

(1957) 01 MP CK 0022

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Application No. 96 of 1956

Rajendar Kumar Chandanmal

APPELLANT

Vs

Government of State and Others

RESPONDENT

Date of Decision : 16-01-1957

Acts Referred:

Constitution of India, 1950 — Article 226, 227

General Clauses Act, 1897 — Section 22

Madhya Bharat Vikram University Act, 1955 — Section 1(2), 44, 45, 8

Madhya Pradesh General Clauses Act, 1957 — Section 21

Citation : AIR 1957 MP 60

Hon'ble Judges : Newaskar, J

Bench : Single Bench

Advocate : K.B. Suxena and C.S. Chhajad, for the Appellant; K.A. Chitale, for the Respondent

Judgement

Newaskar, J.—This is a Petition under Article 226 of the Constitution of India for the issue of writs of quo-warranto and prohibition submitted by one Rajendrakumar Jain of Ujjain, claiming to be a bona fide resident of the State of Madhya Pradesh and a candidate for membership of the Senate of the Madhya Bharat Vikram University, against the State of Madhya Pradesh, the Government of Madhya Pradesh, the Chancellor, the Vice-Chancellor, the Registrar, Assistant Registrar and Dr. Boolchand, Special Officer of the Madhya Bharat Vikram University.

2. The petitioner's allegations are that the legislature of erstwhile State of Madhya Bharat passed an Act known as Madhya Bharat Vikram University Act, No. 18 of 1955 and the said Act received the assent of Rajpramukh on 17-6-1955, that this Act, which was published in the Madhya Bharat Government Gazette dated 25-6-1955, by Section 1 Sub-section (2) provided "it shall come into force on such date as the Government may, by notification in the Gazette, appoint in this behalf; that however subsequent to the passing of the Act, neither the Government of Madhya Bharat nor the Government of Madhya Pradesh, after

the formation of the new State of Madhya Pradesh by the States Reorganisation Act, 1956, issued notification in the Gazette appointing any date for its coming into force and that for that reason the said Act has not come into force; that so far as is known to the petitioner the office of Registrar of the University is vacant but in case he is appointed that officer & other respondents Nos. 3, 4, 6 and 7 have no authority of law to exercise any authority or right or perform any duty or do any function in relation to the said University as according to the petitioner this can be done only after the Act comes into force; that in spite of this fact respondent No. 7 Dr. Boolchand has assumed the office of the Special Officer and has invited, by notification in the Gazette, the graduates to get themselves registered as registered graduates of the said University and that in pursuance of the said invitation about 176 graduates got themselves registered as registered graduates of the said University by 1-10-1956; that subsequent to such registration respondent No. 6 claiming to be the Assistant Registrar of the said University invited the said graduates who had thus been registered to file their nomination-papers for standing as a candidate at this year's election of six members of the Senate by 3-12-1956 and that for this purpose respondent No. 6 has issued blank voting papers initialled by him to vote for any candidate standing at the proposed election which would be completed by 27-12-1956.

3. It is contended that the assumption of their respective offices by respondents Nos. 3 to 7, performance of duties and function and exercising rights in connection with this year's election of six members of the senate and other matters connected with the aforesaid University are without authority of law as the Act has so far not come into force at all.

4. The Petitioner, who had registered himself as a graduate and had stood as a candidate for election to the senate at the aforesaid election, complains that owing to the defect described above the petitioner was likely to be deprived of the votes of many graduates who might have abstained from getting themselves registered on the belief that the Act had not come into force so far and that this would deprive the petitioner of a number of votes he expected to secure at the said election.

5. The petitioner therefore Prayed for the issue of a writ of quo-warranto against the respondents Nos. 3 to 7 who according to him had assumed their respective offices without authority of law to enquire under what authority they had assumed respective offices and are exercising rights and performing duties and functions under the Act in question. The petitioner further prays for a writ of prohibition against respondents Nos. 3, 4, 5, 6 and 7 for restraining them from holding elections referred to above and from functioning under the aforesaid Act and writ of certiorari for quashing the proceedings in connection with the election referred to above.

6. Respondent No. 4 Dr. Mataprasad for himself and for respondents Nos. 3, 5 and 6 has filed a return. Respondent No. 7 has filed separate return.

