
(1965) 12 AHC CK 0026

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1501 of 1965

Kashi Nath Misra

APPELLANT

Vs

Chancellor, University of Allahabad and Another

RESPONDENT

Date of Decision : 03-12-1965

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 1, 17, 3, 6
Allahabad University Act, 1921 — Section 11(4), 11(7), 16, 17(4), 20(1)
Allahabad University Regulations — Regulation 4
Constitution of India, 1950 — Article 216, 223

Citation : AIR 1967 All 101

Hon'ble Judges : W. Broome, J; Jagdish Sahai, J

Bench : Division Bench

Advocate : M.A. Ansari and S.S. Bhatnagar, for the Appellant; G.P. Singh, K.L. Misra, Standing Counsel, General and Shanti Bhushun, for the Respondent

Final Decision : Allowed

Judgement

Jagdish Sahai, J.—By means of this writ petition filed by Sri Kashi Nath Misra, M. L. A., the order of the Chancellor, respondent No. 1, dated 26-2-1965, appointing u/s 11(1) of the Allahabad University Act (hereinafter referred to as the Act) the respondent No. 2, Sri R. K. Nehru, as the Vice-Chancellor of the Allahabad University, is challenged. It is not necessary to mention all the facts given in the writ petition and the affidavits filed by the parties because there is practically no dispute over them and the questions raised before us being entirely legal, do not require any consideration of question of fact. We would, therefore, give only such facts as would contribute to a correct decision of the questions of law raised before us. The Vice-Chancellor of the Allahabad University is a whole-time officer. Section 11 of the Act deals with the appointment of the Vice-Chancellor. That provision reads:--

"11(1) The Vice-Chancellor shall be a whole-time officer of the University and shall be appointed by the Chancellor from amongst the persons whose names are submitted to him by the Committee constituted in accordance with the provisions

of Sub-section (4).

(2) The Vice-Chancellor shall, except as otherwise provided, hold office for a period of three years but may relinquish office by resignation in writing addressed to the Chancellor. The resignation shall ordinarily be delivered to the Chancellor sixty days prior to the date on which the Vice-Chancellor wishes to be relieved.

(8) Subject to the provisions of Sub-section (2), the emoluments and other conditions of service of the Vice-Chancellor shall be such as are, or may be, prescribed by Statutes.

(4) (i). The Committee referred to in Sub-section (1) shall consist of three persons, namely-

(a) one person, not being a person who is connected with the University, a College, an Associated College, a Constituent College or a Hostel, to be elected by the Executive Council;

(b) another person, who is or has been a Judge of the High Court of Judicature at Allahabad to be nominated by the Chief Justice of that High Court; and

(c) a third person to be appointed by the Chancellor who shall also be the Convener of the Committee;

(ii) The Committee shall, as far as may be, at least thirty days before the date on which a vacancy in the office of the Vice-Chancellor is due to occur by reason of expiry of term or resignation under Sub-section (2) and also whenever so required by the Chancellor, submit to the Chancellor the names of three persons suitable to hold the office of Vice-Chancellor. The Committee shall, while submitting the names, also forward to the Chancellor a concise statement showing the academic qualifications and other distinctions of each of the said three persons, but shall not indicate any order of preference.

(5) Where a vacancy in the office of Vice-Chancellor occurs or is likely to occur by reason of leave, or any cause, other than resignation or expiry of term, the Registrar shall report the fact forthwith to the Chancellor, who shall-

(i) in case the vacancy is or is likely to last for a period exceeding six months, take steps for the appointment of the Vice-Chancellor in accordance with the provisions of Sub-sections (1) and (4);

(ii) in case the vacancy is for a period of six months or less, appoint any suitable person to the office of Vice-Chancellor.

(6) Notwithstanding anything to the contrary contained in this Section, the Chancellor may, in any case of emergency, of which the Chancellor shall be the sole judge and in any case where the vacancy cannot be conveniently and expeditiously filled in accordance with the provisions of Sub-sections (1) and (4) appoint any suitable person to the office of Vice-Chancellor.

Provided that no appointment under this sub-section shall be made for a period of more than six months.

Provided further that the appointment so made shall determine on appointment of the Vice-Chancellor in accordance with the provisions of Sub-sections (1) and (4). Explanation--A vacancy in the office of Vice-Chancellor caused u/s 8 of the U. P. Universities Act, 1961, shall also be deemed to be an emergency for the purposes of this Section.

(7) Where an appointment is made under Sub-section (6), the Chancellor shall, as soon as may be, take steps for the appointment of a Vice-Chancellor in accordance with the provisions of Sub-sections (1) and (4).

(8) Till such time as an appointment is made by the Chancellor under Sub-section (5) or Sub-section (6), the Registrar shall carry on the current duties of the Vice-Chancellor but he shall not preside at any meeting of the University Authorities."

