, submitted that taking concurrence of the State Government in the appointment of the Vice-Chancellor is not necessary. Drawing my attention to various decisions, he pointed out that the appointment in the said case is in accordance with law and it does not call for any interference in this writ petition. During the course of arguments, learned counsel also referred to the reasons as to why the petitioner was not selected to be the Vice-Chancellor.

13. Learned senior counsel appearing for the third respondent, at the outset stated that the petitioner is not an aggrieved person, he, therefore, cannot challenge the appointment of the third respondent. That in the instant case, the appointment made by the Chancellor is to the high post of Vice-Chancellor. It is not a case where Article 14 or 16 of the Constitution would apply. The appointment of the Vice-Chancellor is not a justiciable matter. In fact, the Government is not aggrieved by the said appointment as it has not challenged the same. This is not a recruitment to a post, but appointment to a responsible office and a person who is not appointed to the said office cannot have any grievance since the appointment in the instant case is akin to an invitation and it is not pursuant to an application made by eligible candidates as it happens in a regular recruitment process. Therefore, he submitted that the writ petition has to be dismissed as not maintainable as also, the petitioner has no locus standi to challenge the appointment of the third respondent.

14. Dwelling on section 14 of the Act, he stated that the exercise of the power by the Chancellor in the instant case is not similar to the exercise of powers by the Governor of the State, on the aid and advice of the Council of ministers. Though the Governor of the State ex officio is the Chancellor of the University, nevertheless, the exercise of power u/s 14 is an Independent one. The mere use

of expression "concurrence" under Sub-section (4) of Section 14 would not mean that the Governor is bound by the advice of the State Government, that it was not right on the part of the State Government to indicate or recommend the name of the petitioner from the panel of three names to be appointed as the Vice-Chancellor of the University. The power of the Governor cannot be circumscribed by the recommendation made by the State Government. In fact, the State Government had to simply forward the names submitted by the Search Committee in alphabetical order. The Chancellor had to exercise his power under sub-section (4) of Section 14 of the Act having regard to merit, equity and social justice. That the expression "concurrence" cannot be interpreted to mean that, so long as the State Government would not consent to the person selected by the Chancellor, no appointment could be made. The expression "concurrence" is to the act of filling of all the post of Vice-Chancellor and not to the candidate selected by the Chancellor. He, therefore, submitted that there is no merit in this writ petition and the same has to be dismissed.

15. Learned Additional Advocate General, appearing for the State, submitted that it is for the petitioner to establish locus standi to maintain the petition. That in the instant case, the appointment is made u/s 14 of the Act and not under the provisions of the UGC Regulations. That the State Government constitutes the Search Committee under sub-section (4) of Section 14 of the Act and in "concurrence" of the State Government is mandatory as it is the prerogative of the State Government to appoint the Vice-Chancellor. He, therefore, submitted that the appointment is liable to be struck down in the instant case since there has been no consultation, let alone concurrence between the Chancellor and the State Government, before appointing the third respondent as Vice-Chancellor of the University. He also justified that the recommendation of the petitioner made by the State Government was in accordance with law since, ultimately, the State Government has to concur with the appointment of the Vice-Chancellor. Summarising his submission, he stated that the Chancellor is only a statutory authority. He has to comply with the provisions of the statute and that the State Government has the right to recommend the name of the person to be appointed as the Vice-Chancellor of the University and the same would be binding on the Chancellor. He, therefore, submitted that having regard to the stand of the State Government, appropriate orders may be passed in the writ petition.

16. In reply, learned senior counsel for the petitioner submitted that the petitioner has locus standi to maintain this writ petition as judicial review of an administrative action is envisaged under the constitution and therefore, the invocation of Article 226 in the instant case is just and proper. He also submitted that the first respondent-Chancellor in his statement of objections has adverted to the UGC Regulations, whereas the appointment has been made u/s 14 of the Act. Therefore, no reliance can be placed on the UGC Regulations. The power exercised by the Chancellor was statutory in nature in the matter of appointment of Vice-Chancellor, and the primacy was with the State Government. He, therefore, submitted that the writ petition may be allowed.

17. Having heard the counsel on both sides, the following points would arise for my consideration:

i) Whether the petitioner has the locus standi to maintain the writ petition?

ii) If answer to point No. 1 is in the affirmative, whether the appointment of respondent No. 3 in the instant case is in accordance with law?

18. At the outset, it is observed that the Chancellor has exercised powers u/s 14 of the Act in the matter of appointment of the third respondent as the Vice-Chancellor of the respondent-University and not under UGC Regulations. The reference made to UGC Regulations by the Chancellor in his statement of objections is an after-thought only as an attempt to get over the allegations made in the writ petition. Therefore, the contentious issue raised by the petitioner is considered only in the context of Section 14 of the Act and not under the UGC Regulations. Moreover, all arguments have focussed on Section 14 of the Act rather than UGC Regulations. Therefore, no useful purpose would be served by hereinafter making any reference to the UGC Regulations in the instant case.

19. It is also noted that the petitioner is one of the persons whose name figures in the panel of three names submitted by the Search Committee to the State Government who in turn submitted the said panel to the respondent-Chancellor with an indication that the Government had recommended the name of the petitioner to be appointed as the Vice-Chancellor of the respondent-University.

