

**(2012) 08 GUJ CK 0028**  
**In the Gujarat High Court**

**Case No :** Special Civil Application No. 4978 of 2011 with C.A. No. 5465 of 2012  
in Spl. C.A. No. 4978 of 2011

Mukesh V. Chavda and Another

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

**Date of Decision :** 29-08-2012

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226  
Saurashtra University Act, 1965 — Section 11(5), 13, 15, 18, 2(15)

**Citation :** (2013) 1 GLR 265

**Hon'ble Judges :** Bhaskar Bhattacharya, C.J.;V.M. Sahai, J;A.L. Dave, J

**Bench :** Full Bench

**Advocate :** Nikhil S. Kariel, for the Appellant; Kamal Trivedi, Advocate General with Prakash Jani, G.P., with Ms. Sangita Vishen, Asstt. G.P. for Respondent No. 1, J.R. Nanavati with A.R. Thacker for Respondent No. 2 and Mihir Joshi with Hriday Buch, for the Respondent

## **Judgement**

Bhaskar Bhattacharya, C.J.—In this Special Civil Application under Art. 226 of the Constitution of India, the writ-petitioners, two in number, the first one being the elected President of Rajkot Parliament Youth Congress and other, being a Senate Member of Saurashtra University, have prayed for the following reliefs:

(A) Your Lordship be pleased to issue writ of mandamus or any other appropriate writs directing the opponent No. 2, Saurashtra University to act in accordance to the direction given by Chancellor of the Saurashtra University by its order dated 1st February, 2011 bearing No. G.S. 11.2/158/16/2011.

(B) Your Lordship be pleased to issue directions, order or writ in the nature of quo-warranto or any other appropriate writ that the opponent No. 4, Mr. Gajendra Mulshankar Jani holding no requisite academic qualification or experience for the post of Registrar of the Saurashtra University and his appointment for the post of Registrar is illegal and he is not entitled to hold the office of Registrar of Saurashtra University and entitled to discharge the functions

as Registrar of Saurashtra University.

(C) Pending this petition, Your Lordship may please to grant interim relief, restraining opponent No. 4, Mr. Gajendra Mulshankar Jani, from functioning as Registrar of Saurashtra University.

(D) Any other appropriate relief, which may be deemed fit and proper, may be granted in the interest of justice.

Initially, the matter was moved before a learned Single Judge of this Court, but the learned Single Judge formed an opinion that the matter did not appear to be a "service matter" and the Registry was accordingly directed to examine the matter and place before the appropriate Bench.

1.1. Consequently, the matter was placed before a Division Bench presided over by the then Chief Justice of this Court taking up Public Interest Litigations. The Division Bench entertained the said writ-application and issued interim order prohibiting the respondent No. 4 from functioning as the Registrar of the Saurashtra University. The Vice-Chancellor of the University was directed to file reply as to why the order passed by the Chancellor directing removal of the Registrar had not been given effect to.

1.2. Subsequently, on the returnable date, on behalf of the University, it was contended that the Syndicate has the jurisdiction to overrule a decision taken by the Chancellor if the said decision is not in accordance with law. In view of such stance taken by the University, the Division Bench presided over by the then Chief Justice was of the opinion that as an important question of law was involved in the matter, the case should be referred to a Larger Bench. Accordingly, the Division Bench, after admitting the appeal and extending the interim order earlier granted until further orders, referred the matter to the Larger Bench for hearing.

1.3. Subsequently, this Bench has been constituted for hearing of the writ-application.

2. Mr. Kariel, the learned Advocate appearing on behalf of the petitioners, has vehemently contended before us that the University has no right whatsoever to question the legality and validity of the order passed by the Chancellor under Sec. 7(4) of the Saurashtra University Act, 1965 (the Act, hereafter) since the respondent No. 4 had never challenged the same before any appropriate forum. According to Mr. Kariel, the respondent No. 4 was well aware about the Inquiry Committee constituted by the Chancellor to look into the allegation that the respondent No. 4 had no requisite qualification of becoming a Registrar, and according to him, the respondent No. 4 having participated in the process of enquiry at the relevant point of time, and at the same time, not having challenged the order of the Chancellor directing his removal from the post of the Registrar before the appropriate judicial forum, is now precluded from questioning the legality and validity of the order of the Chancellor. According to

Mr. Kariel, the respondent No. 4 acquiesced to the order, and thus has no right to oppose the implementation of the order passed by the Chancellor or to challenge the validity of the same.

3. Mr. Kariel developed his arguments in the following way:

3.1. Submission regarding Sec. 7 of the Act:

3.1.1. The words "to cause an inquiry to be made in respect of any matter connected with the University", appearing in Sec. 7(1) of the Act, according to Mr. Kariel, takes into its ambit any and all kinds of inquiries into every matter connected with the University. Mr. Kariel contends that there is no compulsion that the inquiry should be restricted only to the matters of an administrative nature, but not to a matter of quasi-judicial nature or relating to a case where third party's rights are affected.

3.1.2. The appointment and subsequent confirmation of the Registrar of the University, Mr. Kariel contends, is definitely a matter connected with the University, and therefore, the inquiry conducted in respect of the same is in accordance with the scheme of Sec. 7(1) of the Act.

3.1.3. Mr. Kariel points out that the report of the Inquiry Committee had been placed before the Syndicate and the Senate and after ascertaining the views of the both, the subsequent action had been taken by Chancellor. Since both the Senate and the Syndicate were of the firm opinion that the appointment of the respondent No. 4 was proper and in accordance with law and further, since the powers of the Chancellor to hold such an inquiry was itself questioned, according to Mr. Kariel, there was no occasion for the Chancellor to issue any advice to the University as it would have been an exercise in futility.

3.1.4. The learned Advocate for the petitioners submits that the perusal of order dated 1-2-2011 passed by the Chancellor directing removal of the respondent No. 4 clearly indicates appropriate consideration by the Chancellor of views taken by the Syndicate and the Senate. Order passed by the Chancellor, according to Mr. Kariel, is not required to be one recording reasons on each issue raised by the Syndicate or the Senate, as the case may be.

3.1.5. Mr. Kariel submits that Sec. 7(4) does not confer any discretion whatsoever to the Syndicate either to comply or not to comply with the direction of the Chancellor. According to Mr. Kariel, the language of Sec. 7(4) is very specific indicating that the Syndicate is under an obligation to comply with the directions of the Chancellor.

3.1.6. The learned Advocate appearing on behalf of the petitioners submits that the contention raised on behalf of the University that the Syndicate can refuse to comply with the direction of the Chancellor, if it is not in accordance with law, which led to the petition being referred to the Larger Bench, has not been substantiated by either the University, or by the State or the respondent No. 4. Therefore, according to Mr. Kariel, it is apparent that the Syndicate had no such

powers to decide whether the order of the Chancellor is correct or not before implementing the same.

3.1.7. The order of the Chancellor dated 1-2-2011, directing removal of the respondent No. 4 after following the procedure laid down in Statute 139, according to the learned Advocate for the petitioners, is an order very much capable of being implemented and the reference to Statute 139 does not render the order "not capable of being implemented" as contended by the respondents. On the contrary, the petitioners contend that the Statute 139 is referred only with a view to follow the procedure of removal of the Registrar as is clearly mentioned by the Chancellor in order dated 1-2-2011.

3.1.8. The learned Advocate for the petitioners submits that the power of the Vice-Chancellor under Sec. 11(5) of the Act does not in any manner seek to limit the powers of the Chancellor under Sec. 7 of the Act since Sec. 7 does not reveal any embargo of any nature whatsoever limiting the powers of the Chancellor subject to any other provisions of the Act.

3.1.9. According to the learned Advocate for the petitioners, the absence of power to annul given to the Chancellor in Sec. 7 does not render the entire exercise invalid and illegal as contended by the respondents. The comparisons drawn with the enactments of other Universities, according to him, cannot be a reasonable comparison since the power of annulment in those enactments is conferred upon the visitors and not upon the Chancellor. It would be interesting to note that in cases of the Universities within the State of Gujarat viz. Sardar Patel University, Gujarat University, North Gujarat University etc., those Statutes confer power of issuing direction upon the Chancellor. The power of annulment, on the contrary, is found in the enactment of Maharaja Sayajirao University where such power is given to the visitor, which is a post held ex-officio by the Hon"ble Governor of Gujarat. Thus, according to Mr. Kariel, where the Hon"ble Governor is not the Chancellor, such power to annul is found and the only reason for the same is that where the Hon"ble Governor is not the Chancellor, the Hon"ble Governor may not be aware of or updated with day-to-day affairs of the University, which would have been the case if the Hon"ble Governor were the Chancellor. Thus, Mr. Kariel continues, to keep the appropriate check upon the University machinery, the power of annulment is additionally conferred upon the visitor more particularly where the visitor is not the Chancellor. This submission, Mr. Kariel points out, is without prejudice to the principal contentions that word "directions" is an "all encompassing word" and cannot be read as not including within its ambit the power to quash or set aside.

