
(1984) 05 CAL CK 0003
In the Calcutta High Court
Case No : F. M. A. T. No. 612 of 1984

Kalipada Banerjee and Another	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 09-05-1984

Acts Referred:

Constitution of India, 1950 — Article 134A, 137, 310

Citation : 89 CWN 89

Hon'ble Judges : M.M. Dutt, J;A.K. Sengupta, J

Bench : Division Bench

Advocate : Somnath Chatterjee, Aninda Mitra, Samir Kumar Ghose and Pranab Kumar Chatterjee, for the Appellant; Dipankar Ghosh, Jatin Ghose, Pradip Kumar Guha and Sunil Chatterjee for the Vice-Chancellor, Arun Prakash Chatterjee, Senior Standing Counsel and A. Roy for the Registrar, Bhaskar Gupta, Pranab Kumar Dutta and B. Ghose for Respondent Nos. 6 and 7 and N.N. Guptoo, G.P. and Tarun Roy for State, for the Respondent

Judgement

M.M. Dutt, J.—The appellants, Prof. Kalipada Banerjee and Dr. Subodh Kumar De, both members of the Syndicate, Calcutta University, have impugned the order dated March 1, 1984 of Janah J. vacating the interim order that was passed by him on February 9, 1984 on the writ petition filed by the appellants. In the writ petition, the appellants inter alia challenged the authority of Dr. Santosh Kumar Bhattacharyya, the Vice-Chancellor of the Calcutta University to pass two orders being order nos. 87 and 88 both dated February 2, 1984 and also the legality and validity of the said orders. The impugned orders are set out below :

Order of the Vice-Chancellor

Dated, 2nd Feb. '84.

No. 87

In view of the facts that the Ph. D. processing work is often delayed inordinately at the administrative end and that the work has piled up of late because of the

introduction of the new regulations which demand extensive decentralised arrangements, because of which several Deans have made representation for Strengthening the administrative set up for such work. Sri N. Bose, who retired recently as Officiating Registrar and possesses wide and long experience about such matters is appointed for six months as Officer on Special Duty, attached to the Registrar's Department, with effect from to-day, the 2nd February, 1984 on a consolidated salary of Rs. 2500/- per month. Sri Bose will be assigned responsibilities by the Vice Chancellor, the Pro-Vice Chancellor (Academic) and the Registrar and report directly to them. The Registrar is to issue a letter of appointment accordingly.

Senate House, Calcutta.

The 2nd February, 1984

Sd/- S. K. Bhattacharyya

VICE-CHANCELLOR ""ORDER OF THE VICE-CHANCELLOR

No. 88

Dated, 2nd February, 1984,

As the Registrar has not till 5-30 p.m. today complied with my specific orders viz. (1) transferring Sri Pratul Chatterjee, Superintendent in Controller's Office to the Establishment Section of the Registrar's office and transferring Sri Prabir De, Superintendent in the Registrar's Office to the Controller's Office, with immediate effect and (2) appointing Shri N. Bose as Officer on Special Duty and Shri Bholanath Raychaudhuri as Special Officer, with effect from today.

Now therefore, in view of my powers and duties under the Act and the Statutes, I order u/s 9(6) of the Act, giving immediate effect to the above two orders. The concerned persons may be given copies of the above two orders directly.

This be reported to the next Syndicate.

Sd/- S. K. Bhattacharyya

Senate House, Calcutta.

The 2nd February, 1984.

2.2.84

5-35 p.m.

Copy to : 1) The Pro-Vice Chancellor

2) The Registrar.

2. Order no. 87 relates to the appointment of Mr. N. Bose, who retired recently an officiating Registrar, for a period of six months as officer on Special Duty With effect, from February 2, 1984 on a consolidated salary of Rs. 2500/- per month.

The second order, that is, Order no. 88 also relates to the appointment of the said Mr. N. Bose as Officer on Special Duty and of Mr. Bholanath Raychaudhury as a Special Officer with effect from February 2, 1984. By the said order, the Vice-Chancellor also directed the transfer of Mr. Pratul Chatterjee, Superintendent in the Controller's Office to the Establishment Section of the Registrar's Office and Mr. Prabir De, Superintendent in the Registrar's Office to the Controller's Office with immediate effect. It further appears from order no. 88 that it was passed by the Vice-Chancellor u/s 9(6) of the Calcutta University Act, 1979, hereinafter referred to as the 1979 Act.

3. According to the appellants, the impugned orders were passed by the Vice-Chancellor arbitrarily, mala fide and without any authority and so they filed the writ petition before the learned Judge challenging the Vice-Chancellor's authority to pass the impugned orders and also the legality and validity thereof. The learned Judge initially passed an interim order of injunction restraining the respondents nos. 2 to 7 namely, the University of Calcutta, the Vice-Chancellor, the Pro-Vice Chancellor etc. from giving any effect or further effect to the said impugned orders no. 87 and 88, both dated February 2, 1984. The said interim order was passed ex parte. It is the case of the Vice-chancellor that he came to show from the newspaper about the interim order of the learned Judge. Thereafter, he filed an application praying for vacating the interim order. The learned Judge, after hearing the parties and after considering the balance of convenience, vacated the interim order by his order dated March 1, 1984. Hence this appeal by the writ petitioners.

4. Mr. Somnath Chatterjee, learned Counsel appearing on behalf of the appellants submits that by the impugned orders the Vice-Chancellor has created two posts, one being the post of Officer on Special Duty and the other being the post of special Officer and such creation of posts has been immediately followed by appointment of Mr. N. Bose and Mr. Bholanath Roychaudhury in the said two posts. The terms and conditions including the eligibility and the scales of pay have also been decided by the Vice-Chancellor in the impugned order no. 88. It has been vehemently urged by Mr. Chatterjee that section 9(6) of the 1979 Act does not authorise the Vice-Chancellor to create posts or to lay down the eligibility, terms and conditions in respect of such posts or to make any appointment that has been done by the impugned orders. It is contended by the learned Counsel that the impugned orders have been passed by the Vice-Chancellor in violation of the provisions of section 3 of the West Bengal Universities (Control of Expenditure) Act, 1976, hereinafter referred to as the Control of Expenditure Act, 1976. The Control of Expenditure Act, 1976 still continues as no declaration has yet been made with regard to the said Act under the West Bengal Universities (Control of Expenditure) (Cessation of Application) Act, 1979 hereinafter referred to as the Cessation Act.

5. We may refer to some of the provision of the 1979 Act. Clause (25) of section 2 defines "the university" as meaning the University of Calcutta as constituted

under the 1979 Act. Section 3(1) provides that the first Chancellor and the first Vice-Chancellor of the University and the first members of the Senate and Syndicate, and all persons who may hereinafter become the Chancellor or the Vice-Chancellor of the University or the members of the Senate or the Syndicate so long as they continued to held such office or membership, shall constitute a body corporate by the name of the University of Calcutta. Sub-section (2) of section 3 provides that the University shall have perpetual succession and the common seal and shall sue and be sued by the name of the University of Calcutta. Section 4 of the 1979 Act provides for the powers of the University. Clause (13) of section 4 reads as follows :

"The University" shall have the following powers, namely, :

(13) to create posts, as and when required, of officers and employees of the University besides those provided for in this Act.

6. Section 6 of 1979 Act relates to the officers of the University. Section 6 reads as follows :

6. The following shall be the officers of the University

(1) The Vice-Chancellor;

(2) The Pro-Vice Chancellor for Academic Affairs;

(3) The Pro-Vice Chancellor for Business Affairs and Finance;

(4) The Registrar;

(5) Persons holding such other posts as may be declared by Statutes to be posts of officers of the University.

7. Section 9 lays down the powers and duties of the Vice-Chancellor as follows:

9(1). The Vice-Chancellor shall be the principal executive and academic officer of the University and shall, in the absence of the Chancellor, preside at the meeting of the Senate. He shall, by virtue of his office, be a member and the Chairman of the Syndicate and the Faculty Councils for post-graduate studies and also the Chairman of any other authority or body of the University of which he may be a member. He shall also be entitled to be present and to address any meeting of any other authority or body of the University of which he may not be a member, but shall not be entitled to vote thereat.

(2) The Vice-Chancellor shall have the power to convene meetings of the Senate, the Syndicate, the Faculty Councils for post-graduate studies and of any other authority or body of the University.

(3) It shall be the duty of the Vice-Chancellor to ensure that the provisions of this Act, and the Statutes, the Ordinances and the Regulations are faithfully observed, and to take such action as may be necessary for this purpose.

(4) The Vice-Chancellor shall have the power to exercise general control and supervision over all other officers of the University and over all Teachers and employees of the University and generally over all The affairs of the University and shall decide and dispose of all appeals in disciplinary matters not provided for in section 36.

(5) The Vice-Chancellor shall exercise such other powers and discharge such other duties as may be delegated to him by any authority or body of the University or as may be prescribed by Statutes, Ordinances or Regulations.