19a. In matters pertaining to appointment to the high post of a Vice-Chancellor of a University, the procedure is to appoint a Search Committee u/s 14 of the Act. The object of the Search Committee is to submit to the State Government a panel of three persons who are eminent academicians. In fact, the Search Committee itself consists of eminent persons noted in the field of education, such as persons who are nominated by the Chancellor, by the University Grants Commission, by the State Government and by the Syndicate. The State Government has to appoint one of the members as the Chairman of the Search Committee. The Secretary to Government in-charge of Higher Education or his nominee not below the rank of the Deputy Secretary to Government functions as the Convenor of the Search Committee. Therefore, the Search Committee has the onerous and responsible task of identifying the appropriate persons who could be appointed as the Vice-Chancellor of the University. There is no question of any person making an application or seeking appointment to the post of Vice-chancellor as it is the function of Search Committee to ensure that eminent academicians are empanelled to be considered for appointment as the Vice-Chancellor. The Search Committee would not express any view with regard to the inter se merit of the panel of three names suggested by it. In fact, the said names have to be suggested in alphabetical order. The role of the State Government is to submit the said panel of three names who are eminent academicians, in alphabetical order to the Chancellor. The Chancellor has to then

select and appoint one person from the panel as a Vice Chancellor. The said appointment has to be, keeping in mind merit, equity and social justice and with the concurrence with the State Government.

20. If a person's name finds a place in the panel submitted by the Search Committee and he, thereafter, finds that another member of the panel has been appointed without following the procedure envisaged under the Statute, then in my view, he would have the locus standi to file a petition under Article 226 of the Constitution of India assailing the said appointment, particularly if he alleges violation of Section 14 of the Act. This is not a case where the petitioner's name did not find a place in the panel of names submitted by the Search Committee and that he has assailed the appointment of the third respondent. In fact, there is no challenge made to the panel of three names submitted by the Search Committee. The grievance of the petitioner is with regard to non-compliance of the statutory requirement u/s 14 of the Act, in the matter of appointment of the third respondent as the Vice-Chancellor of the University in question. Therefore, in my view, petitioner has the locus standi to file this writ petition.

21. Judicial review is the part of basic structure of the Indian Constitutional scheme. Decisions arrived at by the executive or administrative decisions are subject to judicial review. While exercising the power of judicial review in a case the court is not concerned with the merit of the decision, but with the decision-making process. If the decision-making process is not adhered to, then judicial review would lie.

22. In fact, a writ of quo warranto can be issued when the holder of a public office has been appointed in violation of constitutional or statutory provisions. Therefore, judicial review for the purpose of issuance of a writ of quo warranto would lie (a) in the event the holder of the public office was not eligible for appointment; (b) processual machinery relating to appointment was not fully complied. While dealing with the writ quo warranto, the Apex Court in *N. Kannadasan Vs. Ajoy Khose and Others*, has held as follows:

The writ of quo warranto proceedings affords a judicial remedy by which any person who holds an independent substantive public office is called upon to show by what right he holds the same so that his title to it may be duly determined and in the event it is found that the holder has no title he would be directed to be removed from the said office by a judicial order. The proceedings not only give a weapon to control the executive from making appointments to public office against law but also tend to protect the public from being deprived of public office to which it has a right. It is indisputably a high prerogative writ which was reserved for the use of the Crown. The width and ambit of the writ, however, in the course of practice, have widened and it is permissible to pray for issuance of a writ in the nature of quo warranto.

Therefore, a writ of quo warranto can be issued when the appointment is contrary to the statutory rules. It is also held that when a court is examining the

question as to whether a person is holding a public office under valid authority or not, the court is not concerned with technical grounds of delay or motive behind the challenge, but to prevent perpetuation of an illegality. At the same time, it must be borne in mind that a writ or quo warranto can be issued on a limited ground, but the considerations for issuance of a writ of certiorari are wholly different. Hence, this writ petition is maintainable. Therefore, point No. 1 is answered in the affirmative.

23. Point No. 2: The Karnataka State Universities Act, 2000 has replaced the 1976 Act. Chapter 3 of the said Act deals with the officers of the university. Section 11 mentions, inter alia, the following officers of the University i.e., (a) the Chancellor, (b) the Pro-Chancellor, (c) the Vice-Chancellor, (d) the Registrar, (e) The Registrar (Evaluation), (f) The Dean.

24. Section 12 states that the Governor of Karnataka shall by virtue of his office, be the Chancellor of the University. He shall be the Head of the University and shall when present, preside at any convocation of the University. He shall have such other powers as are conferred on him by or under the Act. Therefore, the Governor of the State is ex officio the Chancellor of a University coming under the provisions of the Act. Section 13 states that the Minister in-charge of the Higher Education in Karnataka shall be ex officio the Pro-Chancellor of the University.

25. Section 14 deals with the Vice-Chancellor and the same is extracted as follows:

14. The Vice-Chancellor- (1) The Vice-chancellor shall be a whole time officer of the University.

(2) The State Government shall constitute a Search Committee consisting of four persons of whom, one shall be nominated by the Chancellor, one by the University Grants Commission, one by the State Government and one by the Syndicate. The State Government shall appoint one of the members as the Chairman of the Committee. The Secretary to Government in charge of higher education or his nominee not below the rank of the Deputy Secretary to Government shall be the convenor of the search Committee.

(3) No person connected with the affairs of the State Government, the University or any college or institution affiliated to the University shall be nominated as the member of the Search Committee.