3.2. Submissions regarding experience and qualification of respondent No. 4:

3.2.1. The learned Counsel for the petitioners submits that the respondent No. 4 does not possess the first qualification i.e. of having Master degree with at least 55% of marks. The respondent No. 4 was registered with the Saurashtra University for the post-graduate degree of M.Com. and he passed M.Com.

examination held in November, 1998. While the respondent No. 4 was registered with the University as above, Mr. Kariel points out, he had registered himself with the University in the post-graduate degree of Master of Social Work in the month of June-July, 1998. Rule 3(1)(V) of the Rules of Admission to Post-graduate Studies of the Saurashtra University prohibits a candidate for the post-graduate degree from being registered simultaneously in more than one post-graduate subject. The facts show that while the respondent No. 4 was registered with the University for the M.Com degree, he had, according to Mr. Kariel, in violation of the said Rule, registered himself in M.S.W. post-graduate course, which is not permissible, and hence, the post-graduate degree of M.S.W. becomes invalid. Again, according to Mr. Kariel, since there is an express statutory prohibition from getting registered simultaneously in two different courses, the degree of M.S.W. which had been acquired in violation of the same would be void ab initio, and there is no requirement for any competent authority of the University to declare it invalid.

3.2.2. The learned Advocate for the petitioners points out that the respondent No. 4 was registered in the M.Com course as an external student but being an external student, according to Mr. Kariel, he did not acquire any right to have even relaxation for getting registered simultaneously in another post-graduate subject.

3.2.3. Insofar as the student registering himself as an external student, according to Mr. Kariel, such student has to give an undertaking in presence of a Senate member or Head Master or Judicial/Executive Magistrate. The said scheme is found at Ordinance 89(A). Ordinance 89(A) further stipulates that the student already registered for the post-graduate degree can get himself registered as an external student with the sanction of the Senate, but according to Mr. Kariel, the converse is not permissible at all. In other words, according to him, the person having registered himself as an external student has no right to have registration simultaneously for another postgraduate degree as a regular student. Moreover, Mr. Kariel submits that the respondent No. 4 has not even produced any such relaxation granted in his favour by the Senate.

3.2.4. Insofar as certificate of C.C.C. level is concerned, according to Mr. Kariel, it is an admitted position that on the last date of submitting the application form i.e. on or before 17-3-2006, the respondent No. 4 did not have the said qualification. Respondent No. 4 has subsequently acquired the said qualification vide certificate dated 6-4-2006.

3.2.5. Insofar as five years' administrative experience as Assistant Registrar or any equivalent post, Mr. Kariel submits that the respondent No. 4 also does not have the same as noted by the Inquiry Committee. The respondent No. 4, as it appears from record, produced the certificate of one Gitanjali Charitable Trust where the respondent No. 4 himself was a Trustee till his name was deleted on 12-10-2009. That certificate produced by respondent No. 4 as reflected from page 236 of the Paper-Book mentions that the respondent No. 4 had worked in

the organization of Gitanjali College as Chief Administrative Officer between June, 1999 and December, 2004. As found by the Inquiry Committee appointed by the Chancellor, the fact that such a post was created and filled up by the Gitanjali College was not intimated to the University nor was any sanction sought for from the State Government as required under the Ordinance 189. The name of respondent No. 4 did not appear in the document submitted by the Trust as regards non-teaching staff of the college at the time of obtaining permission for the college on 25-5-1999 whereas it is contended that the respondent No. 4 had been appointed on 7-6-1999. As found by the inquiry report, no procedure was adopted to appoint the respondent No. 4, the appointment letter given to the respondent No. 4 was not produced, the resolution appointing the respondent No. 4 did not disclose the salary of respondent No. 4 and no pay-slip or service-book was found.

3.2.6. Mr. Kariel submits that the respondent No. 4 was admittedly prosecuting his studies during the period in which he was working as Chief Administrative Officer. The respondent No. 4 had done his Second Year LL.B. in the year 2002-2003 and Special LL.B. in the Year 2003-2004 from one D.D.K.M. Law College, Porbandar, which was 200 kms. away from Rajkot where the Gitanjali College is situated and thus, according to Mr. Kariel, no administrative experience was acquired during these periods.

3.2.7. In any case, according to the learned Advocate for the petitioners, equivalence between the post of the Assistant Registrar of University and that of the Chief Administrative Officer of Gitanjali College was absurdly sought to be drawn on the basis of salary given to respondent No. 4 being fixed salary at the rate of Rs. 8,000/- a month. The fact that the respondent No. 4 used to get a fixed salary of Rs. 8,000/- a month, according to Mr. Kariel, would not make him holding a post equivalent to the Assistant Registrar having a pay-scale of Rs. 8000-275-13,500 because by no stretch of imagination, the post bearing a fixed salary of Rs. 8,000/- can be termed as equivalent to the pay-scale of the Assistant Registrar stated hereinabove.

3.2.8. Assuming for the sake of argument but without admitting that the respondent No. 4 had actually worked as Chief Administrative Officer for some period of time, according to Mr. Kariel, the same would not be sufficient administrative experience, since at the time of appointment of the respondent No. 4, the Gitanjali College was just having one Clerk, one Accountant, one Peon and one Watchman. In other words, according to Mr. Kariel, the alleged experience of the respondent No. 4 as the Chief Administrative Officer in the college having non-teaching staff consisting of four persons is not a comparable experience as an Assistant Registrar of a University.

3.2.9. According to the petitioners, the Ordinance 189 inter alia gives a list of non-teaching employees of Colleges affiliated with the Saurashtra University along with the pay-scale, but the post of Chief Administrative Officer is not a post envisaged in the said Ordinance.

3.2.10. Furthermore, according to the petitioners, the experience of the respondent No. 4 gained while working as Assistant Registrar with the Gujarat Ayurved University is also not a comparable experience. Gujarat Ayurved University is not affiliated with the University Grants Commission as seen from print-out of web-page of Gujarat Ayurved University, where it is clearly mentioned that the University is administratively linked to Ministry of Health and Family Welfare both at State and Centre whereas the Saurashtra University is registered and affiliated with University Grants Commission, and thus, according to the petitioners, the experience of respondent No. 4 as Assistant Registrar of such an institution cannot be termed as comparable experience of an Assistant Registrar of a University.

3.2.11. The same analogy, according to Mr. Kariel, applied to Clause 24 of the employment notice, which inter alia gives a relaxation for the applicants who are already in the University system. The phrase University system, according to Mr. Kariel, should be interpreted to mean the Saurashtra University only since it is the common practice of all the Organizations, Departments and even Governments to relax qualification for their own employees. If the words University system are stretched to include all similar University, even then, according to Mr. Kariel, the relaxation would not be available to the respondent No. 4 since Gujarat Ayurved University is a University having special status affiliated to the Ministry of Health and whereas Saurashtra University is affiliated and registered with the U.G.C.

3.2.12. Thus, according to the petitioners, it becomes clear that respondent No. 4 did not possess any of the qualifications as prescribed nor did he acquire the appropriate administrative experience to be appointed to the post of Registrar.

3.3. Submissions with regard to writ of quo-warranto:

3.3.1. The writ of quo-warranto, according to the learned Advocate for the petitioners, can be claimed by any person who can satisfy the Court, inter alia, that the office in question is a public office and is held by an usurper without legal authority and it would lead to an inquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not. The University of Mysore and Another Vs. C.D. Govinda Rao and Another, .

3.3.2. It is, according to the petitioners, the sovereign power of the State to impart education. Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, , Modern School Vs. Union of India (UOI) and Others,

3.3.3. University, according to the petitioners, is established by the Act of the State Legislature whereby the sovereign power of imparting education is conferred upon the University. The Registrar of the University is an officer of the University as per Sec. 8 and also the Head of the University office as per the Statute 140. The Registrar as per Statute 141 is the custodian of common seal etc. and more importantly, is the Secretary of the Senate, the Syndicate, the Academic Council, the Faculties, the Board of Studies, the Board of University

Teaching, the Committee appointment of teachers to the University, the Committee for recognition of teachers of the University, Committee for appointment of examiners. Thus, according to Mr. Kariel, the appointment as a Secretary confers powers upon its holder to regulate those statutory bodies in a proper manner. These bodies are constituted, according to Mr. Kariel, to ensure proper manner and method of imparting education by the University and the colleges affiliated under it. Thus, Mr. Kariel submits, the post of Secretary of those bodies does not merely confers upon its holder only the power of recording minutes of the meeting; rather the Registrar on a plain reading of Statutes 140 and 141 is empowered to regulate in a proper manner the functioning of these bodies.

3.3.4. Public office, according to the petitioners, means an office having authority conferred by law, having fixed tenure, having power to exercise some portion of sovereign function. The Registrar, Mr. Kariel continues, being the Head of the University office and being the Secretary of the bodies referred hereinabove, is undoubtedly exercising a portion of sovereign power conferred by the State upon the University, and therefore, the office of Registrar is a public office.

3.3.5. The learned Advocate appearing on behalf of the petitioners submits that the writ of quo-warranto can be issued when the appointment to a public office is without legal authority and the said appointment is not in accordance with law. According to him, the writ of quo-warranto includes a challenge also on the ground that the holder of the office does not fulfil the required qualification or suffers from any disqualification. *B.R. Kapur Vs. State of Tamil Nadu and Another*, .

3.3.6. While examining the question whether a person holds a public office under valid authority or not, the Court, according to Mr. Kariel, is not concerned with technical grounds of delay or motive behind the challenge, since it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. *Dr. Kashinath G. Jalmi and another Vs. The Speaker and others*, . Thus, according to Mr. Kariel, on the basis of the above finding by the Supreme Court, the issue of delay in filing of the complaint before the Chancellor pales into insignificance. Moreover, Mr. Kariel proceeds, the complaint before the Chancellor has led to unearthing of illegalities in the process of appointment as well as absolute lack of qualification of the respondent No. 4. According to Mr. Kariel, since the mala fides of the petitioners have been alleged but not substantiated, therefore, such allegations are of no avail and furthermore since, the motive behind challenge is not a reasonable consideration as held by the Supreme Court, the contentions on that line also fail. This Court, according to Mr. Kariel, is empowered, rather, is under an obligation, to look into the process of the appointment, and should be convinced as to whether respondent No. 4 has the appropriate qualifications and whether the appointment was in accordance with law and whether the statutory provisions with regard to qualification and experience for the appointment to the post of Registrar has been followed.