7. In his return respondent No. 4 asserted that the Executive Head of the State the Rajpramukh or the Governor is recognised, as the Chancellor of the said University by the very passing of the Act and ipso facto holds his office as Chancellor and that the said Chancellor has the authority of law to take necessary action for the purpose of bringing the University into being; that in exercise of the power thus conferred by Section 44 of the Act the Chancellor has duly appointed Respondent No. 4 as the Vice-Chancellor and respondent No. 6 as the Assistant Registrar and that no Registrar has so far been appointed.

8. Respondent No. 7 in his return contested the petition on various grounds.

9. It is first contended that on true construction of the Act in question certain provisions of the Act including Sections 8, 44 and 45 became operative from the date of passing of the Act. It is further submitted that in the Scheme of Act No. 18 of 1955 and on its true construction the machinery of the University has to be set up as a condition precedent to its "body corporate" functioning immediately from the appointed day and that for that purpose transitional powers can be exercised "notwithstanding anything contained in the Act," Statutes or Ordinances" and that extraordinary powers of the Chancellor to bring the University into being can be exercised "at any time after the passing of the act" and that it is with that object in view that the power has been conferred upon the Chancellor to appoint a Special Officer and to invest him with necessary powers by Section 45 of the Act as a transitional measure.

10. It is therefore contended that each one of the respondents Nos. 3, 4, 6 and 7 are holding their respective offices under the authority of law and are exercising rights and performing functions and duties as are contemplated by the very passing of the Act and no more.

11. The petitioner's locus standi to submit the petition is also challenged.

12. Besides the submission of this respondent that "law existed as regards operativeness of Sections 1 (2), 8, 44 and 45 it is urged alternatively by him that by reason of Section 21 of the Madhya Bharat General Clauses Act it is permissible to do spade work during the period from the date of passing of the Act to the commencement thereof so as to synchronise effective enforcement of the Act with the date of its commencement. The petition, according to him, is premature.

13. It is also urged that the validity of various acts sought to be impugned can be challenged only in the manner provided in the Act after the University is established and incorporated.

14. Further it is said that the Petitioner is not entitled to move this Court for the issue of a writ, direction or order since the petitioner has accepted the validity of the action of respondent No. 7 in inviting graduates to get themselves registered by getting himself registered in pursuance of the same. The alleged likely injury, it is said, is too vague and ill-defined to be made the foundation of an application

of this sort.

15. Questions which arise for consideration on the basis of these contentions are;

First: -- Has the petitioner locus standi to submit the petition ?

Second : -- Whether the petitioner is entitled to any relief ? What is the effect of the circumstances that the Petitioner has got himself registered as a registered graduate in response to the invitation of respondent No. 7 ?

Third : -- Whether the assumption of their respective offices by respondents Nos. 3, 4, 6 and 7 legally valid ?

Fourth : -- Is the action of respondent No. 7 in inviting the graduates to get themselves registered and that of respondent No. 6 in inviting the members of the Senate and in issuing blank nomination-forms legally valid ?

16. As regards the first question there is no doubt that the offices of Chancellor, Vice-chancellor and other Officers of the University in respect of which the writ is prayed for are important offices of public nature and sought to be held under a Statute. For the issue of a writ of quo-warranto no special kind of interest in the relator is needed nor is it necessary that any of his specific legal right be infringed.

It is enough for its issue that the relator is a member of the public and acts bona fide and is not a mere pawn in the game having been set up by others. If the Court is of the view that it is in the interest of the public that the legal position with respect to the alleged Usurpation of an important public office should be judicially cleared, it can issue a writ of quo-warranto at the instance of any member of the public. The authorities on this point are practically unanimous.

17. In *Rex v. Speyer* (1916) 1 K B 595 (A), the question related to the appointment of Mr. Speyer to the Privy Council. It was contended by Mr. F.E. Smith who appeared for him that the applicant had no personal interest to question the appointment of the respondent. This contention was negatived on the ground that the application concerned public Government and that there was no ground for impugning the motives of the relator. This case was approved by this Court in *G.D. Karkare v. T.L. Shevde* AIR 1952 Nag 330 (B), in a case which was heard by a Division Bench.