(6) The Vice-Chancellor may take on behalf of the University such action as he may deem expedient in any matter which, in his opinion, is either urgent or of an emergent nature and shall report the same for confirmation at the next meeting to the authority or body which, in the ordinary course, would have dealt with the matter;

Provided that if the action taken by the Vice-Chancellor is not approved by the authority or body concerned, the matter shall immediately be referred to the Chancellor whose decision thereof shall be final.

(7) The Vice-Chancellor may at any time delegate any of his powers to any other officer subordinate to him.

8. Section 17 of the 1979 Act relates to the authorities of the University. Section 17 runs as follows -

17. The following shall be the authorities of the University :

- (1) the Senate;
- (2) the Syndicate;
- (3) the Faculty Councils for Post-graduate Studies;
- (4) the Councils for Undergraduate Studies;
- (5) the Boards of Studies;
- (6) the Finance Committee;
- (7) the Tripura Council;
- (8) such other authorities as may be established under the Statutes.

9. Section 18 relates to the constitution of the Senate. Section 19 lays down the powers and duties of the Senate. Section 21 provides for the constitution of the Syndicate and section 22 lays down the powers and duties of the Syndicate. Clauses (viii) and (ix) of section 22 provides as follows :

Subject to the provisions of this Act, the Syndicate shall exercise the following powers and perform the following duties :

* * * *

(viii). to create posts of officers, Teachers and employees of the University or to recommend to the Senate for such creation, with the approval of the State Government;

(ix). to appoint Teachers, officers and employees of the University and to fix their emoluments and define their duties and other terms and conditions of service in accordance with the Statutes and the Ordinances and to suspend, discharge or otherwise punish in accordance with the Statutes and the Ordinances such Teachers, officers and employees.

10. Next we may refer to the provisions of the Control of Expenditure Act, 1976. It is an Act to provide for the Control of Expenditure for various universities and colleges affiliated to such Universities in West Bengal. Clause (e) (i) of section 2 is as follows :

2. In this Act, unless the context otherwise requires,-

(e) "university" means any of the universities constituted or established, as the case may be, under sub-section (1) of section 3 of - (i) the Calcutta University Act, 1966; (West Ben. Act 11 of 1966).

11. Section 3(1) of the Control of Expenditure Act, 1976 provides as follows :

1. Notwithstanding anything contained in any law for the time being in force or in any contract, custom or usage to the contrary, no university or no college affiliated to such university shall after the commencement of this Act, -

(i) create any teaching or non-teaching post involving any financial liability;

(ii) increase the pay or allowances attached to any post or sanction any new allowances;

Provided that the State Government may by an order, revise the scale of pay attached to such post or sanction any new allowance.

(iii) grant any special pay or allowance or other remuneration under any description whatsoever including ex-gratia payment or any other benefits having financial implication to any person holding a teaching or non-teaching post, or

(iv) incur, except as provided in the rules prescribed for the purpose, any expenditure on any development scheme, without the prior sanction of the State Government.

12. Another provision to which reference may be made in section 6 of the Control of Expenditure Act, 1976.

6. Submission of Budget -

(1) Notwithstanding anything contained in any Act, or in any Statute, Ordinance, or Regulation made there under, every University shall submit a budget showing its estimated receipts and disbursements for the following year, to the State

Government immediately after the same is finalised by the University at a meeting specially convened for the purpose.

(2) A University may submit a supplementary budget at any time within the financial year to the State Government.

(3) Notwithstanding anything contained in sub-section (1) or subsection (2), the State Government may authorise a University to incur any expenditure not forming part of its budget or supplementary budget, as the State Government considers necessary.

Explanation - For the purpose of this section, "financial year" means the year ending on the 31st day of March.

13. The first question that comes up for our consideration is whether section 3 of the Control of Expenditure Act, 1976 applies to the 1979 Act. u/s 3(1) (i) no University shall create any teaching or non-teaching post involving any financial liability without the prior sanction of the State Government. The Control of Expenditure Act, 1976 relates to all Universities in West Bengal including the Calcutta University. So far as the University of Calcutta is concerned, it is defined in section 2(e) (i) as meaning the University constituted under the Calcutta University Act, 1966. It is, accordingly, submitted on behalf of the appellants that as the Control of Expenditure Act, 1976 is still existing, the Vice-Chancellor has no authority to create any post without the prior sanction of the State Government. It is submitted that although in section 2(e) (i), the Calcutta University Act, 1966 has been referred to, such reference shall, by virtue of section 10 of the Bengal General Clauses Act, be construed as reference to the 1979 Act. The contention of the learned Counsel for the appellants is that as the 1979 Act has repealed and re-enacted the Calcutta University Act, 1966 with modifications and as no different intention appears, section 10 of the Bengal General Clauses Act will apply and, accordingly, the reference to the Calcutta University Act, 1966 in the definition of the term "university" u/s 2(e) (i) shall be construed as reference to the 1979 Act. In other words, the definition of the term "university" will be read as meaning the University constituted under sub-section (1) of section 3 of the 1979 Act.

14. In support of his contention, Mr. Chatterjee has placed reliance upon a number of decisions. In *Khuda Bux Vs. Manager, Caledonian Press*, it was held that because Factories Act of 1934 was repealed and re-enacted by the Act of 1948, therefore by virtue of section 8 of the General Clauses Act (similar to section 10 of the Bengal General Clauses Act), references in the workmen's Compensation Act to the Act of 1934 must be construed as references to the Act of 1948, although the definition of "manufacturing process" in the Factories Act of 1934 was enlarged by the definition of the term in the Act of 1948.

15. The next decision that has been relied upon by the appellants is *Bhagat Ram Baika Vs. Prabirendra Mohan Tagore and Others*. In that case, it has been held that as the Calcutta Municipal Act, 1923 has been repealed and re-enacted as the

Calcutta Municipal Act, 1951, reference to the definition of "Calcutta" as given in section 1(2) (a) of the West Bengal Non-Agricultural Tenancy Act, 1949 in terms of the definition given in the Calcutta Municipal Act, 1923, must now be construed as the definition in terms of that given by the Calcutta Municipal Act, 1951 by virtue of section 10 of the Bengal General Clauses Act. Further, it has been held that section 10 of the Bengal General Clauses Act applies not merely to repeals and re-enactments of particular provisions of an Act, but also to repeals and re-enactments of Acts as a whole. It may be noticed that the definition of "Calcutta" has been expanded in the 1951 Act. There can be no doubt that in view of section 10 of the Bengal General Clauses Act, where any Act repeals and re-enacts with or without modifications, any provision of a former enactment, then reference in any other enactment to the provision so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted. See *State of Uttar Pradesh v. M.P. Singh*, AIR 1960 S.C. 509, *State of Bihar Vs. S.K. Roy*, *New Central Jute Mills Co. Ltd. Vs. The Assistant Collector of Central Excise, Allahabad and Others*, ; *Mahindra and Mahindra Ltd. Vs. Union of India (UOI) and Another*, ; *Isha Beevi on behalf of the Minor Umaiben Beevi and Others Vs. The Tax Recovery Officer and Addl. P.A. to Collector, Quilon and Others*, and *Management of the Advance Insurance Co. Ltd. Vs. Gurudasmal, Supdt. of Police and Others*, , All these decisions have been relied upon by the learned Counsel for the appellants.

16. On the other hand, Mr. Dipankar Ghose, learned Counsel appearing on behalf of the Vice-Chancellor submits that section 10 has no application because, although the 1979 Act repeals the Calcutta University Act, 1966 it is not a re-enactment of the former Act with or without modifications. Further, it is submitted by him that it is not a case of enlarging or widening the definition of an existing thing or person, but it is a case where a new juristic person or body corporate comes into existence by the 1979 Act which is quite distinct from the body corporate (University) created by the 1960 Act. He has drawn our attention to the provisions of sections 54 to 59 of the 1979 Act where a distinction has been made between the University under the 1979 Act and the "former" University" under the 1966 Act.

Accordingly, it is submitted by him that the 1979 Act is not a re-enacting Act with modifications. Counsel submits that modification does not embrace essential changes as has been laid down in *New Central Jute Mills Co. vs. Asst. Collector of Central Excise* (supra) which has also been relied upon by the appellant. The learned Counsel for the Vice-Chancellor submits that the cases which have been relied upon by the appellants are cases of repeals and re-enactments with modifications, namely, by enlarging the definitions of "Factory", "Calcutta", "Workman" etc. in the earlier Acts by the later Acts. It is also submitted by the learned Counsel that the 1979 Act shows a different intention and thereby excludes the application of section 10 of the Bengal General Clauses Act.

