

(1985) 07 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8283 of 1984

M. Kiran Babu

APPELLANT

Vs

Government of Andh. Pra. and another

RESPONDENT

Date of Decision : 12-07-1985

Acts Referred:

Constitution of India, 1950 — Article 133, 134A, 154(1), 163, 163(1)

Citation : AIR 1986 AP 275

Hon'ble Judges : Seetharam Reddy, J;Raghuvir, J;Jeevan Reddy, J

Bench : Full Bench

Advocate : Challa Sitaramayya, for the Appellant; P. Ramachandra Reddy (for Respondent No. 2), for the Respondent

Judgement

Jeevan Reddy, J. (agreeing with Seetharam Reddy, JJ.)

1. This Writ Petition has been posted before me on a difference of opinion arising between two learned members of a Division Bench. The issue upon which the two learned Judges differed is undoubtedly of great significance, besides being a difficult one.

2. (A) The three-year term of Prof. M.V. Rama Sarma, Vice-Chancellor of Sri Venkateswara University, expired on 26-9-1983. A successor had to be found. For that purpose, a Committee consisting of a nominee of the Chancellor, a nominee of the State Government, and a nominee of the Syndicate was constituted, as required by S. 12 of the Sri Venkateswara University Act, 1954. The Syndicate nominated Dr. P. Siva Reddy, while the Government nominated Sri Kasipandyan, I.A.S., Secretary to Government, Panchayati Raj Department. Sri M.V. Rajagopal, I.A.S. (Retd.), a former Vice-Chancellor of Jawaharlal Nehru Technological University and a former Secretary to Government, Education Department, was nominated by the Chancellor. Sri Kasipandyan was made the Convenor of the Committee. The Committee met and, by its proceedings dt 6-12-1983, recommended a panel of three names for consideration and appointment as Vice-Chancellor. The three names recommended were :(1) Sri

I.J. Naidu, I.A.S., (Retd.), former Chief Secretary to the Government of Andhra Pradesh and Advisor to the Governor of Tamil Nadu; (2) Prof. G.N. Reddy, a Member of the Syndicate of Sri Venkateswara University; and (3) Sri Sheik Mowla, I.A.S., (Retd.), Registrar, A.P. Agricultural University, and former Joint Director of Public Instruction.

3. The note-file placed before me shows that, the Government recommended the appointment of Sri I.J. Naidu, but, when the matter came up before the Chancellor (the Governor of Andhra Pradesh) he called for the bio-data of the three individuals, included in the panel, on 6-3-1984, which was accordingly supplied. On 2-5-1984 the Council of Ministers met and considered, among other matters, the one relating to the appointment of Vice-Chancellor of this University, and unanimously resolved to request the Governor/Chancellor to agree to the recommendation already made by the Government. However, on 3-5-1984, the Chancellor passed the following order: --

The Selection Committee had proposed on 6-12-1983 a panel consisting of three names in alphabetical order. The bio-data of the individuals included in the panel, furnished on 20th March, 1984, have been gone through carefully. The proposals have been discussed with the C.M. also.

Prof. G.N. Reddy, Member of the Syndicate of Sri Venkateswar University, has been serving this University as Professor of Telugu since 1965. He has an excellent record of academic eminence, including an impressive list of published books and research papers in Telugu to his credit. Considering the need to give opportunities to the academic community also, I appoint Prof. G.N. Reddy as Vice-Chancellor of Sri Venkateswara University, Tirupathi. Notification be issued accordingly.

Sd/- Ram Lal, Chancellor.....

4. On the same day, the Secretary to the Governor of Andhra Pradesh, Sri M.V. Natarajan, wrote to Sri V.P. Rama Rao, I.A.S., Principal Secretary to Government, Education Department, enclosing the order of appointment and requesting the Principal Secretary to arrange for the publication of the necessary notification in the next issue of the Andhra Pradesh Gazette. To the said letter was enclosed the formal "notification", which reads as follows :

In exercise of the powers conferred on me by Cl. (a) of sub-sec. (1) of S. 12 of Sri Venkateswara University Act, 1954, as subsequently amended, I, Ram Lal Chancellor, Sri Venkateswara University, hereby appoint Prof. G.N. Reddy as the Vice-Chancellor of Sri Venkateswara University for a period of three years with effect from the date of his assuming charge.

Sd/-Ram Lal, Chancellor.....

5. The note-file shows further that, on receipt of the said letter of the Secretary to the Governor along with the notification appointing Prof. G.N. Reddy as the Vice-Chancellor, the Chief Secretary and the Chief Minister were apprised of the

same, and the opinion of the Law Department was obtained on the following questions, viz. :--

(i) Whether a Gazette Notification is necessary before Prof. G.N. Reddy takes charge of the office, on the basis of the appointment made by the Governor Chancellor.

(ii) Whether Prof. G.N. Reddy can assume charge of the office without a direct communication of the appointment to him by the Governor; and

(iii) Whether any formal handing over of the charge by the existing incumbent to the new appointee is necessary?

The Law Department submitted its opinion. At that stage, the Principal Secretary to the Education Department received a communication from Prof. G.N. Reddy intimating that, in pursuance of the orders of the Chancellor, he has assumed the office of the Vice-Chancellor. The note made by the Principal Secretary, Education Department, reads as follows :--

I have just received telephonic intimation (1.00 p.m. today) from Prof. G.N. Reddy that, he had received communication from the Chancellor about his appointment as Vice-Chancellor and that he has assumed charge this forenoon.

Yesterday C.M. was mentioning that we may have to consider the question of re-submitting the file to the Chancellor in view of the opinion expressed in the Legislature etc. C.S. may like to discuss this matter further with CM. The file is submitted to C.S.

Thereafter, the following endorsement of the Chief Secretary is found :--

Discussed with C.M. He does not want the file to be re-circulated to the Governor.

