
(1988) 02 GUJ CK 0011

In the Gujarat High Court

Case No : Spl. Civil Application No. 3370 of 1987

Ramanial P. Shah and Another

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-02-1988

Acts Referred:

Gujarat University Act, 1949 — Section 10(2)

Citation : AIR 1989 Guj 61 : (1988) 2 GLR 1154

Hon'ble Judges : P. R. Gokulakrishnan, C.J;R. J. Shah, J

Bench : Division Bench

Advocate : Girish Patel, for the Appellant; J.M. Thakore, Advocate General, M.D. Pandya, Govt. Pleader, S. M. Shelat, B.P. Tanna and V.H. Desai, for the Respondent

Judgement

Gokulakrishnan, C. J.

1. Two lecturers of colleges affiliated to respondent 2-University, who are also Senate Members and who claim to have no personal interest in the subject matter of the present petition, have felt constrained in the interest of high standards, norms, principles and the purity of education and educational institutions to file the present petition challenging what they claim to be arbitrary action of the respondents in the matter of procedure of appointment LCI :he pivotal office Of the Vice-Chancellor of respondent No. 2-University, in the matter of recommendations of the names for the said office and also regarding the functions of the Committee in the matter Of the said appointment.

2. The factual background alleged by the petitioners is as under:-

Since the academic and executive councils in the Gujarat University were not existing at the relevant time due to pending litigation, it had not been possible to call a joint meeting of the Executive Council and the Academic Council for the purpose of nominating a member on the Committee popularly known as the Search Committee. The vice-Chancellors of the Universities established by law in

the State of Gujarat on or about 10-6-87 submitted the name of Shri K. N. Shah as a member of the Search Committee. The Chancellor suggested the names of Shri P. Shivraj and Shri Ramanlal Joshi as the remaining two members on the Search Committee. The said Committee (hereafter me on 4-7-87; 8-7-87 and finally on 9-7-87. According to the petitioners, the said Committee ultimately recommended six names (virtually five names) and the Registrar of the the University was asked to take up the follow-up action. so that a Vice-Chancellor came to be appointed in accordance with law. It is at this stage that the present petition has been filed on 12-7-87 for the following reliefs:-

(A) restraining the respondent Government from implementing and acting upon the names recommended by the committee for the purpose of appointment as Vice-Chancellor of the Gujarat University.

(B). restraining the respondent Government from the vice-Chancellors from amongst the names recommended by the committee.

(C) (if at all the appointment has been made) restraining the respondent-Government from declaring it and also restraining the respondents from allowing him to take charge of the said post: and

D) granting any other appropriate relief

3. Considered in the background of the Gujarat University Act. 1949, it cannot be gainsaid that the office of the Vice-Chancellor is of prime importance. He is the Principal Executive and academic Officer of the University. He is also the ex officio Chairman of the highest authorities of the University. viz. the Executive Council and the Academic Council. It is his duty to ensure that the provisions of the Act, Statutes, Ordinances and Regulations are faithfully observed.

4. To ensure selection of a person to such a high ranking and pivotal office, Legislature has deemed it proper to prescribe a certain well-defined procedure. It can safely be assumed that the Legislature was well aware of the pros and cons of the system of direct election by the University Court as well as those of the system of direct appointment by the State Government. None of these two systems has found favoud with the Legislature so far as the appointment of a Vice-Chancellor is concerned. It has, therefore, evolved a system. which is entirely different from the above two systems in the hope that the system which it was prescribing would ensure the appointment of a Vice-Chancellor who is really indeperldent and impartial and who would be able to do full justice to his office and act without fear or favour. The system evolved is a three-tier one. There are, so to say, three constituencies. each of which has to elect one member on a Committee. The three constituencies are (1) Members of the Executive Council and those of the Academic Council to jointly appoint one member on the said Committee: (2) Vice-Chancullors of all statutory universities in the State of Gujarat to appoint one member on the said Committee; and(3) Chancellor should appoint one member on the said committee. The Committee thus constituted will prepare a panel of three persons. Lastly any one from this

panel of persons should be appointed by the Government as a Vice-Chancellor . It is , therefore evident that under this three-tier system, no single person or institution or even the Government has an entirely free hand in appointing a Vice-Chancellor. It is also noteworthy that in providing as aforesaid, the Legislature truly intends that a Vice-Chancellor of any University under the Act will be free to act objectively, without being influenced or pressurised by any individual, institution or even the Government.