17. We are unable to accept the contention of the learned Counsel for the Vice-

Chancellor that the 1979 Act is not a reenacting Act with or without modifications. The principal reason for this contention is that under sections 54 to 59 of the 1979 Act the University as constituted under the 1966 Act, has been referred to as the "former University". In other words, a distinction has been made in the said provisions between the University as constituted under the 1966 Act and that constituted under the 1979 Act. It is said that a modification can be made of an existing thing but when such a thing does not exist there cannot be any modification. In other words, the contention of the appellants is that as under the 1979 Act, the University as constituted under the 1966 Act is non-existing, there cannot be any modification with regard to the non-existing University; on the contrary, a new University has come into being under the 1979 Act. We are unable to accept this contention of the learned Counsel for the Vice-Chancellor. It is true that in the case of *New Central Jute Mills Co. Ltd.* (supra), it has been observed by the Supreme Court that the power to restrict and modify does not include the power to make essential changes, but that observation has been made in a different context, namely, whether by virtue of section 12 of the Central Excises and Salt Act, 1944 conferring on the Central Government, the power to modify or alter the provisions of the Sea Customs Act, 1878, the Central Government had by the impugned notification purported to change the basic structure of the Act. In that context, it has been observed by the Supreme Court that the power to restrict and modify does not include the power to make essential changes, and that it is confined to alterations of a minor character. We do not think the said observation has any application to the facts and circumstances of the instant case. Similarly, the decision in *Stevens vs. the General Steam Navigation Co. Ltd.*, (1903) 1 K. B. 890 has no application to the instant case.

18. But the important question is whether a different intention appears in the 1979 Act so as to exclude the operation of the provision of section 10 of the Bengal General Clauses Act. In this connection, we should remember that we are concerned with the question whether the Vice-Chancellor can create posts without the prior sanction of the State Government as laid down in section 3(1) (i) of the Control of Expenditure Act, 1976 and, for the matter of that, whether the reference to the Calcutta University Act, 1966 in section 2(e) (i) of the Act can be construed as reference to the 1979 Act, so that section 3(1) (i) may be made applicable to the restriction as to the creation of the posts by the University. It has been already noticed that the Control of Expenditure Act, 1976 relates to all the Universities in West Bengal including the Calcutta University. The Control of Expenditure Act, 1976 was passed at a time when the respective statutes constituting the different Universities permitted the Universities to create posts without the prior sanction of the State Government. Section 4(13) of the Calcutta University Act, 1966 is similar to section 4(13) of the 1979 Act. that is to say, the University has been conferred the power to create Certain posts. Similarly u/s 23(viii) of the 1966 Act as also in section 22(viii) of the 1979 Act before it was amended in 1980, the Syndicate has been conferred the power

to create posts of officers, Teachers and employees of University. The power of the Syndicate to create posts as provided for was unrestricted in the sense that neither the University nor the Syndicate was to take prior sanction of the State Government before any post is created. There can be no doubt that creation of posts and appointment of persons in such posts will mean financial liability and such liability is to be discharged by the State Government. It was, therefore, thought by the legislature that the State Government, should have control over the expenditure in various Universities and colleges and with that end in view the legislature passed the Control of Expenditure Act, 1976. It was for the first time provided that no University shall create any teaching or non-teaching post involving financial liability without the prior sanction of the State Government. Further, by section 6 provisions have been made for the submission of Budget by the University. Although the Control of Expenditure Act is a distinct and separate legislation, yet for all practical purposes it is in the nature of an amending Act of the various Statutes constituting the Universities in West Bengal. It seems that without passing different amending Acts, the legislature thought fit to pass a separate Act that is, the Control of Expenditure Act, 1976 conferring upon the State Government control over the expenditure that may be made by the different Universities including the Calcutta university inter alia by providing in section 3(1) (i) that no University shall create any teaching or non-teaching posts involving any financial liability without the prior sanction of the State Government. Therefore, as stated above, the Control of Expenditure Act, 1970 is for all practical purposes an amending Act of the different Acts constituting the Universities in West Bengal including the Calcutta University Act, 1966.

19. It is common knowledge that whenever the legislature repeals and re-enacts a former Act it does so with modification of some of the provisions of the former Act. If there be no necessity for modification. of any of the provisions of the former Act. there will obviously be no necessity for re-enactment of the former Act. Further, whenever the legislature proceeds to re-enact the former statute, it takes into consideration various facts including the amendments which had to be made to the former Act and the judicial decisions either upholding any of the provisions of the former Act or declaring such provision as ultra-vires. It is a well established principle of law that if in re-enacting the former Act. the legislature omits any amendment that was made in the former Act, then it must be held that the intention of the legislature is that the amendment should not be given effect to. In the instant case the legislature intended to confer some control over the financial matter by the State Government by requiring the Universities to have the prior sanction of the State Government for the creation of posts of teachers, employees etc. by providing in that regard in the Central of Expenditure Act, 1976 which in our opinion, is in the nature of an amending Act. In the 1979 Act. the legislature has not made any provision requiring the prior sanction of the State Governments for the creation of posts of teachers, employees etc. as provided in section 3(1) (i) of the Control of Expenditure Act, 1976. It has been already noticed that by sections 4(13) and 22(viii) powers

have been conferred on the University and the Syndicate respectively for the creation of posts. But no prior sanction of the State Government is required to be obtained for such creation of posts. By an amendment Act of 1980, section 22(viii) has been amended by the incorporation of the words "with the approval of the State Government". Therefore, after the amendment of section 22(viii), the creation of posts of officers, teachers and employees of the Calcutta University can be made by the Syndicate with the approval of the State Government. But section 4(13) of the Act which confers power on the University to create posts, as and when required, of officers and employees of the University besides those provided for in the 1979 Act remains unamended. The implication of sections 4(13) and 22(viii) will be considered later. But at this stage, the question that arises for our consideration is whether on the date the legislature passed the 1979 Act, it had intended that the State Government should have some control over the Calcutta University regarding the creation of posts of officers, teachers, employees by the Syndicate. In our opinion, if the legislature had so intended, in that case, the legislature could have incorporated the provision of section 3(1) (i) of the Control of Expenditure Act, 1976 in the 1979 Act. The legislature, however, did not do that when it repealed and re-enacted the 1966 Act as 1979 Act. It is true that subsequently by an amendment in 1980, section 22 (viii) was amended in the manner stated above. But in order to apply the provision of section 10 of the Bengal General Clauses Act the date of the repeal and re-enactment of the former Act will be relevant and not the date when the new Act is amended, and that is apparent on the face of section 10 of the Bengal General Clauses Act.

20. In this connection, we may refer to a significant fact. In 1980, clause (viii) of section 22 of the 1979 Act was amended and the words "with the approval of the State Government" were incorporated therein. If, by virtue of section 10 of the Bengal General Clauses Act, the reference to the Calcutta University Act, 1966 in section 2(c) (i) of the Control of Expenditure Act, 1976 has to be construed as reference to the 1979 Act, or in other words, if the provision of section 3(1) (i) of the Control of Expenditure Act, 1976 applies to the 1979 Act, it is not understandable why the legislature would unnecessarily amend clause (viii) of section 22 of the 1979 Act by incorporating the said words. The only reason for such amendment seems to be that the legislator was also of the view that though the 1966 Act was repealed and re-enacted with modifications, yet section 10 would not apply as a different intention appears in the 1979 Act to the applicability of section 10. Therefore, in our opinion, in repealing and re-enacting the 1966 Act by the 1979 Act. the legislator not having incorporated the provision of section 3(1) (i) of the Control of Expenditure Act, a different intention appears within the meaning of section 10 of the Bengal General Clauses Act and, as such, reference to the Calcutta University Act, 1966 in section 2(e) (i) of the Control of Expenditure Act, 1976 cannot be construed as reference to the 1979 Act by virtue of section 10 of the Bengal General Clauses Act.

21. We may consider the question from another point of view. We have not

accepted the contention made on behalf of the Vice-Chancellor that the 1979 Act is not a re-enacting Act in view of the fact that in sections 54 to 59, the University as constituted under the 1966 Act has been referred to as the "former University". But that fact may be relevant to the question as to whether a "different intention appears" within the meaning of section 10 of the Bengal General Clauses Act. As the University constituted under the 1966 Act is referred to in sections 54 to the "former University", it is very difficult to construe the reference to the 1966 Act in section 2(e) (i) of the Control of Expenditure Act, 1976 as reference to the 1979 Act, for a different intention appears. When the legislature refers to the Calcutta University constituted under the 1966 Act as the "former University" in the different provisions of the 1979 Act, it can hardly be said that no different intention appears. In our opinion, to construe the reference to the 1966 Act in section 2(e) (i) of the Control of Expenditure Act, 1976 as reference to the 1979 Act, will be definitely against the intention of the legislature apparent from the provisions of sections 54 to 59 of the 1979 Act. We are therefore, of the view that section 10 of the Bengal General Clauses Act will not apply to the instant case as a different intention appears.