2. The Executive Council elected Shri Sri Prakash, the Governor appointed Sri C. D. Deshmukh and the Chief Justice. Sri M. C. Desai, nominated himself in the Committee constituted under Sub-section 4 of Section 11 of the Act (hereinafter referred to as the selection committee). The term of the predecessor of Sri R. K. Nehru, Dr. Bal Bhadra Prasad, was to expire on 17-10-1964. The selection committee had already been constituted, but the names had not been submitted, with the result that the Governor appointed Dr. Bal Bhadra Prasad for a period of six months under Sub-section (6) of Section 11 of the Act. Before the Committee could submit names to the Chancellor, its constitution was challenged by means of Writ Petition No. 4586 of 1964: AIR 1968 All 45. That petition came up for hearing before R. S. Pathak, J. He held that the Chief Justice could nominate himself, but the election of Shri Sri Prakash was illegal. He, however, did not issue the writ on the ground that the illegality in the election of Shri Sri Prakash was cured by the provisions of Section 45 of the Act.

3. Shri Sri Prakash has not put in appearance to contest the instant writ petition. It was, however, contested on behalf of other respondents. Sri Shanti Bhushan has appeared on behalf of Sri M. C. Desai, Chief Justice, and Sri K. L. Misra, Advocate General and Treasurer of the Allahabad University, for the remaining respondents except Shri Sri Prakash. Mr. Asif Ansari, who has appeared for the petitioner, has made the following submissions before us:--

1. That the selection committee was not properly constituted because the election of Shri Sri Prakash by the Executive Council was illegal and Sri M. C. Desai the Chief Justice, could not nominate himself.

2. That Sri R. K. Nehru could not be validly appointed Vice-Chancellor because no ordinance as required by Section 32(2)(f) of the Act providing qualifications of a Vice-Chancellor had been framed.

3. That the Chancellor having nominated Dr. Bal Bhadra Prasad for a period of six months under Sub-section (6) of Section 11 of the Act should have asked for a

fresh election Committee being constituted after that period had expired and inasmuch as he did not do so, there was failure to comply with the provisions of Sub-section (7) of Section 11 of the Act.

3(a). We will proceed to deal with the submissions seriatim.

(1) A meeting of the Executive Council was convened for May 9, 1964. A notice for that meeting was issued to the members of the Executive Council on 29-4-1964, but no agenda was circulated along with it. The notice did not also mention that it was being convened to elect a person to serve in the selection committee. However, on May 4, 1964, a long agenda consisting of a large number of items was issued and was received by the members residing at Allahabad on May 5, 1964. One of the items in the agenda was to elect a person to the selection committee. The Executive Council did meet on May 9, 1964, but only 16 out of its 23 members were present in that meeting. The selection committee elected Shri Sri Prakash as already said earlier.

4. It has been contended before us that the election of Shri Sri Prakash is invalid inter alia on the ground that no proper notice was given to the members of the Executive Council for the meeting held on 9th May, 1964. Section 11 does not specifically provide for a notice. There is no other provision also in the Act, the statutes, the ordinances and the regulations specifically dealing with the matter relating to a notice for a meeting of the Executive Council to elect a representative. No doubt, there is a regulation which deals generally with notice for the meeting of the Executive Council, but before we come to that general provision, we would like to consider whether or not the issue of a notice to the members of the Executive Council is implicit in the provisions of Section 11(4)(i) (a) of the Act. That provision clearly speaks of a person being "elected by the Executive Council". It is trite that it would be no election if the date or time of election were not announced sufficiently in advance. When Section 11(4)(i)(a) of the Act speaks of an election, it provides for a real and not a mock election. Besides, in order that there may be an election, there must be an announcement of the date, time and place of election beforehand. In other words an election cannot be held without the time, date and place of the election being first announced well in advance. Consequently it is not only logical to hold, but it is also implicit in the provision itself that every member of the Executive Council must be informed of the date, the time and the place of election fairly well in advance and if that has not been done, there has been no valid election. In Broom's Legal Maxims, 10th Ed. at page 312 it has been stated "it is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command." We find support for our view also from Matajog Dobey Vs. H.C. Bhari, where it was observed as follows-

"Where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions it is reasonable to hold that it carries with it the power of doing all such acts or employing such means

as are reasonably necessary for such execution." Chapter II deals with the Regulations connected with the meeting of the Executive Council. These are general in terms and apply to all meetings. Regulation 4 reads:-

"(4) Not less than seven days" notice of a meeting shall be given by the Registrar:

Provided that when the nature of the business to be brought before the Council in the opinion of the Vice-Chancellor necessitates an immediate meeting shorter notice may be given, "but at such meeting no business that is not of immediate urgency shall be transacted"". (Underlined (here into " ") by us). Neither this provision nor any other specifically requires that the notice should mention the business to be transacted at the proposed meeting or that an agenda should accompany the notice. However this much is clear that Regulation 4 definitely prescribes at least seven days" notice. It is true that in respect of an urgent matter, the period of notice can be reduced, but the Regulation is insistent that at such meeting "no business that is not of immediate urgency shall be transacted." When the law provides for at least seven days notice and restricts the reduction of the number of days only in case of extreme urgency, it is obvious that a notice shorter than seven days is not adequate notice. It is elementary that a meeting would have no meaning without the members first being told for what purpose they are assembling. This is more so if at the meeting special business is to be transacted. Shackleton in his "Law of Practice of Meetings", 4th Edn., at p. 22, states that-

"As to the essentials of a notice, it must state clearly the nature of any special business to be transacted."