Sd/-Chief Secretary 9/5.....

On 14-5-1984, the Principal Secretary to the Government, Education Department, put up a further note mentioning the fact that the Chief Minister has decided that the file need not be re-circulated to the Governor, and referring to the phone call from the Secretary to the Governor on 11-5-1984 enquiring whether the notification has been issued, and to certain other matters, and finally stating :

Keeping in view all these factors the case may be submitted for orders whether the notification can now be issued. I wanted to informally take C.M.'s orders on the 11th evening itself but as C.M. was not well, I did not want to trouble him on this file on that occasion.

Sd/- V.P. Rama Rao, Principal Secretary, 14-5-84.....

Both the Chief Secretary and the Chief Minister signed below this endorsement and, thereafter, a formal notification in G.O. Ms. No. 311 dt. 2-6-1984, was issued by the Government of Andhra Pradesh, and published in the Gazette. The

notification as follows :--

. . .

Government of Andhra Pradesh Abstract

Universities Sri Venkateswara University?Appointment of a Vice-Chancellor by the Chancellor? Notification Published.

Education (C) Department :

G.O. Ms. No. 311

Dated 2-6-1984 Read:

From the Secretary to Governor, D.O. Letter No. A2/3508/S/83, dated 3-5-1984.

The following notification shall be published in the Andhra Pradesh Gazette:

Notification

In exercise of the powers conferred by Cl. (a) of sub-sec. (1) of S. 12 of Sri Venkateswara University Act, 1954 (Act No. XIV of 1954), I, Ram Lal, Chancellor of Sri Venkateswara University, hereby appoint Prof. G.N. Reddy, Professor of Telugu, Sri Venkateswara University, as Vice-Chancellor of Sri Venkateswara University for a period of three years with effect from the date of assuming charge.

Sd/- Ram Lal, Chancellor

(By Order and In The Name of The Governor of Andhra Pradesh)

V.P. Rama Rao, Principal Secretary to Government.....

6. (B) The present writ petition was filed on 14-5-1984 by a practising advocate of this Court, for the issuance of a writ of Quo Warranto to the 2nd respondent (Prof. G.N. Reddy), requiring him to show cause by what authority he claims to have use, enjoy and perform the rights, duties and privilege of the office of the Vice-Chancellor of Sri Venkateswara University, at Tirupati; and to declare his appointment as illegal and unconstitutional. The petitioner impleaded the Government of Andhra Pradesh, represented by its Chief Secretary, Hyderabad, as 1st respondent, and Prof. G.N. Reddy as the 2nd respondent. The Governor/Chancellor of the University was not impleaded as a party respondent; but, in pursuance of certain observations made by the Division Bench which heard the writ petition, a counter affidavit was filed by Sri M.V. Natarajan, Secretary to the Governor of Andhra Pradesh, under the direction and authority of the Chancellor, explaining the circumstances in which the 2nd respondent was appointed as the Vice-Chancellor, and also defending the same. The State Government (1st respondent) filed a separate counter affidavit, practically supporting the writ petition, while the 2nd respondent (Prof. G.N. Reddy) has filed his own counter-affidavit defending his appointment.

7. The main contention urged by the petitioner before the Division Bench, comprising of A. Raghuvir and A. Seetharam Reddy, JJ., was that the Governor while exercising the powers and discharging the duties of a Chancellor, is bound by the advice tendered to him by the Council of Ministers and that, inasmuch as the 2nd respondent was appointed ignoring such advice, the appointment is illegal. Reliance was mainly placed upon the decision of the Supreme Court in *Samsher Singh Vs. State of Punjab and Another*, . It was urged that the "Chancellor" is but another name for the "Governor" and that, the Governor, whether acting in exercise of his executive power, or under a Statute, is bound by the advice tendered to him by the Council of Ministers. The learned Advocate-General, appearing for the State Government, besides supporting the above contentions, urged that the Universities in this State are run mainly on the funds provided by the State Government and hence, the State Government must have a say in the matter of appointment of Vice-Chancellor.

8. On the other hand, the submission urged on behalf of the 2nd respondent, as well as the Governor of Andhra Pradesh, was that the appointment of Vice-Chancellor was made by the "Chancellor", and not by the "Governor". According to them, both are distinct offices and capacities. Therefore, it was submitted, the advice tendered by the Council of Ministers is not binding upon the Chancellor. Reliance was placed upon a decision of Allahabad High Court and another decision of the Madhya Pradesh High Court, besides the opinion of Sri H.C. Setalvad, the first Attorney-General of India, tendered to the Governor of Andhra in 1954. It was also urged that the Act throughout makes a definite distinction between "Chancellor" and the "State Government" and, therefore, it is not permissible to read the "Chancellor" as "State Government".

9. While the line of reasoning put forward by the petitioner appealed to Raghuvir, J., the contrary view prevailed with Seetharam Reddy, J. The learned Judges have set out their opinions elaborately, which I had the benefit of perusing carefully.

10. The reasoning of Raghuvir, J. in short, is to the following effect: the view expressed by the Allahabad High Court in *Joti Prasad Upadhyaya Vs. Kalka Prasad Bhatnagar and Others*, which undoubtedly supports the contention of the 2nd respondent and the Governor, is no longer good law in view of the subsequent decision of the Supreme Court in *Samsher Singh Vs. State of Punjab and Another*, It is true that, while appointing the Vice-Chancellor, the Chancellor exercises a statutory power; but, in view of the decisions of this Court in *Ghanamani v. Governor of Andhra*, AIR 1954 AP 9 and *Jagga Rao v. State of Andhra Pradesh*, (1957) 2 Andh WR 425, this circumstance is of no consequence, inasmuch as the said decisions as also the decision of the Supreme Court in *Samsher Singh's case* (supra) held that even in such cases, the Governor will have to act on the aid and advice of the Council of Ministers; the decision in *Samsher Singh's case* (supra) is also an authority for the proposition, though the decision directly does not specifically say so, that the distinction between

"Chancellor" and the "Governor" is of little consequence; even while acting as the Chancellor, the Governor must remain "above the combat", which can be ensured only by following the aid and advice of the Council of Ministers in making the appointment. The learned Judge was of the opinion that the writ petition ought to be allowed.