3.3.7. Mr. Kariel submits that Sec. 13 of Saurashtra University Act casts duty upon the Syndicate to frame Statutes for regulating appointment of Registrar, and therefore, in absence of any Statute, the administrative order laying down the qualification and experience can be termed as statutory provisions or the provisions having statutory force. Any view taken to the contrary, according to Mr. Kariel, would lead to a finding that the appointment as Registrar was made in the absence of any rules and hence, illegal.

3.4. Submissions with regard to principles of natural justice:

3.4.1. The learned Advocate for the petitioners submits that the respondent No. 4 had ample and adequate notice about the inquiry being conducted in the matter of his appointment and subsequent confirmation to the post of the Registrar. The Registrar, according to him, was under an obligation to approach either the Inquiry Committee or the Chancellor or any Court of law making out an independent grievance with regard to the non-compliance of principles of natural justice. After having accepted the decision of the Chancellor without challenging the same, according to Mr. Kariel, in a petition, inter alia, preferred praying for implementing the direction of the Chancellor, the respondent No. 4 cannot be heard to question the legality of order of the Chancellor on the ground of non-fulfilment of principles of natural justice. In any case, according to the petitioners, the respondent No. 4 had been called upon to submit his representation regarding educational qualification and experience with regard to his appointment to the post of Registrar vide communication dated 30-10-2010. Thus, Mr. Kariel contends that the respondent No. 4 had adequate notice of the inquiry and he was given an opportunity to submit his representation. Therefore, there was complete adherence to the principle of natural justice.

3.4.2. Furthermore, according to the petitioners, from the submission with regard to lack of qualification and experience at the time of appointment, even if opportunity of hearing was given, there was nothing which the respondent No. 4 could have submitted. The issues with regard to lack of experience and lack of qualification, according to the petitioners, were of such nature that there could not have been any answer to the same.

3.5. The learned Advocate for the petitioners submits that all the contentions raised before this Court are supported by appropriate pleadings in the petition. The pleadings, according to him, are required to be of such a nature that the contentions or the submissions raised can be found in the pleading. According to him, it is not the law relating to the pleading that the pleadings are required to be elaborated till the last word. *S.B. Noronah Vs. Prem Kumari Khanna*, .

3.6. The reference under Sec. 59 of the Act, according to the petitioners, would not be applicable since the reference can be raised with regard to any dispute as to constitution of University Authority or Body. The present issue, according to Mr. Kariel, is with regard to powers of the Chancellor under Sec. 7 and also with regard to appointment and subsequent confirmation of Registrar of the University

and thus, the same is not a dispute with regard to constitution of any University Authority or Body. Furthermore, according to him, the reference itself is with regard to a show-cause notice issued to the then V.C. of the University under Sec. 7(1) of the Act by the Chancellor and not with regard to the present issue. Most importantly, Mr. Kariel submits, the reference cannot be made to override the orders issued by the Chancellor in exercise of powers conferred upon the Chancellor under Sec. 7 of the Act. The powers of the State Government under Sec. 59 and the powers of the Chancellor under Sec. 7, according to him, are ones operating in their own independent spheres and there cannot be overriding power of one over the other.

3.7. By mere acquiring of C.C.C. Certificate in the interregnum i.e. after the last day of submission of the form, according to Mr. Kariel, the respondent No. 4 cannot claim that all the qualifications, which were lacking at the time of filing of the application, have been acquired. The absence of post-graduate degree and that of administrative experience are the defects, which, according to Mr. Kariel, have not been rectified even as on date, and therefore, the submission of the respondent No. 4 that the lacuna having been filled up does not hold good. Thus, according to him, this Court may be pleased to issue writ of quo-warranto or any other appropriate writ, order or direction, declaring that the respondent No. 4 has not been appointed as Registrar of Saurashtra University in accordance with law and in accordance with statutory provisions governing appointment to the post of Registrar. Therefore, according to the petitioners, the respondent No. 4 is not entitled to hold the post since the appointment was illegal ab initio. Furthermore, the petitioners pray, this Court may also be pleased to hold that the Chancellor had exercised powers available to her under Sec. 7 of the Act properly and the Syndicate of the Saurashtra University had no authority whatsoever to question or deny complying with order passed by the Hon'ble Chancellor under Sec. 7(4) of the Act.

4. Mr. Kariel, therefore, prays either to pass a direction for implementation of the order passed by the Chancellor in terms of Sec. 7(4) of the Act or for passing a writ in the nature of quo-warranto quashing the appointment of the respondent No. 4 as the Registrar.

5. Mr. Nanavati, the learned Counsel appearing on behalf of the University and Mr. Trivedi, the learned Advocate General appearing on behalf of the State of Gujarat, however, have opposed the aforesaid contentions of Mr. Kariel and have contended that the order passed by the Chancellor purportedly under Sec. 7(4) of the Act was illegal as the formalities required for passing an order under Sec. 7(4) of the Act were not complied with. According to the learned Counsel, in terms of the Act, the Senate is the appropriate authority for appointment of the Registrar, and they, after being satisfied with the qualifications of the respondent No. 4, having selected him, the Chancellor acted without jurisdiction in appointing the Committee for the purpose of inquiry into the said process of selection.

5.1. Both Mr. Trivedi and Mr. Nanavati vehemently contended before us that no mandamus should be issued for implementation of an illegal order, and at the same time, there is also no scope of passing a writ in the nature of quo-warranto as the post of the Registrar is not a "public office" and the writ-application should be dismissed on the ground of gross delay in moving the application.

5.2. As regards acquiescence of the order of the Chancellor by the Vice-Chancellor as submitted by the petitioners, both Mr. Trivedi and Mr. Nanavati contended that the University, after receiving the purported order under Sec. 7(4) of the Act, referred the matter to the State Government in terms of Sec. 59 of the Act for the interpretation of the provisions of Sec. 7 of the Act as to whether the Chancellor can direct the University to pass such direction disputing, the qualification of the Registrar and the State Government has given opinion that the Chancellor is not entitled to pass such direction. Therefore, according to Mr. Trivedi and Mr. Nanavati, the University has not accepted the order passed by the Chancellor and has taken the view of the State Government, which has disapproved the order passed by the Chancellor, and there was no further necessity of challenging the order before any Court of law. Both the learned Counsel, therefore, pray for dismissal of the writ-application.

6. Mr. Mihir Joshi, the learned Senior Advocate appearing on behalf of the respondent No. 4, has however, in detail, opposed the contentions advanced on behalf of the petitioners and his submissions may be summed up thus:

6.1. That a writ of mandamus cannot be issued as a matter of course to enforce the order/directions of the Chancellor without first examining whether the directions are legal and valid and also the issue regarding the locus and bona fides of the petitioners. This is because, according to Mr. Joshi, it is well settled that mandamus would not be issued to enforce an illegal order or direction. State of U. P. and others Vs. Harish Chandra and others, , (Paras 9, 10); Patna University and Another Vs. Dr. Amita Tiwari (Mrs.), .

6.2. Mr. Joshi contends that the respondent No. 4 is not precluded from challenging the order/directions of the Chancellor in the present proceedings since the same was never served upon him and in any case, was not acted upon by the Syndicate by issuing notice for termination of his services and in any case, had been held to be ultra vires Sec. 7 of the Act by the State Government exercising powers under Sec. 59 of the Act. Such decision, Mr. Joshi points out, has not been questioned by the petitioners in the present proceedings.

6.3. According to Mr. Joshi, the order/direction of the Chancellor is illegal and cannot be enforced inter alia for the following reasons:

6.3.1. That the power conferred on the Chancellor under Sec. 7(4) of the Act to issue directions is a power of general superintendence which could be exercised in respect of administrative functions/duties of the University and cannot relate to or control decisions which would require exercise of quasi-judicial powers by bodies/authorities/Tribunals under the Act. Similar provisions conferring powers

on the Government under various Statutes have been interpreted in the above manner by the Supreme Court vide decision in the case of Bangalore Development Authority and Others Vs. R. Hanumaiah and Others, (Paras 50, 51); Commissioner, Bangalore Development Authority Vs. S. Vasudeva and Others, (Para 11); Inter State Transport Commission, New Delhi Vs. P. Manjunath Kamath and Others, (Paras 12, 19).

6.3.2. That the aforesaid interpretation is further borne out by the language of the Section and the scheme of the Act. The power to cause an inspection or inquiry must be interpreted with reference to the remedial powers of giving advice and directions as may be required and cannot take within its sweep inquiries like the present one which would result in civil consequences for a third party and adversely affect his rights, particularly when the Statute imposes a requirement of hearing only the University and none else. This makes it evident that only such orders/directions are contemplated under the provisions which affect the University alone. Moreover, a power to issue directions cannot be equated with an appellate power, which has to be expressly provided for and conferred. For example, Mr. Joshi continues, if the Syndicate after inquiry directs dismissal of the employee and the Vice-Chancellor acts upon the same, Sec. 7(4) cannot be resorted to for issuing directions to take the employee back in service. The converse would be equally true. Moreover, the power under Sec. 7(2), according to Mr. Joshi, is to give advice which is not binding. Thereafter, if the Syndicate proposes to take action pursuant to such advice but does not take such action despite accepting the advice, the Chancellor has the power to issue directions mandating the Syndicate to act upon its own proposal. Unless the provisions are so interpreted, Mr. Joshi contends, the ambit of Sec. 7(2) and Sec. 7(4) overlaps.

