

(2001) 04 KL CK 0037
In the High Court Of Kerala
Case No : O.P. No. 10798/98 (i)

Dr. V.N. Rajasekharan Pillai

APPELLANT

Vs

Chancellor, M.G. University and Another

RESPONDENT

Date of Decision : 11-04-2001

Acts Referred:

Mahatma Gandhi University Act, 1985 — Section 16, 7(10), 7(4), 9
Transfer of Property Act, 1882 — Section 53A

Citation : (2001) 04 KL CK 0037

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : M. Pathrose Mathai and P. Ramakrishnan, for the Appellant; M.K. Damodaran, General for Respondent No. 1 and T.P. Kelu Nambiar, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Petitioner was the Vice-Chancellor of Mahatma Gandhi University. He joined as such on 25th March 1996. He is aggrieved by Exts. P-9, P-12 and P-15 Orders. Ext. P-15 is an Order passed by the Chancellor of Mahatma Gandhi University u/s 7(4) of the Mahatma Gandhi University Act annulling resolution No. 932, dated 13th November 1996 passed by the Syndicate of the University and the finding that the Vice-Chancellor and the Registrar had no authority to enter into an agreement for the purchase of Cheruvandoor property and to make payment to Father Cyriac Puthenpura and that he had acted without the sanction of the Syndicate. Petitioner is also aggrieved by some of the other findings rendered by the Chancellor based on the report of the Commission appointed by the Chancellor as well as some of the findings and observations made by the Commissioner details of which we shall deal with later in this Judgment. Decision of the Chancellor to take further proceedings on the basis of the observations and findings of the Commission was also challenged by the Petitioner in this proceeding. Vice-Chancellor submitted that he had acted only within his authority and on the basis of the various

decisions taken by the Syndicate. Petitioner submits all his actions decisions taken, and orders passed are for the best interest of the University and the students and not for any personal gain.

2. Before we deal with various issues involved in this case, we have to examine some essential facts for a proper understanding of the controversy.

3. Mahatma Gandhi University was set up as a teaching and affiliating University in the State to provide for the urgent development of higher education in the areas comprised in the Kottayam Ernakulam and Idukki, Alleppey and Pathanamthitta Revenue Districts of the State. University was constituted by the Mahatma Gandhi University Act, 1985 (Act 12 of 1985). The University had its headquarters at Kottayam. It had no infrastructure to start many of the courses envisaged under the Act and Statutes framed there under. Office building of the University and Department of some courses were to be housed in rented buildings. Lack of proper accommodation for its constituent schools and Departments was all along a perennial problem faced by the University. An amount of Rs. 3.3 lakhs was being spent by the University by way of rent of the buildings taken on lease by the University. Lack of infrastructure facilities and building etc. aggravated after starting various new job-oriented courses under the School of Medical Education and School of Technology and Applied Sciences. Even before starting these courses an extent of 3.59 acres of land with building numbers 78, 79, 80 and 81 at Cheruvandoor in Ettumanoor Panchayat owned by Father Puthenpura was in the possession of the University. Agreement of lease was executed by the University and Father Puthenpura on 5th October 1938 by which the Cheruvandoor property was leased out to the University by Father Puthenpura which consisted of buildings with an area of 37,388 sq. ft. Monthly rent was fixed at Rs. 21,600 along with service charges of Rs. 5,400 per month.

4. Mahatma Gandhi University had in the meantime decided to start various Paramedical courses under the School of Medical Education. Various technical courses under the School of Technology and Applied Sciences required the approval of the National Assessment and Accreditation bodies like Pharmacy Council of India, Nursing Council A.I.C.T.E. etc. School of Medical Education was accordingly instituted in 1993 to visualise and implement the policy of the University Grants Commission. School was structured to prepare professionals of high standard to overcome the imbalances in the Health Manpower Structure and Health Care System. Finances for creating the infrastructure and running cost of the School were intended to be generated from the tuition and other fees and N.R.I. remittance. The main campus of the school was located at Gandhinagar in the Medical College campus. Kottayam with Regional Centres at Puthuppally and other places. University started various courses in the School of Medical Education including B. Sc. Nursing, B. Pharm. Course, etc. Prior approval of the All India Council for Technical Education (in short A.I.C.T.E.) was mandatory for starting those courses. Recognition from the Pharmacy Council of India was also statutory requirement. A.I.C.T.E. have laid down various norms and standards for

Pharmacy Institutions which included setting up of Laboratory, Library, hostels and equipments etc. and other infrastructural facilities for which University required own buildings which was a mandatory requirement. University started all these courses without satisfying any of the requirements laid down by the A.I.C.T.E. Most of the B. Pharm. classes were housed in rented buildings without any infrastructural facilities for the students. University had collected large amounts from the students by way of tuition fees as well as by deposit.

5. The Director of School of Medical Education wrote to the then Vice-Chancellor to provide infrastructural facilities for the various courses which were functioning in rented premises. Proposal was made by the Director of School of Medical Education on 18th June 1994 and requested the Vice-Chancellor to take steps with the District Collector to purchase the property which was being leased out to the University by Father Cyriac Puthenpura. University then thought of purchasing the land and building at Cheruvandoor campus during April-July 1995 for the use of the School of Medical Education. Negotiations were made with Fr. Cyriac Puthenpura by the Kottayam District Collector. The District Collector fixed the assessed value of the land at Rs. 5,000 per Are and the price of the building. The total cost of land as per the assessed value was Rs. 7,29,000 and the combined cost of land and buildings Rs. 77,60,000. Owner of the land and building, Father Puthenpura was not agreeable to the said proposal since the price fixed was meagre compared to the price prevalent in the locality. He therefore demanded consolidated amount of Rs. 115 lakhs for the land and buildings. No agreement was reached. Consequently District Collector requested the University to condescend to pay an amount as goodwill to the owner in addition to the assessed value. Father Puthenpura agreed to sell the property for the amount of goodwill fixed by the University. He maintained the stand that he should get Rs. 115 lakhs for the land and building.

6. Since University could not provide necessary infrastructural facilities for the students, students were on a war path and resorted to agitational measures to compel the University to find out immediate solution to the problem and for getting recognition from the A.I.C.T.E. and from the Pharmacy Council. Ninety-seven students approached this Court by filing O.P. No. 14455 of 1995 and sought for a direction to the University to take immediate steps for getting approval from the A.I.C.T.E. and also from the Pharmacy Council of India. Before this Court a statement was filed by the University stating that all possible steps have been taken by the University to provide infrastructural facilities and other requirements for getting approval from the A.I.C.T.E. This Court disposed of the writ petition on 5th February 1996 directing the University to complete all the procedural requirements to get B. Pharm. course recognised within six weeks from the date of receipt of a copy of the Judgment.

7. Father Puthenpura then wrote to the University by letter, dated 15th August 1996 stating that he is willing to sell the land for Rs. 115 lakhs. Since no positive action was taken by the University, students preferred Contempt of Court Case

No. 294 of 1996 before this Court to take appropriate contempt of court action against the Registrar of the University as well as the Vice-Chancellor for non-compliance with the Judgment of this case.

8. The Syndicate after this court's Judgment in O.P. No. 14455 of 1995 met on 6th July 1996 and authorised various Syndicate members to negotiate with Father Puthenpura for the purchase of the land and building, but nothing materialised. Father Puthenpura maintained the stand that he should get an amount of Rs. 115 lakhs. Syndicate again met on 24th October 1996 and passed resolution No. 908 to take steps for the purchase of the land and building and passed the following resolution:

Resolved to initiate steps for the purchase of the building. Formalities for the purchase shall be fixed in consultation with the Standing Committee on Finance and subject to final approval by the Syndicate.

After the filing of the Contempt Petition on 4th November 1996, the Syndicate of the University met on 13th November 1996 and passed the following resolution:

932 - Acquisition/Negotiate purchase of Cheruvandoor building for the University regarding.

Resolved to purchase Cheruvandoor buildings owned by Fr. Puthenpura for an amount of Rs. 115 lakhs and to pay Rs. 50 lakhs as first instalment.

9. On the basis of the above-mentioned decision of the Syndicate, Registrar and the University took urgent steps to go ahead with the purchase of the property since he was facing contempt of court proceeding. The contempt case was posted for further hearing on 14th November 1996. On 14th November 1996 Standing Counsel for the University took time to file affidavit on behalf of Registrar as well as Vice Chancellor. An affidavit signed by the Registrar on 29th November 1996 was filed in court on 3rd December 1996. In the affidavit it was pointed out that conditional recognition of the A.I.C.T.E. for the B. Pharm course of School of Medical Education was obtained and that Registrar had taken various steps for recognition of B. Pharm. course by the A.I.C.T.E. and the Pharmacy Council of India. It was also stated in the affidavit as follows:

Steps have already been initiated regarding the purchase of land and building at Cheruvandoor, which is sufficient to meet the complete space problem of the School of Medical Education.

University expressed deep regret in the matter and tendered their unconditional apology for not being able to fully comply with the orders of this Court within the stipulated time. It was also stated that the delay caused for full compliance with the order was only due to procedural delay in getting recognition from the professional bodies. The Bench of this Court was not satisfied with the explanation and the court passed the following order on 2nd December 1996:

Heard the counsel for the Petitioners and the Respondents. An affidavit has been

filed by the Registrar, Mahatma Gandhi University, Kottayam. We are not satisfied with the action taken by the University in the liesurely manner in completing the entire thing so as to comply with the direction of the court contained in the Judgment within a period of six months from the date of the Judgment. It is orally pointed out that the visit of Pharmacy Council is awaited. We have not found any such statement with all particulars in the affidavit of the Registrar and the statement is quite vague. When the letter so written to the counsel is also not pointed out in the counter affidavit and such letter is not annexed. We therefore call upon the Registrar to present in court on 9th December 1996 at 10.15 a.m. in order to explain as to why the direction in the Judgment has not been fully complied with Post on 9th December 1996.

The Registrar then appeared before this Court on 9th December 1996 in due compliance with the above-mentioned orders and on the request made by the counsel the matter was adjourned.

10. Registrar of the University in order to comply with the orders of this Court and to give effect to the resolution of the Syndicate for the purchase of the property took further steps. The extract of the minutes of the meetings of the Syndicate held on 13th November 1996 was placed before the Vice Chancellor by the Registrar of the University on 11th December 1996 and Vice-Chancellor approved the same. A draft agreement for purchase of Cheruvandoor property along with the title deeds were forwarded to the Legal Advisor on 13th December 1996. After perusing the title deeds and the draft agreement the Legal Advisor opined that as far as sale deed numbers 933/68 and 2246/69 are concerned, they were seen to have been executed in favour of Nirmala Bhavan Secular Institute and that Father Puthenpura has no title in his personal capacity. He purchased the property in the capacity of the Director of the Institute. So in respect of the property covered by the two title deeds mentioned above, as pointed out above Father Puthenpura is not competent to convey title unless there is proper possession and authorisation by the Institute. Referring to paragraph 8 of the draft agreement, Legal Advisor stated Father Puthenpura was receiving Rs. 50 lakhs and the University was using the building. It was pointed out that in case of any breach of contract University is liable to pay only normal rent of the building deducting the said amount from Rs. 50 lakhs and it would not be fair that the University should forfeit the entire advance amount. In addition to the forfeiture Clause there was also a provision casting obligation to pay Rs. 50,000 per month as damages which the Legal Advisor had opined as a penalising provision. The Legal Advisor suggested to fix a sum as liquidated damages in the agreement in case of default on the part of the University to complete the sale transaction on or before 31st March 1997 instead of forfeiting Rs. 50 lakhs and paying Rs. 50,000 per month in addition to the forfeiture. Legal Advisor also opined that the fact that original title deeds were irrecoverably lost should also be mentioned in the agreement for purchase.