11. On the other hand, the reasoning of A. Seetharam Reddy, J. is to the following effect: the several provisions in the Act make a clear distinction between the Chancellor" and the "State Government", the status constitutes the Governor as a distinct authority; the Chancellor and the Governor are two distinct and independent offices and agencies; while acting as the Chancellor, the aid and advice, if any, tendered by the Council of Ministers is neither relevant nor binding; the Chancellor has to act in his individual discretion; while acting as the Chancellor, the Governor does not act as the head of the executive, nor does he act as the State Government; the decisions of the Allahabad and Madhya Pradesh High Courts in Joti Prasad Upadhyaya Vs. Kalka Prasad Bhatnagar and Others, , and Dr. S.C. Barat and Another Vs. Hari Vinayak Pataskar and Others, as also the opinion of the first Attorney-General of India represent the correct view. The learned Judge was, therefore, inclined to dismiss the writ petition.

12. Having differed in the above manner, the Division Bench framed the following question for the opinion of the third Judge :

Whether the Chancellor of Sri Venkateswara University in making the appointment of Vice-Chancellor under the provisions of Act 14 of 1954 is bound by the advice of Council of Ministers?

Of course, the entire writ petition is now before me.

13. Sri Challa Seetharamayya, the learned counsel for the petitioner, reiterated before me the very same contentions as were urged before the Division Bench. According to him, the power of appointment of Vice-Chancellor had always vested with the executive and that, this should be so in view of the public finances, and the public interest involved in the University education a choice has to be made among the persons recommended by the Committee, and such a choice can appropriately be made by the State Government alone, which is elected by, and responsive to the people and their wishes and needs the State Government alone is expected to know what type of a person the University needs at a given point of time, and it also has the machinery to make the necessary enquiry as to which person among the three recommended is the most suitable person; the Governor who is normally from outside the State, neither has the machinery nor the requisite knowledge of the relevant affairs to make an appropriate choice; the Governor, whether acting as the executive head of the State Government, or under any statute, has to act only on the aid and advice of the Council of Ministers; this is not a matter expressly specified by the Constitution as one within the discretion of the Governor; the alleged distinction between the Chancellor and the State Government under the Act is not really a

distinction; wherever supervision or financial matters are involved, the Act refers to the "State Government", and wherever any powers have to be exercised, it refers to the "Chancellor"; but, both are one and the same.

14. The learned Advocate-General appearing for the State Government, supported the petitioner's contentions he submitted that all functions of the Governor, and all his powers and duties, including those exercised qua Governor, have to be, and can be exercised only on the aid and advice of the Council of Ministers, and in no other manner. Only in cases of discretionary powers specified in the Constitution can he act without such aid and advice.

15. Sri P. Ramachandra Reddy, the learned counsel appearing for the 2nd respondent, as also for the Governor, besides reiterating the contentions urged by him before the Division Bench, submitted that the office of the Chancellor cannot be confused with office of the Governor. He submitted that the affairs of the University are not the same as the affairs of the Government. The appointment of Vice-Chancellor is not made in exercise of the executive power of the Governor; the appointment is not made by the Governor at all, but by the Chancellor, in the light of the provisions of the Act and the scheme, the aid and advice of the State Government is excluded with a view to ensure the autonomy of the University, the Act has pacifically placed the power of appointment of the Vice-Chancellor in the Chancellor as such, and not in the State Government.

16. (D) In view of the contentions urged before me, it would be appropriate to examine, in the first instance, the position of the Governor under our Constitution. Art. 154(1) declares that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Art. 163(1) says :

There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his "discretion."

(Though the Forty-Second amendment to the Constitution amended the corresponding provision in Art. 74(1) relating to the President and made the aid and the advice binding upon him, Art. 163(1) was left unamended). According to Cl. (2) of Art. 163 "if any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion." Cl. (3) says "the question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any Court."

17. A Governor is appointed by the President, unlike the President who is elected. The Governor holds office during the pleasure of the President. The Governor cannot be impeached and removed from his office by the State

Legislature, or even by the Parliament.

18. Inasmuch as a Governor is only a nominee of the President and is not elected either directly or indirectly by the people, he cannot claim a legitimate right to govern the people by himself. The people elect a Legislature and a political party to govern them. The Government so elected is responsible to the people through Legislature. It is only this political executive which can claim and which possesses the legitimate right to govern the people. It is for this reason that Art. 163(1) declares that the Governor shall act on the aid and advice of the Council of Ministers headed by the Chief Minister, except in those matters where the Constitution requires him to discharge his functions in his discretion. What are the matters which lie within his discretion, have been set out, though without trying to be exhaustive, by the Supreme Court in *Samsher Singh Vs. State of Punjab and Another*, : Krishna Iyer, J, declared the law to the following effect :

We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations. Without being dogmatic or exhaustive, these situations relate to (a) the choice of Prime Minister (Chief Minister), restricted though this choice is by the paramount consideration that he should command a majority in the House; (b) the dismissal of a Government which has lost its majority in the House but refuses to quit office; (c) the dissolution of the House where an appeal to the country is necessitous although in this area the Head of State should avoid getting involved in politics and must be advised by his Prime Minister (Chief Minister) who will eventually take the responsibility for the step. We do not examine in detail the constitutional proprieties in these predicaments except to utter the caution that even here the action must be compelled by the peril to democracy and the appeal to the House or to the country must become blatantly obligatory. We have no doubt that de Smith's statement (Constitutional and Administrative Law by, S. A. de Smith-Penguin Books on Foundation of Law) regarding royal assent holds good for the President and Governor in India:

Refusal of the royal assent on the ground that the monarch strongly disapproved of a bill or that it was intensely controversial would nevertheless be unconstitutional. The only circumstances in which the withholding of the royal assent might be justifiable would be if the Government itself were to advise such a course a highly improbable contingency or possibly if it was notorious that a bill had been passed in disregard to mandatory procedural requirements but since the Government in the latter situation would be of the opinion that the deviation would not affect the validity of the measure once it had been assented to, prudence would suggest the giving of assent.