6.3.3. Further, according to Mr. Joshi, unlike certain other Statutes, no power of annulment is conferred on the Chancellor under the Act, in which event, alone a quasi-judicial power could be inferred as vesting in the Chancellor. The power of removal of the Registrar is expressly vested in the Syndicate and Vice-Chancellor under Secs. 139 and 11(5) of the Act, and cannot be entrenched upon by the purported exercise of powers under Sec. 7 of the Act.

6.3.4. Without prejudice to the above contentions, Mr. Joshi submits, the order/directions of the Chancellor are even otherwise illegal and cannot be enforced as the procedure prescribed under Sec. 7(2) has not been followed as no advice has been given to the Syndicate after considering the views of the Senate and Syndicate.

6.3.5. In any case, according to Mr. Joshi, the directions to remove the respondent No. 4 as Registrar is invalid on account of breach of principles of natural justice and may not be enforced by a mandamus.

(a) The respondent No. 4, Mr. Joshi contends, has not been supplied even the copy of the complaint (page 13) and other documents called for and relied upon

by the Committee though the same was asked for (p. 256) (Petitioners 43/Z-1).

(b) The respondent No. 4, according to Mr. Joshi, has at no stage been informed about the allegations against him nor any explanation sought with reference to such allegations or adverse inference from documents proposed to be drawn by the Committee.

(c) The respondent No. 4, Mr. Joshi contends, has not been given an adequate opportunity of personal hearing before the Committee.

(d) The decision-making authority, viz., the Chancellor, according to Mr. Joshi, has not heard the respondent at all which is opposed to the principles of natural justice. *Indu Bhushan Dwivedi Vs. State of Jharkhand and Another*, (Paras 21, 23)].

6.3.6. In view of the above, Mr. Joshi submits, the directions of the Chancellor being without jurisdiction, contrary to the scheme and provisions of Sec. 7 of the Act, and in any event, being in breach of principles of natural justice, cannot be enforced by a writ of mandamus.

6.4. Mr. Joshi contends that a writ in the nature of quo-warranto as prayed for cannot also be issued in the facts and circumstances of the case for the following reasons:

6.4.1. The post of Registrar is not a public office in respect of which alone, such a writ will lie. The Registrar neither exercises sovereign functions of the State nor does he exercise powers independently under the Statute, but the exercise of power is subject to supervision and control of the Syndicate. (Judgment of High Court of Calcutta in W.P. No. 29906 (W) of 2008).

6.4.2. In any case, according to Mr. Joshi, the appointment of the respondent is not in breach of statutory provisions for which alone a writ of quo-warranto would lie. The appointment of respondent No. 4 is in pursuance of the qualification determined by the Syndicate, incorporated as part of the Employment Notice dated 17-4-2006 and the same is by way of Resolution and cannot be equated with a statutory provision or statutory rule and a purported breach of the said stipulations does not entitle seeking a writ of quo-warranto. *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, ; *Alex Beets Vs. M.A. Urmese and Another*, ; *B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others*, ; *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, ; *U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh*, .

6.4.3. Mr. Joshi further submits that without prejudice to the above, assuming for the sake argument a writ of quo-warranto is maintainable, the writ being discretionary, may not be granted/issued because of the following facts:

(a) That the present proceedings are barred by delay since the appointment is of

1-5-2007 and the petition is filed after a delay of 4? years. Girjesh Shrivastava and Others Vs. State of M.P. and Others, (Paragraphs 14-17, 29-31); M.S. Mudhol and Another Vs. S.D. Halegkar and Others, (Paragraphs 6, 7); judgment in Spl. C.A. 10057 of 2011 (Paragraphs 15, 16, 23, 24)].

(b) That the proceedings are not bona fide and a result of political rivalry within the Syndicate which is apparent from the fact that certain persons including one of the present petitioners who had complained against the appointment of the respondent to the Chancellor who was member of the Syndicate and had acquiesced and confirmed the appointment of the respondent at the relevant time, but suddenly raised objections after a period of 3-4 years from such appointment. The manner in which the interim order removing the respondent was celebrated clearly establishes a personal vendetta and not public spirit. [Vide Affidavit at p. 193, 194, 205, 261, 262; P. Seshadri Vs. S. Mangati Gopal Reddy and Others, ; Jay Vee Rice and General Mills Vs. State of Haryana and Others, (Paragraphs 17, 20, 21)].

(c) That even in equity, the writ may not issue since the appointment was made after full disclosure of all the relevant facts by the respondent at the relevant time itself without suppression of facts. The respondent had foregone opportunities of employment for which he was selected elsewhere for being appointed here which would have resulted in the respondent reaching such post by now and that the respondent was diligently serving as Registrar since the last 5 years.

(d) That since the respondent can be reappointed to the same post today the issuance of writ would be futile and may not be issued. P.L. Lakhanpal Vs. A.N. Ray and Others, ; Hari Shankar Prasad Gupta Vs. Sukhdeo Prasad and Another, ; Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others, .

(e) That the petitioners being part of the same set of persons who complained against the appointment of the respondent to the Chancellor, must be fastened with the knowledge relating to the appointment since the set of persons included persons who had participated in the selection process at the relevant time. In fact, the petitioner No. 2 is a Senate member and cannot disown knowledge of the appointment. In such case, the petitioners having acquiesced in the appointment are precluded from challenging the same. Rajendar Kumar Chandanmal Vs. Government of State and Others, .

(f) That petitioners have suppressed the relevant facts that the group of complainants to which the petitioners belong consists of Senate and Syndicate members who had participated in the selection process and in fact the action of filing the petition only at the instance of the present petitioners, though they had not raised any individual grievance apart from the group, establishes subterfuge, which disentitles them to discretionary relief.

6.5. That even otherwise, according to Mr. Joshi, the respondent is duly qualified as per the stipulations of the Employment Notice inter alia on account of the

following:

6.5.1. That the respondent has obtained 55% marks in his Masters degree. Statute 164A permits additional marks which must be considered for the purpose. The judgment of this Court in Spl. C.A. 8208 of 2007 was in the context of the question whether the said Statute overrides the U.G.C. prescription of qualifications and was answered in the negative which issue does not arise here.

6.5.2. That the respondent being employed as Assistant Registrar with the Gujarat Ayurved University is a candidate within the University system and the requirement then is for obtaining 50% marks.

6.5.3. That the requirement of C.C.C. qualification was obtained by the petitioner on 6-4-2006 while the interview-call was on 20-4-2007. The requirement of possessing the qualification on the last date of submitting application is not a substantial requirement for issuing a writ of quo-warranto since it appears that no candidate had such qualification and no grievance has been made by an aggrieved party against the relaxation. In any case, the respondent has the requisite qualifications at the time of consideration of the petition, and therefore, no writ would issue. *Md. Muzaffar Alam Vs. State of Bihar and Others*, .

6.5.4. That the respondent possesses the necessary experience of 5 years. The issue of equivalence has been decided by the Syndicate and may not be substituted. *Trivedi Himanshu Ghanshyambhai Vs. Ahmedabad Municipal Corporation and Others*, .

6.6. That in fact the above issues cannot be gone into in the absence of pleadings in the petition. The writ of quo-warranto is akin to civil proceedings and the petition is bereft of pleadings on the above points. The findings of the Committee cannot be relied upon since the same are by a body, which had no jurisdiction, and in any case, the same are in breach of principles of natural justice. *Union of India (UOI) and Another Vs. Association of Unified Telecom Service Providers of India and Others*, Paragraphs 45, 46, 55, 59, 61).

6.7. In view of the matter the breach is not clear, and hence, a writ of quo-warranto cannot be issued.

6.8. Mr. Joshi further contends that assuming that the appointment is contrary to the resolution regarding qualifications, a writ of certiorari or mandamus would lie only in a case where the proceedings has been initiated at the behest of an aggrieved party. *Girjesh Shrivastava and Others Vs. State of M.P. and Others*, ; *Retd. Armed Forces Medical Association v. Union of India*, reported in 02006 (11) SCC 731].

7. Therefore, the questions that fall for determination in this application are:

(1) Whether the order passed by the Chancellor under Sec. 7(4) of the Act is binding upon the University.

(2) Whether the University, without challenging the order passed by the

Chancellor before the appropriate forum, can contend before this Court that the order passed by the Chancellor is otherwise illegal.

(3) Whether at the instance of the petitioners this Court can issue mandamus for enforcement of the order of the Chancellor.

(4) Whether this Court, on the basis of this writ-application filed by the petitioners, can issue a writ in the nature of quo-warranto for quashing the appointment of the Registrar from the materials on record.

8. In order to appreciate the aforesaid questions, it will be profitable to refer to the following provisions of the Act:

8.1. Section 7 of the Act reads as under:

Sec. 7. Inspection and Inquiry: (1) The Chancellor shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories, libraries, museums, workshops and equipment, of any institution, college or hostel maintained, recognised or approved by, or affiliated to the University, of the teaching and other work conducted by the University, and of the conduct of examinations held by the University or by any autonomous college; and to cause an inquiry to be made in respect of any matter connected with the University. The Chancellor shall in every case give notice to the University of his intention to cause an inspection or inquiry to be made and the University shall be entitled to be represented thereat.