5. The relevant provisions of the Gujarat University Act, 1949, as amended from time to time, provide as under :

"10.(I) The Vice-Chancellor shall be appointed by the State Government from amongst three persons recommended under sub-section (3) by a Committee appointed for the purpose under sub-section (2).

(2)(a) For the purposes of sub-section (1), the Chancellor shall appoint a Committee which shall consist of the following members, namely :-

(i) two members (not being persons connected with the University or with any affiliated college, recognized institution or approved institution) out of whom one shall be a person nominated in the manner prescribed by the Statutes by the Executive Council and the Academic Council jointly and the other shall be a person nominated in the manner prescribed by the Statutes by the Vice-Chancellors -of all the Universities established by law in the State of Gujarat;

(ii) one member to be nominated by the Chancellor

(b) The Chancellor shall appoint one of the three members of the Committee as its Chairman

(3) The Committee so appointed shall, within such time and in such manner as may be prescribed by the Statutes, select three persons whom it considers fit for being appointed Vice-Chancellor and shall recommend to the State Government the names of the persons so selected together with such other particulars as may be prescribed by the Statutes :

Provided that, as far as possible, the Committee shall not select any such person who if appointed as Vice-Chancellor would cease to hold that office on account of attaining the age of 65 years before completion of the term of three years.

(4) The Vice-Chancellor shall hold office for a term of three years and he shall be eligible for reappointment to that office for a further term of three years only :

Provided that no person appointed as the Vice-Chancellor shall continue to hold his office as such after he attains the age of 65 years.

(5) The emoluments to be paid to the Vice-Chancellor, and the terms and conditions subject to which he shall hold office shall be such as may be determined by the State Government.

Provided that such emoluments or such terms and conditions shall not, during

the currency of the term of the holder, of that office, be varied to his disadvantage without his consent;

(6) (a) during the leave or absence of the Vice-Chancellor, or

(b) in the event of a permanent vacancy in the office of the Vice-Chancellor, until an appointment is made under sub-section (1) to that office,

the Pro-Vice-Chancellor, and in the absence of the Pro-Vice-Chancellor, one of the Deans nominated by the Chancellor for that purpose carry on the current duties of the office of the Vice-Chancellor.

Section 8

8. The following shall be the officers of the University, namely :-

(i) The Chancellor,

(ii) The Vice-Chancellor,

(iii) The Pro-Vice-Chancellor;

(iv) The Deans of Faculties;

(v) The Registrar,

(v-a) The University Librarian, and

(vi) Such other officers in the service of the University as may be declared by the Statutes to be officers of the University.

Section 15

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

(i) The Court.

(ii) The Executive Council,

(iii) The Academic Council,

(iv) The Faculties,

(v) The Boards of University Teaching and Research,

(vi) The Boards of Studies,

(vii) The Board of Extra-Mural Studies.

(viii) The Board of Students' Welfare,

(ix) The Board of Hostels' Management,

X The Academic Planning Board;

(xi) Such other bodies of the University as may be declared by the Statutes to be the authorities of the University,

Section 57

57. No act or proceeding of any authority or other body of the University shall be invalidated merely by reason of any vacancy in its membership-

6. The following issues arise for consideration in the present petition: -

(1) Whether the Search Committee appointed under S. 10(2)(a)(i) with Mr. K. N. Shah as one of its members is valid :

(a) since Mr. K. N. Shah is a person who is connected with all or any of the bodies mentioned in the said section;

and/or

(b) because he is one of the members in the Vice-Chancellors" constituency and because he has been nominated by the Vice-Chancellors" constituency as Vice-Chancellors" constituency is connected with the University for the purpose of suggesting a name to be nominated in the Search Committee?

(2) Whether the appointment of Mr. Ramanlal Joshi by the Chancellor on the Search Committee is vitiated on account of the fact that he is a person connected with all or any of the bodies mentioned in S. 10(2)(a)(i) of the Act;?