Indeed, this is a reaffirmation of what the Supreme Court said as far back as 1955 in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, It was held in that case that the Indian Constitution has adopted the parliamentary

system of Government wherein the Cabinet, enjoying as it does a majority in the Legislature, concentrates in itself the virtual control of both legislative and executive functions and that, the President of India/Governor has been made a formal or constitutional head of the executive, while the real executive powers are vested in the Council of Ministers, True it is, that this aspect had undergone certain twists and turns in the intervening years, i.e., between 1955 and 1974; but, the position has happily been set at rest by the authoritative decision in *Samshersingh's Case* (supra), it is thus clear that, though the executive power of the State vests in the Governor, he exercises the same only on, and in accordance with the aid and advice tendered by the Council of Ministers, headed by the Chief Minister, except in those matters where he is required by the Constitution to act in his discretion. This is equally so even where certain powers are vested in the Governor by a statute, or a statutory provision, which position is made clear by the decision of the Supreme Court in *Union of India (UOI) and Others Vs. Sripati Ranjan Biswas and Another*, and of this Court in *Gnanamani v. Governor of Andhra*, AIR 1954 AP 9. In both these cases, an appeal was provided to the Governor by the Classification and Control Rules, framed under the proviso to Art. 309 of the Constitution. It was held in both the cases that, though the appeal is provided to the President/Governor, the disposal of the appeal is, in effect, by the Government and that, it is as it ought to be. Accordingly, if it is held that the Chancellor while appointing the Vice-Chancellor acts, in truth and substance, as "Governor of Andhra Pradesh" he would be bound by the advice tendered by the Council of Ministers.

19. (E) The question then arises whether the office of Chancellor is an office distinct from the office of the Governor and whether, while exercising the powers and discharging the duties of the Chancellor under the Sri Venkateswara University Act, the Governor acts as the "Governor", or as the "Chancellor"? Upon the answer to this question does the fate of this writ petition depend.

20. (i) For examining the above question, it is necessary to first examine the relevant provisions of the Act. The Act has been made by the Legislature of Andhra in 1954, to establish and incorporate a University called "Sri Venkateswara University." It has been amended from time to time. The authority of the University extends to the area comprising the districts of Anantapur, Cuddapah, Kurnool, Chittoor and Nellore.

21. Section 9 declares that the Chancellor, the Vice-Chancellor and the Rector, among others, shall be the officers of the University.

22. Section 10 says :

The Governor Andhra Pradesh shall be the Chancellor. He shall, by virtue of his office, be the head of the University, and the President of the Senate and shall, when present, preside at meetings of the Senate and at Convocations of the University. He shall exercise such other powers and perform such other duties as may be conferred on or vested in him by or under the provisions of this Act.

23. Section 12 provides for the appointment, and conditions of service of the Vice-Chancellor. According to Cl. (a) of sub-sec. (1) of S. 12, "the Vice-Chancellor shall be appointed by the Chancellor, from out of a panel of names suggested by a committee consisting of?

- (i) a nominee of the Chancellor;
- (ii) a nominee of the Government; and
- (iii) a nominee of the Syndicate.

24. The term of his office is three years. He can be removed only by an order of the Chancellor based on specified grounds, and after due enquiry in the manner prescribed. The Vice-Chancellor is declared to be the academic head and the principal executive officer of the University, and is empowered to exercise general control over its affairs.

25. The Act confers the following powers upon the "Chancellor" : he is made the head of the University and President of the Senate (S. 10); he appoints the Vice-Chancellor (S. 12(1)(a)); the power to remove the Vice-Chancellor is vested in him (S. 12(1)(c)); he is the appellate authority against the orders of the Vice-Chancellor in the matter of interpretation of the statutes; (S. 12(1)(i)) he is an ex officio member of the Senate (Ss. 10 and 17(4)); nominates certain categories of members specified in S. 15, to the Senate he also nominates certain teachers and other members of the Academic Council, specified in S. 23; in case a dispute or doubt arises whether a person is qualified for election or nomination as a member of any of the authorities of the University, such dispute or doubt has to be determined by the Chancellor, whose decision is declared to be final (S. 27); any dispute as to election or nomination to any of the Authorities of the University shall be decided by the Chancellor, whose decision is declared to be final (S. 28), every statute made by the Senate becomes effective only on being assented to by the Chancellor; he has power to send it back to the Senate for reconsideration (Ss. 42 and 43); he has power to suspend the operation of any Ordinance, while the Senate can consider the validity of the Ordinances (Sec. 45).