11. The Estate Officer then pointed out that as per the office records the total

area is 359 cents only, out of which 158 cents is in the name of Father Cyriac Puthenpura and 201 cents in the name of the Institute. It was pointed out that the land comprising the main building is in the name of Father Cyriac Puthenpura (Re-survey No. 198/1-158 cents) was in the name of Father Cyriac and 201 cents in the name of the Institute. It was pointed out that Father Puthenpura is the owner of the plot of Nirmala Bhavan Secular Institute and he is paying the income tax, wealth tax etc. for the entire property and that he was enjoying the rent from the University for the whole property from 1988 to 1993 and there was no other claimants. The University expressed the pressing necessity of it and due to lack of facilities it took steps to execute the agreement on 19th November 1996 after clearing the defects noted by the Legal Advisor and incorporating the following points:

Value may be separately fixed for the two plots and there may be separate agreements with (a) Father Cyriac and (b) Director, Nirmala Bhavan Secular Institute.

The initial payment of Rs. 50 lakhs may be paid to Father Cyriac for his property as per Re-survey No. 198/1--158 cents.

A declaration of Father Cyriac that he is the authority of the Nirmala Bhavan Institute as its Director and that he is responsible when any other claimant arise, may be included in the agreement.

After executing the agreements the University may issue press notification for the proposal to purchase the Nirmala Bhavan Secular Institute site from its Director and the other claimant of the property, if any, should contact the Legal Advisor of the University (specify name) within the stipulated time.

The above-mentioned proposal of the Estate Officer was placed for approval before the Pro-Vice-Chancellor. Pro-Vice-Chancellor on 23rd December 1996 opined as follows:

Estate Officer to modify the draft agreement on the basis of the opinion received from the Legal Advisor.

He has to comply with all the directions from the Legal Advisor on pages 3 to 6 and resubmit the file for approval before registration.

Possession certificate and other certificates that we insist for registration of the land, in normal cases are also to be submitted for perusal.

Original sale deed in respect of the property is not produced. Photostat copy of the original is only produced. Therefore an officer authorised by the University shall be directed to verify the authenticity of the document from the Sub Registrar Office.

Previous deeds

of the property have to be obtained from the party and kept in the custody of the

University before registration.

(Sd.) Pro-Vice-Chancellor 23-12-1996.

The Vice-Chancellor also made a note on 23rd December 1996 as follows:

In the light of the receipt of the encumbrance certificate, draft agreement, is approved subject to compliance with the legal advice of the University Legal Advisor.

(Sd.) Vice-Chancellor, 23-12-1996.

The Registrar of the University then made the following nothings on the files:

The draft agreement may be modified as ordered by the V.C. above.

(Sd.) Registrar, 23-12-1996

On the basis of the advice made by the Legal Advisor, earlier draft agreement for purchase was revised and placed before the Legal Advisor for further consideration by the Estate Officer. Accordingly the draft agreement was again placed before the Legal Advisor and a revised draft agreement was prepared by the Legal Advisor and the same was placed before the Pro-Vice-Chancellor as well as the Vice-Chancellor for perusal and approval by the Estate Officer on 26th December 1996 with the following nothings:

1. As per orders the revised draft agreement prepared by the Legal Advisor is placed below for perusal and approval.
2. On approval of (I) above, sanction maybe accorded by the Vice-Chancellor subject to the concurrence of finance, for a provisional advance of Rs. 50,00,000 (Rupees fifty lakhs) in favour of the Registrar (through D.D.) for payment to Fr. Cyriac Puthenpura as the advance amount at the time of executing the agreement, meeting the expenditure from available fund of the School of Medical Education.
3. It may be decided whether the University shall be able to pay the balance amount of Rs. 65,00,000 (Rupees sixty five lakhs) before 31st March 1997 for the purchase or the period of agreement may be extended to six months i.e. upto 30th June 1997.

In the file the Registrar of the University made the following nothings on 30th December 1996:

Considering the urgency and to satisfy the stipulations of the regulatory bodies such as Nursing Council, Pharmacy Council etc. and also in view of the Syndicate decision (item 932 dated 13th November 1996) we may agree for payment of Rs. 50 lakhs as first instalment.

(Sd.) Registrar, 30-12-1996

File was placed before the Pro-Vice-Chancellor and the Pro-Vice-Chancellor on

31st December 1996 made certain observations and nothings requesting the Vice-Chancellor to consider those points and take a decision.

12. The Vice-Chancellor after taking into consideration the points raised by the Pro-Vice-Chancellor noted as follows in the file:

The above points were taken into consideration by the Syndicate, the opinion of Legal Advisor was sought on the basis of the recommendation (pp. 1-15) the payment of advance of Rs. 50 lakhs sanctioned as first instalment.

13. The Registrar of the University then issued an order on 2nd January 1997 according sanction for the release of Rs. 50 lakhs for payment to Fr. Cyriac Puthenpura. The said Order No. Ad. B III/Cheruvandoor dated 2nd January 1997 refers to Syndicate meeting held on 13th November 1996. On the basis of the said order Registrar or University paid an amount of Rs. 50 lakhs to Fr. Puthenpura on 3rd January 1997 and a Memorandum of Agreement was executed by Fr. Puthenpura and the Registrar of the University on 3rd January 1997. As per the agreement another amount of Rs. 15 lakhs had to be paid on 31st January 1997 and the same was also paid on the said date and the balance to be paid was Rs. 50 Lakhs which was to be paid on 31st March 1997.

14. We notice as per the agreement total extent of land was 3.59 acres, out of which 41 cents 311 sq. links in Re-survey No. 199/7, and 1 acre and 66 cents in Survey Number 198/1 stood in the name of the vendor Fr. Puthenpura and 60 cents and 666 2/3 sq. links in re-survey No. 199/7, and 1.60 acres in R.S. No. 198/2 stood in the name of Fr. Puthenpura as Director of Nirmala Bhavan Secular Institute. As far as land of 60 cents and 666 2/3 sq. links in survey number 199/7 as well as 1 acre and 60 cents in Survey Number 198/2 there is some controversy. Title deeds stood in the name of Director, Nirmala Bhavan Secular Institute. Fr. Puthenpura always maintained the stand that Institute is only a name lender and for all practical purposes ownership and possession vested in him. We notice that the entire land and building was in his possession and the University was paying Rs. 21,600 plus service charges of Rs. 5,400 to Fr. Puthenpura. Fr. Puthenpura maintained the stand there was no other claimant from any other quarters raising claim to the lease amount. This was a factor within the knowledge of the University authorities that was why legal opinion was specifically sought for. The University also found the property which stood in the name of Fr. Puthenpura as Director of the Institute was in his full control and possession of Fr. Puthenpura for several years. It is under such circumstances sufficient safeguards have been suggested in the agreement by the Legal Advisor himself which is evident from the legal opinion dated 31st December 1996 and the draft agreement of purchase prepared by the Legal Advisor.

15. We notice that after paying Rs. 65 lakhs the entire property was put in possession of the University as per the agreement and various departments started functioning. We may also point out that University was in possession of the land and building on the basis of lease agreement from 1988 onwards, but

after the agreement executed between the University and Fr. Puthenpura and after payment of a portion of the amount as per the agreement, property was put in possession as the vendee. Some of the departments of School of Medical Education also started functioning there.

16. The minutes of the meeting of the Syndicate dated 24th October 1996 and 13th November 1996 came up for confirmation before the Syndicate on 5th February 1997. Controversy in this case erupted from the said date. Some of the Syndicate members, Prof. E.P. Mathew, Prof. K.P. Joy etc. took up the stand that on 13th November 1996 there was no resolution of the Syndicate authorising the purchase of Cheruvandoor property. But there was only a resolution to purchase certain property owned by Fr. Puthenpura after negotiation with the convenor of the Standing Committee on Finance. Prof. K.P. Joy was the convenor of the Committee. Vice-Chancellor maintained the stand that it had been specifically resolved to purchase the Cheruvandoor property for an amount of Rs. 115 lakhs and to pay an advance of Rs. 50 lakhs and the rest in instalments. It was pointed out that there was no resolution for further negotiation including the convenor of the Standing Committee on Finance. Vice-Chancellor pointed out several such negotiations were made earlier by the members of the Syndicate and price fixed as fair. Vice-Chancellor explained the urgency and need for purchasing the Cheruvandoor property. Vice-Chancellor highlighted the urgency for providing facilities for the School of Medical Education and the Pharmacy Courses in particular arising out of the High Court stipulations. Vice-Chancellor pointed out those factors were considered for expediting the purchase and taking possession of the land. Prof. Radha Kaimal endorsed the view of the Vice-Chancellor.

17. Syndicate however on a majority decision resolved as follows:

955. Confirmation of the minutes of the meeting of the Syndicate held on 24th October 1996 and 13th November 1996--Consideration of:

Considered the Minutes of the meetings of the Syndicate held on 24th October 1996 and 13th November 1996 and resolved to confirm the minutes.

Out of discussion, on item 932 it was suggested to change the resolution part under the item as follows:

Resolved to purchase the Cheruvandoor building owned by Fr. Puthenpura for the use of the University after negotiation including the Convenor of the Standing Committee of the Syndicate on Finance. The Vice-Chancellor reported that Fr. Puthenpura demands an amount of Rs. 1,15,00,000 (Rupees one hundred and fifteen lakhs only) as the cost of the property and pay an amount of Rs. 50,00,000 (Rupees fifty lakhs only) as first instalment of the total amount.

18. We notice legal opinion was sought for with regard to the measures to be taken to safeguard the interest of the University with respect to the property in which Fr. Puthenpura figured as the Director of the Institute, Fr. Puthenpura was the person in possession and control of the property and it was he who leased

out the property in the year 1988 along with the building and the University was paying the lease amount only to Fr. Cyriac Puthenpura. Fr. Puthenpura maintained the stand that he is the sole owner of the property and the Institute is only a name lender and it was throughout under his control and possession. Legal opinion was again sought for before parting with the final payment. Legal advisor on 11th February 1997 opined as follows:

Considering all these aspects I am of opinion that it is advisable to issue public notice in the newspapers having wide circulation in the locality and among the community inviting objections from interested parties, if any, before taking any further steps. The expenses of public advertisement may be borne by the vendor since he is bound to show his authority and competency to sell the land, to the satisfaction of the University before completing the transaction.

On the advice of the Legal Advisor University had decided to issue public notice in respect of portion of the property which stood in the name of Fr. Puthenpura, Director, Nirmala Bhavan Secular Institute, so as to ascertain whether third parties have got any right over the property. Notice was published in three leading newspapers namely Malayala Manorama, Mathrubhumi and Deepika on 15th February 1997 inviting claims and objections, if any. In response to the public notice there was only one response from advocate Thomas J. Mappilassery on behalf of his client Sri T.T. Alexander stating that the property was under attachment in O.S. No. 384 of 1984 of the Sub Court, Kottayam for an amount of Rs. 40,000 and interest. As directed by the University Fr. Puthenpura got the attachment lifted on 16th December 1997. Apart from that there was no objection from any quarters with regard to the purchase of property by the University.