(3) Whether it is true that the Search Committee has suggested six names (virtually five)? If yes, whether the whole proceedings are vitiated on that score?

Point No. I(a)

7. According to-the petitioners, Mr. K. N. Shah was a member of the Governing Body and/or the Executive Body of the Bhavans Arts, Science and Commerce College, Dakore and was also on the Board of Trustees of Shri Sahajanand Arts and Commerce College, Ahmedabad. The petitioners have contended that both the said Colleges are affiliated to the respondent 2University. It was, therefore, submitted that in view of S. 10(2)a)(i) Mr. K. N. Shah was disqualified to be a member on the Search Committee. As per the said section, the Chancellor has to appoint a Committee which should consist of two members (not being persons connected with the University or with any affiliated college, recognized institution or approved institution), out of whom one should be a person nominated in the manner prescribed by the Statutes by the Executive Council and the Academic Council jointly and the other should be a person nominated in the manner prescribed by the Statutes by the Vice-Chancellors of all the Universities established by law in the State of Gujarat. The submission, therefore, was that since Mr. K. N. Shah was connected with the aforesaid affiliated colleges, he was disqualified to be a member on the said Committee and so the Vice-Chancellors" constituency could not have nominated him on the said Search Committee. Mr. Patel for the petitioners agrees that the connection which is contemplated by the said section should not be only in name, but should be real and substantial. Learned Advocate General has joined issue in this connection and has submitted that the aforesaid connection of Mr. K. N. Shah with the affiliated colleges is not

a connection, which is contemplated by the said section so as to disqualify Mr. K. N. Shah to become a member on the Search Committee. Regarding the words "connected with" occurring in S. 10(2)(a)(i), learned Advocate General contended that those words only meant intimately connected or connected in a manner so as to take pressure or that person so selected is unable to act independently. Learned Advocate General further contended that even though Mr. K. N. Shah was a member in the governing or executive body of the aforesaid two affiliated colleges, he was not an office-bearer of the said colleges.;, It was therefore, contended that because of such connection as a member only, the person cannot be considered to be intimately connected with the said affiliated colleges

8. Mr. Patel, learned Advocate for the petitioners, in this connection has referred to the decision in the case of Dr. S.C. Barat and Another Vs. Hari Vinayak Pataskar and Others, . The petitioners in the application under Art. 226 of the Constitution of India were members of the Jabalpur University Court. The applicant Dr. S. C. Barat was also a member of the Executive Council of the University and the other petitioner was a member of the Academic council. The petition was filed by them for quashing by a suitable writ an order made by the respondent 1, the Chancellor of the University, appointing the respondent No 4 Shri Avadh Bihari Mishra, as the Vice-Chancellor and for the issue of a suitable direction to the Chancellor for the appointment of the Vice-Chancellor of the University in accordance with S. 11 of the Jabalpur University Act, 1956. The relevant facts were that the term of respondent 3 as the Vice-Chancellor was due to expire on 11-6-91 and the appointment of a new Vice-Chancellor had to be made. According to S.11 of the Jabalpur University Act, the Vice-Chancellor was to be appointed by the Chancellor from a panel of not less than three names recommended by a committee constituted in accordance with sub-section (2). Such a Committee was constituted by the Chancellor and consisted of three persons. One of them was nominated by the Chancellor and the other two were appointed by the Executive Council in the manner laid down in sub-section (2). That sub-section required that two members "shall be appointed by the Executive Council by single transferable vote from amongst persons not connected with the University or a college". On 31-1-61 the Executive Council was required to choose

its nominees. At a meeting held on 5-3-61, the Executive Council appointed Shri Shriman Narayan, Member of the Planning Commission, and Dr. R. P. Tripathi, as its nominees on the aforesaid Committee. As Dr. Tripathi expressed his inability to be a member of the Committee except on certain conditions, the Chancellor called upon the Executive Council to appoint another person in place of Dr. Tripathi. The Executive Council then appointed Dr. Parija Vice Chancellor of the Utkal University, in place of Dr. Tripathi and informed the Chancellor accordingly. The Chancellor appointed , Dr. Siddhanta, Vice-Chancellor of Delhi University, as his nominee on the Committee On 11-5-61, the Chancellor notified the constitution of the Committee for submitting to him a panel of not less than