18. Similar view is taken in *V.D. Deshpande v. Hyderabad State*, (S) AIR 1955 Hyd 36 (C) by Misra C.J., who observed as follows :

"The rule that no person may invoke the Court's aid in respect of a wrongful act of a public nature not affecting prejudicially the real and special interest or a specific legal right of the relator "is true only so far as the issue or writs mandamus and certiorari etc., are concerned. In respect of writ quo-warranto there is no such restriction and a member of the public may challenge a public act of the State provided he does so bona fide and is not a "man of straw" *R. v. Briggs* (1864) 11 LT 372 (D), set up by others as a mere pawn in the game and

provided it is in the interest of the public that the legal position should be judicially declared once for all"

19. It therefore follows that the Petition cannot be thrown out merely on the ground that the petitioner has no special Interest in the matter nor on the ground that none of his special legal right is in jeopardy. The offices to which the petition relates are of public nature and are statutory and the petitioner as a member of public can move this Court to examine the validity of the claim of respondents Nos. 3, 4, 6 and 7 to the same.

20. Second question which is also of preliminary nature is whether the petitioner, having got himself registered on the invitation issued by respondent No. 7 and having himself stood as a candidate at the election to the senate by securing nomination-form in his name, can challenge the validity of appointments of respondents Nos. 3, 4, 6 and 7 and the proceedings of election to the senate taken by them.

21. The main argument in this respect is based on the consideration that the writ of quo-warranto is not generally issued as a matter of course and it is discretionary with the Court to do so or withhold the same. The conduct of the petitioner who comes to Court praying for its issue becomes one of the factors which have to be taken into account in this respect. In *Miss Ari J. Cama v. Banwarilal* AIR 1853 Nag 81 (E), it is held by the Division Bench of this Court following *R. v. Clarke* (1800) 102 ER 15 (F) and *R. v. Lofthouse* (1866) 1 QB 443 (G), that a writ of quo-warranto ought not to be issued at the instance of a person who has acquiesced in or perhaps concurred in the very act which he afterwards comes to complain of.

22. In the present case what we have to consider is whether the conduct of the relator in the present case has gone to such an extent that this Court should, in view of that conduct, consider him to be unworthy of being entrusted with a writ in the form of quo-warranto. He no doubt has responded to the invitation of respondent No. 7 and gave his name for registration as a registered graduate of the University, But this cannot be said to be illegal as calling for the names of graduates for registration can be assumed to be a step of a preparatory nature so long as the actual registration is deferred until the Act comes into force.

But he further stood as a candidate at the election on the invitation of respondent No. 2. This no doubt is a step which to a certain extent indicates his concurrence. It is, however, such as should disentitle to the writ.

23. In AIR 1953 Nag 81 (E), the Petitioner was held to be entitled to object to the election of the respondent No. 1 by means of an election-petition and hence could not be granted remedy under Article 226 of the Constitution. It was further held that even if it were assumed that the petitioner could not resort to the remedy of election-petition and prevent respondent No. 1 from acting as a Councillor to select Councillors u/s 9 (2) of the City of Nagpur Corporation Act, 1948, he could not be granted the writ of quo-warranto as he failed to raise the

objection at proper time but waited till she was defeated at the very election.

This view was based on the case reported in (1866) 1 QB 433 (G) and other cases. The principle of both these cases appears to be that where the person seeking to object to the validity of election not only took part but waited till he was defeated and then turned round to challenge the validity of that Act he should not be allowed to do so. In the present case when the Petition was made no election had taken place. Only preparatory steps had been taken.

It is in that circumstance difficult to say that the petitioner by his conduct has acquiesced in the proceedings and waited till he had lost. I therefore do not find sufficient ground to refuse the relief to the petitioner on this preliminary ground.

24. Next important question to be considered is whether the assumption of their respective offices by respondents Nos. 3, 4, 6 and 7 legally valid ?

25. The only ground on which the validity is challenged in the petition is that the Act has not come into force since no notification has been issued either by the State of Madhya Bharat prior to 1-11-1956 or by the State of Madhya Pradesh from that date appointing the date on which the Act would come into force. At the time of argument learned counsel for the petitioner tried to urge other grounds based on the conditions laid down in the Act for valid appointments of some of the respondents but the learned Advocate for the State rightly took objection to this course on the ground that the respondents had no opportunity to meet these grounds in their return. Such last minute attempt to raise new grounds for the first time at the time of argument cannot ordinarily be permitted.

26. I shall therefore consider the only ground raised in the Petition. In order to appreciate the respective contentions of either side on this question it will be useful to set out material provisions of the Act and the Statutes.