(4) The Search Committee shall submit to the State Government a panel of three persons who are eminent academicians, in the alphabetical order. The State Government shall forward the panel to the Chancellor who shall keeping in view merit equity and social justice and with the concurrence of the State Government, appoint one person from the panel as the Vice-Chancellor.

Provided that the Chancellor may with the concurrence of the State Government call for a second panel if he considers it necessary and the Search Committee

shall submit a second panel which shall be final.

(5) No person shall be appointed or hold office of the Vice-Chancellor if he has attained the age of sixty-five years.

(6) The Vice-Chancellor shall, subject to the pleasure of the Chancellor and the provisions of sub-section (5) hold the office for a period of four years. He shall not be eligible for reappointment, for a second term.

(7) The Vice-Chancellor shall not be removed from his office except by an order of the Chancellor passed on the ground of willful omission or refusal to carry out the provisions of this Act or for abuse of the powers vested in him and on the advice tendered by the State Government on consideration of the report of an inquiry ordered by it under sub-section (8).

(8) For the purposes of holding an inquiry under this section the State Government shall appoint a person who is or has been a Judge of the High Court or the Supreme Court. The inquiry authority shall hold the inquiry after giving an opportunity to make representation by the Vice-Chancellor and shall submit a report to the State Government on the action to be taken including penalty if any to be imposed, and the State Government shall on consideration of the report advise the Chancellor. The Chancellor shall act in accordance with such advice, as far as may be within six months.

(9) The emoluments and others conditions of service of the vice-Chancellor shall be such as may be determined by the Chancellor and shall not be varied to his disadvantage after his appointment as Vice-Chancellor. In the event of a Vice-Chancellor retiring on superannuation during his tenureship as Vice-Chancellor, his conditions of service already determined shall continue to be in vogue. All his pensionary benefits shall be kept in abeyance which shall be released after his demoting the office of the Vice-Chancellor.

26. Section 15 deals with the powers of the Vice-Chancellor, the same reads as follows:

15. Powers of the Vice-Chancellor:- (1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general control over the affairs of the University. He shall exercise all powers necessary for maintenance of discipline in the University.

(2) He shall be ex officio Chairman of the Academic Council and the Syndicate and the Finance Committee. He shall preside over in the absence of the Chancellor and Pro-Chancellor at the Convocations. He shall preside over the meetings of the authorities or bodies of the Universities, and shall be entitled to vote.

(3) He shall ensure that all the provisions of this Act, the Statutes, the Ordinances and the Regulations are observed and shall have all the powers necessary for that purpose.

(4) He may either himself or through any officer of the University authorised in writing by him, convene the meetings of the Academic Council, the Syndicate and the Finance Committee and shall perform all such acts as may be necessary to carry out and give effect to the decisions of these authorities.

(5) In case of emergency which, in his opinion, requires immediate action, the Vice-Chancellor shall take such action as he deems necessary and shall at the earliest opportunity thereafter report the action taken to such authority or body which in the ordinary course would have dealt with the matter: Provided that if the action taken by the Vice-Chancellor is not approved by the Authority or body concerned, he may refer the matter to the Chancellor whose decision thereon shall be final: Provided further that any person in the service of the University affected by the decision of the authority or body based on the report of the Vice-Chancellor under this sub-section may prefer an appeal to the Chancellor within thirty days from the date on which the decision was communicated to him and the decision of the Chancellor on such appeal shall be final:

Provided also that the powers vested under this subsection shall not be exercised to revise the pay scale of University employees or to grant affiliation to a college or a course of instruction and if in the exercise of the powers under this sub-section, Statutes or Regulations are framed, they shall be subject to the approval of the Chancellor under the relevant provisions of this Act and if Ordinances are made they shall be submitted to the Chancellor in accordance with this Act.

(6) The Vice-Chancellor shall exercise such other powers as may be prescribed by the Statutes, Ordinances and Regulations.

Section 16 deals with the arrangement of work during the vacancy In the office of the Vice-Chancellor.

27. On a reading of the said provisions, it is clear that the Vice-Chancellor is a whole time officer of the University. The appointment of the Vice-Chancellor is as per the procedure prescribed u/s 14 of the Act. Initially, the State Government has to constitute a Search Committee consisting of four persons nominated by the Chancellor, University Grants Commissioner, by the State Government and by the Syndicate. One of the four persons is appointed as the Chairman of the Committee by the State Government. The Secretary to Government in-charge of Higher Education or his nominee is the convenor of the Search Committee. As per sub-section (3) of Section 14, no person connected with the affairs of the State Government, the University or any college or institution affiliated to the University shall be nominated as the member of the Search Committee. The object is to ensure that the Search Committee would discharge its responsibilities in an objective manner. Under sub-section (4) of Section 14 which is the provision under consideration, the Search Committee has to submit to the State Government a panel of three names of persons who are eminent academicians in alphabetical order, then the State Government has to forward the panel of three names to the Chancellor. Thereafter, keeping in view merit, equity and social

justice and with the concurrence of the State Government the Chancellor has to appoint one person from the panel of three names to be the Vice-Chancellor of a University. If the Chancellor considered it necessary, then he can call for a second panel with the concurrence of the State Government and the Search Committee, then shall submit a second panel which panel shall be final. No person can be appointed or hold office of the Vice-chancellor if he has attained the age of sixty-five years. The Vice-Chancellor, subject to the pleasure of the Chancellor and subject to the aforesaid age, would hold office for a period of four years. He would not be eligible for reappointment, for a second term. The Vice-Chancellor can be removed from office by an order of the Chancellor passed on the ground of willful omission or refusal to carry out the provisions of this Act or for abuse of the powers of the Act or for abuse of powers vested in him and on the advice tendered by the State Government on consideration of the report of an enquiry. For the purpose of holding an enquiry, the State Government can appoint a person who is or has been a Judge of the High Court or the Supreme Court. The inquiry authority shall hold the inquiry after giving an opportunity to make a representation by the Vice-Chancellor. The inquiry authority shall then submit a report to the State Government on the action to be taken including penalty, if any, to be imposed and the State Government on consideration of the report, accordingly, advice the Chancellor. The Chancellor shall act in accordance with such advice, as far as may be within six months.