22. It is next contended by Mr. Ghosh that, in any event the Control of Expenditure Act, 1976 stands rented by implication by reason of the subsequent statute, that is. the 1979 Act and, therefore, notwithstanding that there is no declaration u/s 1(3) of the Cessation Act. the Control of Expenditure Act has ceased to operate. It is submitted that the test of implied repeal is not that there must be an express repugnancy between the provisions of the two Act; it is sufficient if it can be shown that the later Act covers or occupies the same held as the earlier one, and that the provisions of the later Act are different and/or inconsistent with those in the earlier Act. In such a case, the earlier Act will be deemed to have been impliedly repealed. The learned Counsel has placed reliance upon Article 137 of Crawford on Construction of Statutes, 1940 Edition, Page 196. The relevant portion of Article 137 is set out below :

Repeals of this type are those which take place when a subsequently enacted law contains provisions contrary to those of an existing law but no provisions expressly repealing them. Such repeals have been divided into two general classes; those which occur where an act is so inconsistent or irreconcilable with an existing prior act that only one of the two can remain enforce, and those which occur when an act covers the whole subject of an earlier act and is intended to be substituted therefore.....

23. On the other hand, it is submitted by Mr. Chatterjee for the appellants that the theory of implied repeal has no manner of application in the present case. The learned Counsel has also placed reliance on Article 310 of Crawford on the Construction of Statutes, 1940 Edition. Page 630. Article 310 is set out below :

..... the courts do not look with favour upon implied repeals, and the presumption is always against the intention of the legislature to repeal legislation by implication..... the intent to repeal must clearly appear.....

This presumption against the intent to repeal by implication rests upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject, so that the failure to add a repealing clause indicates that the intent was not to repeal any existing legislation. This presumption, however, is overthrown if the new law is inconsistent with or repugnant to the old law, for the inconsistency or repugnancy reveals an intent to repeal the existing law. Similarly, when a statute specifically repeals certain acts or parts of an act, it will not be presumed that the legislature intended to repeal any act or any part of an act not mentioned.

24. The law as to implied repeal has been clearly stated in the above two Articles, namely, Articles 137 and 310. The 1979 Act has not expressly repealed the Control of Expenditure Act, 1976. So there is a presumption against the intent to repeal by implication. The question, however, is whether this presumption is overthrown by any provision of the 1979 Act which is inconsistent with or repugnant to the provisions of section 3(1) (i) and section 6 of the Control of Expenditure Act. or whether there are provisions in the 1979 Act which can be said to be the substitutes for the provisions of section 3(1) (i) and section 6. In either case the presumption will be overthrown and the theory of implied repeal will apply.

25. So far as section 3(1) (i) is concerned, it has been already noticed that the 1979 Act contains provisions for the creation of posts. Further, it has also been noticed that on the date the 1979 Act was passed and before it was amended in 1980, no approval of the State Government was necessary for the creation of any post. Thus the provisions of section 4(13) and section 22(viii) of the 1979 Act before it was amended, are inconsistent with the provision of section 3(1) (i) of the Control of Expenditure Act, 1976. Further, section 46 of the 1979 Act provides for the general limitations of financial powers of the University. Sub-section (4) of section 46 provides for the budget which is, to some extent, different from section 6 of the Control of Expenditure Act, 1976. We have already noted the contention made on behalf of the Vice-Chancellor that the theory of implied repeal does not require that there must be an express repugnancy between the provisions of the two Acts. Indeed, this contention finds support from the statement of law in Article 137 in Crawford on the Construction of Statutes set out above. In our opinion, therefore, the 1979 Act impliedly repeals the provisions of section 3(1) (i) in so far as it is meant to apply, if at all, to the Calcutta University as constituted under the 1979 Act, and the provision of section 6 of the Control of Expenditure Act, 1976. In this connection, it may be recalled that it is our considered opinion that the Control of Expenditure Act containing only a few sections has been in the nature of an amending Act and after the enactment of the 1979 Act repealing the 1966 Act, it is very difficult to accept the contention of the writ petitioners that the relevant provisions of the Control of Expenditure Act, 1976 still apply to the Calcutta University. Accordingly, we hold that the Control of Expenditure Act does not apply to the Calcutta University after the enactment of 1979 Act.

26. The most important question is whether the Vice-Chancellor can in exercise of his power u/s 9(6) of the 1979 Act, create posts. It is not disputed that previously there was no such posts as "Officer on Special Duty or as "Special Officer". It has been stated already that Mr. N. Bose has been appointed by the Vice-Chancellor the Officer on Special Duty and Mi. Bhola Nath Raychaudhury, the Special Officer by the impugned order no. 88 dated February 2, 1984. Section 9(6) of the 1979 Act confers power on the Vice-Chancellor to take action on behalf of the University in any matter which is either urgent or of an emergent nature. Further, u/s 9(6) the Vice-Chancellor, if he takes any such action shall report the same for confirmation at the next meeting of the authority or body which, in the ordinary course, would have dealt with the matter. If such authority or body does not approve of the action of the Vice-Chancellor, the matter shall be referred to the Chancellor whose decision shall be final. In the ordinary course, the authority which is empowered to create posts is the syndicate. It has been already noticed that u/s 22 (viii) one of the powers of the Syndicate is to create posts of officers, teachers and employees of the University with the approval of the State Government. While u/s 22 (viii) approval of the State Government is required for the creation of posts, u/s 4(13) which contains one of the powers of the University to create posts of officers and employees of the University besides those provided for in the 1979 Act, no approval of the State Government is required for such creation of posts. Of course, u/s 4(13), the University can create posts of officers and employees of the University besides those provided for in the 1979 Act, but u/s 22(viii), the syndicate can create any post with the approval of the State Government. The posts which have been provided for in the Act of 1979 is contained in section 6 read with paragraph 3 of the Calcutta University First Statutes, the two posts or Special officer which appointments have been made by the vice-chancellor by the impugned orders in exercise of the power u/s 9(3) are. admittedly, not posts provided for in the 1979 Act.

27. It is contended by Mr. Chatterjee that it is implied that the Syndicate exercise are powers and performs the duties as mentioned in Section 22 including clauses (viii) and (ix) thereof on behalf of the University and, as such, the taking, or any action by the Vice-Chancellor u/s 9(6) in the matter of creation of posts will be on behalf of the Syndicate. In other words, it is submitted, the taking of action by the Vice-Chancellor u/s 9(6) in respect of matter which is dealt with in the ordinary course by the authority or body will be on behalf of such authority or body it is submitted that unless that is so section 9(6) would not have provided for the submission of a report by the Vice-Chancellor to such authority or body for conformation of the action taken by the Vice-Chancellor. It is contended that u/s 9(6), the Vice-Chancellor can take action on behalf of an authority or body, out if that authority cannot itself take such action, the Vice-Chancellor also will have no to take such action. So it is submitted that as u/s 22(viii) the Syndicate cannot create posts without the approval of the State Government the Vice-Chancellor also has no authority to create posts without the approval of the State

Government with regard to section 4(13) of the 1979 Act which confers on the University the power to create posts of officers and employees of the University besides those provided, for in the 1979 Act, without requiring the approval of the State Government for such creation of posts, it is submitted on behalf of the appellant that as the 1979 Act does not contain a provision regarding the manner and mode of exercise of powers of the University as embodied in section 4 including clause (13) thereof, such powers can only be exercised by the authorities of the University as specified in section 17 of the 1979 Act. It is contended that the powers of the University cannot be exercised by the University as a body corporate and the 1979 Act does not even contemplate the same. So it is submitted that the power of the University u/s 4(13) can be exercised by the Syndicate u/s 22(viii) with the approval of the State Government. It is submitted on behalf of the appellants that the Vice-Chancellor has no authority to create posts of officers of the University without the approval of the State Government.

28. Section 9(6) authorises the Vice-Chancellor to take such actions as he may deem fit and proper to take on behalf of the University. The language of Section 9(6) is quite plain and simple. It is true that the Vice-Chancellor has to submit a report to the authority or body which, in the ordinary course, would have dealt with the matter in respect of which the Vice-Chancellor has taken action, but that does not mean that the Vice-Chancellor takes an action u/s 9(6) on behalf of any such authority or body. An action can be taken by the Vice-Chancellor u/s 9(6) in any matter which is urgent or of an emergent nature. This power of the Vice-Chancellor is an independent power. The authority or body to which the Vice-Chancellor submits his report for confirmation may not confirm his action. The legislature in its wisdom has not made the action that may be, taken by the Vice-Chancellor u/s 9(6) as final and conclusive, but such action will be subject of the confirmation by the body or authority which in the ordinary course, would have dealt with the matter and, in case, the body or authority does not approve of the action of the Vice-Chancellor, the matter will be referred to the Chancellor whose decision will be final. It is, therefore, quite apparent that the Vice-Chancellor does not exercise any power u/s 9(6) on behalf of any authority or body or on behalf of the Chancellor of the University, but he exercises the power on behalf of the University.