27. The Act received the assent of Rajpramukh of Madhya Bharat on 17-6-1955. Section 1 of the Act in Sub-section (1) gives the short-title of this Act. Section 1 Sub-section (2) provides:

"It shall come into force on such date as the Government may, by notification in the Gazette, appoint in this behalf".

28. Section 2 sets out definitions of important terms in the Act, Out of them the following are material for our purpose. Section 2 (xi) :

""Registered Graduates" means a graduate-registered under the provisions of this Act."

Section 2 (xii) :

" "Statutes", "Ordinances" and "Regulations" mean respectively the Statutes, Ordinances and Regulations made under this Act and for the time being in force."

Section 3 (1) :

"The Chancellor, the First Vice-Chancellor, the First members of the Senate, the Syndicate and the Academic Council and all persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of the "Madhya Bharat Vikram University".

29. Section 4 defines powers of the University educational, disciplinary and financial.

Section 7 :

"The following shall be the Officers of the University :

- (i) The Chancellor,
- (ii) The Vice-Chancellor.
- (iii) The Treasurer,
- (iv) The Registrar, and
- (v) The Deans of the Faculties.

Section 8 :

"The Rajpramukh of the State of Madhya Bharat shall be the Chancellor of the University. He shall by virtue of his office be the Head of the University and the President of the Senate, and shall, when present, preside at meetings of the Senate and at any convocation of the University".

30. Section 9 defines the powers of the Chancellor and provides for supervision, direction and control by him of the affairs of the University. He is practically the Executive-Head of the University, acts ordinarily through the syndicate but possesses powers to act directly with- out concurrence of the Syndicate under certain circumstances. Section 10 (1) :

""The Vice-Chancellor shall be appointed by the Chancellor from a panel of three persons selected by a Committee as constituted under Clause (2)."

Section 10 (2) :

"The Committee referred to in Sub-section (1) shall consist of three persons, two of whom shall be persons not connected with the University or a Constituent or affiliated College, nominated by the Syndicate and one person appointed by the Chancellor. The Chancellor shall appoint one of the three persons to be Chairman of this Committee.

Provided that if the Chancellor does not approve of any one person so recommended he may call for fresh recommendations."

Section 10 (3) :

""The Vice-Chancellor shall hold office for a term of five years and shall not be

eligible for re-appointment :

Provided that, notwithstanding, the expiry of the term he shall continue in office until his successor is appointed and enters upon the office; but this period shall not exceed six months".

Section 13 :

"The Registrar shall be the wholetime Officer of the University, and shall act as Secretary of the Senate, the Syndicate and of the Academic Council. His terms of appointment, powers and duties shall be prescribed by the Statutes and the Ordinances."

31. Section 15 defines what are authorities of the University. Amongst them are (i) the Senate, (ii) the Syndicate, (iii) the Academic Council, (iv) the Faculties, (v) the Boards of Studies and (vi) such other authorities as may be declared by Statutes and the authorities of the University.

32. Section 16 sets out the constitution of the Senate. Amongst them are (1) the Chancellor, (2) the Vice-Chancellor, (3) the Treasurer, (4) the Registrar, (5 to 11) certain officials of the Government, (12) the Principals of the affiliated Colleges (13) the Deans of Faculties, (14) the Chairmen of the Boards of Studies, (15 to 17) certain classes of donors of the University, (18) four Members of Vidhan Sabha, (19) six members elected by the Registered graduates from amongst themselves, (20) the Chief Justice of the State, (21) a member of Public Service Commission. (22) Representative of teachers, (23) Five nominees of the Chancellor and (24) one representative of Board of Secondary Education.

33. Sections 17 and 18 make provisions regarding meetings of Senate and the powers thereof. Section 19 provides for the constitution of the Syndicate which is more or less the executive body of the University. Section 20 defines the powers of the body. Sections 21 and 22 provide for the constitution of Academic Council and their powers. Section 23 provides that the University shall have such faculties as may be prescribed by the Statutes but it empowers the Chancellor to name and decide the location of various faculties and Departments till they are prescribed.

There are further provisions regarding the faculties in this section. Section 24 defines powers of Faculties. Section 25 provides for the constitution of the Board of Studies and Section 26 makes a provision for establishing such other bodies as may be prescribed by the Statutes. Section 27 lays down the matters which may be provided in the Statutes and Section 28 indicates how Statutes may be made. Sections 29 and 30 deal with Ordinances and how they are to be made and Section 31 deals with Regulations.