It may be that if only ordinary routine business is to be transacted, insistence on the notice providing the purpose of the meeting or an agenda being issued along with the notice may be dispensed with, but it cannot be seriously urged that a meeting of the Executive Council held to elect a representative to the selection committee transacts routine business and not special business. Consequently, considering the statutory provisions and relying upon the well accepted principles relating to convening of meetings, Regulation 4 of the Act must be so read as to require that the seven days" notice provided therein should mention the business for which the meeting is being held, or along with the notice a separate agenda should issue.

5. The learned Advocate-General placed reliance upon the circumstance that twentytwo out of twentythree members of the Executive Council reside at Allahabad and the agenda was served on them on 5th May, 1964. He, therefore, contended that those members knew on 5th May, 1964 that one of the purposes for which the meeting was being convened was to hold the election of the representative of the executive Council to the selection committee. Again, placing reliance upon the circumstance that the agenda of the meeting was despatched by post to the twentythird member, Sri Madan Mohan, at his Meerut

address, the learned Advocate-General asked up to draw the presumption that the agenda must have reached him on the 7th or the latest on the 8th May, 1964. He, therefore, contended that even Sri Madan Mohan must be presumed to have known that the election would be held in the meeting of the 9th of May, 1964. We are unable to agree with the learned Advocate-General that this was sufficient notice of the date of election. We have already held earlier that it is implicit in Section 11 (4)(i)(a) of the Act that the date of the meeting in which the election of the representative of the Executive Council is to be held must be given sufficiently in advance of the date. We have also held that it is equally implicit in Regulation 4 that the seven days" notice required by that provision should mention the business to be transacted at the meeting or should be accompanied by an agenda specifying the business to be transacted in the meeting. We cannot consider that four days" notice in the case of Allahabad members and one or two days" notice in the case of the Meerut member (and that too on the basis of a presumption) was sufficient compliance with either the provisions of Section 11(4) (i)(a) of the Act or Regulation 4. The view that we are taking finds support from a Bench decision of this Court in *Ram Saran Das v. Municipal Board, Bulandshahr*: Writ Petn. No. 384 of 1959, dated 4-2-1960 (All), where this Court observed :--

"This want of circulation of the notice sufficiently before the date of the meeting invalidates the proceedings of that meeting altogether. When the regulation laid down a minimum period which must elapse between the circulation of the notice and the holding of the meeting, it has some purpose and that purpose would be defeated if the requirement is not strictly complied with."

6. The learned Advocate-General submitted that whatever defect there was in the notice the election was validated by the circumstance that in the next meeting of the Executive Council, the minutes of the meeting dated 9th May, 1964 were confirmed. For the reason that the confirmation of the minutes only results in the correctness of the record being certified and not in validating the business transacted at the meeting, we find no force in the submission of the learned Advocate-General; See *R. v. Mayor of York* (1853) 1 El & Bl 588 . It was also contended on behalf of the respondents that since no member of the Executive Council has complained about the defect in the notice, the defect has been waived. We are doubtful if in the matter of the election to the selection committee, which is required to submit names for appointment to the high public office of the Vice-Chancellor, the Executive Council was competent to waive the illegality in the election. Besides, it is well settled that the principle of waiver can only be invoked when all the members are present in the meeting: *Re, Express Engineering Works* (1920) 1 Ch 466 and *Municipal Board Vs. Sardar Sukha Singh*, .

7. It was also contended that what was conducted at the meeting of the Executive Council was protected from external review on the ground of internal management. It is fully established that the doctrine of internal management

cannot be pressed in aid to protect ultra vires acts.

8. We are also satisfied that the analogy of a meeting of a Board of Directors cannot be extended to a meeting of the Executive Council and the law that the members of the Board of Directors are expected to be present in every meeting cannot be applied to the members of the Executive Council, who are not paid servants of the University. The case of the Directors is different both on the ground of their legal obligations and the nature of their duties. This would appear from *La Compagnie de Mayville v. Whitley* (1896) 1 Ch 788 at p. 797, where it was observed :--

"It is not uncommon for directors conducting a company's business to meet on stated days without any previous notice being given either of the day or of what they are going to do. Being paid for their services as they generally are, and as is the case in this company it is their duty to go when there is any business to be done, and to attend to that business whatever it is; and I cannot now say for the first time that as a matter of law the business conducted at a directors' meeting is invalid if the directors have had no notice of the kind of business which is to come before them. Such a rule would be extremely embarrassing in the transaction of the business of companies."