26. The Act confers the following powers upon the "State Government" : The State Government has the right to cause an inspection to be made, by such person or persons as it may direct of the University, its buildings, laboratories, libraries, museums, workshops and equipment, etc., and of any institutions maintained by or affiliated to the University, and also to cause an enquiry to be made into the teaching and other work conducted or done by the University, or in respect of any matter connected with the University. The Inspection report shall be forwarded by the State Government to the Vice Chancellor for obtaining the views of the Syndicate and, on receipt of such views, the State Government can tender such advice as it may consider necessary, and also fix a time limit for the action to be taken by the University thereon. If the University fails to take action within the prescribed time, the State Government has the power to issue such

directions as it thinks necessary, which shall be binding upon the authorities (S. 8); the Finance Officer of the University is appointed by the State Government on such terms and conditions as may be prescribed by the Rules made by the State Government in that behalf (S. 13-A); certain members of the Senate are nominated by the State Government as provided in Sec. 15; a copy of the annual report of the University prepared by the Syndicate and submitted to the Senate, shall be submitted by the Senate to the State Government for information (S. 20); the annual accounts of the University prepared at the end of each financial year is to be submitted to the State Government (S. 21); the financial estimates prepared by the Syndicate under S. 21-A have to be submitted to the State Government for information; certain members of the Academic Council specified in S. 23, are nominated by the State Government; the power to apply the provisions of the Provident Funds Act, 1925, to any person, insurance, or Provident Fund constituted by the University, vests with the State Government (S. 37); S. 37 A confers upon the State Government the power to make Regulations regarding classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the members of the teaching and non-teaching staff of the Affiliated Colleges and the Oriental Colleges. Sec. 38 says that the University may establish, under its direct control and management, such scientific, technical and other colleges as may be agreed upon from time to time between the University and the State Government. Section 39 says that, the general fund of the University shall also include the contributions made by the State Government. The State Government is entitled to impose such conditions as it thinks appropriate while making such contributions. Sec. 40-C declares that the University shall not, without the prior approval of the State Government, divert earmarked funds for other purposes, or upgrade any post or revise the scales of pay of its staff or implement any scheme which involves any matching contribution from the State Government, or create a post or posts resulting in a recurring liability on the State Government either immediately or in future. Section 41 empowers the State Government to transfer to the University the control and management of any of their institutions, on such terms and conditions as may be deemed proper. Sections 50 and 53 provide for the permission of the State Government in certain matters.

27. This survey of the Act shows that the Legislature has made a clear and definite distinction between the "Chancellor" and the State Government". The very Sec. 12(1)(a) which deals with the appointment of Vice-Chancellor, makes such a distinction. It contemplates constitution of a committee consisting of the nominees of Chancellor, State Government, and Syndicate respectively. This committee has to suggest a panel of names from out of which one has to be selected by the Chancellor. Similarly, Sec. 15 provides for some members of the Senate to be nominated by the Chancellor, and some by the State Government. Sec. 23 dealing with the composition of the Academic Council also makes a similar distinction?some members have to be nominated by the Chancellor and some by the State Government. When the Act observes and maintains such a

distinction throughout it is idle to contend that it is a distinction without a difference. In view of the several provisions referred to above, it is also not possible to accept the explanation suggested by Sri C. Seetharamayya that, wherever the financial supervision is concerned, the Act uses the expression "State Government" and wherever powers and duties are specified, it uses the expression "Chancellor".

28. (ii) Since in my opinion it is necessary to understand the concept of "University autonomy" for a proper interpretation of the provisions of the Act, I think it appropriate to briefly refer to this concept and its relevance in the matter of appointment of Vice-Chancellors of the Universities. The concept of "University autonomy" has been discussed in Chapter XIII of the "Report of the Education Commission (1964-66)", popularly known as "Kothari Commission Report". The Report states that a distinction needs to be made between the University autonomy and academic freedom of University and College teachers; both are distinct concepts, though equally important in their own way. I shall omit any discussion with respect to the academic freedom of the University teachers, and confine myself to the discussion of University autonomy. "University Autonomy", it is stated, lies principally in three fields, viz., the selection of students; the appointment and promotion of teachers; and the determination of courses of study, methods of teaching, and the selection of areas and problems of research. It is stated that, in the use of their autonomy, the Universities should be governed by one overriding consideration, their commitment to truth in all fields of activity. Without such autonomy, the Universities cannot discharge effectively their principal functions of teaching, research and service to the community; the University must be an autonomous institution, free from regimentation of ideas and pressure of party or power politics, to enable it to pursue the truth fearlessly, and to build up among the teachers and students habits of independent thinking and a spirit of enquiry unfettered by the limitations and prejudices of the near and the immediate. The Report states that the question of "University autonomy" must be examined at three levels, viz., (i) autonomy within a University, e.g., autonomy of the departments, colleges, teachers and students in relation to the University as a whole; (ii) autonomy of a University in relation to the University system as a whole, e.g., the autonomy of one University in relation to another, or in relation to the U.G.C. and the Inter-University Board (IUB); and (iii) autonomy of the University system as a whole, including the UGC and the IUB, in relation to agencies and influences emanating outside that system, the most important of which are the Central and the State Governments. The Report then deals with the role and appointment of the Vice-Chancellor, in the context of University Autonomy. According to it, "the person who is expected, above all, to embody the spirit of academic freedom and the principles of good management in a University is the Vice-Chancellor. He stands for the commitment of the University to scholarship and pursuit of truth and can ensure that the executive wing of the University is used to assist the academic community in all its activities. His selection should, therefore, be governed by

this overall consideration". The Report suggests that the choice of the Vice-Chancellor should eventually be left to the University; but, at the same time, it says that, in view of the present situation in many of the Universities in this country, they recommend, for the time being, the adoption of what is called the "Delhi Pattern", or some suitable variation of it. According to this pattern, the appointment is made by the Visitor Chancellor from a panel of three names prepared by a committee consisting of three persons, two of whom are nominated by the Executive Council from amongst persons not connected with the University or any of its colleges, and the third is nominated by the Visitor/Chancellor, who also appoints one of them as Chairman of the Committee. The Report then says :

Whatever be the mode of appointment of the Vice-Chancellor, its main object is to choose the best person available and to grant him suitable conditions of service so that he may function without fear or favour of persons in authority. Generally, the Vice-Chancellor should be a distinguished educationist or eminent scholar in any of the disciplines or professions, with a high standing in his field and adequate administrative experience. We are not generally in favour of appointment of persons who have retired from other fields. An exception to this general recommendation should be made only in the case of very outstanding persons whose association with the Universities would be desirable from every point of view and should not be made an excuse for "accommodating" or "rewarding" individuals who do not fulfil the conditions laid down.....