Then there are certain miscellaneous provisions regarding disqualifications for being a member of an authority, confinement of honorary degree, the power of the Senate to remove a member and to withdraw a degree or diploma, vacancies how occur and how are to be filled and reference to the Chancellor in certain

matters of dispute. Then comes Section 39 which is material for the purpose of this petition. It is as under:

Section 39 :

"The following graduates of three years standing or upwards shall on payment of such fess, as may be prescribed by the Statutes be entitled to have their names enrolled in the Registered Graduates :

(1) Any graduate of the Vikram University.

(2) Any graduate of any University established by law residing in Madhya Bharat for a period of five years immediately preceding his application for registration, but no graduate who is registered in any other University shall be entitled to registration in the Vikram University."

34. Sections 40 and 43 relate to financial matters. Sections 44 and 45 are important:

Section 44 :

"Notwithstanding anything contained in this Act, the Statutes or the Ordinances:

(1) the first Vice-Chancellor shall be appointed by the Chancellor for such period and on such terms as he may determine ;

(2) the first Treasurer shall be appointed by the Chancellor for such period and on such terms as he may determine ;

(3) in the first instance the Registrar shall be appointed by the Chancellor for such period and on such terms as he may determine. He shall be under the administrative control of the Vice-Chancellor. Subsequent to the first appointment, the Registrar shall be appointed by the Syndicate on terms and conditions prescribed by the Statutes :

Provided that all the above appointments shall not in any case exceed a period of three years.

(4) any student of Victoria College, Gwalior, Holkar College, Indore, Madhav College, Ujjain, Kamala Raja Girls" College, Gwalior, Gajra Raja Medical College, Gwalior, Mahatma Gandhi Memorial Medical College, Indore, Agricultural College, Gwalior, Christian College, Indore, who immediately prior to the commencement of this Act was studying for an examination of the Agra University shall be permitted to complete his course in preparation therefor, and the University shall provide for such students" instructions and examinations in accordance with the Prospectus of Studies of the Agra University for a minimum period to be specified by the Chancellor. Until such examinations be provided by the Vikram University, every such student may be admitted to the examination of the Agra University."

Section 45 :

"At any time after the passing of this Act, the Chancellor may take such action consistent so far as may be with the provisions of this Act and the Statutes, as he may think necessary for the purpose of bringing the University into being and for that purpose may appoint Special Officer for organising the University and may invest him with necessary powers".

And out of the Statutes one material for our purposes is the one contained in Schedule 7 (iii) (d) which is as under :

"In the case of election of members by Registered Graduates under number (20) of Section 16 of the Act, the Registrar shall prepare and Publish at the end of every three years ending on the 31st March preceding the election, an electoral roll of the Registered Graduates. The notice of publication of the roll shall be published in newspapers to be selected by the Vice-Chancellor, calling upon the Registered Graduates to apply any ratification of the mistakes and omissions in the name, if any, within one month from the date of such notification. The notice of election shall be published in the Madhya Bharat Gazette, and in newspapers to be selected by the Vice-Chancellor at least 25 days before the date of election and the Registrar shall invite nominations therefore to reach on or before the last date fixed for receiving nomination".

35. Mr. Kuvar Bahadur Suxena for the petitioner contends that no notification has so far been issued as provided in Section 1 (2) of the Act appointing the day on which the Act would come, into force. The result, according to him is that there is no law in force uptill now and nobody can be the Chancellor, Vice-Chancellor, Registrar or Special Officer contemplated under the Act and the respondents No. 3, 4 and 7 are mere usurpers of their respective offices. Respondent No. 5 is not functioning and respondent No. 6 has no legal existence under the Act as there is no such authority contemplated therein.

It is also contended that their acts and functions i.e., inviting graduates for registration, their registration, issuing blank nomination forms and inviting nomination-papers for election to the Senate and holding of such election are all without lawful authority and therefore invalid. He relied upon a passage in Craie" Statute Laws page 355 which is as follows :

"But an Act will not have any operation until the day for its commencement, even though the Sections of the Act may have been framed as if it would come into operation immediately it receives the Royal assent because the last thing settled is when the Act shall come into operation, therefore all the Sections are to be considered as speaking from the date so fixed and are governed by the last section.

36. He further contended that no fees are prescribed by the Statutes on the payment of which graduates get themselves registered.