19. Syndicate of the University later met on 7th April 1997 for confirmation of the minutes of the meeting held on 5th February 1997. There was discussion in the Syndicate as to whether the decision taken on 5th February 1997 meeting was a "decision" to change the resolution item No. 932, dated 13th January 1996 or a "suggestion" to change the resolution dated 13th November 1996. While Vice-Chancellor took up the stand that the word "decided" was corrected as "suggested" in the draft as Chairman since he wanted to include the dissenting note based on the views expressed in the previous meeting which was approved by him. The rest of the Syndicate members except Prof. Radha Kaimal took up the stand that it was a "decision" to change the resolution dated 13th November 1996. Thereupon at the meeting held on it was resolved as follows:

986-A. Confirmation of the minutes of the meeting of the Syndicate held on 5th February 1997.--Out of discussion on item 955, the members of the Syndicate except the Vice-Chancellor and Prof. Radha Kaimal asserted that it was a "decision" to change the resolution and not a "suggestion" and therefore the sentence should be amended as "it was decided to change the resolution" instead of "it was suggested to change the resolution". The members except the Vice-Chancellor stated that the inclusion of the dissenting note of the Vice-

Chancellor in the minutes was not indicated in the last meeting of the Syndicate and therefore the contents in the dissenting note as the last meeting of the Syndicate and therefore the contents in the dissenting note as the last paragraph under the item are not acceptable to the members.

The Vice-Chancellor dissented to all the suggestions of some members of the Syndicate on the confirmation of the minutes of the Syndicate held on 5th February 1997. He reiterated the views expressed in his dissenting note of 5th February 1997 on the item of confirmation of minutes and held the stated views of upholding the decision of the Syndicate on item 932 of 13th November 1996. The Vice-Chancellor indicated that there is no need of specifically indicating the necessity of inclusion of a dissenting note in any meeting. The meeting procedure implies this and the minutes book of the Syndicate held and maintained by the Registrar is the prime document in this regard. The dissenting note from the Vice-Chancellor on item 955, dated 5th February 1997 should stand as it is.

The entire views expressed by some of the members of the Syndicate on the confirmation of the minutes of the meeting on item 955 of 5th February 1997 have been totally dissented by the Vice-Chancellor.

The minutes was confirmed.

20. The Registrar of the University on 11th April 1997 filed an affidavit before this Court in C.C.C. No. 294 of 1996 stating as follows:

It is respectfully submitted that according to the suggestion made by the expert team, the following steps have already been taken by the University.

1....

2....

3....

4....

5. The Department of Pharmacy, Gandhinagar has already been shifted to the newly acquired Cheruvandoor campus having buildings of 40,000 sq. ft. area, purchased at a cost of Rs. 1.15 crores. All facilities for the B. Pharm courses will be completed within three months in the new building. The Department of Pharmacy of Puthuppally Centre has also been provided additional Lab facilities in the new building constructed at Thalappady.

It was pointed out by the Registrar of the University that most of the deficiencies noted by the Pharmacy Council has been rectified and the remaining would be complied with within the time as stipulated by the Executive Committee.

21. We find in the meanwhile four members of the Syndicate headed by Prof. E.P. Mathew raised certain allegations against the Vice-Chancellor stating that he had proceeded with the purchase of Cheruvandoor property without any authority

and without the sanction of the Syndicate. They also complained that resolution number 932 of 13th November 1996 of the Syndicate was manipulated and corrected. So also the decision of the Syndicate dated 5th February 1997. Syndicate members therefore wanted to stall purchase of Cheruvandoor property and restrain the Vice-Chancellor from paying any amount to Fr. Puthenpura on the basis of the agreement. Complaint was, dated 16th April 1997.

22. Vice-Chancellor then received a communication from the Secretary to Governor, dated 2nd May 1997 to keep in abeyance the proposed conveyancing of the transaction in question until further orders. In the notice received by the Vice-Chancellor the allegations against him were narrated as follows:

(i) the Vice-Chancellor, the Mahatma Gandhi University is alleged to have entered into an agreement, with a private individual, one Reverend Father Cyriac Puthenpura, for buying a plot of land, stated to be located at Cheruvandoor, setting the University to a financial commitment of more than a crore of rupees; and the ownership of this property is alleged to be disputed.

(ii) under the Act and Rules governing the Mahatma Gandhi University, the Vice-Chancellor is stated not to have the requisite authority, to enter into any such transaction; and

(iii) the minutes of the meeting of the Syndicate held on 1th October 1996, relating to this transaction in land, is alleged to have been tampered with.

We notice on the same day itself Vice-Chancellor replied by Ext. P-3 letter, dated 2nd May 1997 stating as follows:

This has reference to your Fax No. 653-1665/97, dated 2nd May 1997, regarding the purchase of land and buildings at Cheruvandoor for the Mahatma Gandhi University. The remarks to the points raised in the issue may be brought to the kind notice of the Hon?ble Chancellor.

(i) The Vice-Chancellor has not entered into any agreement. Vide Syndicate decision (item No. 932, [dated 13th November 1996) and consequent U.O. No. Ad. BIII/3/Cheruvandoor/P.R. 167/96, dated 2nd January 1997, the Registrar, Mahatma Gandhi University, as corporate person, has entered into an agreement on 3rd January 1997 for the purchase of 3.59 acres of land and 45,090 sq. ft. of buildings at a cost of Rs. 115 lakhs (Rupees one hundred and fifteen lakhs only). The ownership of the land is not in dispute. A copy of the comprehensive legal advice is enclosed.

(ii) The Vice-Chancellor has not entered into any transaction and, hence there is no question of violation of the Act and Rules governing the Mahatma Gandhi University. Registrar, based on the Syndicate resolution and the University Order has lawfully entered into the said transaction on behalf of the University.

(iii) There was no meeting of the Syndicate on 14th October 1996, as stated in the Fax. There were meetings on 24th October 1996 and 13th November 1996.

The decision was taken on 13th November 1996 by the Syndicate vide item No. 932 (copy enclosed). There is no tampering of the minutes as alleged (copies enclosed).

2. The University has entered into a valid agreement with the Vendor and the contract has been partly performed by handing over possession of the properties and buildings for use of the University. The legal adviser has advised the University to honour the agreement and be ready and willing to perform specifically its part of the agreement.

It will be breach of contract on the part of the University to resile from the agreement u/s 53A of the Transfer of Property Act. All the administrative, financial and legal clearance has been obtained for executing the deed. The University has paid an advance of Rs. 50 lakhs; and then Rs. 15 lakhs as first instalment. Moreover, the University has purchased stamp paper worth Rs. 11.5 lakhs for execution of the sale deed. The draft sale deed was also approved by the Legal Adviser.

3. The enclosed documents are self-explanatory and will reveal that the allegations are baseless. All the allegations, as summarised in the Fax, are totally baseless, untrue and ill-motivated. It may also be noted that this office has not received a copy of the allegations.

On the basis of this report, the University may be permitted to proceed with the agreement which has been lawfully executed for the best interests of the University. The vendor is insisting to complete the transaction as expeditiously as possible, and one of the terms of agreement is that time is the essence of contract. The time stipulated already expired and the University may be liable for breach of contract, if there is any further delay on its part. Therefore, the matter may kindly be treated as very urgent. The direction to keep the conveyancing in abeyance may kindly be reviewed in order to facilitate the fulfilment of the contract.

The Secretary to the Chancellor then wrote to the Registrar by letter, dated 7th October 1997 directing to piece the particulars of the transaction for the purchase of land for the University be placed before the Syndicate of the University to ascertain its views. Accordingly the matter was placed before the Syndicate on 20th January 1998. Syndicate resolved to intimate the Chancellor of its views to conduct enquiry of the complaint received by the Chancellor regarding the purchase of land at Cheruvandoor.

23. The Chancellor then decided to entrust the enquiry into the allegations regarding the purchase of land and building of the University at Cheruvandoor to Justice Section Padmanabhan (retired Judge of the Kerala High Court). A communication to that effect was sent by the office of the Chancellor to the Vice-Chancellor vide Fax Message No. GS3-1665/97, dated 14th March 1998 which reads as follows:

Proceedings

The Mahatma Gandhi University--Inquiry into allegations against the Vice-Chancellor regarding the purchase of land and building for the University at Cheruvandoor--Ordered.

GOVERNOR'S, SECRETARIAT The Kerala Raj Bhavan

No. GS3-1665/97. Dated, Thiruvananthapuram 14th March, 1998. Read. - 1. Memorandum, dated 16th April 1997 submitted by Shri E.P. Mathew and four other members of the Syndicate of the Mahatma Gandhi University.

2. ** ** ** **

3. ** ** ** **

4. ** ** ***

5. ** ** ***

6. ** ** ***

7. ** ** ***

ORDER

In the memorandum read as first paper above, Shri E.P. Mathew and four other members of the Syndicate of the Mahatma Gandhi University, have alleged as follows:

(i) Dr. V.N. Rajasekharan Pillai, the Current Vice-Chancellor, the Mahatma Gandhi University, has moved a resolution, which was later approved by the Syndicate, to initiate steps for the purchase of about 3 acres of land and building therein, for the use of the University Departments, allegedly without taking into account the anomalies and infirmities pointed out by the Pro-Vice-Chancellor, and, the Legal Advisor of the Mahatma Gandhi University.

(ii) The minutes regarding item No. 932 had not been correctly recorded. Issues which were not considered discussed or decided either on 14th October 1996 or on 13th November 1996, were incorporated. Fabricated minutes were recorded.

(iii) The proposal to purchase this property owned by one Rev. Fr. Cyriac Puthanpura was stated to have been Abandoned by the University earlier, on account of certain infirmities in respect of the title of the property.

(iv) The sale deeds were seen to have been executed in favour of Nirmala Bhavan Secular Institute. Rev. Fr. Cyriac has no title in his personal capacity.

(v) In spite of the infirmities and anomalies pointed out by the Legal Advisor, and, the Pro-Vice-Chancellor, the Vice-Chancellor has decided to purchase the property for Rs. 115 lakhs and advanced Rs. 50 lakhs, without any reference to the Syndicate.

8. The Chancellor, the Mahatma Gandhi University hereby directs that an inquiry shall be made in respect of the allegations raised by the syndicate members mentioned above by Mr. Justice S. Padmanabhan, Retired Justice of Kerala High Court.

9. The inquiry shall be conducted with reference to the papers read as one to eight above.

10. The report shall be forwarded to the office of the Chancellor expeditiously.

(Sd.) SUKHDEV SINGH KANG, The Chancellor.

Vice-Chancellor of the University in reply to the various allegations against him sent his explanation to the Commission, dated 27th March 1998.

Before the Commission the Vice-Chancellor also gave oral evidence with regard to the objections referred to herein before. He was cross-examined and also examined; by the advocate for the complainant as well as the Commission himself. We notice that before the Commission Dr. A.K. Chirappanath, Professor and Head of the Department and others opposed the complainants and supported the action of the Vice-Chancellor. Pro-Vice-Chancellor Mrs. V.L. Charlotte supported the complainant and opposed the stand of the Vice-Chancellor. Sri A Shameem representing the Parents Students Association highlighted the necessity of purchasing the premises. Five complainants reiterated their stand in the memorandum of complaint. One Philomin George, the only son of the only brother of Rev. Fr. Gyriac Puthenpura claimed more than two acres and 20 cents of the disputed premises belonged to a family Trust over which Rev. Fr. Puthenpura has no exclusive right. Mr. Dejo Kappen and Mr. P.K. Radhakrishnan supported the stand taken by Prof. K.P. Joy and filed statement opposing the actions of the Vice-Chancellor. So also some of the other Syndicate members as well. Sri S. Chandramohan, journalist filed statement supporting the Vice-Chancellor. Mr. N. Chandrasekharan Nair, Joint Registrar in his statement supported the action of the Vice-Chancellor. Vice-Chancellor filed two statements justifying his actions. We notice before the Commission 75 documents were produced. Dr. P.G.R. Pillai, Director of School of Medical Education and Applied Sciences supported the action of the Vice-Chancellor. So also the then Registrar Dr. M.C. Chacko also supported the stand of the Vice-Chancellor. Prof. P.K. Natarajan, Chief Co-ordinator of the School of Medical Education who prepared Ext. P-40 also supported the action of the Vice-Chancellor. So also John K. George, Dy. Registrar of the University. Fr. Puthenpura was also examined. He deposed that there was no irregularity in the transaction. It was alleged on behalf of Prof. K.P. Joy, one of the complainants an offer was made to pay 135 lakhs for the premises out of which Prof. K.P. Joy wanted Rs. 20 lakhs as commission. Commission ultimately concluded as follows:

(i) The earlier proposal of 1995 started when Dr. Sukumaran Nair was the Vice-Chancellor to have negotiated purchase of Cheruvandoor premises was not abandoned, but it is only lay dormant, for some time. No defects in title came to

notice at that time because it was unnecessary to enquire into that matter since no decision was taken to purchase the property by fixing the price. It is not correct to say that all on a sudden the matter was taken up in the Syndicate on 24th October 1996. It came in the Syndicate meeting on 24th October 1996, only after the Syndicate appointed a Sub Committee for this purpose on 6th July 1996.