The report appends the statement issued by the Committee constituted by the Inter-University Board on University autonomy, as a Supplementary Note to Chapter XIII, which is of great relevance on this aspect. The Inter-University Board had appointed a Committee, consisting of Dr. C.P. Ramaswami, Aiyar, Dr. A.B. Mudaliar, Dr. C.D. Deshmukh, Dr. K.L. Shrimali and Dr. B. Mullick, to review the provisions in the different University Acts and the innovations that have been made which are detrimental to academic efficiency, honour and dignity of Universities, and to suggest ways and means by which things can be improved so as to establish cordial relations with the Government of the day consistent with the position of the Universities. Indeed, the Board was of the opinion that, unless the Vice-Chancellor of a University is able to command the confidence of his colleagues and the respect of the students, and unless there is sympathy and good relationship with the Government, no University can function well. After considering the whole problem, the Statement issued by the Committee is to the following effect :--

.....By virtue of the generally accepted view regarding their intellectual leadership of the community, the Universities are the key to social and economic progress. Therefore it is important that the Universities should be helped to grow and develop their personalities unhindered by extraneous pressures. The fullest possible measure of autonomy is indispensable for their proper functioning and growth in the interests of the country's advancement and it is essential to draw

attention to and oppose effectively any tendencies contrary to this objective. Keeping these considerations in mind the Committee recommends as follows:-

(1) X X X

(2) The practice of having State Governors as Chancellors of Universities in their States has much in its favour, but only if the Chancellors function in their individual capacity, consulting the State Government only when they consider it necessary.

(3) X X X

(4) No Minister should hold any office in a University ex officio;

(5) Provisions in certain recent University Acts for issuing directives or giving instructions to Universities are particularly obnoxious must be deleted such provisions would inevitably lead to violations of the autonomy of Universities.....

(6) to (8) X X X 29. Indeed, as far back as 1950, Dr. S. Radhakrishnan, who later became the President of India, in his celebrated "Report of the University Education Commission, 1950", had this to say :--

Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyranny....We must resist, in the interest of our democracy, the trend towards the Governmental domination of the educational process..... Higher education is undoubtedly an obligation of the State but State aid is not to be confused with State control over academic Policy and practices. Our Universities should be released from the control of politics..... (Emphasis added)

The importance of Universities as the "republics of learning"--as the Germans called them--has been forcefully brought out by Sri Richard Livingston, a former Vice-Chancellor of Oxford University. He said :

If you wish to destroy modern civilisation, the most effective way to do it would be to abolish universities. They stand at its centre. They create knowledge and train minds. The education which they give moulds the outlook of all educated men and thus affects politics, administration, the profession, industry and commerce. Their discoveries and their thought penetrate almost every activity of life.....

(Quoted in the Article "The Concept of University Autonomy" by Prof. Rashiduddin Khan, published in the "Journal of University Education"--December 1965).

30. (iii) In view of a contention urged by the learned counsel for the petitioner, it would be appropriate to examine how the governmental control over University education in India came about. This would first require an examination of the governance of universities in United Kingdom. In Oxford, the Chancellor is elected by, what is called "convocation", which consists of all the Masters of Arts

and holders of some higher degrees who have kept alive their membership of the University by payment of the prescribed dues. The effective governing power, however, vests in the "Congregation" of the University which consists of the teaching and administrative elements in the University and the colleges. It is the principal legislative body which is in-charge of most appointments to administrative posts. The Chancellor, who is the titular head of the University, is a non-resident officer. The executive power is exercised by his deputy, the Vice-Chancellor, whom the Chancellor nominates, in practice, the senior head who has not previously been Vice Chancellor, and by the proctors who are annually elected by the colleges in rotation. The Vice-Chancellor wields great influence and authority, and is the Chairman of all the relevant committees, and Boards. In Cambridge too the position is practically identical. It may not be necessary here to examine the constitution of the University of London and of the Scottish universities; suffice it to say that the Government has no voice or say in the matter of appointment of Vice-Chancellors or, for that matter, Chancellors; (see Chapter X "University Administration" in the book "Universities in Britain" by S.R. Dongerkery Oxford University Press First Edition (1953)).

31. So far as India is concerned, the first concerted move to bring about a uniformity was made with the appointment of a Committee under Sir James Colvile, by Lord Dalhousie. What emerged from the Committee's Report may be stated in the words of Eric Ashby in his book "Universities: British, Indian, African-A Study in the Ecology of Higher Education", 1966 Edition, at pages 63-64 :

The University which emerged from the planning in 1857 was a deliberate exotic of a strangely hybrid kind. Although based on the University of London, it had been assigned such different social functions that however much it resembled its model in outward form, it reproduced little of its academic character. As Wood (Sir Charles Wood, Pioneer of the University Education in India under the Company rule) conceived it, the Indian university had two main functions : to provide a test of eligibility for government employment, and to transmit an alien culture. These were not the true functions of a university and inevitably they obscured the proper aims of university scholarship. The Government of India rescued the original concept from some of its narrowness, but the political purpose of the university remained dominant and was underlined by the detailed government control "written into its constitution. And if the Indian university" deviated from its model in England, it was a wholly alien implantation in India.

Again, at page 141, the learned author says :

From 1854 to 1919 the British rulers of India deliberately maintained powers of governmental control over universities which no British University would have tolerated. It was left to the Sadler Commission in 1919 to prescribe a more enlightened pattern of government, which maintained, indirectly, the influence of the State on universities, but assured them a large measure of autonomy in academic affairs. Even so, the memorandum of evidence from Sharp to the

Commission showed how persistent was the tradition of paternalism among Indian civil servants.