37. The Statutes which are appended to the Act do not provide for the fees and as the Act has not come into force no further Statutes could be made. There can

therefore be no valid registration of graduates of the University and the entire Proceedings taken by the Assistant Registrar and Special Officer for registration of the graduates and for election of members to the Senate from amongst them are altogether null and void.

38. On the other hand the learned Advocate for the opponents contended that if the structure and the scheme of the Act is carefully examined it will be found to consist of certain provisions which became operative by the very passing of the Act and certain provisions which would become operative after the issue of notification as contemplated u/s 1 (2) of the Act. Sections 8, 44 and 45, according to him are such sections of the former category.

And if these Sections are held to be operative from the date of passing of the Act it cannot be said that there is any illegal assumption of their respective offices by respondents Nos. 3, 4, 6 and 7. Learned counsel referred to the decisions of the Supreme Court reported in Boppana Venkateswaraloo and Others Vs. Superintendent, Central Jail, Hyderabad State, and A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, Relying upon those decisions he contended that if the body is to have automatic incorporation when the Act comes into force every member of the body ought to exist before the body comes into being on the appointed day and for bringing this about power must exist.

This was, according to the learned Counsel, clearly understood by the legislature and provided for by Sections 44 and 45 of the Act. The appointment of the Vice-Chancellor, Assistant Registrar and the Special Officer therefore cannot be said to be invalid nor can the effectiveness of such appointment be postponed till the commencement of the Act by notification u/s 1 (2) of the Act.

39. Two questions emerge for consideration on this aspect of the case which pertain to the legality of assumption of offices by respondents Nos. 3, 4, 6 and 7 and the proceedings taken by respondents Nos. 6 and 7 for election from amongst registered graduates to the Senate.

40. As regards the first we will have to consider in the first place whether the contention of the learned Advocate for the opponents that Section 8 comes into force on the passing of the Act and that its operation is not postponed till the issue of notification u/s 1 (2) is correct or not.

41. Section 8 is declaratory and from its Wording taken by itself we cannot say that it is I operative from the date of passing of the Act. |

42. But Section 45 of the Act empowers the Chancellor to take such action consistent, so far as may be, with the provisions of the Act and the Statute, as he may think necessary for bringing the University into being and for that purpose to appoint a Special Officer for organising the University and invest with necessary powers This he can do at any time after the passing of the Act.

43. In (S) A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, it was pointed out by their Lordships of Supreme Court that when by an Act of

legislature power is conferred upon the Government to appoint a day from which the Act would come into force the Act becomes an existing law and at least the provision regarding the commencement of the Act comes into force On its passing and that any other construction will lead to a stale-mate. Therefore Section 1 (2) of the Act should be taken to be operative from the date of passing of the Act.

44. Similarly Section 45 specifically empowers the Chancellor to act for specified purposes from the date of passing of the Act. A Chancellor cannot act as such unless the existence of his office is assumed to come into being from the date of passing of the Act. We may therefore adopt the view that the provision regarding the existence of office of the Chancellor and the powers he is entitled to exercise u/s 45 of the Act will have their immediate operation from the date of passing of the Act.

It therefore follows that there is no illegal assumption of office by the Chancellor leaving aside the question regarding his authority to appoint Vice-Chancellor and Assistant Registrar. It is also clear that in appointing Dr. Boolchand as Special Officer he acted within the four corners of his powers u/s 45 of the Act.

45. As regards the appointment of Vice-Chancellor the contention raised by respondent No. 4 is that he has been duly appointed by the Chancellor in pursuance of powers conferred upon him u/s 44 of the Act.

46. In this connection the learned Advocate for the opponents relied upon the phrase "notwithstanding anything contained in this Act, Statutes and Ordinances" for contending that the power of appointment referred to in this Section can be exercised by the Chancellor even before the Act comes into force,

47. In my opinion the words "notwithstanding anything contained in the Act, Statutes and Ordinances" are intended to make a special provision in respect of the first appointments of the Vice-Chancellor, the Treasurer and the Registrar and for enabling students of certain Colleges to complete their studies for examination of Agra University subject to certain restriction even after the commencement of the Act.