28. The Vice-Chancellor is the principal executive and academic officer of the University who exercises general control over the affairs of the University. He exercises all powers necessary for maintenance of discipline in the University. He is the ex officio Chairman of the Academic Council and the Syndicate and the Finance Committee. He would preside over Convocations, in the absence of the Chancellor and Pro-Chancellor. He presides over the meetings of the authorities or bodies of the Universities, and is entitled to vote. The Vice-Chancellor has to ensure that all the provisions of this Act, the Statutes, the Ordinances and the Regulations, which are observed and shall have all the powers necessary for that purpose.

29. Two significant aspects of the matter require to be noticed at this stage. Firstly, while submitting the panel of three names as suggested by the Search Committee by the State Government to the Chancellor, a submission note was also sent recommending the name of the petitioner to be the Vice-Chancellor of the respondent-University (Annexure-C). Exercising powers under sub-section (4) of Section 14 of the Act, the Chancellor having regard to merit, equity and social justice appointed the third respondent as the Vice-Chancellor and a notification to that effect was issued on 18.10.2010 (Annexure-E).

30. Having regard to the expression "concurrence of the State Government" used in Sub-section (4) of Section 14 and also proviso thereto, the procedure followed by the State Government as well as the Chancellor in the instant case has to be adjudicated upon. The argument of the petitioner is, that the concurrence of the

State Government would imply approval and therefore, without the approval of the State Government, the Chancellor cannot make appointment of the Vice-Chancellor. In other words, according to the petitioner, concurrence means consent of the State Government to the person selected by the Chancellor to be appointed as the Vice-Chancellor. That is, without there being consent or approval, there would be no concurrence of the State Government and thereby the appointment of the Vice Chancellor would be contrary to Sub-section (4) of Section 14. The other aspect is, as to whether "concurrence" would imply that the State Government would have a choice in the matter and any recommendation made by the State Government, at the time of submitting the panel of names to the Chancellor could indicate the name of the person to be appointed as the Vice-Chancellor. In short, the question is, whether the recommendation made by the State Government is binding on the Chancellor. In this context, the meaning and interpretation of the expression "concurrence of the State Government" would have to be given.

31. While interpreting a statute, the words of a statute have to be understood in their natural, ordinary or popular sense and the natural and grammatical meaning have to be assigned to them, unless that would lead to some absurdity or there is something in the context or the object of the statute which would suggest something contrary. It is often stated that the golden rule is that the words of a statute must prima facie be given their ordinary meaning, unless it could be shown that the legal context in which the words are used requires a different meaning. Therefore, departure from the literal meaning is in rare cases.

32. In the case of N. Kannadasan Vs. Ajoy Khose and Others, , the Apex Court has held that construction of a statute must sub-serve the tests of justice and reason. It is a well-settled principle of law that in a given case with a view to give complete and effective meaning to a statutory provision, some words can be read into; some words can be subtracted. Provisions of a statute can be read down also, although sparingly.

33. In the case of K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, the Apex Court held that the task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity".

34. In Bhudan Singh and Another Vs. Nabi Bux and Another, the Apex Court quoting Crawford, on Statutory Interpretation has stated that the entire legislative process is influenced by considerations of justice and reason and the object of every legislation is to advance of public welfare.

35. In the case of *Atma Ram Mittal Vs. Ishwar Singh Punia*, the Apex Court quoted Blackstone to state that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable and these signs are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law.

36. In the case of *Harbhajan Singh Vs. Press Council of India and Others*, the Apex Court while referring to "Principles of Statutory Interpretation" by Justice G.P. Singh, has stated that judges can adopt a purposive interpretation if they can find in a statute, read as a whole or in material to which they are permitted by law to refer as aids to interpretation, an expression of Parliament's purpose or policy.

37. Learned Senior Counsel appearing for the Chancellor has referred to certain decisions in the context of interpretation to be given to the expression "concurrence of the State Government" in sub-section (4) of Section 14 of the Act. The same are as follows:

(a) In *Hameedia Hardware Stores*, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, the Apex Court has held that having regard to the context in which the provision appears and object of statute in which the said provision is enacted, court should construe it in a harmonious way to make it meaningful.

(b) In *Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, Vs. N.C. Budharaj (Dead) by Lrs. etc. etc.*, the Apex Court has held that any restricted and literal construction which is bound to create numerous anomalies and ultimately defeat the ends of justice should be scrupulously avoided. On the other hand, that interpretation which makes the text not only match the context but also makes a reading of the provision of an Act just, meaningful and purposeful and help further advance the ends of justice must alone command for acceptance of court of law.

(c) In *Radhey Shyam Garg Vs. Naresh Kumar Gupta*, it has been observed that a plain meaning or literal interpretation should not lead to absurdity or an anonymous situation.