9. For the reasons mentioned above, we are satisfied that the election of Shri Sri Prakash suffers from the defect that for the meeting of 9th of May, 1964 proper notice had not been given.

10. Another ground on which the election of Shri Sri Prakash is said to be illegal is that it did not take place in the manner provided by law. Section 11 does not prescribe the manner in which the election would be conducted. As the Executive Council is a body which can transact business only at a meeting, it may be conceded that the election must take place in a meeting. In the absence of there being anything in Section 11 of the Act with regard to the manner in which the election would be held, it is necessary to see if there is any other provision which provides the manner in which the election is to be held. Section 28, which was inserted in the Act in 1954 by means of an amendment Act, so far as relevant for our purposes, reads :--

"28(1) Save where expressly provided to the contrary, officers and members of the Authorities of the University shall, as far as may be, be chosen by methods other than election.

(2) Where provision is made in this Act for an election, such election shall be conducted according to the system of proportional representation by means of the single transferable vote, and where such provision is made in a Statute it shall be held in the manner prescribed by the Statutes.

(3)The marginal note to this section reads:

"Manner of appointment of officers and members of Authorities."

Sub-section (2) of Section 28 is very widely worded and deals with any election provided for in the Act. The election by the Executive Council of a representative to the selection committee is provided in the Act (Section 11(4)(i) (a)). Considering its language we do not see any reason why the representative of the Executive Council to the selection committee should not be elected in the manner provided by Sub-section (2) of Section 28 of the Act. It has been contended on the basis of the marginal note that that provision applies only to the appointments of officers and members of Authorities. In the first place a marginal note cannot control the meanings of the enacting clause of a provision : see *Commissioner of Income Tax, Bombay Vs. Ahmedbhai Umarbhai and Co., Bombay*, and *Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others*, . Secondly the marginal note in the present case is not very clear. It is true that Sub-section (1) of Section 28 of the Act deals with the officers and members of Authorities of the University and that the representative of the Executive Council in the selection committee is neither an officer nor a member of an Authority of the University; but in our opinion Sub-section (2) of Section 28 of the Act is a very general provision, which deals with all elections under the Act, and is not confined only to the officers and members of the Authorities of the University. So far as we have been able to see, the Act does not contemplate the election of officers or members of an Authority of the University other than the Vice-Chancellor, the Treasurer, the Court, the Executive Council and the Committee of Reference. Section 17 of the Act deals with the composition of the Court, Section 20 with the Constitution of the Executive Council, Section 23 with the membership of the Committee of Reference and Section 14 with the appointment of the Registrar. All these provisions provide for proportional representation by means of single transferable vote. These provisions were inserted in the Act simultaneously with Section 28 of the Act by means of the amendment Act of 1954. Inasmuch as the system of proportional representation by means of single transferable vote has been provided for in respect of other elections and in view of the circumstance that Section 28(2) is so general as to include the election of the representative of the Executive Council to the selection committee, taken along with the fact that Section 11 of the Act, though it speaks of election, does not provide the manner of the election, we are of the opinion that the provisions of Section 28(2) of the Act clearly apply to the election of the representative of the Executive Council to the selection committee. In fact, whenever an election is contemplated and there is no self-contained provision in respect of that particular election, in our judgment Section 28(2) would apply. That being the position, we are of the opinion that the Executive Council was bound to adopt the procedure contained in Sub-section (2) of Section 28 of the Act for electing their representative.

11. The Governor of U. P. has framed statutes for the University. To the statutes ii appended an appendix. Part II of the appendix deals with elections held at meetings. Paragraph 8 of this part reads :--

"In case of an election conducted at a meeting of a University Authority or body

it shall not be necessary to publish the electoral roll for the purpose of eliciting claims and objection or to invite nominations in advance. The members of the Authority concerned present at the meeting duly convened shall take part in the election. Names may be proposed for election and candidature withdrawn, in advance or at the meeting. The voting paper supplied to voters shall show the names of which notice was received in time for printing and shall contain blank spaces for the addition of names including those proposed at the meeting. A notice of the meeting at which election is to be held, mentioning the time, date and place of such meeting together with the list of members shall be sent by the Registrar to each member. The period of notice shall be fixed by the Vice-Chancellor." That the Executive Council is an Authority of the University is clear from Section 16 of the Act. Consequently paragraph 8 of part II of the appendix will apply to an election conducted at a meeting of the Executive Council.