48. In the absence of such a provision the Vice-Chancellor could only be appointed as provided in Section 10 and his appointment would be subject to restriction contained in that Section; the Treasurer could only be appointed as provided in Section 12 upon the recommendation of the Syndicate and the Registrar too can only be appointed as provided in Section 13. The provision is transitory and is intended to provide for the first appointments. In the absence of such a provision it probably would lead to stalemate. But there is nothing specific in this Section or anywhere else in the Act including Section 45 empowering the Chancellor to make appointment of the Vice-Chancellor or the Registrar immediately after the passing of the Act.

49. In the absence of such power specifically conferred upon the Chancellor I am

not persuaded to construe extra-ordinary power of the Chancellor to take necessary action for the purpose of bringing the University into being so widely as to justify such appointment. The functionaries i.e., the Vice-Chancellor and the Registrar are to perform functions and exercise Powers under various provisions of the Act and the Statutes and it cannot reasonably be said that they could perform such functions and exercise powers even before the material and relevant provisions came into force.

50. Power conferred upon the Chancellor u/s 45 is merely of a preparatory character and is not intended to extend to making appointments of persons who are to perform functions and exercise powers under the Act so as to make such appointments operative even before the Act comes into force.

51. As regards the Assistant Registrar, it is said, that there is no such officer provided for in the Act and that therefore no writ can issue in respect of an office which has no legal existence. This contention is not well founded. The Assistant Registrar practically performed the duties of the Registrar. He invited the registered graduates to file their nomination-papers and issued blank-nomination form for the purpose. He evidently purported to take proceedings for the election to the Senate from amongst the "Registered Graduates of the University".

In so doing he purported to act as a Registrar u/s 7 (iii) (d) and (e). It is held in *In re, Banwarilal Roy*. 43 CW N 766 (J) that a writ of quo-warranto lies where there is in substance a usurpation though the name of the office may not have been assumed by the respondent. The principle of this case applies.

52. As a result of foregoing discussion I am inclined to be of the opinion that there is no usurpation of office by the Chancellor or the Special Officer. But appointment made by the Chancellor of the Vice-chancellor and Assistant Registrar under the Act cannot take effect until the Act comes into force. The provisions contained in Sections 44 and 45 are insufficient to justify the operative character of such appointment before the commencement of the Act.

53. Section 45 contemplates appointment only of a Special Officer for organising the University so as to bring it into existence. It also contemplates taking of such action by the Chancellor as he may think necessary for bringing the University into existence. These actions are necessarily of a preparatory character. The words in Section 45 are not wide enough to include appointment of Officers who are to perform functions under the Act after the Act comes into force. Section 22 of the General Clauses Act also does not justify such a course.

Even under that Section and Section 21 of the Madhya Bharat General Clauses Act the appointments made of any officer who is to exercise powers and perform functions under the Act will only be operative from the date of the commencement of the Act. If Section 45 contemplated appointment of officers such as Vice-Chancellor, Treasurer, Registrar and performance by them of functions or acts under the Act and the Statutes it would have been specifically provided. Then in that case there was no question of appointing a Special Officer

to do the spade work and to invest him with necessary powers. These persons so appointed should have done what the Special Officer was required to do.

54. The case reported in Boppana Venkateswaraloo and Others Vs. Superintendent, Central Jail, Hyderabad State, has a material bearing on the question under consideration. In that case the Petitioner was detained under the Preventive Detention Act. By the initial order confirming his detention the Government fixed 31-3-1952 as the date upto which he was to be kept under detention. On 29-3-1952 the petitioner's detention was extended till 30-9-1952 and on 22-9-1952 his detention was again extended till 31-12-52. But for this last extension the detention could not extend beyond 30-9-1952 except by use of powers under the new Act known as Preventive Detention Amendment Act, No. 61 of 1952.

The detenu contended that on 22-9-1952 the Government had no authority to extend the Period of his detention beyond 30-9-1952 i.e., the life time of the Act then in force and that the order extending the detention till 31-12-1952 was illegal. On behalf of the State Government order dated 22-9-1952 was sought to be justified on the ground that it had power to enlarge the period of detention under the new Act because the Act had been passed by the Parliament and though the same had not come into force by reason of Section 22 of the General Clauses Act.

Mahjan J., who delivered the judgment of the Court repelled the contention thus :

"This Section corresponds to Section 37, English Interpretation Act of 1890. It is an enabling provision, its intent and purpose being to facilitate the making of rules, bye-laws and orders before the date of commencement of an enactment in anticipation of its coming into force. In other words, it validates rules, bye-laws and orders made before the enactment comes into force provided they are made after the passing of the Act and as preparatory to the Act coming into force. It does not authorize or empower the State Government to Pass substantive orders against any person in exercise of the authority conferred by any particular Section of the new Act.