(2) The Chancellor shall communicate to the Syndicate and to the Senate his views with reference to the results of such inspection or inquiry and shall, after ascertaining the opinion of the Syndicate and the Senate thereon, advise the University on the action to be taken.

(3) The Syndicate shall report to the Chancellor such action, if any, as it has taken or may propose to take upon the results of the inspection or inquiry. Such report shall be submitted with the opinion of the Senate thereon, and within such time as the Chancellor may direct.

(4) Where the Syndicate does not within a reasonable time take action to the satisfaction of the Chancellor, the Chancellor may, after considering any explanation furnished or representation made by the Syndicate, issue such directions as he may think fit and the Syndicate shall comply with such directions.

(5) The State Government may, whenever it deems fit, cause a like inspection or inquiry to be made in the manner described in sub-secs. (1) to (3) above and shall have, for the purposes of such inspection or inquiry, all the powers of the Chancellor under the said sub-sections.

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8.2. Section 8 of the Act provides as under:

Sec. 8. Officers of the University: The following shall be the officers of the

University, namely:

- (i) The Chancellor,
- (ii) The Vice-Chancellor,
- (iii) The Pro-Vice-Chancellor,
- (iv) p of The Deans Faculties, (v) The Registrar,
- (va) (\* \* \*)
- (vi) The Controller of Examinations, and
- (vii) Such other officers in the service of the University as may be declared by the Statutes to be officers of the University.

8.3. Section 8A of the Act reads as under:

Sec. 8A. (1) Notwithstanding anything contained in this Act, Statutes, Ordinances, Regulations and Rules, no person shall be appointed, nominated or, as the case may be co-opted:

- (i) on the post of officers referred to in clauses (iv), (v), (vi) and (vii) of Sec. 8;
- (ii) on the post of teacher; or
- (iii) as a member of any of the authorities of the University, any Committee or any other body thereof after he attains the age of 62 years:

Provided that nothing in this Section shall apply to the Chairman or a member of any of the authorities of the University Committee or any other body thereof, who holds the Chairmanship or membership by virtue of his office as a Chancellor, Vice-Chancellor, or as the case may be, the Pro-Vice-Chancellor.

(2) Any person who has been appointed on the posts referred to in clauses (i) and (ii) of sub-sec. (1) or nominated or co-opted as a member of any of the authorities of the University, any Committee or any other body thereof, shall cease to hold his office as such or as the case may be, to be a member after attaining the age of 62 years.

8.4. Section 9 of the Act reads as under:

Sec. 9. Chancellor: (1) The Governor of the State of Gujarat shall be the Chancellor of the University.

(2) The Chancellor shall, by virtue of his office, be the head of the University and the President of the Senate and shall, when present, preside at the meetings of the Senate and at any Convocation of the University.

(3) The Chancellor shall have such other powers as may be conferred on him by this Act or the Statutes.

xxx xxx xxx

8.5. Section 13 of the Act reads as under:

Sec. 13. The Registrar: The Registrar shall be a whole-time salaried officer and shall act as the Secretary of the Senate, of the Syndicate and of the Academic Council. He shall be appointed by the Syndicate in accordance with the Statutes to be made in this behalf, and his emoluments and conditions of service shall be determined by such Statutes. He shall exercise such powers and perform such duties as may be prescribed by the Statutes, Ordinances and Regulations.

13A. Joint Registrar. (Deleted by Guj. 26 of 1978, Sch.)

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8.6. Section 15 of the Act reads as under:

Sec. 15. Authorities of the University: The following shall be the authorities of the University, namely:

- (i) The Senate,
- (ii) The Syndicate,
- (iii) The Academic Council,
- (iv) The Faculties,
- (v) The Board of University Teaching,
- (vi) The Boards of Studies,
- (vii) The Board of Extra-Mural Studies, if established,
- (viii) The Board for Hostels, if established,
- (ix) The Board for Students Welfare, if established, and
- (x) Such other Boards, and bodies of the University as may be declared by the Statutes to be the authorities of the University.

xxx xxx xxx

8.7. Section 18 of the Act reads as under:

Sec. 18. Powers and Duties of the Senate: (1) Subject to such conditions as may be prescribed by or under the provisions of this Act, the Senate shall exercise the following powers and perform the following duties, namely:

- (i) to make provision for instruction, teaching and training in such branches of learning and courses of study as it may think fit, for research and for the advancement and dissemination of knowledge;
- (ii) to make such provision as will enable affiliated colleges and recognised institutions to undertake specialisation of studies;
- (iii) to organise and make provision for common laboratories, libraries, museums

and other equipment for teaching and research;

(iv) to establish and maintain departments and institutes of research and specialized studies;

(v) to institute professorships, readerships, lecturerships and any other posts of teachers required by the University;

(vi) to institute fellowships, travelling fellowships, scholarships, studentships, exhibitions, medals and prizes;

(vii) to institute and confer degrees, titles, diplomas and other academic distinctions;

(viii) to confer on the recommendation of the Syndicate, honorary degrees, titles or other academic distinctions;

(ix) to make, amend or repeal the Statutes;

(x) to consider, cancel, refer back but not to amend Ordinances;

(xi) to consider and pass resolutions on the annual reports, annual accounts and financial estimates;

(xii) to consider the annual financial estimates prepared by the Syndicate and pass resolutions with reference thereto;

(xiii) to elect office-bearers and authorities as provided in the Act and the Statutes;

(xiv) to make provision relating to the use of Gujarati or Hindi in Devnagari script or both as a medium of instruction and examination;

(xv) to exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the Statutes, Ordinances and Regulations.

(2) The powers and duties under clauses (i) to (viii) of sub-sec. (1) shall not be exercised except upon the recommendations made by the Syndicate and the Academic Council.

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8.8. Section 20 of the Act provides as under:

Sec. 20. Powers and Duties of the Syndicate: (1) Subject to such conditions as may be prescribed by or under the provisions of this Act, the Syndicate shall exercise the following powers and perform the following duties, namely:

(i) to hold, control and administer the property and funds of the University;

(ii) to enter into, vary, carry out and cancel contracts on behalf of the University in the exercise or performance of the powers and duties assigned to it by the Act

and the Statutes, in consultation with the Finance Committee, if any, and the Legal Committee, if any, appointed by the Syndicate;

(iii) to determine the form, provide for the custody and regulate the use, of the common seal of the University;

(iv) to administer funds placed at the disposal of the University for specific purposes;

(v) to frame the annual financial estimates of the University and to submit them to the Senate;

(vi) after the financial estimates are voted by the Senate:

(a) to reduce the amount of the budget grant.

(b) to sanction the transfer of any amount within a budget grant from one minor head to another or from a subordinate head under one minor head to a subordinate head under another minor head, or

(c) to sanction the transfer of any amount not exceeding rupees five thousand within a minor head from one subordinate head to another or from one primary unit to another;

(vii) to make provisions for buildings, premises, furniture, apparatus and other means needed for carrying on the work of the University;

(viii) to accept on behalf of the University, bequests, donations and transfers of any movable or immovable property to the University;

(ix) to transfer any movable or immovable property on behalf of the University;

(x) to raise loans on the security of the assets of the University;

(xi) to manage and regulate the finances, accounts and investments of the University;

(xii) to institute and manage --

(a) Printing and Publication Department,

(b) University Extension Boards,

(c) Information Bureau, and

(d) Employment Bureau;

(xiii) to make provision --

(a) for extra-mural teaching and research,

(b) for physical education, National Cadet Corps and military training;

(xiv) to manage colleges, departments, institutes of research or specialised studies, laboratories, libraries, museums and hostels maintained by the

University;

(xv) to recognise hostels and to provide housing accommodation for University teachers and to other employees;

(xvi) to register high schools situate outside the State of Gujarat as may be provided by the Statutes;

(xvii) to arrange for and direct the inspection of affiliated colleges, recognised institutions, approved institutions and hostels, to issue instructions for maintaining their efficiency and for ensuring proper conditions of employment for members of their staff, and in case of disregard of such instructions, to modify the conditions of their affiliation or recognition or take such other steps as it deems proper;

(xviii) to call for reports, returns and other information from colleges, recognised institutions, approved institutions or hostels;

(xix) to supervise and control the residence, conduct and discipline of the students of the University and to make arrangements for promoting their health and general welfare;

(xx) to recommend to the Senate the conferment of honorary degrees, and academic distinctions in the manner prescribed by the Statutes;

(xxi) to award fellowships, travelling fellowships, scholarships, studentships, exhibitions, medals and prizes;

(xxii) to appoint teachers and servants of the University, fix their emoluments, if any, and define their duties and the conditions of their service and discipline;

(xxiii) to recognise a member of the staff of an affiliated college or recognised institution or approved institution as a professor, reader, lecturer or teacher of the University and withdraw such recognition;

(xxiv) to fix remuneration of examiners and to arrange for the conduct of and for publishing the results of the University examinations and other tests;

(xxv) to fix, demand and receive such fees and other charges as may be prescribed by the Ordinances;

(xxvi) to make, amend and cancel the Ordinances;

(xxvii) to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act, Statutes, Ordinances and Regulations;

(xxviii) to exercise all powers of the University not otherwise provided for in this Act or the Statutes and all other powers which are requisite to give effect to the provisions of this Act or the Statutes.

(2) The Syndicate shall make a report to the Senate about all acceptances of property referred to in clause (viii) of sub-sec. (1).

(3) The Syndicate shall not transfer any immovable property without the previous sanction of the Senate.