(d) In *Dove Investments Pvt. Ltd. and Others Vs. Gujarat Industrial Inv. Corporation Ltd. and Another*, it has been held that whether statute would be directory or mandatory would depend upon the scheme thereof. Ordinarily a procedural provision would not be mandatory even if the word "shall" is used.

38. The word "concurrence" has not been defined in the definition clause of the Act. But merely because the word has not been defined, it does not mean that there are no parameters or judicial pronouncements from where assistance could be derived.

39. The word "concurrence" which occurs in Sub-section (4) of Section 4 of the

Act has its root in the word "concurrent". The word "concurrent" according to Black's Law Dictionary, means operating at the same time, covering the same matters having authority on the same matters. According to P. Ramanatha Aiyar's Advanced Law Lexicon, "concurrent" means having the same authority, acting in conjunction, existing together agreeing in the same act, contributing to the same event, contemporaneous, running together, co-operating, contributing to the effect, accompanying, conjoined, joint and equal in the sense of concurrent jurisdiction. The action of concurring is concurrence. On the other hand, consent means to give ones permission for doing an act, i.e., in the realm of approval. If the word "concurrence" in sub-section (4) of Section 14 of the Act, having regard to the meaning of the word "concurrent" is interpreted to mean agreeing to the same act leading to a consensus, then in order to arrive at a consensus, consultation is a mandatory requirement. In that case, the word "concurrence" would not mean approval or consent. On the other hand, if "consultation" is for the purpose of intimating or informing the State Government the name of the person selected to be appointed as the Vice-Chancellor, then consultation in this sense is not to arrive at a consensus. Therefore, consent/approval of the State Government stands on a higher footing than consensus. In order to achieve consensus, consultation is a must. On the other hand, if the object of consultation is only to intimate/inform the State Government the name of the person selected to be appointed as the Vice-Chancellor, then consensus in the matter between the State Government and Chancellor is not necessary. Therefore, the exact meaning of the word "concurrence" has to be ascertained in the instant case.

40. In this context, it is relevant to observe that the Chancellor under the statute is a high constitutional authority. He is the Governor of the State under the constitutional frame work, who acts on the aid and advice of the Council of Ministers. But his actions are not with the prior approval or consent of the Council of Ministers. Moreover, under certain circumstances, there is a discretionary power vested with the Governor, which is de hors, aid and advice of the Council of Ministers. Having regard to the fact that the Governor of the State, ex officio is the Chancellor of the University under the Act, the status and position of the Governor in the entire frame work cannot be ignored while interpreting Sub-section (4) of Section 14 of the Act.

41. If the word "concurrence" is interpreted to mean consent, assent or approval, then that would imply that the State Government by withholding consent, approval or consent to the person selected by the Chancellor having regard to the parameters stated in sub-section (4) of Section 14 can, scuttle the appointment of a person sought to be made by the Chancellor. Such an interpretation would lead to absurdity inasmuch as the Chancellor would not be in a position to appoint a person unless the said appointment is consented to or approved or assented to by the State Government. But in my view, the Chancellor cannot be dictated to by the State Government in the matter of appointment of the Vice-Chancellor of a University. The provision does not

envisage negation of powers vested with the Chancellor. On the other hand, the said sub-section vests authority with the Chancellor to appoint the Vice-Chancellor of a University. Therefore, the word "concurrence" must be interpreted to mandate consultation, as the power exercised by the Chancellor and the State Government under sub-section (4) of Section 14 is concurrent i.e., when the authorities act in conjunction by co-operating with each other to bring about the same effect. Therefore, the word "concurrence" cannot mean approval, consent or assent. It mandates "consultation" and the Chancellor has to appoint a person as the Vice-chancellor in consultation with the State Government. As already stated, the object of consultation is not to receive any approval from the State Government regarding the name selected by the Chancellor. Consultation in this context is only to arrive at a consensus. It is needless to observe that when there is consensus, it would amount to a tacit approval by the State Government.

42. Therefore, the word "concurrence" cannot be interpreted in a literal manner to mean consent or approval but consultation to arrive at a consensus. In the present context, the expression "concurrence" would mandate "consultation with the State Government" by the Chancellor, about the person to be appointed as the Vice-Chancellor, so as to arrive at a consensus.

43. The expression "consultation", according to the Apex Court is powerful and eloquent with meaning loaded with undefined intonation and it answers all questions and all the various tests including the test of primacy. Therefore, meaning be attached to the expression "consultation" in the context of statute has to be understood.

44. In the case of *R. Pushpam and Another Vs. The State of Madras and Another*, it was held that the word "consultation" 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. All the materials in the possession of one who consults must be unreservedly placed before the consultee and further, a reasonable opportunity for getting information, taking other steps and getting prepared for tendering effective and meaningful advice must be given to him, vide *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*,

45. The Apex court in the case of *Supreme Court Advocates-on-Record Association and in the Presidential Reference, Special Reference No. 1 of 1998* has, however, laid down that "consultation" would mean "concurrence" whereby the primacy has been shifted to the Collegium of Judges headed by the Chief Justice in the matter of appointment of judges of the High Court and Supreme Court.

46. According to the Apex Court, the word "consultation" may have different meanings in different situations depending upon nature and purport of the statute. Sometimes when the word "consultation" is used, it would imply "concurrence". In certain other situations when the word "concurrence" is used, it would mean "consultation".