29. We are unable to accept the contention made on behalf of the appellants that if the body or authority cannot itself take a particular action, the Vice-Chancellor will have also no authority to take such action. This contention is based on the assumption that the Vice-Chancellor exercises his power u/s 9(6) on behalf of the body or authority which usually deals with the matter in respect of which the Vice-Chancellor may take action. The limitation that has been put on the exercise by the Syndicate of the power u/s 22(viii) will, under no circumstance, apply to the action that may be taken by the Vice-Chancellor u/s 9(6) in an emergency. The reason for the same is quite apparent and simple. If the Vice-Chancellor had been required to go through the formality of taking the approval of the State

Government for creation of posts, the very object of section 9(6). which is a provision for dealing with an emergent situation, will be frustrated. Suppose the Vice-Chancellor is of the opinion that immediately a post is to be created and appointment to be made to that post to cope with some urgent matters, no will not be able to do so if he has to take the approval of the State Government for the creation of the post, which will mean delay. Various emergent situations may arise when the Vice-Chancellor has to take actions u/s 9(6), otherwise the interest of the University might be seriously impaired, So the legislature has not put any impediment in the way of the Vice-Chancellor taking action in respect of an urgent matter. In our opinion, therefore in creating posts and making appointments to the same, the Vice-Chancellor is not required to take the approval of the State Government.

30. Moreover, section 4(13) does not require the approval of the State Government for the creation of posts. It may be that the Syndicate cannot, in usual circumstances, create posts without the approval of the State Government, but the Vice-Chancellor in taking actions on behalf of the University u/s 9(6), can create posts without the approval of the State Government. The power of the University u/s 4(13) can only be exercised by the Vice-Chancellor u/s 9(6) and not by the Syndicate, for u/s 22(viii) a restriction has been put on the power of the Syndicate by providing for the approval of the State Government for such creation of posts. It may be that the powers of the University as specified u/s 4 of the 1979 Act are exercised by the different authorities of the University including the Senate and the Syndicate. But so far as the power of the creation of posts u/s 4(13) is concerned, the Syndicate cannot exercise that power except without taking the approval of the State Government as provided in section 22(viii). When the Vice-Chancellor takes action u/s 9(i) such action is taken not on behalf of the Syndicate but on behalf of the University, and so the Vice-Chancellor is alone competent to exercise the power of the University u/s 4(13) by creating posts without the approval of the State Government, subject to the approval of the Syndicate and, falling which, by the Chancellor.

31. We may refer to the decisions on which reliance has been placed by the learned Counsel of the Vice-Chancellor. In *Indra Dev Vs. Meerut University, Meerut*, , section 10(5) of the Kanpur and Meerut Universities Act, 1965 is somewhat similar to section 9(6) of the 1979 Act with which we are concerned. Section 33 of the Kanpur and Meerut Universities Act lays down the procedure for framing an Ordinance. The question that came up for consideration before the Allahabad High Court was whether the Vice-Chancellor could in an emergent situation frame an Ordinance without complying with the procedure laid down in section 33. It has been held that the power u/s 10(5) is exercisable when the matter is of an urgent nature. As the two authorities, namely, the Executive Council and the Vice-Chancellor function in different situations and circumstances, there will be no conflict if the Vice-Chancellor, in exercise; of his powers u/s 10(5) frames an Ordinance, provided, of course, the condition precedent for the exercise of that power is present. Further, it has been held that

the procedure u/s 10(5) may be different from the one u/s 33, but difference in procedure cannot be suggestive of the nature of the power vested in the authority. The condition precedent referred to in the above observation of the Allahabad High Court is the existence of an emergency. In *R. Bhadada vs. University of Jodhpur*, 1977 Lab. I.C. 509, it has been held by the Rajasthan High Court that the Vice-Chancellor in exercising his emergency power u/s 12(5) of the Jodhpur University Act, 1962 does so in his own right and not as a delegate of the Syndicate of the University. It may be stated here that section 12(5) is also more or less similar to section 9(6) of the 1979 Act. The decision of the Supreme Court in *The Vice-chancellor, Jammu University and Another Vs. Dushiant Kumar Rampal*, , relates the interpretation of section 13(4) of the Kashmir and Jammu Universities Act, 1969 which inter alia provides that the Vice-Chancellor shall be entitled to take such action as he deems necessary in any emergency which in his opinion falls for immediate action. It has been held by the Supreme Court that the language of section 13(4) is sufficiently wide and comprehensive to take within its scope and ambit every kind of action which may be considered necessary by the Vice-Chancellor in an emergency.

32. The above decisions support the view we have taken. Mr. Chatterjee has drawn our attention to Chapter III of the Calcutta University First Ordinances, 1979 which inter alia lays down the procedure for the appointment to the posts of teachers, officers and other employees of the University. Ordinance 9(1) provides for the appointment of officers mentioned in clause (5) of section 6 of 1979 Act by the Syndicate on the recommendation of a Standing Committee. The proviso to Ordinance 9(1) lays down that in the case of temporary appointments for any period not exceeding six months, appointments to the posts of such officers may be made by the Vice-Chancellor in his discretion without any recommendation referred to above. The expression "such officers" in the proviso to Ordinance 9(1), in our opinion, relates to the officers as mentioned in section 6(5) of the 1979 Act. The Calcutta University First Ordinances, 1979 does not lay down any procedure for the appointment of officers as mentioned in section 4(13), but it relates only to the posts of officers as mentioned in section 6(5) of the 1979 Act. Therefore, the question of complying by the Vice-Chancellor acting u/s 9(6) with the procedure for appointment to the posts of officers as mentioned in section 4(13) of the 1979 Act does not arise as contended on behalf of the appellants. It has been already held by us that the restrictions which have been put on the authorities of the University will not apply to the Vice-Chancellor acting u/s 9(6) of the 1979 Act in an emergency. For the same reasons, we hold that in matters of appointment of officers, the Vice-Chancellor acting u/s 9(6) in an emergency is not required to go through the lengthy procedure to be followed under normal circumstances by the body or authority concerned. In *Ramesh Prasad Singh Vs. State of Bihar and Others*, . it has been observed by the Supreme Court that exigencies of administration at times require immediate creation, of service or posts and any procrastination in that behalf cannot but prove detrimental to the proper and efficient functioning of

public departments. This observation equally applies to the appointment of officers by the Vice-Chancellor u/s 9(6) of the 1979 Act without going through the lengthy procedure if there be any when circumstances require that immediate appointments should be made. We are, therefore, unable to accept the contention made on behalf of the appellants that as the Vice-Chancellor had not complied with the procedure for appointments, the appointments made by him stand vitiated and should be forthwith terminated. There is also no substance in the contention of the appellants that the appointments which have been made by the Vice-Chancellor u/s 9(6) are contrary to the provisions of the 1979 Act and the Calcutta University First Ordinances. Further, in our opinion, no illegality has been committed by the Vice-Chancellor in laying down the terms and conditions of service of the Special officers appointed by him. It is true that Mr. N. Bose is a retired officer of the University, but we do not think there is any bar to the appointment of a retired officer to a purely temporary post only for a period of six months. The contention of the appellants contrary to the above is rejected. In the facts and circumstances of the case and the provisions of law, particularly the provision of section 9(6) of the 1979 Act, the decision of the Supreme Court in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, which has been relied upon by the appellants does not appear to have any manner of application to the instant case.

33. Before we pass on to the next point, we may deal with the contentions of Mr. Arun Prokash Chatterjee learned Senior Standing Counsel appearing on behalf of the Registrar of the Calcutta University. It is urged by the learned Senior Standing Counsel that u/s 9(6), the Vice-Chancellor can take administrative action on behalf of one authority and not on behalf of more than one authority. This contention presupposes that the Vice-Chancellor acting u/s 9(6) does so as a delegate or an agent of the body or authority that usually deals with the matter in respect of which the Vice-Chancellor may take action u/s 9(6). It is submitted by the learned Senior Standing Counsel that the creation of posts can be made by the Syndicate with the approval of the State Government under normal circumstances and, as such, the Vice-Chancellor cannot take such action u/s 9(6) on behalf of two authorities namely, the Syndicate and the State Government. We have already dealt with and rejected the contention of Mr. Somnath Chatterjee, learned Counsel for the appellants that the Vice-Chancellor gets on behalf of the Syndicate in the matter of creation of posts. For some reasons, we are unable to accept the contention made by the learned Senior Standing Counsel. The contention is accordingly, overruled. Further, it is contended by the learned Senior Standing Counsel that the Vice-Chancellor can only take administrative action u/s 9(6) and cannot create posts such action being a quasi legislative function. Section 9(6) has conferred on the Vice-Chancellor a very wide power in respect of any matter which in his opinion is urgent or of an emergent nature. Even assuming that the creation of posts is a quasi legislative function the Vice-Chancellor, in our opinion, can in an emergency create posts on behalf of the University. In other words what is permissible for the University

permissible for the Vice-chancellor in an emergency u/s 9(6) of the Act. This contention of the learned Standing Counsel is also permitted.