(ii) A portion of the Cheruvandoor premises covering 2 acres 20 cents and odd stands in the name of Rev. Fr. Cyriac Puthenpura on behalf of the Nirmala Bhavan Secular Institute as its Director and hence it cannot be said that he is having any independent right. The other portions of the premises were also acquired in his individual name and all the buildings were constructed with funds received in the name of Nirmala Bhavan Secular Institute. Thus his title could only be said to be shady or cloudy and the matter has to be agitated and got established through a court of law. Otherwise, it is imprudent and risky to purchase the lands and buildings from him.

(iii) The syndicate decision mentioned in item No. 932 on 13th November 1996, the correction of the word "decided" into "suggested" in item No. 955 on 5th February 1997 and the dissenting note therein are manipulations of the Vice-Chancellor and they are not part of the proceedings of the syndicate. In spite of the fact that infirmities in title and anomalies were pointed out by the legal advisor and the Pro-Vice-Chancellor, the Vice-Chancellor decided to purchase the property for Rs. 115 lakhs and advanced Rs. 50 lakhs, without reference to the syndicate. The action is illegal, and

(iv) The prima facie satisfaction of the Chancellor that the transaction was entered into by the Vice-Chancellor without obtaining the approval of the Standing Committee of the Syndicate on Finance or the Statutory Finance Committee or the Syndicate itself is fully justified by the evidence.

The Commission is also of the opinion that the Vice-Chancellor Dr. V.N. Rajasekharan Pillai could be prosecuted under the provisions of the Prevention of Corruption Act for misusing official position in order to gain undue advantage to himself or others including Rev. Fr. Cyriac Puthenpura by manipulating the minutes, ignoring majority decisions of the Syndicate and misusing University funds by executing the disputed agreement and causing loss to the University by parting with its funds without authority by ignoring the Syndicate, the Statutory Finance Committee and the Standing Committee of the Syndicate on Finance.

24. Report of the Enquiry Commission was placed before the Chancellor. Chancellor then issued notice, dated 22nd April 1998 u/s 7(4) of the Mahatma Gandhi University Act and requested the Vice-Chancellor to appear before the Chancellor on 25th April 1998 and to show cause why Syndicate decision No. 932, dated 13th November 1996 and the correction of the word "decided" into "suggested" in item No. 955 of the minutes of the Syndicate, dated 5th February 1997 be not annulled and also the dissenting note therein.

25. The Vice-Chancellor filed detailed objections to the notice reiterating his earlier stand. He stated that he has acted only on the basis of the Syndicate decision dated 13th November 1996 and also on the basis of the legal opinion. It was pointed out that the draft agreement was prepared by the legal advisor of the University and executed by the Registrar of the University. He stoutly denied the allegation that he had tampered with the records. He stated that he had acted in the best interest of the University and students and had no personal interest in the transaction. Further it was stated that he had not entered into any transaction with anybody. It is the Registrar who executed the agreement on behalf of the University. He challenged the findings of the Commission that the Vice-Chancellor is liable to be prosecuted under the Prevention of Corruption Act. He pointed out even complainants have no case of corruption against him. He reiterated that all the findings of the Commission are contrary to truth, documentary evidence and are based on surmises and conjectures.

26. Chancellor however accepted the Commission report and concluded-as follows:

I have carefully considered the submissions. These have not commended themselves to me except the plea that there was an urgent need for securing or acquiring premises in the shape of classrooms and laboratories for the pharmacy courses. And because of the pendency of the contempt proceedings against them, the Vice-Chancellor and the Registrar were under pressure. They were therefore justified in taking urgent steps to comply with the High Court directions. This however, did not absolve them from acting in accordance with the Act, Statutes and regulations etc. Our law enjoins a vendee to satisfy himself about the legality and validity of the title of the vendor who offers to sell immovable property. It is his duty to make inquiries to find out as to whether the vendor was a real owner of the property and he had a clear title thereto and there was no infirmity in or shadow or cloud on the title. And also about his status and authority and capacity to transfer a legal and valid title. If there is even a slightest doubt about the title, or there is a shadow or cloud thereupon, a prudent person will not enter into an agreement of purchase, more so if the property is going to be purchased for a public institution with public funds. In the present case, the Vice-Chancellor was the Chairman of the Sub Committee appointed by the Syndicate in its meeting held on 6th July 1996, to find out a suitable place for accommodating courses giving preference to the University campus or the Cheruvandoor premises and buildings. It should have been the first step by the Vice-Chancellor and the members of the Sub Committee to make full enquiries about the title of the vendor. They should have examined all the documents and satisfied themselves that the vendor was the sole owner of the properties in question and there was no flaw or infirmity in his title and that nobody else had any interest, right or title in the subject of sale. It seems that no such steps were taken.

The Chancellor further held that pleas raised by the Vice-Chancellor do not

detract from the validity of the above conclusions of the learned Commission. The fact that nobody raised any dispute or claim about the vendor's title at any stage and that the University had taken the very property on lease from the vendor are relevant, but do not lead to the only conclusion that the vendor had a valid title. Chancellor reiterated the findings of the Commission that Nirmala Bhavan Institute is a family trust and that the purchase and construction over those lands were made with foreign donations received in favour of Nirmala Bhavan Institute. Those circumstances according to the Chancellor created a cloud on the vendor's title which had necessarily to be cleared through a competent court of law. For the decision of this issue, the fact that the Registrar and not the Vice Chancellor had entered into the agreement for purchase is not material. It was the Vice-Chancellor who had sanctioned the payment on two occasions out of the University funds. With regard to the tampering of the decision of the Syndicate, dated 13th November 1996 and also the correction of the word "decided" therein as "suggested" the Chancellor concluded as follows:

For the foregoing reasons, the report of the learned Commission is accepted. The decision of the Syndicate mentioned in item No. 932, dated 13th November 1996 and the correction of the word "decided" into "suggested" in item No. 955 on 5th February 1997 are manipulations and have resulted from tampering with the decisions and resolutions taken or passed by the Syndicate. This resolution No. 932, dated 13th November 1996 is annulled u/s 7(4) of the Act.

Chancellor then concluded that payment of advance moneys in two instalments to the tune of Rs. 50 lakhs and 15 lakhs to Fr. Cyriac Puthenpura are without the authority of law and of Syndicate. The Vice-Chancellor or the Registrar (sic) the impugned decision under item No. 932, dated 13th November 1996 have no authority to enter into the agreement for purchase and make payment to Fr. Puthenpura. The Chancellor concluded that those acts are void ab initio.

27. Chancellor further concluded that by the annulment of the resolution, persons in possession of the property would not be affected, or, ejected. Their rights de hors the agreement for sale and the payment of advance remain intact. It is also held that payment to Fr. Puthenpura was made as advance by the Vice-Chancellor and the Registrar out of the public funds without authority of law, the authorities of the University should be under obligation to take steps to retrieve the amount in accordance with law. Chancellor also concluded that decision on the other findings and suggestions made by the learned Commission shall be taken separately in due course.

28. We have to decide on the question of the legality, propriety and regularity of the proceeding initiated against the Vice-Chancellor on the basis of the complaint raised against him in the aforementioned factual scenario which we have dealt with in detail.

29. When the matter came up for hearing we heard counsel for the Petitioner Sri M. Pathros Mathai, and counsel appearing for the University Sri T.P. Kelu Nambiar

as well as the Standing Counsel Sri K. Gopalakrishna Kurup. We have also heard Advocate General appearing for the Chancellor.

30. Counsel appearing for the Vice-Chancellor Sri M. Pathros Mathai submitted that the very initiation of the proceedings against the Vice Chancellor is void and without jurisdiction. Counsel submitted that proceedings were initiated against the Vice-Chancellor in pursuance of Section 7(4) of the Act. Counsel submitted that Section 7(4) of the Act could be invoked only against the authorities of the University such as Syndicate, Senate, Academic Council etc. and not against the Vice-Chancellor who is an officer of the University. It is his contention that in a given case if there is a charge of misappropriation or mismanagement of funds or misbehaviour against the Vice-Chancellor, Chancellor can invoke only Section 7(10) of the Act after following the procedure laid down therein. Since the entire proceeding was initiated u/s 7(4) of the Act, counsel submitted, the whole proceeding is void ab initio and is liable to be set aside. Counsel further submitted that the Vice-Chancellor had acted only in accordance with law on the basis of the powers conferred on him under the Mahatma Gandhi University Act and Rules as well as on the basis of the decision of the Syndicate dated 13th November 1996. Counsel submitted that the property in question was in the possession of the University from 1988 onwards and many of the departments were functioning there. University was the lessee of the property and Fr. Cyriac Puthenpura was the lessor. Agreement of lease was executed between the University and Fr. Puthenpura for the lease of the property on Rs. 21,600 per month towards rent and also service charge of Rs. 5,400 per month. Even before assumption of charge by the Vice-chancellor on 25th March 1995, properties were in the possession of the University. School of Medical Education was pressing for the purchase of the property for getting approval of its course from the All India Council for Technical Education and also recognition from the Pharmacy Council. Negotiations were held in the Collectorate in the year 1995. Students were on agitation since necessary sanction from the All India Council for Technical Education was not obtained by the University. Vice-chancellor and Registrar were to be held up for contempt for not complying with the direction of this court. Necessity of this particular premises was felt very much. There were no alternative premises available.

31. Counsel submitted it is under such circumstances Syndicate met on 13th November 1996 resolved to purchase the property. Counsel submitted that legal opinion was sought from the Legal Advisor and thereafter agreement was executed. Counsel strenuously attacked the findings of the Commission which, according to him, are not supported by any materials. Counsel submitted that the Commission has totally misdirected itself in his findings and approached the entire issue with a closed mind to the detriment of the Petitioner. It is his contention that some of the findings of the Commission is totally unwarranted and are beyond the terms of reference. Findings entered by the Commission cast a stigma on the Petitioner as a result of which he lost a prestigious post of Chairman of University Grants Commission which was offered to him. Counsel

submitted that the Petitioner is a man of high integrity and honesty. He is a well-known Scientist and Academician and Educationalist. He had a brilliant academic record throughout his career. He is a fellow of the Indian Academy of Science and was selected by the U.G.C. for an exchange programme to West Germany and had a five year stint at University of Mainz. Counsel submitted that his straightforwardness, honesty was not to the likings of many of the persons including some of the Syndicate members. They could not achieve their illegal demands. The contention that he had manipulated the minutes dated 13th November 1996 and 5th February 1997 was strongly disputed by him. According to him, correction the Petitioner made in the draft for approval Ext. P-16 was misused so as to project the same as tampering. According to him, in any view, whether it is the word "decided" or "suggested", meeting held on 5th February 1997 is of no consequence with regard to the decision taken on 13th November 1996 to purchase the property in question.