12. In the present case it is admitted that the Vice-Chancellor did not fix the period of notice and a list of members was not sent along with the notice, nor did the Registrar act as the Returning Officer. No names were proposed for election in advance of the meeting and no voting papers were supplied to the members of Executive Council, nor were any ballot papers printed. The notice that was sent for the meeting did not mention that an election was to be held in that meeting, nor was a list of members sent to the members of the Executive Council. It is admitted that the provisions of Section 28 (2) and the appendix were not followed in this case and all that happened in the meeting of the Executive Council on 9-5-1964 was that the names of some persons were proposed then and there, but later on all names, other than that of Shri Sri Prakash, were withdrawn and he was elected unanimously. It is clear from what we have stated above that the election of Shri Sri Prakash was not held in the manner provided by law. It is well settled that if the law requires an election to be held in a particular manner all other methods are barred: see *Woodward v. Sarsons* (1875) 10 C. P. 733 and *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, . On this ground also it must be held that Shri Sri Prakash was not validly elected and for that reason was not competent to represent the Executive Council in the selection committee.

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

why the Chief Justice has to nominate a sitting or a retired Judge and the Chancellor, who is the Governor, a nominee of his. The election of Shri Sri Prakash cannot, therefore, be assailed on this ground, though on other grounds we have already held it to be invalid.

14. We now proceed to consider the submission whether Shri M. C. Desai, the Chief Justice, could nominate himself. Section 11(4) (1)(b) of the Act provides that another member of the selection committee will be a "person, who is or has been a Judge of the High Court of Judicature at Allahabad to be nominated by the Chief Justice of that High Court." The question that requires consideration is whether the expression "a Judge of the High Court of Judicature at Allahabad" includes the Chief Justice himself.

15. It is true that the Chief Justice has also to perform judicial functions and in that sense he is also a Judge. The question, however, before us is whether he is comprehended in the expression "judge" as used in Clause (b) of Section 11(4) (i) of the Act also. In our judgment he is not. Our reasons are :--

(a) The legislature having used two different expressions, that is, "the Chief justice" and "a Judge" in the same clause, it must be held that it was referring to two different officers and the two expressions are mutually exclusive.

(b) The office of the Chief Justice of the Allahabad High Court is a different office from that of a Judge of the High Court; and except where the context would otherwise require, the "Chief Justice of the Allahabad High Court" cannot and would not normally be described as a "Judge of the Allahabad High Court."

(c) Clause (c) of Section 11(4)(i) of the Act Provides for the appointment of a third person, by the Chancellor, but it is admitted that the Chancellor cannot nominate himself. The expression "person" can include the Chancellor and yet on the basis of the scheme of the provision, it has been admitted that the Chancellor cannot nominate himself. We see no reason why the case of the Chief Justice should be different from that of the Chancellor, the language of Clauses (b) and (c) of Section 11(4)(i) of the Act being similar.

(d) If the idea was to permit the Chief Justice to be a member of the selection committee, Section 11(4)(i)(b) would have been worded like Section 14(1)(iii) of the Act. That provision, so far as relevant for our purposes, reads:--

"14. (1) The Registrar shall be a whole-time officer of the University and shall be appointed by the Executive Council on the recommendation of a selection Committee consisting of the following, namely-

(i) The Vice-Chancellor;

(ii) an educationist nominated by the Chancellor; and

(iii) "the Chairman of the Public Service Commission, Uttar Pradesh, or a member thereof nominated in this behalf by the Chairman."

.....

(Underlined by us (here into " ")). Both the provisions, that is, Sections 11 and 14 fall in the Act. The language of Clause (iii) of Section 14(1) of the Act stands in marked contrast to the language of Section 11(4)(i)(b) of the Act, which was introduced in the Act by the Amendment Act of 1954. The contrast is all the more glaring because at the time of framing of Section 11 of the Act, the legislature had before it Section 14(1)(iii) of the Act. Inasmuch as it did not adopt a phraseology similar to that of Section 14(1)(iii) in Section 11(4)(i)(b) of the Act and deliberately chose a different pattern, it must be held that a different course was intended.

(e) Normally the word "nomination" is used in the sense of not appointing oneself, but of nominating another. We would have to strain the language of Clause (b) of Section 11 (4) (i) of the Act and to travel outside its language in the realm of other provisions in other Acts to give to the expression "a Judge of the High Court" the meaning that it includes "the Chief Justice". The legislature could have very directly provided for the Chief Justice nominating himself as it has done in the case of Chairman, Public Service Commission, in Section 14(1) (iii) of the Act, but since it has not done so and in view of the fact that the normal connotation of the word "nominate" does not extend to appointing oneself, it appears to us on this ground also that in the expression "a Judge of the High Court" the "Chief Justice of the High Court" is not included.