34. It is submitted by Mr. Somnath Chatterjee that the construction put forward on behalf of the Vice-Chancellor on the provision of section 9(6) of the 1979 Act if accepted, will make him the sole authority to take action in any and every matter. Counsel submits that if such powers are conceded, the Vice-Chancellor can create any number of posts for any duration with any terms and conditions without the approval, prior or subsequent, of the Government, and the same will be nothing but an anarchy. Further, it is submitted that the Vice-Chancellor has not been given any dictatorial powers under the 1979 Act. The interpretation sought to be put on behalf of the Vice-Chancellor on the provision of section 9(6), if accepted, will create a situation which will be most undesirable and should be avoided. The contention, in our opinion, is unsound and without any substance whatsoever. The Vice-Chancellor who is the chief executive of the University is ordinarily a highly educated and a respectable person in the sphere of education. The legislature has reposed much confidence in the Vice-Chancellor which would be the appellant from the provision of section 9 of the 1979 Act. Under sub-section (4) of section 9, the Vice-Chancellor shall have the power to exercise general control and supervision over all other officers of the University and over all Teachers and employees of the University and generally over all the affairs of the University and shall decide and dispose of all appeals in disciplinary matters not provided for in section 36. If the legislature has conferred wide powers on the Vice-Chancellor, nobody can complain about the same. Moreover, it has been already noticed that under the proviso to Ordinance 9(1) the Vice-Chancellor has been authorised to make temporary appointments for any period not exceeding six months. In view of the high and respectable Position of the Vice-Chancellor it is not expected that he will act in such a manner in the exercise of his powers u/s 9(6) as would be considered nothing but anarchy. Accordingly, we reject the said contention of the appellants.

35. It is not disputed that the Vice-Chancellor cannot take any action in any matter u/s 9(6) unless, in his opinion, the matter is either urgent or of an emergent nature. In view of our finding that in creating posts u/s 9(6) of the 1979 Act, the Vice-Chancellor is not under any limitation as the Syndicate is u/s 22(viii), namely, that it has to take the approval of the State Government for creating posts, it is not necessary for us to decide whether the approval referred to in section 22 (viii) is the prior approval or the subsequent approval of the State Government. All that we can say on this question is that it is clear from section 22(viii), that the Syndicate cannot create posts without the approval of the State Government. In other words, creation of posts will not take effect unless the State Government has approved of such creation of posts. It is the contention of both Mr. Somnath Chatterjee and of the learned Senior Standing Counsel that the existence of emergency is a sine qua non to the exercise of power by the Vice-Chancellor u/s 9(6). It is pointed out by both the learned Counsel that the Vice-Chancellor has not referred to any emergency in the

impugned orders. It is urged that factually there was no emergency for the creation of two posts and for appointments thereto. It is urged by Mr. Somnath Chatterjee that the Vice-Chancellor could call an emergent meeting of the Syndicate within three days and the Syndicate would have created posts if it had thought expedient so to do. The contention of the learned Counsel for the appellants as also of the Registrar is that in purporting to create posts u/s 9(6) and making appointments to such posts by the Vice-Chancellor in a great hurry was motivated, as there was no necessity for the appointments which have been made by the Vice-Chancellor by the impugned orders.

36. In the application for vacating the interim order that was initially passed by the learned Judge, the Vice-Chancellor has referred to certain facts and circumstances in support of his case that there existed an emergency requiring that immediate appointments should be made as had been done by him u/s 9(6) of the 1979 Act. In paragraph 5 of the said application, it has been alleged by the Vice-Chancellor that since his appointment as the Vice-Chancellor of the University on December 31, 1983, the appellants and some of their associates who are members of the Syndicate or the Senate as a matter of policy have been concisely trying to cause obstruction in the due discharge of his duties and functions by resorting to diverse devices one after another for oblique reason presumably on the ground that his appointment as the Vice-Chancellor did not suit their individual group interest. We are, however, not concerned with whether the Vice-Chancellor is being harassed in the way as alleged or not.

37. It has been alleged by the Vice-Chancellor in the said application that on assumption of office of Vice-Chancellor, he received complaints from the scholars as well as their teacher-guides and Dean of Faculties of the Arts, Science & Technology, Commerce, Agriculture etc. (who are also ex-officio members of the Syndicate), orally as well as in writing against the inordinate delay in the processing of the Ph.D, theses and finalisation thereof which involve the lengthy procedure as stated in paragraph 16 of the application. Copies of some of the letters which the Vice-Chancellor has received from the Deans have been annexed to the said application. Further, it has been stated that the Vice-Chancellor ascertained to his surprise on the basis of materials on record that in the cases of 50 scholars unanimous reports have been received from their examiners for awarding Ph. D. degrees. The administration is to further process the said papers and timely action in this regard would make it possible to award Ph. D., D. Sc., D. Lit. etc. to the successful scholars in the next convocation to be held on or about March 28, 1984, otherwise they will have to wait one full year in getting the degrees. It is stated that in the case of approximately another 50 scholars reports have been received, but the same are not unanimous. Expeditious and timely action is also necessary in this regard to avoid frustration and the agony of uncertainty being caused to the respective scholars, There are about 350 cases where examiners have been appointed and theses have been forwarded to the examiners yet, no proper follow-up-action has been taken. With regard to about 150 cases theses have been submitted but the examiners have

not being appointed. There are about 500 cases which are pending for registration under the old or new Regulations but the same has not yet been processed. It is alleged that under the circumstances stated above, the Vice-Chancellor was of the opinion and decided that the matter relating, to Ph.D. theses should be expeditiously dealt with in the interest of the scholars as well as for the goodwill and will and reputation of the premier University in India.

38. It is stated by the Vice-Chancellor that on January 31, 1984, a note was put up to the Registrar for appointment of Mr. N. Bose, who retired very recently as officiating Registrar of the University and was thoroughly conversant with Ph. D. processing work and was in a position to tackle the problems. His appointment was felt all the more urgent or necessary because the present incumbents to the posts of Registrar and Deputy Registrar had very little experience in the Ph. D. processing work as they were practically new in the said department. Accordingly, the Vice-Chancellor passed the impugned order no. 87 dated February 2, 1984 in view of the urgency of the matter appointing Mr. N. Bose, a special officer, and directed the Registrar to issue the appointment letter. It is complained by the Vice-Chancellor that the Registrar by a note in a most discourteous manner refused to comply with the said direction and thereby an administrative deadlock and an emergent situation was created. It appears from the copy of the letter of the Registrar dated February 2, 1984 that he was against making any appointment of Special Officer on the ground that since the posts of D. R. (E & T), D. R. (Admn.) and D. R. (P&D) have now been filled up, the work accumulated was likely to be cleared up soon. It was further stated by him that the "inordinate delay" in processing Ph.D. work as mentioned in the note of the Vice-Chancellor was not any extra-ordinary affair in the running of the University administration. Accordingly, the Registrar requested the Vice-Chancellor to take back the order".

39. As regard the appointment of Mr. Bholanath Raychaudhury it is stated in paragraph 22 of the said application that the results of B. A., B. Sc. and B. Com. examinations were being delayed in the past, In fact, it is pointed out that Part II result of B.A., B.Sc. and B.Com examinations of 1983 had not been published although the same was over due. The tabulating work of the said examinations by the examiners had commenced from January 1984. There was dearth of persons in the office of the Controller of Examinations. Mr. Bholanath Raychaudhury was previously working as an Assistant Controller of Examinations of the University and he has recently retired. The Vice-Chancellor, in the interest of the University passed an order directing the Registrar to appoint the said Mr. Bholanath Raychaudhury, a Special officer after the need for such appointment was made out by the Controller of Examinations and previously recommended by the Pro-Vice Chancellor for Academic Affairs. The Registrar, however, refused to comply with the said order. In the circumstances, the Vice-Chancellor had no other way then to make an order for the appointment of the said Bholanath Raychaudhury as a Special Officer.

40. The facts and circumstances under which the Vice-Chancellor had to make the impugned appointments as stated in the said application, in our opinion, sufficiently prove that there was an emergency justifying the Vice-Chancellor to take action u/s 9(6) of the 1979 Act. Mr. N. Bose was appointed so that he could process the papers expeditiously and that would make it possible to award Ph.D., D.Sc. and D.Lit. degrees to the successful scholars in the next convocation that was held on March 28, 1984. If no such appointment had been made, it was apprehended by the Vice-Chancellor that the successful candidates would have to wait for one full year in getting degrees. Whether such apprehension was right or wrong is not a matter for the decision of this Court, but we are satisfied that the circumstances as stated by the Vice-Chancellor in his application warranted the taking of an immediate action in processing papers relating to Ph.D., D.Sc. and D.Lit degrees of successful candidates so that the degrees could be awarded to them in the ensuing convocation of the University. The Deans of various Faculties have repeatedly requested the Vice-Chancellor to take immediate action for the processing of the papers of the successful candidates. We are, therefore, firmly of the view that the exigencies of circumstances as mentioned in the application of the Vice-Chancellor required the Vice-Chancellor to take immediate steps as the matter was really of an emergent nature.