three names for appointment to the office of the Vice Chancellor of the Jabalpur University. In the notification, Dr. Siddhanta was shown as nominated by the Chancellor and the other two persons were described as "elected by the Executive Council". The Committee submitted to the Chancellor a panel of three names on 22-6-61. Out of the said panel, the Chancellor selected Dr. Mishra for appointment as Vice-Chancellor of the University. Dr. Mishra was informed accordingly on 31-7-61. On 10-8-61, petitioner No. 2 in the said case addressed a letter to the Chancellor saying that the appointment of Shri Shriman Narayan by the Executive Council on the Committee constituted under S. 11(2) was illegal, as he was a member of the Governing Body of Govindran Sakseria Commerce College Jabalpur and was therefore not eligible for appointment and that consequently the panel of names submitted by the Committee was illegal and requested the Chancellor to ask the Executive Council to appoint another person in place of Shri Shriman Narayan on the Committee and the Committee thus constituted with the new members should be asked to submit a panel of names as required by S. 11(4) of the Act.

9. At the outset, it should be noted that in the Jabalpur case, the Chancellor had acted on the recommendations of the Committee and had appointed a Vice-Chancellor, whereas in the present case till the petition was filed, the Vice-Chancellor had not been appointed. A contention was raised in Jabalpur case, as is sought to be raised in the present case by the learned Advocate General, regarding true meaning of the words "connected with", which found place in S. 11 of the Jabalpur University Act and which words are also as well as in S. 10(2)(a)(i) of "the Gujarat University Act. The Madhya Pradesh High Court held that as the Committee was consisting of a member not qualified to sit on it, the same could not be regarded as a valid committee under S. 11 and so there was in fact no Committee contemplated by S. 11(2). In other words, the Madhya Pradesh High Court accepted that as Shri Sriman Narayan was a member of the governing body of Govindran Sakseria Commerce College, he was not eligible for appointment on the Committee. Such a connection was, therefore, held to be a connection, which was within the meaning of S.11 of the Jabalpur University Act.

10. In the aforesaid Madhya Pradesh decision, a reference has been made to The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, . Learned Advocate General pointed out that Madhya Pradesh High Court should not have relied upon the said Supreme Court Judgment, as in Samsher Singh Vs. State of Punjab and Another, , the Supreme Court referring to the decision in Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., , clarified the propositions laid down in The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, regarding the interpretation of Arts. 310 and 311 of the Constitution. A close examination of the Madhya Pradesh decision clearly brings out that the decision reported in The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, was not the basis on which the Madhya Pradesh High Court ultimately decided the issues which fell for consideration in the said case and which also fall for consideration in the present case. In our opinion, neither the decision

reported in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, nor the decisions reported in *Samsher Singh Vs. State of Punjab and Another*, and *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, can have real bearing on the interpretation given by the Madhya Pradesh High Court regarding the issues which arose before it and regarding the issues involved in the present case.

11. In *Kashi Nath Misra Vs. Chancellor, University of Allahabad and Another*, the Allahabad High Court had occasion to consider the aspect of appointment of the Vice-Chancellor and also the constitution of the Selection Committee. Amongst other questions, the Allahabad High Court considered as to whether the Selection Committee was properly constituted, since it was alleged that the election of Shri Sri Prakash by the Executive Council was illegal and that Shri M. C. Desai, the Chief Justice, could not have nominated himself as one of the members of the Selection Committee. In that decision, as regards the election of Shri Sri Prakash, it was held as, follows:

"The election of Shri Sri Prakash was also challenged on the ground that he was ineligible for election, being a registered graduate within "the meaning of S. 11(4) (i)(a) of the Act. A registered graduate does not hold a post of Profit in the University. He is not an officer of the University or a Constituent College or an Associate College or Hostel. He has no concern with the administration of the University and has no dealing with it. There are no favours that a Vice-Chancellor can bestow on him. All that he is entitled to is, along with other registered graduates, to elect 25 persons to the Court. In our judgment the word "connected" means intimately connected or connected in a manner so as to take pressure or be unable to act independently. The scheme of section 11 of the Act is that in the selection of the Vice-Chancellor, independent persons should have a hand."