16. We derive some assistance for the view that we are taking from Section 9(4) (i)(o) of the Kanpur and Meerut Universities Act, 1965 (U. P. Act No. XIII of 1965) (hereinafter referred to as Act No. XIII). Section 9 of Act No. XIII consists of eight sub-sections and its language is identical with that of Section 11 of the Act. There are only two changes. The first one is that the proviso to Sub-section (1) of Section 9 of Act No. XIII does not find place in Section 11(1) of the Act and the second one is the use of different language in Clause (b) of Section 9(4) (i) of Act No. XIII. The proviso to Section 9(1) of Act No. XIII reads :--

"Provided that the appointment of the first Vice-Chancellor and the subsequent appointment, if any, as may be required to be made till the Committee has been constituted, may be made by the Chancellor." It is obvious that such an emergency provision has been made because Kanpur and Meerut Universities have not yet started functioning and some one had to be appointed as Vice-Chancellor before an appointment under Sub-section (4) of Section 9 of Act No. XIII could be made. Section 9(4)(i) of Act No. XIII reads :--

"9(4)(i) The Committee referred to in Sub-section (1) shall consist of three persons, namely-

(a) one person, not being a person who is in the service of the University, a constituent college, an affiliated college or a hostel, or is a member of any Authority, Board or body of the University or of the Management of any such College, to be elected by the Executive Council;

(b) one person to be nominated by the Chief Justice of the High Court of Judicature at Allahabad from amongst the other Judges or retired Judges of the said High Court;

(c) a person to be appointed by the Chancellor, who shall also be the convener of the Committee."

(Underlined by us (sic)).

There cannot be any manner of doubt that under Clause (b) of Section 9(4)(i) of Act No. XIII the Chief Justice cannot nominate himself. This is apparent from the words "from amongst the other Judges or retired Judges of the said High Court." This Act was passed in 1965 after the present Chief Justice had nominated himself in the selection committees of the Allahabad University, the Agra University, the Lucknow University and the Gorakhpur University and his act of nominating himself had been challenged. The declaration of the legislature is clear that the Chief Justice cannot nominate himself. The Kanpur and the Meerut Universities are also State Universities and the provisions of Act No. XIII are similar to those of the Act and the Acts relating to the Agra, the Lucknow and the Gorakhpur Universities. The same principles and considerations govern the enactment of all these Acts. The provisions of Section 9(4) of Act No. XIII can, therefore, be looked into as a help to interpret Section 11(4) (i) of the Act: See *Ormond Investment Co. Ltd. v. Betts* 1928 AC 143 at pp. 156 and 164 and *Kirkness v. John Hudson and Co. Ltd.* 1955 AC 696 (710). In Craise "On Statute Law", 1951 Edn., the law on the point has been summarised at page 137 in the following words :--

"Light may also be thrown upon the meaning of an Act by taking into consideration enactments contained in subsequent Acts." Mr. Shanti Bhushan has contended that if the intention of Section 11(4)(i)(b) of the Act was to provide for the same thing as has been provided for by Section 9(4)(i)(b) of Act No. XIII, the former provision would have been amended by the legislature so as to bring it in line with the latter provision. The submission is fallacious and based on the unjustified assumption that Section 11(4)(i)(b) of the Act and Section 9(4) (i)(b) of Act No. XIII provide differently. The question of amendment is premature at this stage. The matter relating to the interpretation of Section 11(4)(i)(b) of the Act is sub judice and if ultimately it is held by the Courts that Section 11(4)(i)(b) of the Act and Section 9(4) (i)(b) of Act No. XIII provide for the same thing, though in different language, an amendment would not be necessary. Secondly, an amendment to an Act can be brought about only by following an elaborate and detailed procedure. Act No. XIII is of the year 1965. The controversy with regard to the interpretation of Section 11(4)(i)(b) of the Act has arisen only in late 1964. Consequently, there is no basis for assuming that an amendment would not be made if a necessity for it arises.

17. Mr. Shanti Bhushan on behalf of the Chief Justice invited our attention to Article 217, which deals with the appointment and conditions of the office of a

Judge of a High Court, Article 219, which deals with oath, Article 220, which imposes restriction on permanent Judges with regard to the right of practice and Article 222, which relates to the power of the President to transfer a Judge from one High Court to another. He strenuously contended that in all these provisions no distinction has been maintained between a Judge and a Chief Justice and a Chief Justice is included in the expression "a Judge". Since the contents of these provisions were to be made applicable to the judges as also to the Chief Justices of the High Courts, on grounds of convenience the two were lumped together in these provisions, but it cannot be said that the Constitution does not visualise a distinction between a Chief Justice and a Judge of a High Court or that it does not treat the two offices as distinct from one another. Article 216 provides that "every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint". Article 223 reads :--

"When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose." Article 221 provides for the salary of the Judges of High Court and the second schedule provides for a sum of Rs. 4,000 being paid to a Chief Justice and a sum of Rs. 3,500 being paid to a Judge of the High Court. These provisions and many others in the Constitution clearly show that the office of the Chief Justice is a distinctly different office from that of a Judge and normally a Chief Justice of a High Court is called Chief Justice of that Court and not a Judge of that Court.