(3A) The exercise of the powers by the Syndicate under clause (xxii) of sub-sec. (1), insofar as they relate to the laying down and regulating salary-scales and allowances of teachers and servants of the University, shall be subject to the approval of the State Government.

(4) The Syndicate may by Ordinances appoint Committees to carry out its administrative work and define their constitution, functions and tenure.

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8.9. Section 59 of the Act reads as under:

Sec. 59. Disputes as to Constitution of University Authority or Body Where any question arises as to --

(1) the interpretation of any provision of this Act, or any Statute, Ordinance, Regulation or Rule, or

(2) whether a person has been duly elected or appointed as or is entitled to be or ceases, to be entitled to be, a member of any authority or other body of the University,

(a) it may be referred to the State Government if it relates to a matter specified in clause (1), and

(b) it may be referred to the State Government if --

(i) it relates to a matter specified in clause (2), or

(ii) if twenty members of the Senate so require irrespective of whether it relates to a matter specified in clause (1) or clause (2), and the State Government shall after making such inquiry as it deems fit (including giving an opportunity of being heard where necessary) decide the question and its decision shall be final.

9. At the outset, we propose to consider the question raised by the learned Counsel for the respondents as to whether in exercise of power conferred under Sec. 7(4) of the Act, the Chancellor has the right to pass a direction for removal of the Registrar on the ground of lack of qualification based on the independent inquiry made by her.

10. It is strenuously contended by the learned Counsel appearing on behalf of the respondents that in exercise of power conferred under Sec. 7(4) of the Act, the Chancellor can pass order only in respect of administrative functions/duties of the University but cannot pass any direction for removal of an officer appointed by the University.

11. The learned Counsel for the respondents contended that if really any power was conferred upon the Chancellor to dismiss an employee of the University, in

such a case, the Act would have indicated specific provision for giving opportunity of hearing to the person affected. According to the learned Counsel for the respondents, in the absence of any provision in the Statute for giving opportunity of hearing to the concerned employee, the order of removal from service is not contemplated under the above provision.

12. After hearing the learned Counsel for the parties and after going through the language employed in Sec. 7 of the Act, we find that in the matter of dismissal of employee already appointed by the University, the Act itself gives specific power to the Senate and Syndicate for taking action against misconduct etc., and thus, Sec. 7 does not contemplate such an action on the part of Chancellor in respect of a matter for which specific provision is made in the Act. But the position will be totally different when the Chancellor wants to exercise his power of quashing of the appointment of an officer on the ground that such appointment is made in violation of the Act. In our opinion, Sec. 7 of the Act authorizes the Chancellor to cause inquiry in respect of any matter connected with the University and the sphere of such enquiry definitely extends to the question of illegal appointment in violation of the statutory provisions. In other words, if the appointment is given to a person having no requisite qualification as prescribed under the Statute, the Chancellor is vested with the power to undo such wrongful act. We are, however, prepared to accept the contention of the learned Counsel for the respondents to this extent that once a valid appointment is given to an employee, if question of removal of such an employee from service arises due to misconduct of such a legally appointed employee, by taking aid of Sec. 7, such an employee cannot be removed from service.

13. In the case before us, Chancellor has not inquired into any misbehaviour or misconduct of an employee legally appointed but has sought to inquire into the illegal appointment of the Registrar, an important officer, who, it was alleged, had no requisite qualification to become Registrar as fixed in exercise of the power conferred under the Act and on the basis of inquiry so made, has arrived at the conclusion that such appointment was void as the person had no requisite qualifications. Consequently, the University was directed to take step for his removal.

14. If according to the University, such decision taken by the Chancellor was incorrect, appropriate remedy of the University or the person concerned lay by approaching the appropriate legal forum for setting aside the order passed by the Chancellor, a statutory authority, being a "State" within the meaning of Art. 12 of the Constitution of India.

15. Therefore, before entering into the merit of the decision taken by the Chancellor, we hold that Sec. 7(4) of the Act authorizes the Chancellor to pass direction upon the University to recall an appointment of an officer of the University, which is non-est in the eye of law as the person concerned had no requisite qualification fixed by the Statutory Authority to hold such post.

16. The next question is whether this Court, in the present writ-application filed by the writ-petitioners, can pass an order of mandamus for implementation of the order passed by the Chancellor.

17. The learned Counsel appearing on behalf of the respondents, at this stage, strenuously contended before us that the Chancellor, while exercising power under Sec. 7(4) of the Act, has, first, not followed the procedure provided in Secs. 7(2) and 7(3) of the Act and secondly, even on merit, the finding arrived at by the Committee constituted by the Chancellor was wrong regarding lack of qualification of the respondent No. 4. According to the learned Counsel for the respondents, a writ Court should not issue a mandamus for enforcement of a wrong order. They further contend that at the stage of inquiry conducted by the Chancellor through the Committee constituted by her, appropriate opportunity of hearing was not given to either respondent No. 4 or to the University. They also challenge the finding recorded by the Committee constituted by the Chancellor that respondent No. 4 had no requisite qualification of the Registrar, which according to them, is based on misreading of the materials on record.

18. On the above question, we are of the view that it is true that a High Court exercising writ-jurisdiction does not pass a direction upon the "State" to do a wrongful act. But the law is equally settled that even if a direction on the basis of the power conferred by the Statute is given by one of the statutory authorities upon the other which may not be appropriate in the facts of the case, the latter has a duty to implement such order unless the latter challenges the alleged wrongful direction successfully before the appropriate forum. For instance, if a citizen gets a declaratory decree against a State as regards his legal status and the State does not challenge such declaratory decree before the appellate forum, it cannot subsequently allege that the decree was illegal when the citizen prays for mandamus for enforcing his legal status against the State. In other words, the High Court will unhesitatingly issue mandamus for enforcing the decree the State has suffered as it had attained finality unless it has lost its force for other lawful reason. At that stage, there is, however, no scope of entering into the legality of the decree on the ground that in the facts of the case such decree should not have been passed. Therefore, once the Committee constituted by the Chancellor has held that the respondent No. 4 had no requisite qualification of being appointed as Registrar and the Chancellor had by accepting the finding of the Committee directed the Vice-Chancellor to take step for removing the Registrar, it was the duty of the University or the respondent No. 4 to challenge the decision in accordance with law if they are of the view that the finding recorded by the Committee appointed by the Chancellor was wrong.

19. In this connection, all the learned Counsel appearing on behalf of the respondents vehemently contended that their clients challenged such decision before the State Government by taking aid of Sec. 59 of the Act and the State Government has already given opinion that the Chancellor has no such power. Consequently, they submit that the purported decision passed under Sec. 7(4) of

the Act was very much challenged before the appropriate forum and after the opinion given by the State Government in exercise of power conferred under Sec. 59 of the Act, such order is no longer enforceable and has lost its force.

20. On the above question, we find that Sec. 59 of the Act gives power to the State Government to decide the question as to interpretation of any provision of the Act, Statute, Ordinance, Regulations or Rule or as to whether a person has been duly elected or appointed as or is entitled to be or ceases, to be entitled to be, a member of any authority or other body of the University and if such dispute is raised, the State Government should decide such question. In our opinion, the question whether the Registrar of the University had the requisite qualification to be appointed in that post does not come within the purview of Sec. 59 as it neither refers to interpretation of any of the provisions of the Act, Statute, Ordinance, Regulation or Rule nor is the post of Registrar come within the purview of phrase "member of any authority or body of the University". As it appears from Sec. 13 of the Act, Registrar shall be a whole-time salaried officer and shall act as ex-officio Secretary of the Senate, of the Syndicate and of the Academic Council. Therefore, Registrar does not come within the purview of Sec. 59(2) of the Act as the said sub-section does not refer to any salaried officer of the University mentioned in the Act.

21. We, therefore, find that in the case before us, instead of referring decision of the Chancellor under Sec. 7(4) of the Act to the State Government, it was duty of the respondents to challenge such decision before the lawful forum if they were of the view that the order was illegal. Section 59 of the Act is not that lawful forum. In the Act, State Government has not been given any power to overrule a decision taken by Chancellor in exercise of power under Sec. 7 of the Act. Similarly, the Chancellor has also not been given any right to question the decision taken by State under Sec. 59 of the Act. Section 59 of the Act does not give power to the State Government to decide whether an order passed by the Chancellor under Sec. 7(4) of the Act holding that the Registrar appointed by the University had no requisite qualification fixed under the Statute is correct or not.

22. On consideration of the above aspect, we, thus, find that once the Chancellor has issued even a purported order under Sec. 7(4) of the Act, if the University is dissatisfied, it is their duty to challenge such order in accordance with law before appropriate forum or to accept the said decision. University cannot challenge the decision given by the Chancellor upon it for recalling the order appointing Registrar by taking recourse to Sec. 59 of the Act. In this connection, we may profitably refer to the following observations of the Apex Court in the case of Pune Municipal Corporation Vs. State of Maharashtra and Others, dealing with the effect of not challenging even an apparent void order:

36. It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. As Prof. Wade states: "The principle must be equally true even where the "brand of invalidity" is plainly visible; for there also the order can effectively be resisted in law only

by obtaining the decision of the Court.

37. He further states:

The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiffs lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the "void" order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another.

38. In *Smith v. East Elloe Rural District Council*, (1956) 1 All ER 855, Lord Redcliffe had an occasion to consider a similar argument (that the order was null and void). Negating the contention, the Law Lord made the following oft-quoted observations:

(T)his argument is in reality a play on the meaning of the word "nullity". An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.