Some of the Universities founded since 1919 have on paper the pattern of constitution which the Sadler Commission recommended; but in practice the old abuses remain. Academic policy-making is not left to academics; politicians meddle; governments interfere. Three generations of surveillance have sapped the universities initiative. It is hard for them to become tough, self-governing societies.

32. It is thus clear that the governmental control over University education in India was a colonial innovation with an Imperialist purpose. It was not an innovation conceived in the interest of India requirements, or of higher education. It is, therefore, of no avail to argue that, inasmuch as right from 1858 the practice has been to make the Governors of the Provinces the Chancellors of the several Universities when the Governors were the real rulers, unlike the Governors under the Indian Constitution--the same system of governmental control should be continued. Firstly, this is not a welcome feature, nor a thing to be proud of; secondly, as I shall presently point out, it is opposed to the scheme, and the provisions of the Sri Venkateswara University Act.

33. (F) Now coming back to the submission of the petitioner's counsel--practically the main submission urged by him--that the office of Chancellor is not a distinct and separate office from that of the Governor and that, the Chancellor is but another name of the Governor--I find it difficult to agree. It is true that, according to S. 10, the Governor of Andhra Pradesh is to be the Chancellor by virtue of his office; but, it is not possible to say that, while acting as the Chancellor, he acts as the Governor. The context of the Act does not permit such an interpretation. According to S. 9, Chancellor is one of the officers of the University. He has to preside at the meeting of the Senate and Convocations of the University, and exercise many other powers as Chancellor. It is difficult to envisage how he can act upon the aid and advice of the Council of Ministers, headed by the Chief Minister, while presiding at the meetings of the Senate. Indeed, the Act refers to "Governor" only once, i.e. in S. 10; at all other places it refers to the "Chancellor, and it confers several powers upon the Chancellor as such. As pointed out in S. (E)(i) of this judgment, the Act throughout makes a clear distinction between the Chancellor and the State Government, and confers distinct and separate powers upon them. In many cases, the very same Section, or the sub-section, as the case may be, refers to both the "Chancellor and the "State Government" separately, for exercising identical powers, e.g. nominations to the Senate and Academic Council. In the face of this fact, I do not see any warrant to read the Chancellor as Governor, which in turn means "State Government". The autonomy of the University and the interest of higher education demand that there should be no political interference in the governance of the universities, as also in the appointments of Vice-Chancellors. The Kothari Commission Report, and in particular the recommendations of the

Committee of the Inter-University Board, composed of very eminent educationists of this country, clearly says that the appointment of Vice-Chancellor should be made by the Chancellor in his individual judgment, and not by the State Government. It would be consistent with the spirit of the enactment to hold that, while appointing the Vice-Chancellor, the Chancellor should act in his individual discretion. While exercising the power under S. 12 (1)(a), the Chancellor does not act as the Governor, and if so, the very question of aid and advice of the Council of Ministers becomes irrelevant.

34. I am unable to appreciate the argument that, because the Governor is normally from outside the State, he would not have the requisite knowledge of the affairs of the University, or of the persons suggested in the panel and that, he would not be in a position to make a proper selection. The Chancellor's power of appointment of Vice-Chancellor is neither unlimited, nor absolute; a Committee is appointed consisting of the nominees of the Chancellor, Government, and the Syndicate. It is presumed that the persons so nominated to the Committee are persons having the requisite knowledge, expertise, and are men of proper standing. They are supposed to know the needs of the University; they look around for appropriate persons from that stand-point. With a view to ensure a say to all points of view at such a consideration, the Legislature has provided representation to all the three authorities concerned, namely, Chancellor, State Government, and the Syndicate of the University. The Committee is supposed to act fairly and to draw up a panel in their own wisdom and judgment, after due deliberation and discussion. Such a Committee suggests a panel of names; the Chancellor's power is to select one among them. For this purpose, it is open to him to look into the bio-data of the persons suggested and make a proper selection. Now, even if the selection is to be made by the State Government, the same situation would obtain. The Government too has to select one out of the panel of names suggested by the Committee, and it too has to act on the basis of the material gathered by the Committee. It is not expected that any one in the Government would act on the basis of his personal knowledge, or private information, in such a matter. If any further information is called for, or further enquiry is necessary, the same can be got done through the Committee, by the appointing authority--whoever it is. Thus, I see no handicap which a Chancellor suffers in this matter, nor do I see any special advantage enjoyed by the Government, which should induce me to ignore the clear intention, evidenced by the statute. In short, the equation espoused by the learned counsel for the petitioner, viz., Chancellor=Governor=State Government, cannot be accepted in the light of the clear language, scheme and spirit of the statute.

35. The view taken by me accords with the opinion expressed by Sri M.C. Setalvad, the first Attorney-General of India, contained in his letter dt. 21-9-1954 addressed to His Excellency Sri CM. Trivedi, the then Governor of Andhra. This opinion has been referred to in the affidavit filed on behalf of the Chancellor, and a copy of the letter has also been furnished to the Court. The relevant provisions of the Andhra University Act considered by the learned

Attorney-General were substantially similar to the provisions of the Sri Venkateswara University Act. On an examination of those provisions, the learned Attorney-General expressed the following opinion :

(3) No doubt, the Governor is the Chancellor of the University by virtue of his office as the Governor of Andhra (Section 10(D)). On ceasing to hold that office he would cease to be the Chancellor and would automatically vacate the other positions occupied by him in the University (Section 30(3)). These provisions do not however necessarily indicate that the functions assigned to him as the Chancellor of the University are intended to be performed by him in his capacity as the Governor. The powers vested in the Chancellor are very limited as compared with the powers exercisable by the Visitor under the Delhi University Act. The nature of these powers and the language in which they are couched, would seem to indicate that these powers are vested in him as the leading officer of the University.