18. Reliance was next placed upon Rules 1, 6 and 17 of Chapter V, Rule 3 of Chapter VIII of the Rules of Court, Clause 14 of the U. P. High Courts (Amalgamation) Order, 1948, and Rule 1, Order XI of the Supreme Court Rules. These provisions are reproduced below :--

Rule 1 Chap. V. "Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions."

Rule 6 Chapter V: "The Chief Justice may constitute a Bench of two or more Judges to decide a case or any question of law formulated by a Bench hearing a case. In the latter event the decision of such Bench on the question so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any, arising therein."

Rule 17 Chapter V: "The Chief Justice shall determine the permanent place of sitting of a judge and may from time to time give directions that a Judge at Allahabad may for such period as he may specify sit at Lucknow and vice versa."

Rule 3 Chapter VIII: "When a case, to which the provisions of the Code of Criminal Procedure do not apply, is heard by a Division Court composed of two or

more Judges and the Judges are divided in opinion as to the decision to be given on any point, such points shall be decided according to the opinion of the majority, if there shall be a majority. Should the Judges be equally divided they may state the point upon which they differ and each Judge shall record his opinion thereon. The case shall then be heard upon that point by one or more of the other Judges as "may be nominated" by the Chief Justice and the point decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it."

Clause 14 of Amalgamation Order: "The new High Court, and the Judges and division courts thereof shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint:

Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice, otherwise directs, such Judges of the new High Court, not less than two in number, as the Chief Justice, may, from time to time "nominate", shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh, as the Chief Justice may direct, the jurisdiction and power for the time being vested in the New High Court:

Rule 1, Order XI of the Supreme Court Rules: "Subject to the other provisions of these Rules, every cause, appeal or matter shall be heard by a Bench consisting of not less than two judges nominated by the Chief Justice."

(Underlined (here into " ") by us).

19. Mr. Shanti Bhushan contends that in some of the provisions extracted above the word "nominate" has been used and in all these provisions the Chief Justice is the nominating authority and yet it cannot be seriously urged that the Chief Justice could not nominate himself. There is no substance in the submission of the learned counsel. It is well settled that a word takes its meaning from the setting or the context in which it is used. All these provisions relate to constitution of Benches and to the exercise of judicial powers. For judicial work the Chief Justice is a Judge of the Court. Consequently, because of the context, he has the power of nominating himself on a Judicial Bench.

20. In the end, Mr. Shanti Bhushan contended that if the legislature could trust the Chief Justice to nominate a Judge to the selection committee, which admittedly he could, it is difficult to see why the legislature precluded him from nominating himself. The answer is very simple. Under the provisions of Section 17(4) of the Act the Chief Justice is an ex-officio member of the Court and it is admitted that under a long standing practice the present Chief Justice like his predecessors has been throughout a member of the Executive Council of the University. Since the policy behind Section 11 of the Act was to have persons on the selection committee who were not in any manner connected with the University or an Associate College or a Constituent College or a Hostel, the Chief Justice was precluded from nominating himself.

21. Mr. Shanti Bhushan also tried to defend the Chief Justice's nomination of himself by contending that even though he might not be eligible for nomination as the Chief Justice he having been a Judge before being appointed as Chief Justice was comprehended in the expression "is or has been a Judge". In our judgment all that that expression means is a sitting or a retired Judge. We, therefore, reject this submission of the learned counsel also.

22. For the reasons mentioned above, we, are satisfied that the Chief Justice could not nominate himself in the selection committee.

23. It was also submitted by Mr. Asif Ansari that the action of the Chief Justice in nominating himself amounts to mala fide exercise of power, having been motivated by the desire to exercise patronage. But beyond pointing out the circumstance that the Chief Justice nominated himself to all the selection committees relating to the various State Universities, nothing else has been brought to our notice on the basis of which Mr. Ansari's submission could be accepted. That being the position, the submission is wholly untenable.

24. In view of our findings that Shri Sri Prakash was not validly elected to the selection committee and the Chief Justice could not nominate himself thereto, we are of the opinion that the recommendation of the selection committee could not be acted upon by the Chancellor and Sri R. K. Nehru, who has been appointed on the basis of the recommendation of the selection committee, was not validly appointed.

25. The learned Advocate General contended that whatever be the invalidity in the election of Shri Sri Prakash and in the Chief Justice nominating himself, the same was cured by the provisions of Section 45 of the Act, which reads:

"No act or proceeding of any authority or other body of the University shall be invalidated merely by reason of the existence of a vacancy or vacancies among its members or by reason of some person having taken part in the proceedings who is subsequently found not to have been entitled to do so."