In the aforesaid view, the Allahabad High Court held that the election of Shri Sri Prakash could not be assailed on the said ground. We are in agreement with the said ratio, because it is evident that a registered graduate cannot be said to be so "connected" "as to vitiate the constitution of the Committee. This judgment, however, cannot help the respondent in the present case, since Mr. K. N. Shah was intimately connected, being a member on the governing bodies of two affiliated colleges. The case of a person, who is only a registered graduate, stands on a totally different footing from the case of a person, who is a member of governing bodies of two affiliated colleges.

12. In this connection, Mr. Patel referred to the case of *G. Sarana Vs. University of Lucknow and Others*, in order to substantiate his contention that putting one of the members who had connection with some affiliated college in the Search Committee, there might be bias which was likely to operate in a subtle manner. In the abovesaid decision, the question was regarding the selection for the post of Professor of Anthropology. Two candidates applied for the same and for the purpose of selection a Committee was appointed That Committee selected one of

the candidates for the post. The candidate who had not been selected came forward with the writ petition alleging that two of the members of the Selection Committee, who were co-opted as experts, were biased against him. Considering the allegations made by the petitioner therein, the Supreme Court even though it dismissed that writ petition, observed as under : -

"It is needless to emphasise that the principles of natural justice, which are meant to prevent miscarriage of justice are also applicable to domestic enquiries and administrative proceedings. (See A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . It cannot also be disputed that one of the fundamental principles of natural justice is that in a case of quasi-judicial proceedings, the authority empowered to decide the dispute between opposing parties must be one without bias by which is meant an operative prejudice, whether conscious or unconscious towards one side or the other in the dispute (see Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, and Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, ").

13. In the said Supreme Court decision G. Sarana Vs. University of Lucknow and Others, , reference has been made to A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , where the Supreme Court has observed as follows: -

"The real question is not whether a member of an administrative Board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to prove the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. In a group deliberation and decision like that of a Selection Board the members do not function as computers. Each member of the group or Board is bound to influence the others more so if the member concerned is a, person with special knowledge. His bias is likely to operate in a subtle manner".

The Legislature, when it enacted the aforesaid S. 10(2)(a)(i), it would seem, was taking care of this very aspect and so it had provided that two persons at least on the Search Committee should not in any way be connected with the University or with any affiliated college, recognised institution or approved institution.

14. Another submission of Mr. Patel in this connection is that pre-requisite conditions for the members to be in the Search Committee are mandatory and not directory as claimed by the respondents and since the said mandatory pre-requisite conditions have not been observed in the present case, the appointment of Mr. K. N. Shah on the Search Committee is vitiated on that score. Mr. Patel contended that the object of the Legislature in promulgating such a section is to promote a certain " object, namely, to maintain the purity and independence of the office of the Vice-Chancellor and so if the section is not strictly interpreted, the performance will be frustrated. Such a contention was

also raised in the aforesaid Madhya Pradesh decision. It was observed by the Madhya Pradesh High Court that whether a provision of an Act is imperative or directory, such a thing has to be determined not only on the language of the provision but also on the relation of that provision to the general object intended to be secured by it. The Madhya Pradesh High Court, interpreting S. 11(2) of the Jabalpur University Act, observed as under:-

"The provision that the nominees of the Executive Council shall be from amongst persons not connected with the University or: a College is one prescribing a qualification and as disqualifying persons connected with the University or a College from being appointed as nominees of the Executive Council. This provision is clearly mandatory. Section 11(2) does not say that the persons to be appointed by the Executive Council shall so far as possible be persons not connected with the University or a college. There is, therefore, no question of substantial compliance with the qualification prescribed. A person is either qualified or he is not. There can be no degrees of compliance in this respect".

Thus, the contention that such a provision was directory was repelled by the Madhya Pradesh High Court in the aforesaid terms. It was, pointedly made clear that the question, "of substantial compliance of a provision on the basis that it is a directory one did not arise at all in the case before the Court, as the question was regarding the qualification prescribed and so far as that aspect was concerned, there could not be degrees of compliance in that connection.