32. Counsel appearing for the Mahatma Gandhi University Sri T.P. Kelu Nambiar as well as Sri K. Gopalakrishna Kurup admitted the requirement of the premises in question and that the University has been in possession of the property from 1988 onwards. Counsel submitted that a lease agreement was originally executed on 5th October 1988 with Fr. Puthenpura by which an area of 37,380 sq. ft. was put in the possession of the University and an amount of Rs. 21,700 was being paid as rent by the University plus Rs. 5,400 as service charges. They submitted that University is in dire need of space and that if the transactions were not materialised they will have to initiate steps for acquisition of the property invoking the provisions of the Land Acquisition Act. The only anxiety expressed by them is with regard to the defective title if any of the vendor. With regard to the contention of manipulation of minutes of the Syndicate meeting they submitted that it is for the court to decide on the basis of the materials as well as on the basis of attendant circumstances.

33. We heard learned Advocate General who appeared for the Chancellor. Learned Advocate General supported the order of the Chancellor and submitted that lack of title of Puthenpura with respect to a portion of the property was the concern of the Chancellor as well as the University. Learned Advocate General submitted that Chancellor has annulled the resolution of the Syndicate dated 13th November 1996 and has not taken initiated any proceeding u/s 7(10) of the Act against the Vice-Chancellor. Further Advocate General submitted that Chancellor has not taken any steps to remove the Vice-Chancellor either on charges of misappropriation or on mismanagement or on misbehaviour. Learned Advocate General submitted that the Chancellor has not given any direction as such to recover the amount of Rs. 65 lakhs either from the Vice-Chancellor or from the Registrar. The Chancellor was only giving direction to the University to recover the amount from Fr. Puthenpura. Counsel further submitted if at all there is any irregularity in the procedure adopted by the Chancellor, this Court may not strike down the order, but may remit the matter back to the Chancellor for de novo consideration.

34. We are of the view the entire issue mainly centres round the validity or otherwise of the resolution of the Syndicate, dated 13th November 1996. While some of the Syndicate members who raised the complaint maintained the stand that there was no resolution on 13th November 1996 to purchase the Cheruvandoor land and buildings for the University for Rs. 115 lakhs and to pay Rs. 50 lakhs as first instalment, the then Registrar Dr. M.C. Chacko, Joint Registrar in charge of Registrar, Deputy Registrar, Finance Office, Chief Co-ordinator of School of Medical Education, Dr. P.G.R. Pillai, Director of School of Medical Education, Prof. Radha Kaimal, Member of the Syndicate all have supported the action of the Vice-Chancellor as well as the steps taken by the Registrar to purchase the property in question. All of them maintained the stand that the Registrar, Vice-Chancellor and the officials of the University proceeded on the basis of the resolution of the Syndicate, dated 13th November 1996 to purchase the property in question.

35. When the matter came up for hearing we called for the original files from the University so as to ascertain whether there was a meeting of the Syndicate on 13th November 1996 and to examine whether there was a resolution resolving to purchase the Cheruvandoor property and to pay the amount in instalments. We also examined the steps taken by the Registrar, Vice-Chancellor and other officials of the University and also the advice given by the Legal Advisor for executing the agreement for purchasing the property in question on the basis of the Syndicate decision, dated 13th November 1996. There is controversy between the parties as we have already indicated, as to whether there was a decision to purchase the property on 13th November 1996 or only a decision to negotiate the purchase. We will deal with that dispute later. We will now examine the steps taken by the University on the basis of the decision of the Syndicate on 13th November 1996. After the Syndicate meeting on 13th November 1996 we notice that the Contempt Case came up before this Court on 14th November 1996. Counsel for the University sought time to file statement on behalf of the Registrar as well as the Vice-Chancellor who were made to nominee parties in the contempt case. On 2nd December 1996 Registrar of the University Dr. M.C. Chacko filed an affidavit before the Division Bench stating as follows:

(d) For solving the space problem of School of Medical Education, steps have already been initiated regarding the purchase of land and building at Cheruvandoor, which is sufficient to meet the complete space problem of the School of Medical Education.

(e)....

(f) The University has already applied to the Pharmacy Council of India for their approval and expecting their visit for assessing the facilities immediately.

The affidavit filed by the Registrar was not satisfactory. Consequently the court ordered personal appearance of the Registrar of the University before this Court on 9th December 1996. The Division Bench directed the Registrar to explain as

to why direction in the Judgment has not been fully complied with. Registrar of the University, who is the Secretary and Custodian of the records of the Syndicate, recorded the decision of the Syndicate meeting held on 13th November 1996 and submitted the same for approval of the Vice-Chancellor and he approved the minutes on 11th December 1996 after verifying the original minutes recorded in the Minutes Book by the Registrar. Original minutes recorded in the Minutes Book was seen signed by the Registrar as well as the Vice-Chancellor on 13th November 1996 which would indicate that there was a resolution No. 932 of the Syndicate by which it was resolved to purchase Cheruvandoor building owned by Fr. Puthenpura for an amount of Rs. 1,15,00,000 and to pay Rs. 50,00,000 as first instalment. We notice that the minutes was not placed for confirmation which would in the normal course be placed for confirmation only later. Registrar could act on the basis of the resolution passed by the Syndicate and approved by the Vice-Chancellor even before confirmation of the minutes by the Syndicate. Accordingly extract of the minutes of the Syndicate which was held on 13th November 1996 was taken by the Registrar and submitted for approval to the Vice-Chancellor and he approved the same on 11th December 1996 after verifying with the original minutes. We also notice that minutes of the meeting held on 13th November 1996 was also recorded in file No. Ad. B. 111/96 at page No. 2. We also find that on the basis of the resolution passed by the Syndicate, draft agreement was prepared by the office of the University and the same was forwarded to the Legal Advisor for his opinion and to verify the terms and conditions of the agreement. Title deeds made available by the vendor were also forwarded to the Legal Advisor. Registrar deputed officers of the University to meet the Legal Advisor with the records on 13th December 1996. Legal Advisor perused the draft agreement and made some suggestions and corrections in the draft agreement for purchase. Legal Advisor also noted that the vendor Fr. Puthenpura is to receive Rs. 50 lakhs from the University towards first instalment. He advised that in case of breach of terms of the agreement, University is liable to pay interest at the normal rate. He also advised that it would not be just that the University shall forfeit the entire advance amount. He also advised that the fact that the original title deeds were irrecoverably lost be mentioned in the agreement to avoid unnecessary dispute. He suggested that a fixed sum may be shown as liquidated damages in case of default on the part of the University to complete the sale on or before 31st March 1997 instead of forfeiture of Rs. 50 lakhs and Rs. 50,000 per mensem in addition to the forfeiture. Legal Advisor made his opinion on 13th December 1996. Suggestion made by the Legal Advisor was considered by the Office of the University. Office made the following nothings in the file.

Considering the urgency of the University requirement, the purchase agreement may be executed clearing the defects noted by the Legal Advisor and including the following points:

(1) Values may be separately fixed for the two plots and there may be separate agreements with (a) Fr. Gyriac and (b) Director, Nirmala Bhavan Secular Institute.

(2) The initial payment of 50 lakhs may be paid to Fr. Cyriac for his property as per resurvey No. 198/1--158 cents.

(3) A declaration of Fr. Cyriac that he is the authority of the Nirmala Bhavan Institute as its Director and that he is responsible when any other claimant arise may be included in the agreement.

(4) After executing the agreements the University may issue press notification for the proposal to purchase the Nirmala Bhavan Secular Institute site from its Director and the other claimants of the property, if any, should contact the Legal Advisor of the University (specify name) within the stipulated time.

Tiles were then placed before the Pro-Vice-Chancellor and also before the Vice-Chancellor. Pro-Vice-Chancellor on 23rd December 1996 made the following nothings:

(1) Estate Officer to modify the draft agreement on the basis of the opinion received from tai P.V.C./V.C. and Legal Advisor.

(2) He has to comply with all the directions from the Legal Advisor on pages 3 to 6 and resubmit the file for approval, before registration.

(3) Possession certificate and other certificates that we insist for the registration of land, in normal cases, are also to be submitted for perusal.

(4) Original sale deed in respect of the property is not produced. A photostat copy of the original is only produced. Therefore an officer authorised by the University shall be directed to verify the authenticity of the document from the Sub Registrar's office.

(5) Previous deeds

of this property has to be obtained from the party and kept in the custody of the University before registration.

Pro-Vice-Chancellor has signed the file on 23rd December 1996. File was then placed before the Vice-Chancellor on the same day and the Vice-Chancellor opined: "In the light of the receipt of the encumbrance certificate, draft agreement, is approved subject to compliance with the legal advice of the University Legal Advisor." This was the position as on 23rd December 1996.

36. Aforementioned proceedings would positively show that there was a decision of the Syndicate on 13th November 1996 resolving to purchase Cheruvandoor land and buildings owned by Fr. Puthenpura for the use of the building for an amount of Rs. 115 lakhs and to pay an amount of Rs. 50 lakhs as first instalment. If there was no such resolution University would not have got legal opinion on 13th December 1996 and would not have got the draft agreement prepared by the Legal Advisor.

37. We also notice that the office of the University made a revised draft agreement after incorporating the suggestion made by the Legal Advisor. Final

draft agreement was prepared by the Legal Advisor and was placed for perusal and approval before the Pro-Vice-Chancellor as well as before the Vice-Chancellor. Registrar of the University again made a noting on 30th December 1996 in the file as follows:

Considering the urgency and to satisfy the stipulations of regulatory bodies such as Nursing Council, Pharmacy Council etc. and also in view of the Syndicate decision (item 932, dated 13th November 1996) we may agree for payment of Rs. 50 lakhs as first instalment.

The above file with the Registrar's note was placed before the Pro-Vice-Chancellor. Pro-Vice-Chancellor has made certain notings in the file, however, left it to the Vice-Chancellor's decision after considering the points noted therein. This was on 31st December 1996. On 31st December 1996 Vice-Chancellor has ordered as follows:

The above points were taken into consideration by the Syndicate the opinion of the Legal Advisor was sought. On the basis of these recommendations (pp. 1-15) the payment of advance of Rs. 50 lakhs sanctioned as first instalment.

University accordingly passed University Order Ad. B. III/3/Cheruvandoor/P.R. 167/96, dated 2nd January 1997 according sanction for transfer of an amount of Rs. 50 lakhs to Director, School of Medical Education for being paid to Fr. Puthenpura

38. We are of the view that the entire proceedings would positively indicate that there was a resolution in the meeting held on 13th November 1996 to purchase Cheruvandoor property from Fr. Puthenpura for an amount of Rs. 115 lakhs and to pay first instalment of Rs. 50 lakhs. We notice of late some of the Syndicate Members on 5th February 1997 when the minutes of the meeting of 13th November 1996 came up for confirmation opined that there was no decision to purchase, but it was only a resolution to go for negotiation including the convener of the Standing Committee on Finance. If there was no such resolution the Registrar of the University who is the Secretary of the Syndicate would not have prepared the extract of the minutes to that effect on 10th December 1996 and placed before the Vice-Chancellor on 11th December 1996 who approved the same on the same date. The Registrar also prepared an affidavit and signed on 29th November 1996 and submitted before this Court on 7th December 1996. The affidavit stated that steps have already been initiated to purchase the land and buildings at Cheruvandoor to meet the complete space problem of the School of Medical Sciences. The files along with the title deeds were placed before the Legal Advisor on 13th December 1996. The files along with the legal opinion was placed before the Pro-Vice-Chancellor who made his notings in the file on 23rd December 1996. If there was no such decision on 13th November 1996, Registrar would not have filed the affidavit before this Court on 3rd December 1996 and would not have taken further steps to execute the draft agreement.