Before Section 45 can apply, it has got to be considered whether the selection committee is an authority or other body of the University. The authorities of the University are given in Section 16 of the Act which reads:

"The following shall be the authorities of the University:

I. The Court.

II. The Executive Council.

III. The Academic Council.

IV. The Committee of Reference.

V. The Board of Faculties.

VI. Selection Committees for the appointment of teachers, and

VII. Such other authorities as may be declared by the Statutes to be authorities of the University."

The selection committee has not been declared by the Statutes to be an authority of the University. The bodies of the University have not been mentioned, but it appears that the words "Authorities" and "Bodies" are interchangeable. This would appear inter alia from the provisions of Section 20(1) of the Act which reads:

"The Executive Council shall be "the Executive body of the University" and shall consist of a (Underlined (here into " ") by us).

It is thus clear that the selection committee cannot be comprehended in the expression "any authority or other body of the University" occurring in Section 45 of the Act. In our judgment the authorities or the bodies of the University contemplated by that provision are authorities or bodies which are units or limbs of the University and which function normally in connection with the management or the administration of the University. The selection committee is not a limb or a unit of the University. It comes into existence only once in five years and that too for the specific purpose of recommending names to the Chancellor for making appointment to the office of the Vice-Chancellor. We are therefore, of the opinion that Section 45 of the Act cannot cure the illegality in the election of Shri Sri Prakash and in the nomination of the Chief Justice. That being the position, we hold that the Committee was not validly constituted, its recommendations could not be looked into by the Governor and that the appointment of Sri R. K. Nehru is against the provisions of Section 11(1) of the Act.

26. We find no merits in the submission of Mr. Ansari that Sri R. K. Nehru could not be appointed as Vice-Chancellor of the University because no ordinance as required by Section 32(2) (f) of the Act had been framed prescribing the qualifications for the Vice-Chancellor. Section 32(1) and (2)(f) of the Act reads:

"32 (1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for any matter permitted by this Act or the Statutes to be provided for by Ordinances and for any other matter which the Executive Council considers it advisable to provide for by Ordinances.

(2) Without prejudice to the generality of the power conferred by Sub-section (1), the Ordinances shall provide for the following matters, namely-

(f) the number, qualifications, emoluments and other conditions of service (including the age of retirement) of teachers and salaried officers of the University and the preparation and maintenance of a record of their service and activities."

In our judgment this provision does not apply to the Vice-Chancellor; firstly, because Section 11 is a self-contained provision with regard to the appointment of the Vice-Chancellor, and secondly, because he is not comprehended in the

expression "teachers and salaried officers of the University" occurring in Section 32(2)(f) of the Act. We, therefore, overrule this submission of the learned counsel.

27. We find no merits in the submission that inasmuch as the Chancellor had nominated Shri Balbhadra Prasad as the Vice-Chancellor for a period of six months under the provisions of Sub-section (6) of Section 11 of the Act, he should have, after the expiry of six months, asked for a fresh selection committee being appointed. Mr. Ansari placed reliance upon the words "where an appointment is made under Sub-section (6), the Chancellor shall, as soon as may be, take steps for the appointment of a Vice-Chancellor in accordance with the provisions of Sub-sections (1) and (4)", occurring in Sub-section (7) of Section 11. He contends that the step that the Chancellor should have taken was to ask for the appointment of a fresh selection committee. The words "take steps for the appointment of a Vice-Chancellor" are very comprehensive and do not militate against the selection committee already appointed recommending three names to the Chancellor. Recommending of the names would be a step towards the appointment of the Vice-Chancellor. We, therefore, overrule this submission of the learned counsel also.

28. For the reasons mentioned above, we are of the opinion that this writ petition should be allowed. We have given anxious thought to the question whether costs should be awarded in this case. All the respondents, other than Shri Sri Prakash, have hotly contested the writ petition, the hearing of which lasted for several days. In our opinion, therefore, costs of this petition should be paid by the respondents, other than Shri Sri Prakash, to the petitioner.

29. We, therefore, allow the writ petition, issue a writ of quo warranto ousting Sri R. K. Nehru from the office of the Vice-Chancellor and declare that office to be vacant. We also issue a writ of certiorari to quash the order of the Chancellor appointing Sri R. K. Nehru as the Vice-Chancellor and a writ of mandamus directing Sri R. K. Nehru not to function as the Vice-Chancellor of the Allahabad University. We also issue a writ of quo-warranto holding that the Chief Justice Sri M. C. Desai and Shri Sri Prakash have not been able to show that they function in the selection committee under the authority of law and for that reason oust them also from the selection committee. We further issue a writ of mandamus to the Chancellor directing him to fill up the office of the Vice-Chancellor in the manner provided by Section 11 of the Act. In the circumstances of the case, we direct the respondents, other than Shri Sri Prakash, to pay the costs of the petition to the petitioner.