41. Similarly, the matter regarding the appointment of the said Bholanath Raychaudhury to the post of Special Officer was also of an emergent nature. The Vice-Chancellor did not do anything out of his own. The Controller of Examinations expressed the need for such appointment which was duly recommended by the Pro-Vice Chancellor for Academic Affairs. The appointment was to be made immediately because it involved the publication of the Part II result of B. A., B.Sc. and B.Com. examinations of 1983 which had not then been published, although the same was overdue. In the circumstances, it is difficult to accept the contention made on behalf of the appellants and the Registrar of the University that the matter regarding the appointment of Mr. N. Bose and Mr. Bholanath Raychaudhury was not at all urgent as it could be placed by the Vice-Chancellor before the Syndicate. Assuming that the matter was placed before the Syndicate, the Syndicate could not make any appointment then and there as, in view of the contention of the appellants, the Syndicate had to place the matter before the State Government for its approval, for it involved the creation of posts of Special Officers to which the appointments have been made by the Vice-Chancellor. In that case, the interest of the University would suffer. Accordingly, the Vice-Chancellor, in our opinion, was justified in making the impugned appointments and no exception can be taken to the same. The appointments made by the Vice-Chancellor are, therefore, quite in accordance with the provision of section 9(6) of the Act.

42. By the impugned order no. 88, the Vice-Chancellor has also transferred one Mr. Pratul Chatterjee, Superintendent in the Controller's Office to the Establishment Section of the Registrar's office and one Mr. Prabir Dey, Superintendent in the Registrar's office to the Controller's office with

immediate effect. By the impugned order, the transfer of the said two officers seemed to have been made under the provision of section 9(6). It is not disputed that the Vice-Chancellor has power to transfer officers of the University from one department to another under Ordinance 14 of the Calcutta University First Ordinances, 1979. In view of the said power of transfer, mentioning of section 9(6) in the impugned order no. 88 in so far it relates to the order of transfer was wrong, but it is now well established that wrong mentioning of the provision of law under which an order is passed will not vitiate the order, if the authority passing the order is so empowered under any other provision of law. In the instant case, as the Vice-Chancellor has the power to transfer under Ordinance 14, it should be held that the order of transfer is not vitiated because it is linked up with the order passed u/s 9(6) of the 1979 Act.

43. It is complained on behalf of the Registrar of the University that before the Vice-Chancellor orders for the transfer of an officer from the Registrar's department he should consult the Registrar in the matter. In our opinion, it is not for us to consider whether the Vice-Chancellor should have consulted the Registrar or not, but the Registrar had no authority to refuse to comply with the order of the Vice-Chancellor either regarding the transfer or the appointments to the posts of Special Officers. The Registrar is admittedly an officer subordinate to the Vice-Chancellor and it was highly unjustified for him not to comply with the impugned orders of the Vice-Chancellor. In our opinion, the Registrar has no authority to call in question the legality of the order of the Vice-Chancellor. The Vice-Chancellor has given ample reasons for transferring the said two persons from the Controller's department to the Registrar's department and vice versa. This Court also cannot enquire into the propriety or otherwise of the said order of transfer inasmuch as the Vice-Chancellor has admittedly the authority to transfer under Ordinance 14 of the Calcutta University First Ordinances, 1979. The impugned orders are, therefore, quite legal and valid and the Registrar should have carried out the impugned orders of the Vice-Chancellor.

44. In view of the findings made above, it is not necessary for us to decide the question as for whether a writ of quo-warranto lies against the respondents nos. 6 and 7, namely, the said Bholanath Raychaudhury and Mr. N. Bose who according to Mr. Bhaskar Gupta, learned Counsel appearing for the respondents nos. 6 and 7, do not hold any public office.

45. The appellants are the members of the Syndicate. The impugned orders of the Vice-Chancellor will undoubtedly serve the interest of the University. Mr. N. Bose has been appointed by the Vice-Chancellor for the purpose of processing the papers relating to the Ph.D., D.Sc. D.Lit. degrees so that the successful candidates could be awarded the degrees in the convocation that was fixed to be held on March 28, 1984. The other person, namely, Mr. Bholanath Raychaudhury has been, appointed for the purpose of publication of the results of B.A., B.Sc. and B.Com. examinations which were long overdue. We fail to understand how the appellants feel aggrieved or how they are prejudiced. Being members of the

Syndicate they should, in our opinion, appreciate the action taken by the Vice-Chancellor in the best interest of the University. We do not, therefore, think that the High Court should exercise any discretion in favour of the appellants.

46. Although the instant appeal relates to an interim order, elaborate submissions have been, made on behalf of the parties. Indeed, it has been requested by Mr. Somnath Chatterjee that we should give our reasons for whatever decision which this Court may arrive at. We have considered the points raised by the parties and have given detailed reasons deciding the points. In the circumstances, nothing remains for the decision of the learned Judge in the writ petition. Accordingly, we treat the writ petition as on day's list for the purpose of disposal. Indeed at the very outset it was requested by Mr. Somnath Chatterjee that we should also dispose of the writ petition.

47. For the forgoing reasons, the writ petition and the instant appeal are both dismissed. There will, however, be no order as to costs.

48. Mr. Samir Kumar Ghosh, learned Advocate appearing on behalf of the appellant, prays for a certificate for leave to appeal to the Supreme Court under Article 134A of the Constitution of India, in our opinion, the case does not involve a substantial question of general importance. Accordingly, the prayer for a certificate is disallowed. We also disallow the prayer for stay of operation of this judgment.

Ajit Kumar Sengupta, J.

49. I agree with my lord that the appeal and the writ petition should be dismissed.

50. I would only like to add a few observations on a point which did trouble me during the argument. This is with regard to the role of the Registrar of the University in the present proceeding. The Registrar joined on 10th October, 1983 and the present Vice-Chancellor assumed office on 31st December, 1983.

51. On or about 31st January, 1984 the Vice-Chancellor put up a note to the Registrar for appointment of one Shri N. Bose as Special Officer to tackle the problems connected with the Ph.D. processing work. The Vice-Chancellor also appointed one Shri Bholanath Roychaudhury as Special Officer. The Vice-Chancellor directed the Registrar to issue appointment letters to the said two Special Officers appointed by him. The Registrar did not care to act according to the said direction. The Registrar put up the following note on 2.2.1984 :

Vice-Chancellor :

You may kindly remember that on 31.1.84 in your ante chamber in presence of the Pro-Vice-Chancellor (A) you asked me to go through a typed note (drafted presumably by you) wherein a case for appointing Shri N. Bose as a Special Officer in the Registrar's Office for clearing the backlog of work (including Ph.D. work) in the Registrar's office was made and you wanted me to put my signature

on the note that you prepared for me to sign.

I had pointed out that since the posts of D.R.(E. & T.), Dr. (Admn.), D.R (P & D) have now been filled upon the work accumulated is likely to be cleared up soon. As such, there was no need for appointing a special officer at this stage.

The "inordinate delay" in processing Ph.D. work as mentioned in your note of 2.2.84 is not any extraordinary affair in the running of the University administration and I think that once the working policies are laid down, it will not take a long time to clear up the work to the satisfaction of all concerned. Only a few days" overtime work can solve the problem.

I also like to point out that the Registrar as the Head of the Department concerned could have apprised you of the nature of the pending work which the Deans, I am sorry to say, cannot furnish.

Under the circumstances, I request you to- take back the order.

52. The Vice-Chancellor passed an order of transfer of Shri Pratul Chatterjee, Superintendent of Controller's office to the Establishment Section of the Registrar's office and Shri Prabir Dey, Superintendent in the Registrar's office to the Controller's office. The Registrar gave a note on 2.2.1984 on the said transfers made by the Vice-Chancellor as follows :

Vice-Chancellor :

Your note dated 1.2.84 transferring Shri Prabir De, Superintendent Establishment Section to the Controller's Department is quite surprising. Shri De has been working in a Department of which I am the Head and I can very legitimately expect that I ought to have been consulted before the issuance of the order.

All transfer cases are, no doubt, passed by the Vice-Chancellor but those are done always in consultation with the Departmental Heads -at least the administrative Heads. Your order does not seem to have followed that convention.

I would, therefore, like to know how the interest of the University could be better served by the transfer of Shri De who has been working quite efficiently and satisfactorily in the Estt, Section. This, however, should not be construed as having any reflection on the efficiency of Shri Pratul Chatterjee of Controller's Department.

I request you to kindly take back the order.

53. By the said notes both dated 2.2.84 put up by the Registrar, the Registrar questioned the property of the said orders of the Vice-Chancellor and refused to comply with the direction of the Vice-Chancellor. The Registrar has filed an affidavit on 15th February, 1984 supporting his action and the Senior Standing Counsel has appeared to justify the Act and conduct of the Registrar as well as to assail the authority of the Vice-Chancellor in making the aforesaid appointments and transfers. In the said affidavit affirmed by the Registrar, he has given various

statistics in respect of the matters dealt with by the former Vice-Chancellor and the former Officiating Registrar. But surprisingly enough, he has not cared to say that similar appointments were made by the former Vice-Chancellor without any approval of the Syndicate and such appointments were made in exercise of the powers conferred on the Vice-Chancellor u/s 9(6) of the Calcutta University Act, 1979 (hereinafter referred to as the said Act). Nor did he say that those appointments were "illegal and irregular" as has been said by him in his said affidavit in respect of the appointments impugned in the present proceeding. As a matter of fact, in his said affidavit in paragraph 10 he has said that the appointment of Shri N. Bose as Special Officer on duty is "illegal and irregular". He also said in paragraph 17(d) of the said affidavit that he sent a note stating that the order of transfer was "irregular".