(4) Section 44 of the Act confers power on the Provincial Government to intervene by order as occasion may require and remove any difficulties which may arise in giving effect to the provisions of the Act. This power conferred on the Provincial Government as a Government supports the inference that the Chancellor under the Act though the Governor of the State does not function in his official capacity as the head of the State but rather as the head of the body corporate of which he is the Chancellor.

(5) On the whole, though the matter is not as clear as in the case of the Poona University Act, I am of the view that the Chancellor under the Andhra University Act, 1925, does not perform his functions in his official capacity as the constitutional head of the State. He is not, therefore, bound to act in the exercise of these functions with the aid and advice of his Council of Ministers.

(6) What I have stated above, does not of course prevent the Governor consulting the Ministry if he chooses and give weight to the advice given. Indeed, notwithstanding the position of the Chancellor above indicated, conventions may grow under which the Chancellor would act in consultation with the Ministers.....

36. Reference in this connection may also be made to the recommendations of the Administrative Reforms Commission in its Report on State Administration (November 1969) with respect to the "Role of the Governor"¹, which reads as follows :?

6. We are, however, of the opinion that the functions devolved on the Governor by statute as the head of the Government at the State level (e.g. those of Chancellor of a University) should be discharged by him in his individual discretion and not on the advice of the Chief Minister. The idea underlying the assignment of certain functions to the Governor by statute is to insulate them from political influence. It is the representatives of the people themselves who confer such functions on the Governor through a statute.

Recommendation 1.

We recommend :

(1) The functions assigned to a Governor by statute (e.g. those of Chancellor of a University) should be exercised by him in his discretion. He may consult the Chief Minister if he so wishes but he should not be bound by the latter's advice.

37. In this behalf, I may refer briefly to the decisions of the Allahabad and Madhya Pradesh High Courts, relied upon by the counsel for Respondents. In *Joti Prasad Upadhyaya Vs. Kalka Prasad Bhatnagar and Others*, a Bench of the Allahabad High Court considered the provisions of the Agra University Act, 1926 which, in relevant particulars, are practically the same as the provisions of the Sri Venkateswara University Act, and held that while appointing the Vice-Chancellor, the Governor does not act in exercise of his executive powers, but acts as the Chancellor under the Act. It was held that the offices of Governor and the Chancellor are two different offices and capacities which cannot be confused with each other. It was further held that the Governor while discharging the functions and duties of the Chancellor of a University, cannot be deemed to be acting as the head of the executive, or as the State Government. This was so held notwithstanding the definition of the term "State Government" contained in S. 3(60) of the General Clauses Act, 1897.

38. To the same effect is the decision of a Division Bench of the Madhya Pradesh High Court in *Dr. S.C. Barat and Another Vs. Hari Vinayak Pataskar and Others*. There, of course, the question arose from the standpoint of Art. 361 of the Constitution of India, and the question was whether the immunity provided by the said Article extends to the acts of the Governor done in his capacity as the Chancellor of the Jabalpur University. It was held that the immunity does not extend, for the reason that, while discharging the functions and duties attached to the office of Chancellor, he acts as the Chancellor and not as the Governor. The ratio of these two decisions clearly supports the view taken by me.

39.(G) Now coming to the facts of the present case, the record discloses that the Committee appointed for the purpose of suggesting a panel of names, unanimously suggested three names. The first among them is Sri I. J. Naidu, a former Chief Secretary to the Government of Andhra Pradesh. The second person in the panel, viz. the 2nd respondent herein was a Professor working in the same University, while the third one is a former Registrar of the said University. The Government recommended that the first person in the panel, namely, Sri I.J. Naidu, should be appointed, to which, however, the Chancellor did not agree. He appointed the 2nd respondent. Though in the first instance the Government recommended and insisted upon the appointment of Sri I.J. Naidu it did not choose to bring the matter to a head. The note-file, referred to hereinbefore, discloses that after receiving the order of the Chancellor appointing the 2nd respondent, the Hon'ble Chief Minister decided against the recirculation of the file to the Governor. Indeed, the Government went ahead and issued a formal

G.O., duly authenticated by the Principal Secretary to the Government and published it in the Andhra Pradesh Gazette, Whether this action of the Government amounts to it's acquiescence in the appointment of the 2nd respondent, and what is its effect, has not been debated before me, nor before the Division Bench. I do not, therefore, wish to express any opinion on this aspect.

40. For all the above reasons, I hold that the Chancellor cannot be said to have acted beyond his power in appointing the 2nd respondent as the Vice-Chancellor of the Sri Venkateswara University. Since the appointment was made by the Chancellor which office is distinct and separate from that of the Governor, the advice tendered by the Council of Ministers headed by the Chief Minister was not binding upon him,

41. The matter will now go back to the Division Bench, which heard this petition, for disposal in accordance with Clause 36 of the Letters Patent.

Final Order

Raghuvir, J.

42. In view of the majority of the opinions expressed in the writ petition, this writ petition has to be dismissed and it is accordingly dismissed. No costs.

43. We have pronounced the judgment in the writ petition dismissing the same. The learned counsel for the petitioner states that he has no instructions to ask for leave to appeal to the Supreme Court. The learned counsel for the Vice-Chancellor states that in the instant case the State Government did not file the writ petition, therefore, the State is not aggrieved of the impugned order and for that reason is not entitled to seek leave either under Art. 133 or 134-A of the Constitution.

44. In Art. 133 there are no words to indicate that the aggrieved person alone or the person who has filed the writ petition alone should seek leave. On facts of the case, we hold the issue in the writ petition involves a substantial question of law general importance, which needs to be decided by the Supreme Court. Therefore, leave to appeal to the Supreme Court is granted to the State Government, who is one of the respondents in this case. The oral leave as requested is ordered.