47. Moreover, in the instant case, the expression "concurrence" must be so interpreted that the power of Chancellor would not be neutralised by the Government by withholding consent to the name of the person selected by the Chancellor. Therefore, the expression "concurrence" in Section 14 cannot be interpreted to mean consent or approval. Such a construction would virtually confer a veto power on the State Government, which would be against the exercise of the power by the Chancellor, because the statute in question gives power to the Chancellor to select a candidate as a Vice-Chancellor from out of the panel of names submitted through the Government, by the Search Committee.

48. In other words, the purpose under the statute is to select the best candidate from the panel of names submitted by the Search Committee in the most objective manner. The said name must be selected by the Chancellor after consultation with the State Government. Therefore, the Chancellor though selects a name from the panel of names submitted by the Search Committee through the State Government, cannot straight away notify the said name for the purpose of appointment as a Vice-Chancellor de hors consultation with the State Government. Therefore, when once the Chancellor selects a name on the basis of inter se merit, equity and social justice out of the panel of names submitted by the Search Committee through the State Government, it is a mandatory requirement to consult the State Government about the candidate selected. The said process of consultation between the Chancellor and the State Government is in order to arrive at a consensus regarding the appointment of the Vice-Chancellor. If for any reason, consensus cannot be arrived at in a consultative process, then the question of primacy would assume importance. In my view, when a consensus between the Chancellor and the State Government in the matter of appointment of the Vice-Chancellor of a University cannot be achieved, primacy would be with the Chancellor, as prima facie discretion is vested in the Chancellor in the matter of appointment of the Vice-Chancellor of a University.

49. Therefore, the word "concurrence" in the instant case, has to be read to mandate "consultation". However, consultation is for the purpose of achieving consensus in the matter of appointment of the Vice-Chancellor of the University and not for consent or approval. "Concurrence" also cannot be interpreted to mean consent or approval. The requirement of consultation is, because the State Government cannot be kept in the dark about the candidate selected by the Chancellor to be appointed as the Vice-Chancellor of the University. When once the Chancellor selects the name from the panel of names submitted by the Search Committee through the State Government, there has to be an, effective

consultation between the Chancellor and the State Government on the selection made by the Chancellor for the purpose of arriving at a consensus. Therefore, the selection of a name from the panel of names submitted by the Search Committee by the Chancellor in consultation with the State Government is inextricable in making the entire process of appointment of a Vice-Chancellor under the Act an integrated one. A concomitant consequence is that the State Government is not empowered to indicate or approve a name at the time of sending the panel of names submitted by the Search Committee to the Chancellor. At the same time, the chancellor without consulting the State Government cannot unilaterally appoint a candidate selected by the Chancellor. It is reiterated that the object of the consultation between the Chancellor and the State Government is to arrive at a consensus. The Chancellor is also not required to obtain concurrence or approval of the State Government to the selection of the candidate made by him. Ultimately, in my view, merit being the upper-most criterion to be considered in the matter of appointment of Vice-Chancellor of a university, all attention must be given on the merit of the candidates submitted by the Search Committee. Merit envisages not only academic merit, but also envisages possession of other qualities required for effective functioning as the Vice-Chancellor of the University. Such being the case, it cannot be held that so long as the Chancellor does not have approval of the State Government to the selection of the candidate made by the Chancellor, no appointment can be made. It is necessary, however, that there should be consultation for the purpose of arriving at a consensus. If there is no consensus then primacy vests with the Chancellor to appoint the person selected by him as the Vice-Chancellor. There has to be checks and balances in the exercise of power by the two different authorities before the appointment of Vice-Chancellor of a University is made. Therefore, if the word "concurrence" is given, it is plain and literal meaning, then in that case, the object of ensuring appointment for a meritorious candidate would be lost. Therefore, the word "concurrence" has to be interpreted to mandate "consultation" between the Chancellor and the State Government so as to arrive at a consensus. In fact, when there is a consensus, it would lead to "concurrence".

50. In the context of the appointment of the Vice-Chancellor of a university, the role of the Government as well as the Chancellor who are the participants in the selection have to be assessed only collectively as they jointly constitute the "selector". The primary aim must be to reach an agreed decision or a decision by consensus by taking into account the purpose for which the power is being exercised. When a decision is reached by consensus without any difference of opinion, the question of primacy would not arise. Since it is held that the word "concurrence" must be read to mandate consultation so as to arrive at a consensus, the participants to the said consultation i.e., the Chancellor of the University and the State Government would have to act in a manner so as to achieve consensus. The question of primacy between the Chancellor and the State Government would arise only when consensus cannot be arrived at on a

name from the panel of names submitted by the search committee. It is in that context only that primacy would become a relevant factor. It is only when consensus cannot be arrived at, having regard to the object of the Act and the office to which appointment has to be made, that primacy would be with the Chancellor.

51. Another reason why "concurrence" would not mean consent/approval is, because for any name suggested by the Chancellor to the State Government, the latter could disagree, which would ultimately lead to the Chancellor accepting the name indicated or suggested by the State Government. That is not the object and purpose for which the procedure has been envisaged in Section 14. In fact, the Chancellor can seek a fresh or second panel of names to be sent, if he so considers it necessary, with the concurrence of the State Government. The expression "concurrence" in the proviso to sub-section(4) of Section 14 has also to be interpreted to mandate consultation i.e., intimation to State Government so as to enable the latter to convey to the Search Committee to send the second panel of names. Therefore, the purpose of consultation would be, so as to enable the State Government to submit fresh panel of names after obtaining the same from the Search Committee, as it is left to the discretion of the Chancellor so as to obtain a fresh panel of names once again. Therefore, "concurrence of State Government" does not mean consent or prior approval, which is not envisaged both in the Sub-section (4) of Section 14 as well as in the proviso. The decision of the Apex Court in All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, is distinguished having regard to the context of Section 14 of the Act.