(Emphasis supplied)

39. A similar question came up for consideration before this Court in *State of Punjab and Others Vs. Gurdev Singh*, . In *Gurdev Singh*, a suit for declaration was instituted by the plaintiff contending that the order dismissing him from service was ultra vires, unconstitutional, violative of principles of natural justice and void ab initio and he continued to be in service. Such suit, in accordance with the provisions of Art. 113 of the Limitation Act, 1963, must be filed within three years from the date of passing of order or where departmental appeal or revision is filed from the date of dismissal of such appeal/revision. The suit was, however, filed beyond the period of three years. The High Court held that since the order was void, the provisions of Limitation Act would not apply to such order. The aggrieved State approached this Court.

40. Setting aside the decree passed by all the Courts and referring to several cases, this Court held that if the party aggrieved by invalidity of the order intends to approach the Court for declaration that the order against him was inoperative, he must come before the Court within the period prescribed by limitation. "If the statutory time of limitation expires, the Court cannot give the declaration sought for".

41. The Court then stated:

If an Act is void or ultra vires, it is enough for the Court to declare it so and it

collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not "quash" so as to produce a new state of affairs.

22.1. Thus, for not challenging the order of the Chancellor before the lawful forum, the same has attained finality and is binding upon the respondents.

23. The next question is whether a writ of mandamus should be issued for implementation of such an unchallenged order at the instance of the petitioners, who according to the respondents, have no locus standi to maintain a writ-application. According to learned Counsel for the respondents, one of the writ-petitioners was himself a member of the Senate and a party to the decision appointing respondent No. 4 as Registrar, and therefore, he cannot challenge the decision of the Senate.

24. In our opinion, even if a member of the Senate is present in the meeting where illegal order is passed by the Senate and if subsequently, the Chancellor exercises power under Sec. 7(4) of the Act to quash such illegal order of the Senate, such member of the Senate being bound by the statutory provision of Sec. 7(4) can pray for enforcement of such a binding order though initially such member was party to a wrong decision taken by the Senate which has since been set aside by the Chancellor in exercise of statutory power. One of the petitioners, being a member of the Senate, cannot be branded as a "busybody" so as to reject the writ-application on the ground of want of locus. (See *M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others*, for detailed discussions on the subject). Thus, at least one of the petitioners, who is a member of the Senate of the University, is entitled to maintain a writ-application for enforcement of an order passed by a statutory authority against the University, another statutory authority.

25. We now propose to consider the most vital question whether respondent No. 4 had really the requisite qualification of becoming a Registrar and whether Chancellor was justified in passing a direction upon the University to set aside the appointment. In other words, we also propose to consider the other prayer of the petitioners for issue of writ in the nature of quo-warranto for setting aside the appointment of respondent No. 4 which has already been ordered to be quashed by the Chancellor, even if it is assumed for the sake of argument that the prayer of writ in the nature of mandamus is not maintainable for enforcing the order of the Chancellor for want of locus standi of the petitioners.

26. Mr. Mihir Joshi, the learned Senior Advocate appearing on behalf of respondent No. 4 assiduously contended before us that as the post of Registrar is not a public office, no writ of quo-warranto can be issued and on that ground alone, we should reject the prayer for issue of writ of quo-warranto.

27. After hearing the learned Counsel for the parties and after taking into consideration various decisions of the Supreme Court, we find that in order to

succeed in the proceeding for grant of issue of writ of quo-warranto, it must be proved that the post concerned is a public office and held by a usurper without legal authority. The next question, therefore, is whether post of Registrar is a public office. It is now settled law that in order to be a public office, the holder thereof must exercise some of the sovereign powers of the State in discharge of his duties.

28. We find substance in the contention of Mr. Kariel, the learned Advocate appearing on behalf of the petitioners, that it is a basic sovereign power of the State to impart education to the citizen. The State has delegated a part of such powers to the University by its establishment through the Act of the State Legislature. Thus, by virtue of an Act of State Legislature, a part of the sovereign powers of imparting education is conferred upon the University to the extent indicated in the Statute. We have already pointed out that the Registrar is an officer of the University as mentioned in Sec. 8 of the Act and is also the Head of the University office. According to Statute 140, Registrar is the custodian of common seal and is also the ex-officio Secretary of the Senate, Syndicate and Academic Council, Faculties and Boards of Studies and Board of University. Therefore, Registrar definitely exercises a part of the sovereign powers of the State to impart education, which is conferred upon the University by enactment of law. It is settled law that public office means an office having authority conferred by law and having fixed period and specific power to exercise some portion of the sovereign functions. Thus, we are of the firm opinion that the Registrar of a University exercises a part of sovereign powers vested in the University and consequently, such an office is a public office. Such being the position, an application for issue of writ of quo-warranto is maintainable for removal of a Registrar if other conditions for issue of such writ are fulfilled.

29. Although, Mr. Joshi tried to convince us that this writ-application should be rejected on the ground of delay and ill-motive of the petitioners, we find that once it is held that a person is holding public office under invalid authority and having no requisite qualification, the factors of mere delay or even ill-motive of the petitioners cannot stand in the way of a writ Court and the Court should not hesitate to ask a person to vacate the office even if there is some delay or inimical relation with the petitioners with the usurper of the public office. In this connection, we may appropriately refer to the following observations of a three-Judge Bench of the Apex Court in the case of Dr. Kashinath G. Jalmi and another Vs. The Speaker and others, :

33. In our opinion, the exercise of discretion by the Court even where the application is delayed is to be governed by the objective of promoting public interest and good administration; and on that basis, it cannot be said that discretion would not be exercised in favour of interference where it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality.

34. We may also advert to a related aspect. Learned Counsel for the respondents were unable to dispute that any other member of the public, to whom the

oblique motives and conduct alleged against the appellants in the present case could not be attributed could file such a writ petition even now for the same relief, since the alleged usurpation of the office is continuing, and this, disability on the ground of oblique motives and conduct would not attach to him. This being so, the relief claimed by the appellants in their writ petitions filed in the High Court being in the nature of a class action, without seeking any relief personal to them, should not have been dismissed merely on the ground of laches. The motive or conduct of the appellants, as alleged by the respondents, in such a situation can be relevant only for denying them the costs even if their claim succeeds, but it cannot be a justification to refuse to examine the merits of the question raised therein, since that is a matter of public concern and relates to the good governance of the State itself.

29.1. Moreover, we find that in the case before us, Chancellor of the University was herself satisfied with the illegality committed by the University, and initiated proceeding in the year 2010 for inquiry and the outcome of the inquiry went against respondent No. 4. Therefore, the period during which the Chancellor had taken action, the petitioners had reasonable ground for not invoking writ jurisdiction of quo-warranto. Therefore, even factually, in this case, the delay, if any, is not that gross so as to dismiss the writ application on that ground. We have, however, found no ill-motive of the petitioners in filing this application. We have already pointed out a member of the Senate is entitled to pray for enforcement of a direction given by the Chancellor upon the Vice-Chancellor.

30. We now propose to enter into the last question as to whether respondent No. 4 had the requisite qualification of becoming a Registrar.

31. According to the advertisement given by the Saurashtra University for appointment of the Registrar, it appears that the following are the qualifications for being appointed as Registrar:

1.(a) A Master's Degree with atleast 55% of the marks or its equivalent grade of B in the U.G.C. Seven point scale.

(b) A degree/diploma/certificate course of computer equivalent to C.C.C. level from Government Recognized University/Polytechnic/Training Institute.

2. At least Five years of experience as a Lecturer in a College or a University with experience in educational administration.

Or

Comparable experience in research establishment and/or other institutions of higher education.

Or

Five years of administrative experience as Assistant Registrar or in an equivalent post.

32. So far as the first qualification indicated above is concerned, it appears that the respondent No. 4 was registered with the Saurashtra University for Post-Graduate Degree of M.Com. as an external candidate and passed such examination which was held in the month of November, 1998. In the said M.Com. Examination, undisputedly, he had secured less than 55% marks. While the respondent No. 4 was registered with the University for M.Com degree as external candidate, he had also registered himself for the Post-Graduate Degree of Master of Social Work (M.S.W.) in the month of June-July, 1998 as a regular candidate. Rule 3(1)(v) of the Rules relating to Post-Graduate Studies prohibits a candidate of Post-Graduate Degree from getting registered simultaneously in more than one Post-Graduate Degree course. In the case before us, while the respondent was registered with the University for M.Com. degree, he had, in violation of the said rule, registered himself for M.S.W. degree course and ultimately, passed M.S.W. Post-Graduate Degree where he obtained 4 marks less than 55%, but by way of 4 grace marks, he obtained 55% marks.

33. Mr. Kariel, the learned Advocate appearing on behalf of the petitioners strenuously contended before us that the grace mark of 4 cannot be taken into consideration because without the said grace marks, he did not secure 55% marks and thus, the respondent No. 4 had no requisite qualification.

34. Secondly, Mr. Kariel contends that once a student has registered himself as an external student in M.Com., he could not simultaneously register himself for another Post-Graduate Degree course as a regular student and thus, the degree obtained by the respondent No. 4 in M.S.W. should be treated to be an invalid degree.

35. So far as the second qualification regarding obtaining of certificate of C.C.C. level is concerned, it is an admitted position that the last date for submitting application form was 17th March, 2006, whereas the respondent No. 4 obtained such qualification, vide certificate dated 6th April, 2006. Therefore, on the last date of submission of application for the post of Registrar, the respondent No. 4 did not have the requisite qualification of having certificate in C.C.C. level.