39. We may notice that in the meeting held on 13th November 1996 Pro-Vice-Chancellor was also present and participated in the meeting. If no such resolution was taken to purchase the property on 13th November 1966 the Pro-Vice-Chancellor would have stated so when the file and legal opinion and the draft agreement were placed before her. On the other hand, Pro-Vice-Chancellor herself stated that Registrar has to comply with all the directions of the Legal Advisor and arrange to resubmit the file for approval before registration. Therefore, there was no doubt in the mind of the Pro-Vice-Chancellor, Registrar and the officers of the University acted on the decision of the Syndicate to purchase the property in question on 13th November 1996. Even in the nothings made by the Pro-Vice-Chancellor on 31st December 1996 she had no case that Syndicate had not decided to purchase the land in question in its meeting held on 13th November 1996.

40. We are of the view that the volte-face shown by some of the Syndicate Members which included the Pro-Vice-Chancellor on 5th February 1997 when the minutes of the meeting held on 13th November 1996 came up for confirmation stating there was no decision to purchase on 13th November 1996 but only to negotiate, is for reasons best known to themselves. This fact was highlighted by the Vice-Chancellor before the Commission as well as before the Chancellor. They wanted inclusion of one of the Syndicate Members as negotiator. Some other Syndicate Members it was alleged had also their axe to grind against the Vice-Chancellor for not paying heed to their various illegal demands. Commission as well as the Chancellor rejected those allegations stating that there were no materials to establish the same. Let those allegations remain as such. Those aspects were beyond the terms of reference. We leave it there without expressing any opinion.

41. All the same we feel after perusing the file and appreciating the entire facts and circumstances of the case that some Syndicate Members had shown volte-face on 5th February 1997 to rake up an issue as if there was no decision as such on 13th November 1996. They could muster majority for their view and could change the earlier resolution dated 13th November 1996 stating that there was only a resolution to purchase Cheruvandoor property after negotiation including the convenor of the Standing Committee on Finance. We notice meeting held on 5th February 1997 considered the minutes of the Syndicate on 24th November 1996 and 13th November 1996 and resolved to confirm the minutes. As we have already held on 13th November 1996 there was a decision to purchase Cheruvandoor property owned by Fr. Cyriac Puthenpura for the use of the University for Rs. 1.15 lakhs and to pay Rs. 50 lakhs as first instalment. Said resolution would stand confirmed by their own minutes dated 5th February 1997. After confirming the said minutes, after discussion on resolution No. 932, it was decided suggested (there is controversy which we will deal with later) to change the resolution dated 13th November 1996.

42. We also find from the minutes book of the University that there were three

other meetings, held on 21st November 1996, 18th December 1996 and 23rd December 1996 before 5th February 1997 meeting. The minutes book maintained in the University showed the decision of 13th November 1996 as item 932 as a resolution to purchase Cheruvandoor property owned by Father Puthenpura for Rs. 115 lakhs and to pay Rs. 50 lakhs as first instalment, in the subsequent meeting held on 21st November 1996 some of the complainants had participated and signed. They had no case that what was minuted in the meeting on 13th November 1996 was wrong. So also in the meeting held on 23rd December 1996 some of the complainants were present and they had no case that what was minuted on 13th November 1996 was wrong. After having executed the agreement for sale and after having parted with Rs. 50 lakhs as first instalment and another sum of Rs. 15 lakhs on 31st January 1997 on the basis of University order dated 2nd January 1997 as we have already indicated, some of the Syndicate Members questioned the authority of the Vice-Chancellor and complained that the Vice-Chancellor had deliberately misstated as if the Syndicate had considered the matter and had specifically authorised to purchase the property for Rs. 115 lakhs and also to pay Rs. 50 lakhs as first instalment. With a majority they could change the decision of 13th November 1996 stating that it was only a resolution to purchase after negotiation.

43. We are of the view that we cannot accept such a volte-face of some of the Syndicate Members. Facts and circumstances of the case would not lie. They reveal that there was a meeting on 13th November 1996 in which it was resolved to purchase the Cheruvandoor property owned by Fr. Puthenpura and it was on the basis of the said resolution the Vice-Chancellor, Registrar and officers of the University acted. We therefore hold that there was sufficient authority on the Vice-Chancellor, Registrar and other officers of the University to go ahead with the purchase of the property. We also notice that an amount of Rs. 65 lakhs was paid by the University after executing the agreement with Fr. Puthenpura after getting the agreement approved by the Legal Advisor.

44. We may also consider as to whether Vice-Chancellor has manipulated the minutes of the Syndicate meeting held on 5th February 1997 which came up for confirmation on 7th April 1997. We are of the view since we have found that there was a meeting on 13th November 1996 and a resolution to purchase the property, the question as to whether there is any manipulation of the minutes of the Syndicate is not of much consequence. Since the complaint was raised against the Vice-Chancellor we will examine the issue also. Nothing turns round on the basis of the decision on 5th February 1997 in this regard. Complaint raised against the Vice-Chancellor was that he had deleted the word "decided" and inserted the word "suggested" in the minutes of the Syndicate held on 5th February 1997. As we have already indicated, minutes of the meeting held on 24th October 1996 and 13th November 1996 came up for consideration on 5th February 1997. We notice on 5th February 1997 some Syndicate Members wanted to change part of the resolution dated 13th November 1996 stating that was not the resolution passed on 13th November 1996. Vice-Chancellor

maintained the stand that there was a resolution on 13th November 1996 to purchase the property for an amount of Rs. 115 lakhs. Some of the Syndicate Members said that it was not a suggestion but was a decision to purchase the land on negotiation. We notice that draft of the minutes of Syndicate meeting held on 5th February 1997 was typed in the office of the University and placed the same for approval. Vice-Chancellor made certain corrections including changing the word "decided" into "suggested". There were other corrections also in the draft minutes. It is the stand of the Vice-Chancellor that draft placed before him titled "draft for approval by the Vice-Chancellor" was not the original record of the minutes. The draft copy of the minutes corrected was deliberately misused by the complainants and presented before the Chancellor as if it was the original record of the minutes and Vice-Chancellor had tampered with the original minutes. Vice-Chancellor submitted that when the draft was placed before him he made corrections. Instead of the word "decided" he corrected it as "suggested". It cannot be said that the Vice-Chancellor had made any manipulation in the draft. Draft is only an outline or preliminary copy of the document or rough of the document unlike original or fair copy which is normally treated as honest, just, right, upright, etc. We cannot say that correction made in the draft is a manipulation. We are of the view nothing turns out of the word "decided" or "suggested" since we have already found that there was a valid resolution on 13th November 1996. When there was a valid resolution in the meeting held on 13th November 1996 the word used in the draft, whether it is "decided" or "suggested" is not of much consequence. Honestly Vice-Chancellor has stated that he had made correction in the draft minutes with the bona fide belief that it was only a suggestion and not a decision.

45. We find in the meeting held on 7th April 1997 when the minute No. 955, dated 5th February 1997 came up for consideration there was a commotion by some of the complainants that it was a "decision" and not a "suggestion" and that Vice-Chancellor had made correction. Complainants could muster majority and hence the word "suggested" was substituted as "decided" and it was so recorded at page 137 of the original minutes of the Syndicate. There is no tampering of the original minutes by the Vice-Chancellor. It is only a correction made in the draft. Therefore the allegation that the Vice-Chancellor had made manipulation in the original minutes cannot hold good. Original minutes of the Syndicate has not been tampered with by the Vice-Chancellor. We may hasten to add Vice-Chancellor is the Chairman of the Syndicate and not the Secretary of the Syndicate. He is not the custodian of the records also. What is minuted by the Registrar is being: approved by the Vice-Chancellor.

46. We notice that charge levelled against the Vice-Chancellor was that in spite of the infirmities pointed out by the Pro-Vice-Chancellor, Vice-Chancellor has accorded sanction for the purchase of the property and made advance of Rs. 50 lakhs without reference to the Syndicate. We have already indicated Vice-Chancellor has acted on the basis of the decision of the Syndicate dated 13th November 1996. Facts would reveal on the basis of the decision of the Syndicate,

draft agreement was made available to the Legal Advisor by the Registrar. Draft agreement was prepared in the office of the University and not by the Vice-Chancellor. It was the Registrar who prepared the draft-Draft agreement was placed before the Legal Advisor by the office of the University and the Legal Advisor perused the draft agreement and gave his legal opinion on 13th December 1996. Legal Advisor never advised not to execute the agreement but suggested safeguards. It is difficult to believe that Legal Advisor was not informed about the decision of the Syndicate. Legal Advisor was aware of the fact that there was a lease agreement between the University and Fr. Puthenpura in respect of the property as early as from 29th September 1988 onwards. Legal Advisor was aware of the fact that University was in possession of the property as lessee and Fr. Puthenpura was the lessor. File shows that University used to pay monthly rent of Rs. 21,600 per mensem and also Rs. 5,400 as service charges in respect of the same property.

47. It is not as if University is going to purchase an unknown property. University was going to purchase a property which was in its possession from 1988 onwards as a lessee. Lack of proper accommodation for its constituent schools, department, etc. had been a desideratum from the very inception of the University. Huge amounts were being paid by the University all these years by way of rent. Those amounts were received Fr. Puthenpura alone and not by anybody else. There was no claim from any quarters for the said lease amount. As per the Peroor Village Office records the total area is 359 cents (145 "80 Ares) and 158 cents is in the name of Fr. Cyriac and 201 cents is in the name of the Institute. Files disclosed that the area comprising the main, building is in the name of Fr. Cyriac (Re survey No. 198/1). He claims ownership of the plot of Nirmala Bhavan Secular Institute and that he was paying income tax, wealth tax, etc. for the entire property covered by sale deed Nos. 933 of 1968 and 2246 of 1969. These sale deeds were made available by the University to the Legal Advisor. The fact that these properties were owned by Fr. Puthenpura as Director of Nirmala Bhavan Secular Institute and controlled by Fr. Cyriac was a fact which was known to the Legal Advisor. Legal Advisor's note dated 13th December 1996 will show that Fr. Cyriac had purchased the property in the capacity as Director of the Institute. So Legal Advisor opined that real owner is the Institute covered by the two sale deeds mentioned herein before. That is why he opined that Fr. Cyriac was not competent to convey title unless there is proper decision and authorisation by the Institute. In case agreement for sale is not pushed through sufficient safeguards have also been made in the agreement for sale. It is after incorporating the specific Clause in case of any defect in the title of the vendor that the agreement for sale was approved by the Legal Advisor. It was to safeguard the interest of the University. Prior to the date fixed for payment of the balance amount of Rs. 50 lakhs on the basis of the agreement dated 31st March 1997, we notice University has decided to issue public notice regarding the proposal to purchase the property of Nirmala Bhavan Secular Institute from its Director. Accordingly public notice was published in the Mathrubhumi, Malayala

Manorama and Deepika daily on 15th February 1997 inviting claims or objections from any person/body who may be interested in the property. In pursuance of the said notice only one claim by advocate one Thomas, J. Mappilassery on behalf of his client T.T. Alexander was received which pertains to an attachment of the property for Rs. 40,000. The said attachment was subsequently lifted on 16th April 1997. We may indicate there was no response from Philomen George, the brother's son of Fr. Puthenpura who later raised the concept of Family Trust. Possession of the University of the said premises from 1988 onwards was also not objected to by anybody. It was taken on lease from 1988 onwards. Public notice made by the University on 15th February 1997 in three daily newspapers inviting objection if any, with regard to the agreement for sale. However, since University had to comply with other formalities for which the period of the agreement was extended. It is under such circumstances agreement was executed by the Registrar of the University.