52. In other words, if the word "concurrence" is given its plain and literal meaning it would be possible for the State Government to ultimately push its own candidate to be appointed as the Vice-Chancellor of the university which would only neutralize the power of the Chancellor. Such an interpretation cannot be given to the section having regard to the role played by the Chancellor while selecting and appointing the Chancellor to the University. It is needless to observe that the ultimate authority vests with the Chancellor.

53. In the case of Supreme Court Advocates-on-Record Association, it has been held that the word "consult" as understood in parlance means to ask or seek advice or the views of a person on any given subject from another. But it does not convey that the consultant is bound by the advice. By consulting the consultant does not mortgage his decision. The advice given is only an input among various factors which enter the decision-making. It is ultimately, the responsibility of the Chancellor to reach a sound decision as he is accountable for the same. Ultimately, the method of appointment must ensure that the best candidate is appointed. Therefore, the word "concurrence" when read to mandate consultation cannot imply consent or approval. It also cannot mean that the statute has transferred the power of appointment to the State Government by use of the word "concurrence". If that was so, the word "consent" or approval

could have been used, so that the final say in the matter would vest with the State Government.

54. Having regard to Section 12 of the Act, the Governor of the State is the Chancellor of the University. Even though the Chancellor of the University is a statutory authority, nevertheless, the fact that the Chancellor is the Governor of the State cannot be lost sight of. The Governor is a high constitutional authority in the State who discharges various administrative, judicial and legislative functions, in most cases, on the aid and advice of the Council of Ministers, but in some cases by exercising discretion vested in him. Therefore, even under the provisions of the Constitution, there are certain areas or certain situations when the Governor need not act on the aid and advice of the Council of Ministers, but would exercise discretion solely vested in him. Having regard to the fact that the Chancellor is the highest officer of the University who has been vested with the power to appoint the Vice-Chancellor and having regard to sub-sections (6), (7), (8), (9) and (10) of Section 14 as well as sub-section (4) of Section 14, it becomes clear that the Chancellor is the appointing authority of the Vice-Chancellor and that the Vice-Chancellor functions subject to the pleasure of the Chancellor. It is only the Chancellor who can remove the Vice-Chancellor from office as per procedure envisaged u/s 14. The emoluments and other conditions of service of the Vice-Chancellor shall be, as may be determined by the Chancellor. Thus the appointment of the Vice-Chancellor is the prerogative of the Chancellor. The Chancellor has, therefore, the authority to select from the panel of three persons who are eminent academicians, one person, having regard to merit, equity and social justice to be appointed as the Vice-Chancellor of the University. However, the State Government has to be consulted about the appointment of the Vice-Chancellor of the University. At the same time, the State Government has no prerogative powers in the appointment of the Vice-Chancellor. The object and purpose of consultation by the Chancellor with the State Government is to ensure that the best candidate to be appointed as Vice-Chancellor is made known to the State Government for arriving at a consensus. If not, the Chancellor has, therefore, primacy in the appointment of the Vice-Chancellor.

55. The reasons for the same are not far to see. The Chancellor functions as an independent authority under the provisions of the Act, he does not function as the Governor of the State under the Act and therefore, does not function on the aid and advice of the Council of Ministers while exercising powers under the provisions of the Act. The Chancellor being the appointing authority cannot have his authority neutralised by holding that the appointment of the Vice-Chancellor is subject to concurrence or approval by the State Government. Otherwise, it would not have been necessary for the State Government to submit a panel of three names to the Chancellor for the purpose of appointment as Vice-Chancellor. The State Government could have appointed from the said panel. The purpose of the Chancellor being the repository of power in the matter of appointment of the Vice-Chancellor is to make the appointment in an objective manner and without

any political or other considerations. Thus, the discretion vested in the Chancellor cannot be neutralised by holding that the appointment of the Vice-Chancellor is subject to the concurrence or approval of the State Government.

56. Any other interpretation would negate the statutory power vested in the Chancellor to appoint the Vice-Chancellor. Any appointment of the Vice-Chancellor only with the concurrence/approval of the State Government may also lead to appointment of persons who are wholly unsuitable to the post or appointment motivated by political and other considerations. In the instant case, therefore, the State Government was not right in indicating in its submission note, the recommendation of the petitioner to be the Vice-Chancellor of the respondent-University. The said recommendation sent along with the panel of names submitted by the Search Committee by the State Government has no validity in the eye of law. In view of the aforesaid interpretation, "concurrence" in the sense of prior approval of the State Government before appointment is not envisaged under the Statute. Thus, the recommendation of the petitioner made by the State Government is also contrary to Section 14 of the Act. Therefore, no reliance can be placed by the petitioner on the submission note sent by the Principal Secretary Higher Education to the Chancellor.