36. Similarly, so far as 5 years administrative experience as Assistant Registrar or any equivalent post is concerned, it appears that the respondent No. 4 produced a certificate from one Gitanjali Charitable Trust, where the respondent No. 4 himself was a trustee till his name was deleted on 12th October, 2009. The certificate produced by the respondent No. 4 at page 236 of the paper book indicates that the respondent No. 4 was working in the organization of Gitanjali College as Chief Administrative Officer between June, 1999 and December, 2004.

37. The Inquiry Committee constituted by the Chancellor has arrived at the conclusion that the fact that such post was created and filled up by the Gitanjali College was not intimated to the University nor was any sanction sought from the State Government as required under Ordinance 189. It was further pointed out that Gitanjali College was not a University nor was any sanction sought for from

the State Government as required under Ordinance 189. The Inquiry Report further discloses that no procedure was adopted to appoint the respondent No. 4 and the appointment order of respondent No. 4 was not produced nor resolution for appointing the respondent No. 4 discloses the salary of the respondent No. 4 nor was any pay-slip or service-book produced.

38. It further appears from record that the respondent No. 4 was prosecuting his studies in the Second LL.B. and Special LL.B. from one D.D. College, Porbandar which was about 200 kms. away from Rajkot where Gitanjali College is situated during the period in which he had been allegedly working as Chief Administrative Officer. Further, it appears that although the post of Assistant Registrar in a University has a pay-scale of Rs. 8000-275-13500, the post held by the respondent as Chief Administrative Officer of Gitanjali College had a fixed salary of Rs. 8000/- a month. It was, therefore, contended that the post of the Chief Administrative Officer was not equivalent to that of Assistant Registrar of a University. It is further pointed out that in Gitanjali College there was one Clerk, one Accountant, one Peon and one Watchman, and thus, the alleged experience of the respondent No. 4 as Chief Administrative Officer is not comparable to the experience of Assistant Registrar of a University. It further appears that Ordinance 189 gives a list of non-teaching employees of college affiliated with Saurashtra University along with pay-scale of the posts, and the post of Chief Administrative Officer is not a post envisaged in the said Ordinance.

39. It further appears that the respondent No. 4 gained experience while working as an Assistant Registrar of Gujarat Ayurved University for some period. It is pointed out that the Gujarat Ayurved University is not affiliated with University Grants Commission, but is linked to the Ministry of Health and Family Welfare, both at the State level and Central level whereas Saurashtra University is registered and affiliated with University Grants Commission and, therefore, the experience of the respondent No. 4 as Assistant Registrar cannot be termed as comparable experience.

40. Lastly, it is contended by Mr. Kariel that the relaxation of the qualification can be granted only to the person who is already in University system, meaning thereby, connected with the Saurashtra University. Thus, according to Mr. Kariel, no relaxation can be given to the respondent No. 4 who was working with Gujarat Ayurved University having a separate special status, affiliated to the Ministry of Health.

41. Although, Mr. Joshi, the learned Senior Advocate, appearing on behalf of the respondent No. 4 strenuously contended before us that his client has not been given an appropriate opportunity to meet with such type of allegations, which were not alleged in the main writ application, we find that the above facts have appeared even from the pleadings of the respondent No. 4 and the documents produced by him. We further find that those were also produced before the Committee constituted by the Chancellor. We, therefore, find no reason to accept the contention of Mr. Joshi that his client has not got opportunity to controvert

those allegations. We have heard Mr. Joshi on the above questions and those documents being produced by the respondent No. 4 himself, he now cannot be permitted to contend that he was not given opportunity of explaining his requisite qualifications.

42. After the conclusion of the hearing of this matter, at the time of preparation of the judgment, we found that the qualifications mentioned in the advertisement issued by the University for the post of Registrar was not in conformity with the qualifications prescribed in the U.G.C. Notification on revision of pay-scales, minimum Qualification for Appointments of Teachers in Universities, Colleges and Other Measures for the Maintenance of Standards, 1998 (the "Notification" hereafter). From the said Notification, it appears that the minimum qualifications for the post of Registrar, Deputy Registrar and Assistant Registrar were mentioned in Appendix-III. The same is quoted below:

#### APPENDIX-III

Minimum qualifications for the direct recruitment to the posts of Registrar, Dy. Registrar and Assistant Registrar.

(i) Registrar and equivalent posts:

1. A Master's degree with at least 55% of the marks or its equivalent grade of B in the U.G.C. seven point scale.
2. Atleast 15 years of experience as Lecturer (Sr. Scale)/Lecturer with eight years in Reader's grade along with experience in educational administration.

Or

Comparable experience in research establishment and/or other institutions of higher education.

Or

15 years of administrative experience of which 8 years as Deputy Registrar or an equivalent post.

(ii) Deputy Registrar and equivalent posts:

1. A Master's degree with at least 55% of the marks or its equivalent grade of B in the U.G.C. seven point scale.
2. Five years of experience as Lecturer in a College or a University with experience in educational administration.

Or

Comparable experience in research establishment and/or other institutions of higher education.

Or

Five years of administrative experience as Assistant Registrar or in an equivalent post.

(iii) Assistant Registrar and equivalent posts:

1. Good academic record plus Master's degree with at least 55% of the marks or its equivalent grade of B in the U.G.C. seven point scale.

42.1. For the above reason, we placed the matter for further hearing drawing the attention of the learned Counsel for the parties to the above fact. However, our attention was drawn to the fact that the aforesaid notification of 1998 was superseded by notification of 2000 where such qualification is not mentioned. Therefore, at the time of appointment of the respondent No. 4, there was no subsisting Notification issued by the U.G.C. laying down any qualification for appointment to the post of the Registrar of a University.

42.2. We, therefore, do not take note of the aforesaid Notification of 1998.

43. However, as pointed out by a Division Bench of this Court in the case of Harshaben Chatrabhuj Trivedi v. State of Gujarat, in Special Civil Application No. 8208 of 2007 disposed of on 5th May, 2009, unless there is specific provision in the University Grants Commission Regulation enabling a candidate to round off marks so as to obtain 55% marks applying Ordinance 164A, the eligibility criteria laid down in the University Grants Commission Regulation cannot be diluted. There is no dispute that both the Saurashtra University and the State of Gujarat were parties to the aforesaid writ petition, and, therefore, the aforesaid principle laid down in the decision of the Division Bench which has attained finality is binding upon both of them. Therefore, we find that the respondent No. 4 even lacked the first qualification prescribed by the University and reflected in the advertisement of the University inasmuch as the 4 grace marks given to the respondent No. 4 by taking aid of the Ordinance No. 164A are to be excluded.

44. Similarly, we also find substance in the contention of the petitioners that simultaneous registration of the respondent No. 4 when he had already been registered as an external candidate for M.Com. was not permissible and the second Post-graduate degree is invalid being in violation of the mandatory provision of the Statute. Thus, the marks obtained in the second Post-graduate degree should be ignored. Thirdly, it is an admitted position that the C.C.C. level certificate was obtained by the respondent No. 4 after the last date of submitting the application was over. Therefore, undisputedly, he had no requisite qualification at the relevant point of time being the last date of submitting the application pursuant to the advertisement. Fourthly, we agree with the petitioners that as the respondent No. 4 was not in any way connected with the University System, meaning thereby, "associated with the system of Saurashtra University or the colleges under this University", there was no scope of relaxation of his qualification. According to Sec. 2(15) of the Act, "University" means "Saurashtra University constituted under this Act" and consequently University system refers to "association with the Saurashtra University". Therefore, there

was no scope of relaxation of the qualifications of the respondent No. 4. We are, thus, not impressed by the submission of Mr. Joshi that today his client has all the requisite qualifications.

45. We are of the view that the Chancellor, after taking into consideration the above aspects coming out on the basis of the report of the Inquiry Committee appointed by her, having passed a direction for the removal of the respondent No. 4, the respondent No. 4 or the University could challenge the said direction only by filing an appropriate judicial proceedings against the direction/order passed by the Chancellor and not by way of Reference under Sec. 59 of the Act. It is now well settled law that once a statutory authority, in exercise of its purported statutory powers passes an order against any person, it is the duty of that person affected by such order to challenge that order in accordance with law. Not having challenged such order, the respondent No. 4 and the University are precluded from challenging such findings now. Moreover, we have also found that the findings arrived at by the Inquiry Committee were quite justified in the facts of the present case. We thus find that the writ-petition filed by the petitioner No. 2, a member of Senate, for enforcement of the order passed by the Chancellor, which remained unchallenged, should succeed. Similarly, there is no bar in even issuing a writ in the nature of quo-warranto when we ourselves are also satisfied from the materials on record that the respondent No. 4 had no requisite qualifications of becoming a Registrar of the University. We, therefore, hold that it is a fit case where the University should be directed to implement the order of the Chancellor based on the inquiry report, which has attained finality.

45.1. We accordingly answer the four questions formulated by us in Paragraph 8 of this judgment in the following way:

1st - in the affirmative.

2nd - in the negative.

3rd - in the affirmative.

4th - in the affirmative.

46. This writ application is thus allowed. The order of appointment of the respondent No. 4 as Registrar of the University is quashed and the University Authority is directed to immediately implement the order of annulment of the appointment of the respondent No. 4 as the Registrar of the University. Rule made absolute accordingly. No order as to costs. In view of the aforesaid order passed in the main writ-petition, the Civil Application does not survive, and stands disposed of accordingly.

#### FURTHER ORDER

After the order was pronounced, the learned Counsel appearing on behalf of the respondent No. 4 prays for stay of operation of our aforesaid order.

In view of what has been stated above, we find no reason to stay our order. The

prayer is refused.