48. We are not prepared to say that the University or the Vice-Chancellor has acted mala fide or with ulterior motive. On 28th April 1997 Vice-Chancellor issued orders subject to ratification by the Syndicate to complete the transaction. Stamp papers for Rs. 11.5 lakhs was purchased on 29th April 1997. Draft of the sale deed was prepared and got approved. Legal Advisor also opined on 26th April 1997 as follows:

There is no dispute regarding the ownership of properties covered by sale deed No. 933/68 and No. 2246/69. Those properties had been purchased by Fr. Cyriac Puthenpura in his name and not in any other capacity....If Nirmala Bhavan Institute has a separate legal entity vis-a-vis Fr. Cyriac, there is very little doubt that he alone is not competent to convey the property unless properly authorised in accordance with the rules governing the Institute. In that circumstance, as P.V.C. has lightly pointed out he should produce a valid power of attorney executed by the members of the Institute.

But here the circumstances disclosed by the available materials are very peculiar and exceptional. Fr. Cyriac has informed the University that the Institute is not at all functioning for the last several years and it is now defunct. According to him, Nirmala Bhavan was only a religious gathering for religious and secular purpose of prayer and retreats and before about 25 years the above-said Institute was stopped. There is no bye-law or constitution. It is not a trust or charitable society of church with any separate existence.

The said letter would highlight the fact that the Institute was controlled solely by Fr. Cyriac himself and the name of the Institute was inserted in the sale deeds for some other purpose and not with the intention of vesting ownership on that Institute. I am not unmindful of the possibility that Fr. Cyriac may be suppressing the material facts to serve his purpose and by wilfully concealing the documents concerning the Institute. But that possibility can be rejected for the following reasons.

Legal Advisor has given his reasons for establishing this:

In the above circumstances though the University may be satisfied that there is no other person interested in the property, as abundant caution, I advised the University to issue public notice inviting any claim or objection to the transaction. That was done.

There was only a claim by a Plaintiff who had attached all these properties. Attachment has been lifted, the order of the court, has been produced. The attachment order of the court fortifies the stand of the University that the entire property belongs to Fr. Cyriac.

So I am of opinion that the legal hurdle as pointed out by P.V.C. regarding competency and authority of Fr. Cyriac may not stand in the way of registering proper conveyances provided the following indemnity Clause is also incorporated in the deed....

I may conclude by emphasising one other aspect. The University has entered into a valid agreement with the vendor and the contract has been partly performed by handing over possession. It is known in law as part performance u/s 53A of the Transfer of Property Act. The University shall honour the agreement and be ready and willing to perform specifically its part of the agreement. To me it appears that it is not advisable on the part of the University to renege from the agreement and to commit breach of contract and invite unnecessary litigation unless these are strong, just and valid reasons for doing so.

We notice it is on the basis of the above legal opinion Vice-Chancellor has acted, Registrar has acted and the University has acted with appropriate legal sanction. We cannot therefore accept the allegation raised against the Vice-Chancellor that he has acted without authority. In fact it is the University, Registrar and other officers all of them have acted in the best interest of the University to purchase the property for the benefit of the University and also for the benefit of the students and also for the benefit of the School of Medical Education and also for due compliance with the Judgment of this Court. We also notice that as advised by the Legal Advisor several Clauses have been incorporated in the agreement to safeguard the interest of the University in the case of breach or lack of title by the vendor. It is after getting approval from the Legal Advisor agreement has been executed. We find no infirmity in the action taken by the Vice-Chancellor or the Registrar.

49. We may in this connection record our strong disapproval with some of the findings of the Commission against the Vice-Chancellor. In paragraph 5 last sentence:

The over anxiety of the Vice-Chancellor to impress the Chancellor and others regarding title clearance even after adverse legal opinion reveals his mind.

in paragraph 11:

Actually, the Vice-Chancellor single handed supports the disputed decision, probably he is bound to do so on account of his wilful actions and inactions.

in paragraph 12:

But before that meeting the Vice-Chancellor played a trick. He got item 932 short minuted by the Registrar and approved by him. He gave a curious version in the box that a short minuted item approved by the Vice-Chancellor will be conclusive even without confirmation in the next meeting and that if any change is necessary it could be done only on the basis decided ballot.

in paragraph 13:

These facts themselves indicate the mala fide intentions and ulterior motives of the Vice-Chancellor Dr. V.N. Rajasekharan Pillai. What exactly was his motive is not in evidence and it is only a matter for inference from given circumstances. The normal course of action expected from a reasonable person having prudence and commonsense and holding such an official position is that, even if a decision as item No. 932 was taken without understanding the infirmities in title, as soon as the legal Advisor and the Pro-Vice-chancellor pointed out the defects, it will be placed again before the Syndicate for reconsideration in order to avert loss to the University. But it appears to the Commission that it was not the attitude of the Vice-Chancellor. He showed an elastic conscience to proceed with the transaction in a hurry, even before the next meeting of the Syndicate and he had no prick up conscience in raising the improbable and impossible contentions that all the Syndicate members including the Pro-Vice-Chancellor, not only supported the decision but subsequently forced him also to act upon decision No. 932. He cut a sorry figure before the Commission during his marathon examination for which he alone is mainly responsible.

in paragraph 14, last sentence:

Probably the Vice-Chancellor wanted to give a mala fide legal backing to his stand for justifying his actions in the meetings of the Syndicate on 5th February 1997 and 7th April 1997 also.

in paragraph 18:

Still the Vice-Chancellor, as a dictator, was not prepared to yield to the majority decisions taken by the Syndicate on 5th February 1997 and 7th April 1997. He has no such right provided anywhere.

in paragraph 19:

In the opinion of the Commission, the dissenting note is also a subsequent manipulation and fabrication. The post of the Vice-Chancellor is a noble one. He is the Chairman of the Syndicate, the Senate and various other Committees. If such a person, who holds that office is prepared to make fabrications in the minutes, it is only a matter of inference regarding the fate of the University. in paragraph D last:

But the Commission has already found that item No. 932 is a manipulation and there was no such decision also. It is evident that the Vice-Chancellor acted as a dictator completely ignoring the Standing Committee on Finance or the Statutory Finance Committee.

The above findings of the Commission meet with our strong disapproval. We are of the view that the Commission is totally misdirected himself and has gone beyond the terms of reference. Commission has not properly understood the factual situation and misappreciated the entire facts. Commission has even gone to the extent of deciding certain issues which were not in the terms of reference. Even complainants have no case that Vice-Chancellor is a corrupt person or that he had gained anything out of the transaction or he had intention to gain anything out of the transaction or that he had to be proceeded under the Prevention of Corruption Act. But the Commission has in the report stated as follows:

It could be said that he abused his official position. He could even be said to have committed offences coming under the Prevention of Corruption Act by manipulating minutes, ignoring majority decisions in the Syndicate and misusing University funds by executing agreement and parting away University funds in order to have undue advantages for himself or others including Fr. Cyriac Puthenpura.

We strongly disapprove the above findings of the Commission. We have indicated that we have perused the complaint raised by some of the Syndicate members. We have also gone through the terms of reference by the Chancellor. There is absolutely no allegation against the Vice-Chancellor of having committed any offence under the Prevention of Corruption Act. Even the Chancellor has no such complaint. There is no complaint from any quarters that he had parted with the University funds to gain any undue advantage for himself or to others including Fr. Puthenpura. We are of the view that the Commission has totally misdirected himself and gone at a tangent to suggest initiation of proceedings under the Prevention of Corruption Act.

50. We are of the view as the learned Counsel for the Petitioner rightly submitted, if those findings are allowed to stand that would cast a stigma on the Petitioner wherever he goes whatever position he holds. We notice that before the Commission also Vice-Chancellor took up a contention that the complaint was engineered by ill-motive and due to extraneous reasons. That contention raised by the Vice-Chancellor was rejected by the Commission stating that Vice-Chancellor could not prove it. The Commission could have rejected those allegations stating that those allegations are beyond the terms of reference rather than holding that the Vice-Chancellor could not substantiate those allegations. The Commission arrived at the following conclusion:

The inevitable conclusion that the Commission could arrive at on the basis of the materials before it is that item 932 in the minutes of the Syndicate meeting held

on 13th November 1996, the dissenting note inserted in the minutes of the Syndicate meeting held on 5th February 1997 as the last paragraph and the correction of the word "decided" into "suggested" in the resolution part of item No. 955 on 5th February 1997 are all manipulations of the Vice-Chancellor for which witness No. 2 yielded probably fearing ofriciation.

Expressions used by the Commission "All these facts indicate "foulplay" and item 932 is a "fabrication" and that Vice-Chancellor has acted as "dictator" ignoring the Standing Committee", are all unnecessary and not supported by any materials but only figment of imagination by the Commission. We disapprove all these findings of the Commission. In Chapter IX of the Commission Report the Commission has recorded its findings. We are not reiterating all those findings over and again but the suggestion of the Commission to prosecute the Vice-Chancellor under the Prevention of Corruption Act has no factual or legal foundation. We have indicated that the above finding of the Commission is beyond the terms of reference and materials do not support such a finding. We disapprove that finding.

51. We notice Commission report was made available to the Vice-Chancellor who submitted a detailed reply as per Ext. P-14. He reiterated that he has acted on the basis of the valid resolution, dated 13th November 1996 of the Syndicate for the best interest of the students. He reiterated that the allegations in the complaint are ill-motivated and due to extraneous reasons and narrated in detail the circumstances under which the property came to the possession of the University, decision taken by the Syndicate to purchase the property, steps taken by the University, legal advice taken by the University to purchase the property and the suggestions by the Legal Advisor to safeguard the interest of the University in case the title of Fr. Puthenpura was found to be defective were all elaborately dealt with in his reply. He stated that he acted for the best interest of the students and University and to get recognition or approval from the All India Council for Technical Education and the Pharmacy Council. Contempt of court proceedings initiated against the Registrar was also highlighted by him. The finding of the Commission that he should be proceeded against under the Prevention of Corruption Act according to the Petitioner was unwarranted and was not in the contemplation of the complainants. Vice-Chancellor therefore requested the Chancellor to reject the Commission Report. He reiterated that he had not gained anything for himself or to others out of such transaction. Vice-Chancellor prayed to His Excellency to accept his submission and drop the proposal to annul the decision of the Syndicate and correction and dissenting note.

52. The Chancellor however passed an Order, dated 2nd June 1998 under Sub-section (4) of Section 7 of the Mahatma Gandhi University Act. In paragraph 19 of the order Chancellor found that there was urgent need for securing or acquiring premises in the shape of classrooms and laboratories for the pharmacy courses. And because of the pendency of the contempt proceedings against

them, the Vice-Chancellor and the Registrar were under pressure. They were therefore justified in taking urgent steps to comply with the High Court directions. This however did not absolve them from acting in accordance with the Act, Statutes and Regulations etc. Vice-Chancellor concluded that since the title of Fr. Puthenpura was shady University should not have been ventured in such transaction.

53. We notice defective title of Fr. Puthenpura was always a matter within the knowledge of the authorities of the University from 1988 onwards, even before the Petitioner assumed office of the Vice-Chancellor. This was a fact which was taken note of by the Legal Advisor when the file was placed before him for opinion. Draft agreement was also placed before the Legal Advisor along with the title deeds of Fr. Puthenpura and Nirmala Bhavan Secular Institute. We also notice paper publication was also carried out and there was no objection from any quarters with regard to the transaction and agreement entered into between the University and Fr. Puthenpura. Draft agreement was placed before the Legal Advisor who finalised the same and only after approval the same was executed.