57. As already stated, when the Chancellor considers the name of the third respondent to be appointed as the Vice-Chancellor of the University having regard to the principle of merit, equity and social justice, consultation with the State Government is a mandatory requirement. In the instant case, there being no material forthcoming with regard to such consultation between the Chancellor and the State Government, can the appointment of the third respondent as Vice-Chancellor be held to be not in accordance with law and thus vitiated? In this context, the submission of the learned senior counsel appearing for the respondent-Chancellor was that the concurrence of the State Government is only directory and not mandatory. He, therefore, submitted that it was not necessary for the Chancellor to have the "concurrence" of the State Government. However, the expression "concurrence" has now been interpreted to mandate "consultation" with the State Government, when once the Chancellor has selected a person to be appointed as the Vice-Chancellor of the University. Since in the instant case, there has been no information or intimation of the said selection given by the Chancellor to the State Government and notification dated 18.10.2010 has been issued, would the same result in the appointment being declared null and void. Having regard to the interpretation given to the expression "concurrence of the State Government" to mandate consultation with the State Government, for the purpose of arriving at a consensus, once the selection was made by the Chancellor and having regard to the fact that the Chancellor in the instant case has appointed the third respondent who is one of the persons found in the panel of names submitted by the Search Committee and also having regard to the fact that concurrence in the instant case does not mean approval or consent of the State Government, in my view, the fact that there has been no consultation with the State Government by the Chancellor would not

vitiate the appointment of the third respondent. I hasten to add that the consultation with the State Government, before any appointment is notified by the Chancellors is a mandatory requirement under sub-section(4) of Section 14 of the Act. However, in the instant case, the same not having been done, cannot vitiate the appointment of third respondent as the Vice-Chancellor of the University. The reason is on account of the fact that in the present case, there could not have been any consultation, in view of the State Government recommending the petitioner to be appointed as the Vice-Chancellor. Such a recommendation could not have been made by the State Government to the Chancellor. By making such a recommendation the State Government has deprived the Chancellor to consult the State Government after selecting a name from the panel of names. The fact that the Chancellor chose the third respondent to be appointed as the Vice-Chancellor would imply that in the instant case, no consensus could be arrived at, because the State Government had already recommended the name of the petitioner to be the Vice-Chancellor while submitting the panel of names. In the absence of any consensus between the Chancellor and the State Government, the primacy vests with the Chancellor to appoint the candidate selected by him. Thus, the appointment of the third respondent as Vice-Chancellor of the respondent-University is not vitiated in the instant case. In normal circumstances, it would have been necessary for the Chancellor to consult the State Government about the selection of a particular name from the panel of names submitted by the Search Committee. Though in the instant case the said procedural requirement has not been complied with the same would not vitiate the appointment of the third respondent as Vice-Chancellor of the University for the aforesaid reasons.

58. Apart from the reasons assigned above, there is another reason as to why the appointment of the third respondent could be sustained. This is not a case where the Search Committee has directly submitted the names of the candidates empanelled for the purpose of appointment as the Vice-Chancellor to the Chancellor. On the other hand, the Search Committee in terms of sub-section (4) of Section 14 of the Act has submitted a panel of three names who are eminent academicians in alphabetical order to the State Government. The State Government had knowledge about the three persons empanelled by the Search Committee. In fact, the State Government went a step ahead and also recommended the name of the petitioner to be appointed as the Vice-Chancellor. Therefore, the State Government was not kept in dark about the names empanelled by the Search Committee. Moreover, the Chancellor has not appointed a person whose name does not find a place in the panel submitted by the Search Committee. Thus selection of the third respondent as a Vice-Chancellor by the Chancellor cannot be assailed. It is only where the decision-making process is not in compliance with the statutory requirements or for any other legal reason that the selection can be vitiated. As already noted that though there has been no consultation with the State Government after the selection of the third respondent by the Chancellor, in the instant case, the

selection of third respondent cannot be held to be vitiated. The said procedural requirement become redundant in the instant case on account of the recommendation of the petitioner made by the State Government. Therefore, consensus was not possible in the instant case. Having regard to the primacy of the Chancellor, the appointment of 3rd respondent would not call for any interference. Therefore, while laying down the requisite procedural norms to be followed u/s 14, by giving an interpretation to the expression "concurrence of the State Government" in sub-section (4) of Section 14 as well as in its proviso, I do not think that any interference of the appointment of the third respondent is called for in this case.

59. Before parting with this case, I deem it proper to state that both the State Government as well as the Chancellor must make a joint and determined effort to improve higher education in the state. The least that could be done in this regard is to appoint competent persons with impeccable reputation to run the affairs of the University as the Vice-Chancellor, in terms of Section 14 of the Act. One cannot underestimate the importance of education in a country like India which is striving for an equitable social order. The same can be achieved if only our education policies strive to eliminate the sources of inequities and injustices. According to Dr. Radhakrishnan, Former President of India, "Education is the means for the reconstitution of the society if we are to prepare ourselves for a democratic order, our education must have in view the development of each and every individual as a producer, as citizen, as a human being. He must have opportunity to develop to the utmost his innate ability and genius, physical, mental and spiritual. Equality of opportunity is the basic principle of democracy and that can be realised only if we have faith in the dignity of the human soul."

60. He, further, stated that, "we must be educated not for cruelty and power but for love and kindness. We must develop freshness of feeling for nature, the sensitiveness of soul to human need. We must foster the freedom of the mind, the humanity of the heart, the integrity of the individual. Even from the nurseries, we must train human beings by unconscious influence and conscious effort to love truth, beauty and goodness." Extract from "The Purpose of Education" "Radhakrishnan Reader An Anthology" - Publisher -Bharatiya Vidhya Bhavan, Mumbai." In the result, the writ petition is dismissed.