The words of the Section "with respect to" prescribe the limit and the scope of the powers given by the Section. Orders can only be issued with respect to the time when or the manner in which anything is to be done under the Act. An order for the extension of the detention made under the purported exercise of the powers conferred by any of the provisions of the new Act is not an order with respect to the time or the manner in which anything is to be done under the Act. Such an order could only be made under the Act and after the Act had come into force and not in anticipation of its coming into force. The Act having no retrospective operation, it cannot validate an order made before it came into force.

It seems to us that the expression "order" in the Section means an order laying down directions about the manner in which things are to be done under the Act

and it is an order of that nature that can be issued before the Act comes into force but it does not mean that the substantive order against a particular person can be made before the Act comes into force."

55. These observations lend considerable force to the contention that except where there is specific provision to the contrary. Section 22 of the General Clauses Act (which corresponds to Section 21 of the Madhya Bharat-General Clauses Act) cannot be resorted to for making appointment of officers under the Act whose appointment would be operative before the Act comes into force nor for justifying taking actions and passing orders of substantive character under the Act.

56. In the present case the steps were being taken for holding the election to the Senate. This could only be in accordance with the procedure laid down in the Schedule containing First Statutes made in pursuance of powers u/s 28 (1) of the Act.

57. u/s 21 of the Madhya Bharat General Clauses Act the Statutes could be prepared but they could not be held to be operative until the Act comes into force. Therefore the Statutes are not so far operative. How then can it be said that what is being done is merely preparatory? For election to the Senate from amongst the registered graduates there must be valid list of graduates entitled to register and duly registered after complying with the requirements of Section 39 which cannot be done until the Act comes into force.

The Vice-Chancellor ought u/s 7 (iii) (d) of the Statutes select the newspapers wherein the roll of registered graduates is to be published in order to enable persons entitled to come forward to correct mistakes and omissions. This action of the Vice-Chancellor is a substantive action under the Act and cannot be taken until the Act comes into force. Action of the Register to invite nomination 25 days before the election is also a substantive action under the Act.

58. The argument of the learned Advocate for the respondents is that since at the commencement of the Act every limb of the University including the Chancellor, the Vice-Chancellor, the Senate, the Syndicate, the Academic Council should pre-exist, therefore everything can be done under Sections 44 and 45 of the Act to bring that about and that therefore the registration of the graduates, the appointment and functioning of Assistant Registrar or may be even Registrar and election proceedings to the Senate from amongst the registered graduates cannot be invalid. I am unable to stretch the scope of Sections 44 and 45 to this extent.

59. Next question is are the various Impugned acts narrated by the relator regarding inviting the names of graduates entitled to get themselves registered by respondent No. 7, issuing of blank nomination-forms and inviting the graduates who had submitted their names in pursuance of the invitation of respondent No. 7 to file their nomination papers in the office of the Assistant Registrar and proposed holding of elections to the Senate legally valid.

60. As regards the act of respondent No. 7 in issuing invitation to the graduates to submit their names for the purpose of registration one may say that the act is merely of a preparatory character. Such act by itself will not bring into effect valid registration until all the preliminary requirements are fulfilled after the Act comes into force.

61. As regards the acts of respondent No. 6 are concerned they cannot be justified on the ground that the same are merely preparatory. These acts assume the existence of valid list of registered graduates and the power in the officer to perform acts as provided in Section 7 (d) and (e) of the Statutes and these cannot be held to be legal as the Act and the Statutes have not come into force as provided in the Act. It is likely that the questions of disputed character may arise with regard to the registration of graduates and the nomination of candidates and validity of their election to the Senate. These questions cannot be settled even before the Act comes into force.

63. It is therefore declared:--

(1) That there is no usurpation of their respective offices by the Chancellor and respondent No. 7.

(2) That the appointment by the Chancellor of the Vice-Chancellor and the Registrar or Assistant Registrar who performs the functions of the Registrar cannot take effect until the Act comes into force.

(3) That the actions of the Assistant Registrar and Vice-Chancellor pertaining to the registration of graduates and holding of election to the Senate are invalid as the Act has not come into force except Sections 8 and 45 of the Act.

These proceedings are held to be void.

63. Under the circumstances of the case there will be no order as to costs.