54. We notice there is nothing to show that University is in any way affected by the transaction. The University has been in possession of the property all these years. University has been using the whole property from 1988 onwards without any complaint or objection from any quarter.

55. Chancellor has also accepted the finding of the Commission with regard to the tampering of the minutes. We are of the view that the Commission as well as the Chancellor has not correctly appreciated the scope of resolution, dated, 13th November 1996. We have indicated that Pro-Vice-Chancellor had also participated in the meeting held on 13th November 1996 and she had no case either on 23rd December 1996 or on 31st December 1996 that Syndicate had not taken any decision to purchase the Cheruvandoor property on 13th November 1996. This will cut at the root of the contention raised by the complainants.

56. We are of the view Chancellor fell in error in believing the complainants that there was no such decision in the meeting held on 13th November 1996 but only a decision to negotiate. Even though complainants could change their face as and when they like circumstances would not lie. As we have indicated conduct of Pro-Vice-Chancellor in the nothings made on 23rd December 1996 and 31st December 1996 are crucial. She had not made any noting that Vice-Chancellor or the Registrar had no authority to proceed with the execution of the agreement for sale or that there was no decision of the Syndicate, dated 13th November 1996 to purchase the Cheruvandoor property. We are of the view, if there was no such resolution on 13th November 1996 Pro-Vice-Chancellor would have noted it in the file and consequently Vice Chancellor and the Registrar would not have proceeded further.

57. We have also pointed out that one of the complainants, Syndicate member Prof. K.P. Joy who wanted to figure as the negotiator himself has suggested in

the Budget Speech on 5th February 1997 as follows:

Item No. 1049. - Budget estimate of the University for the financial year....In self-financing sector, the most important achievement is the decision to purchase Nirmala Bhavan Building at Cheruvandoor for the University.

This would also strengthen the fact that there was a decision on 13th November 1996 to purchase the Cheruvandoor land and building because one of the complainants had admitted that there was a decision to purchase the Nirmala Bhavan building at Cheruvandoor. We have therefore no doubt in our mind that there was a resolution in the meeting held on 13th November 1996, authorising the University to proceed with the purchase of the property. This crucial aspect of the matter has been misappreciated and misunderstood by the Commission and the Chancellor. We are of the view we cannot endorse the view of the Commission or the Chancellor that Vice-Chancellor, has acted without authority to part with the amount for the purchase of the property. Ext. P-16 was the draft of the minutes for approval. Vice-Chancellor has not made any correction in the original minutes of the University. Ext. P-16 was made available to the Vice-Chancellor for approval. Correction was made only on the draft and not in the fair minutes of the Syndicate. Vice-Chancellor has got the authority to correct minutes. But correction is made only on the draft which was placed before him for approval. Corrections are evident from Ext. P-16. We may hasten to add that since we have found that there was a meeting on 13th November 1996 to purchase the property, substitution of the word "decided" as "suggested" is of not much consequence. We therefore disagree with the finding of the Commission as well as the Chancellor that there was any correction in the original minutes.

58. The Chancellor in paragraph 38 stated:

Since payment to Fr. Puthenpura has been made as advance by the Vice-Chancellor and the Registrar out of the public funds without authority of law, the authorities of the University shall be under obligation to take steps to retrieve the amount in accordance with law.

Learned Advocate General assured that the intention of the Chancellor was not to recover the amount from Vice-Chancellor but from Fr. Puthenpura. Since we have found that agreement has been executed between University and Fr. Puthenpura, Chancellor has no jurisdiction to interfere with the said agreement. This is a matter between the vendor and vendee. We have found that University has acted on the basis of valid resolution. Order of the Chancellor to nullify the resolution cannot hold good. We notice that the said resolution of 13th November 1996 was subsequently annulled and changed by the Syndicate itself in its meeting held on 5th February 1997. But the fact remains that the University, the Registrar and the Vice-Chancellor acted in accordance with the decision of the meeting on 13th November 1996. Their action cannot be characterised as void ab initio. Chancellor in paragraph 29 stated that decision on the other findings and

suggestions made by the learned Commission shall be taken separately in due course. We have found that the finding of the Commission is unsustainable. Therefore the decision of the Chancellor on the basis of the findings of the Commission to take further action against the Vice-Chancellor is not legal or valid. We declare so.

59. We cannot accept the findings of the Chancellor or the allegations raised by the complainant that only after confirmation of the minutes of 13th November 1996 the University or its officers could act. Since we have found that there was a resolution on 13th November 1996 by which it was resolved to purchase the property on certain terms and conditions, there is no necessity for the University to wait for confirmation. This is the legal position. We may refer to Shackleton on the Law and Practice of Meetings, Seventh Edition, which says that decision once arrived at need not wait for confirmation. This legal position is followed by the Karnataka High Court in *Karnataka Bank Ltd. v. A.B. Datar and Ors.* 1994 (79) Com. Cases 417. Quoting Shackleton on the Law and Practice of Meetings, 7th Edition by Ian Shearman the court held as follows:

Decisions once arrived at do not need confirmation. At a vestry meeting it was the usual procedure to read over at the next meeting the resolutions of the preceding one. At the second of two meetings there was considerable diversity of opinion as to the votes admitted at the first meeting, but Judgment was to the effect that there was no necessity for the confirmation by the second vestry of what was legally done at the first. If the first was a legal vestry the election there at was legal.

However, confirmation of the minutes as an accurate record of the decisions made at the previous meeting is usually obtained by submitting them to *he Chairman of the next meeting for signature. If they have not been previously circulated he will ask the secretary to read them, and, if the meeting confirms (usually on a show of hands) that they are a correct record, he will sign them. If they have previously been circulated, he will sign them. If they have previously been circulated, he will sign them without their being read out if the meeting so agrees.

The Chairman who signs the minutes at the next meeting need not necessarily have been present at the meeting of which the minutes are a record. His action in signing them is merely to record that they are a correct record of the business transacted.

It is therefore, apparent that the confirmation of the minutes reflects an accurate record of the decisions made at the previous meeting and there is no law requiring confirmation of the same in the subsequent meeting. In that view the contention of the Respondents that the notice issued without confirmation of the minutes of the meeting held on September 16, 1982 is bad in law is not sustainable.

We fully endorse the said reasoning and therefore the contention that only after

confirmation of the minutes of 13th November 1996 University or the authorities could act cannot be sustained. Once court finds there was a valid resolution on 13th November 1996 we are of the view that the University and the authorities can act on the basis of the said resolution and the said action is legal and valid,

60. We shall now consider the contention that the Chancellor has no power to initiate action against the Vice-Chancellor u/s 7(4) of the Mahatma Gandhi University Act. Ext. P-9 order, dated 14th March 1998 issued by the Chancellor proceeds on the basis that the Chancellor had ordered inquiry into the allegation against the Vice-Chancellor regarding purchase of land and building at Cheruvandoor. After obtaining the commission report the Chancellor has issued note, dated 22nd April 1998 to the Vice-Chancellor u/s 7(4) of the Mahatma Gandhi University Act, 1985 requesting him to appear in person before the Chancellor on 25th April 1993. We are of the view the Vice-Chancellor is not legally obliged to answer the proceedings initiated by the Chancellor u/s 7(4). We may extract Section 7(4) for easy reference.

7. (4). - The Chancellor may, by order in writing, annul any proceeding of any of the authorities of the University which is not in conformity with this Act, the Statutes, the Ordinances, the Regulations, the rules or the bye-laws.

Provided that, before making any such order, the Chancellor shall call upon such authority to show, cause why such an order should not be made and consider the cause, if any, shown by such authority within a reasonable time.

The Chancellor in exercise of the powers u/s 7(4) can only annul the proceedings of any proceeding of any of the authorities of the "University". Chapter IV of the Act deals with the authorities of the University. Section 16 of Chapter IV explains who are all the "authorities" of the University. The Senate, Syndicate, Academic Council etc. are the authorities of the University. The proviso to Section 7(4) obliges the Chancellor to call upon such authority to show cause and not the Vice-Chancellor who is an Officer of the University. Section 9 of the Act explains who are all the officers of the University. The Vice-Chancellor, Pro-Vice-Chancellor, Registrar etc. are officers of the University. The only provision under which the Chancellor could proceed against the Vice-Chancellor is u/s 7(10) of the Act which reads as follows:

(10) The Chancellor shall have power to remove the Vice-Chancellor or the Pro-Vice-Chancellor from office by an order in writing on charges of misappropriation or mismanagement of funds or misbehaviour.

Provided that such charges are proved by an enquiry conducted by a person who is or has been a Judge of the High Court or the Supreme Court appointed by the Chancellor for the purpose:

Provided further that the Vice-Chancellor or the Pro-Vice-Chancellor shall not be removed under this Section unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.

It is clear from the above-mentioned provision that only on charges of misappropriation or mismanagement of funds or misbehaviour the Chancellor could proceed against the Vice-Chancellor and remove him from the post of Vice-Chancellor. Admittedly there was no charge of misappropriation or mismanagement of funds or misbehaviour by the Vice-Chancellor. The Chancellor has no case that he has invoked Section 7(10). Admittedly the proceedings were initiated u/s 7(4) so as to annul the resolution of the Syndicate. We are therefore of the view the proceedings initiated against the Vice-Chancellor and summoning him under the proviso to Section 7(4) for annulling proceedings of the Syndicate u/s 7(4) is illegal and without authority. The Chancellor has got the power to summon the Vice-Chancellor only if the proceedings are initiated against the Vice-Chancellor by invoking Section 7(10) of the Act. The proceedings initiated against the Vice-Chancellor is therefore unauthorised and void. We could have disposed off this case on this short ground alone but allegations were raised against the Vice-Chancellor and an Enquiry Commission was appointed and findings were entered therefore we thought we should examine the entire matter.

61. Learned Advocate General submitted that if this Court finds that Chancellor has not properly appreciated Commission Report and committed an error in invoking Section 7(4) as against the Vice-Chancellor, matter may be remitted back to the Chancellor. We are not impressed by this submission and we reject the same.

62. We have perused the Commission Report as well as the order of the Chancellor. We are of the view if the Commission Report is allowed to stand it will be a stigma on the Petitioner. We are informed by the counsel for the Petitioner that he was tipped as Chairman of the University Grants Commission, a post which has got the high status. If the observations made by the Commission about the Petitioner are allowed to stand that will always be a stigma which will follow him wherever he goes and whatever position he holds. We are of the view such findings and observations shall not stand. This Court sitting in writ jurisdiction has the duty to expunge the observations and findings. We therefore quash the findings made by the Commission and the order of the Chancellor.

63. We accordingly set aside the order of the Chancellor and declare that there was a valid resolution on 13th November 1996 to purchase the Cheruvandoor land and buildings and it was on the basis of the said resolution the Vice-Chancellor, the Registrar and the Officers of the University proceeded to purchase the property in question and parted with money. It is on the basis of the said resolution the University and its officers executed the agreement of purchase. We are not expressing any opinion with regard to the validity or otherwise of the terms and conditions of the said agreement. We make it clear that there was a valid resolution supporting the action of the Vice-Chancellor and the Registrar and the Officer of the University. Validity or otherwise of the terms and conditions entered into between the University and Fr. Puthenpura are not matters for our opinion. University has to face the consequence if they violate

the terms and conditions. So also the case of Fr. Puthenpura. We therefore allow the Original Petition and quash Exts. P-9, P-12 and P-15 orders.