54. Some of the appointments made by the former Vice-Chancellor u/s 9(6) of the said Act have been indicated by the Vice-Chancellor in his petition for vacation of the interim order passed by A. K. Janah J which are reproduced below :

(a) On or about June 20, 1983 the then Vice-Chancellor Shri R. K. Podder appointed Shri Achinta Kumar Chakravorty as Special Officer (University Publication and General Information") for a period of six months with effect from the date said Shri Chakravorty would report for duty on a consolidated salary of Rs. 2,000/- per month. The said post of Special Officer was not one of the posts enumerated in section 6 of the Act read with clause 3 of the Statute nor any such post was created by the Syndicate with the approval of the Senate and the State Government

(b) On or about December 29, 1983 the Registrar of the University as per the order of the then Vice-Chancellor extended the term of Shri Chakravorty's appointment for a further period of six months effective from January 1, 1984 on the same terms and conditions. The said Shri Chakravorty was not even an Officer or an employee of the Calcutta University but a retired reporter of the Statesman. The said matter was later placed before the Syndicate.

(c) Dr. S. P. Sarkar as Secretary, University College of Science and Technology retired sometime in the year 1981. Almost immediately after his retirement, the then Vice-Chancellor said Shri Poddar appointed said Dr. Sarkar as Special Officer who continued as Special officer till about November, 1983.

(d) In or about December 1983 Sarvashree Kaushik Ganguly and Swapan Kumar Kundu, two outsiders were appointed by said Shri Poddar, the then Vice-Chancellor, as Special Assistant and Special Officer respectively although the said posts of Special officer or Special Assistant are not the posts amongst those provided for and/or enumerated in the Act read with the Statute. The said posts were not also created by the Syndicate with the approval of the Senate and the State Government.

(e) Dr. L. K. Mitra after his retirement as Secretary, Under-Graduate Council was

appointed as Special Officer by Shri Poddar, the then Vice-Chancellor.

(f) Shri Gautam Sarkar Roy was also appointed by Shri Poddar, the then Vice-Chancellor as Administrative officer after his retirement as before. There is no post of officer with the nomenclature Administrative Officer under the Act and/or the Statute.

(g) Shri B. Chatterjee was appointed by said Shri Poddar, the then Vice-Chancellor, as Review Coordinator after his retirement as Assistant Controller although no such post appears in the enumerated list under the Act read with the Statute.

(h) Dr. S. Sen. a" retired teacher of Government College was appointed as Review Co-ordinator by the then Vice-Chancellor although there is no such post enumerated in the Act.

55. It appears that all the aforesaid cases of appointment excepting in two cases were placed before and confirmed by the Council/Syndicate and the writ petitioners were also the members of the Syndicate at the material time.

56. Some illustrations out of 150 cases of transferor made by the previous Vice-Chancellor without consulting the Head of the Department or the officers have been Indicated by the Vice-Chancellor in his said application, which are reproduced below :

i) Shri Amalendu Banerjee transferred from Accounts Department to University College of Science & Technology, Rajabazar;

ii) Shri S. Roy transferred from Controller's office to University College of Science and Technology;

iii) Shri Swapan Ghosh transferred from Controller's office to University College of Science and Technology;

iv) Shri Subash S. Biswas transferred from Registrar's office to University College of Science and Technology;

v) Shri Ashok Dutta from Controller's office to Department of Economics;

vi) Shri Sridhar Prosad Sen transferred from Controller's office to Department of Botany;

vii) Shri Manoranjan Saha transferred from Controller's office to the Department of Bio-Chemistry;

viii) Shri Tapas Roy Chowdhury transferred from Controller's office to the Pure Mathematics;

ix) Shri Swapan Bose transferred from Controller's office to University College of Science & Technology;

x) Shri Mrinal Dutta transferred from University College of Arts & Commerce to

University College of Medicine.

57. In paragraph 6 of the said affidavit affirmed by the Registrar, he has said that the allegations made by the Vice-Chancellor, the Principal Executive and Academic Officer of the University, "are neither healthy nor conducive to smooth and efficient administration of the activities of the University, as amongst other such allegations will create an adverse psychological effect among the officers and the employees as well as other concerned including myself, who have always been cooperating with the present Vice-Chancellor in every sphere of activity."

58. The Registrar has not practiced what he has preached. On the contrary, the act and conduct of the Registrar are neither healthy nor conducive to smooth and efficient administration. It is also curious that the Registrar supported the appointments of Special Officers made by the former Vice-Chancellor as enumerated hereinabove on the ground that the said appointments were made "in pursuance of initiation made either by the Registrar or the Departmental Head".

He said further :

..... in no case of any such appointments or any appointment of Special Officer either under the name sake "Special Officer" or under any other namesake the Vice-Chancellor did not sue moto or at his instance or at his initiation gave any such or any other appointment or created any post.

59. The grievance, therefore, of the Registrar is that since the proposals for appointments of Special Officers and transfer of Superintendents were not initiated by the Registrar, the Vice-Chancellor could not act u/s 9(6) of the said Act and/or under the Ordinances. According to him, the said appointments or transfers made by the former Vice-Chancellor were neither illegal nor irregular. But according to him, the appointments of Special Officers and transfers as impugned in this proceeding are illegal and irregular. He has assailed the transfer of Shri Pratul Chatterjee from the office of the Registrar as "irregular" as the alleged Rule and practice have not allegedly been followed in such transfers. As is apparent from the said note, he virtually asked for an explanation from the Vice-Chancellor as to "how the interest of the University could be better served by the transfer of Sri De". The Registrar has supported the writ petition filed by the two members of the Syndicate. He has submitted in paragraph 19 of the said affidavit that the application made by the Vice-Chancellor for variation and/or modification of the ex parte interim order is "not maintainable either in fact or in law". The tone and tenor of the said affidavit have made it crystal-clear that the Registrar was in company with the writ petitioners and colluded with them. It is not known how the writ petitioners could get the copy of the Order Nos. 87 and 88 both dated 2.2.1984 passed by the Vice-Chancellor and impugned in the present proceeding.

60. The language used by the Registrar in the aforesaid notes and in the said affidavit displays a lack of sense of responsibility expected from the Registrar.

After all, the Registrar is an officer subordinate to the Vice-Chancellor. The language used cannot be said to be pertinent or polite, respectful or responsible. The refusal to comply with the said direction of the Vice-Chancellor is intended to impair the authority, position and dignity of the Vice-Chancellor, who is the Principal Executive and Academic Officer of the University. The challenge thrown to the authority of the Vice-Chancellor by the Registrar, in my view, constitutes insubordination. It is not for the Registrar to find fault with the orders of the Vice-Chancellor, nor he is empowered to call in question the orders of the Vice-Chancellor. Whether the order of the Vice-Chancellor is legal or proper was not for the Registrar to decide. When an order is passed by the Vice-Chancellor by making certain appointments or transfers, the Registrar was required to comply with the said orders. The Registrar was fully aware of similar appointments made by the former Vice-Chancellor, which according to him, were not illegal or irregular. As a matter of fact, the appointment of Shri Achinta Kumar Chakraborty as Special Officer, a Retired Reporter of the State-tesman by the then Vice-Chancellor on 20.6.1983 for 6 (six) months was extended by the then Registrar in terms of the order of the former Vice-Chancellor made on 29.12.1983, just two days before the present Vice-Chancellor assumed office. The concept of obedience is implicit in the fact that the officer receiving the order is subordinate to the officer giving the order. The conduct of an officer in refusing to carry out the order of a superior not only results in disobedience but also indiscipline. Disobedience amounts to insubordination. If the subordinate officer (the Registrar in this case) is given the authority to question the legality of any act of the superior officer (the Vice-Chancellor) and as in this case he refuses to comply with the order of the Vice-Chancellor, in that event, there will be endless chaos and utter confusion, disorder and indiscipline in the administration of the University and in the academic atmosphere in the seat of learning. On the facts and circumstances of this case, it must be held that the Registrar had no power, authority, or jurisdiction to disobey the order passed on direction given by the Vice-Chancellor. The academic atmosphere of the University is vitiated. The administration of the University will be in the doldrums if such a state of affairs is allowed to continue where the Registrar can refuse to comply with the order of the Vice-Chancellor with impunity. If a Registrar is allowed to disobey the order or direction -of the Vice-Chancellor, the officers and employees subordinate to the Registrar may also take the same plan in not carrying out the order of the Registrar. That would create complete disorder and disarray in the administration and consequently the entire academic environment of the University will be polluted. A process of erosion of credibility has already set in. If the present trend continues the university education will be deprived of the values that sustain such credibility. If I may add, there is imperative need to preempt further process of disillusionment and to bring back serenity and order lines in this great University with the avowed ideal of advancement of learning.