15. The Madhya Pradesh High Court had further observed in the above connection as under - -

"In our opinion, under sub-section (2) and (3) it is not sufficient that two members of the Committee should be unconnected with the university or a college. It is also essential that they should be members of the committee as persons appointed by the executive council. The fact that sub-secs. (3) and (5) provide for the contingency of the failure of the executive council to choose its members and of the failure of the Committee to submit the panel gives additional weight to the conclusion that the requirement in sub-sec. (2) that two unconnected members must sit on the Committee as nominees of the Executive Council is a mandatory requirement."

Thus, on both the counts, as observed hereinabove, the Madhya Pradesh High Court had reached a conclusion that the panel submitted by the Committee consisting of a member not qualified to sit on it, could not be regarded as a valid panel under S. 11 from which the Chancellor could make valid selection under sub-section (1). The principles propounded in the Madhya Pradesh decision, therefore, will apply with equal force in the present case, as the provisions in this connection under both the Acts are similar.

16. Learned Advocate General, however, despite the aforesaid Madhya Pradesh decision, has submitted that aforesaid S. 10(2)(a)(i) should be read as directory. He has attempted to get support for the said proposition from the decision in the

case of *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, . The Supreme Court here was dealing with the Preventive Detention Act, 1950. The detenu in that case filing a petition under Art 32 of the Constitution in the Supreme Court questioned the detention order, contending that it was imperative on the part of the appropriate Government when it confirmed the order of detention under S.11(1) of the said Act to specify the period during which the detention was to continue and an omission to state the period vitiated the order. The other contention raised was that the order of confirmation, not being expressed to be made in the name of the Governor as was required under Art 166(I) of the Constitution, was void and inoperative. The Supreme Court had to deal with the question as to whether the provisions mentioned in Art. 166(I) which enjoined the Government to make an authenticated executive decision in the form mentioned therein was directive or imperative. The Supreme Court in that case held that every executive decision need not be formally expressed and that this was particularly so when one superior officer directed his subordinate to act or forbear from acting in a particular way, but when the executive decision affected an outsider or was required to be officially notified or to be communicated, it should normally be expressed in the form mentioned in Art. 166(I) of the Constitution, that is to say, in the name of the Governor. The Supreme Court observed:

"It is, well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold, null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice of the courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done."

The Supreme Court in the said case extracted from *Maxwell on Interpretation of Statutes* pp. 379, 380 in the following terms: -

Where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or in other words, as directory only."

17. We do not think that the aforesaid decision will have any real bearing on the facts of the present case. All that the procedure established by law required in that case was that the appropriate Government should take a decision as to whether a detention order should be confirmed or not under S. 11(I) of the Preventive Detention Act. It was amply proved from the record in that case that

such a decision had in fact been taken by the appropriate Government. It was, therefore~ specifically held by Supreme Court in that case that there was no breach of procedure established by law and that the procedure in that case only prescribed a, formality for doing a public duty. The present case is clearly distinguishable from the said case. Here, the section in question is intended to serve a specific purpose of keeping the, highest office of the Vice-Chancellor as pure as possible. In the present case, the provisions of the Act clearly illustrate the pivotal position of the Vice-Chancellor under the Act and it is also evident from the provisions, of the Act that the Legislature is anxious and clearly intends to keep the said post as pure as, possible. It is with this intention, as stated hereinabove, that the Legislature has not favored the system of direct election by their University Court as well as the system of direct appointment by the state Government: and so it has evolved a system, which is entirely different from the above two systems, in the hope that the system which it was prescribing would ensure the appointment of a Vice-Chancellor, who is really independent and impartial and who would be able to do full justice to his office and act without fear or favour.

18. In his third Edition on Statutes and Statutory Construction, J. G. Sutherland has stated in paragraph 2801, dealing with mandatory and directory statutes, as follows: -

"Although directory provisions are not intended by the Legislature to be disregarded, yet the seriousness of non-compliance is not considered so great that liability automatically attaches for failure to comply. The question of compliance remains for judicial determination. If the Legislature considers the provisions sufficiently important that exact compliance is required, then the provision is mandatory."

It has also been stated in the said Third Edition in para. 2802 as under

"There is no universal rule by which directory provisions may, under all circumstances, be distinguished from those which are mandatory. The intention of the Legislature, however, should be controlling and no formalistic rule of grammar or word form should stand in the way of carrying out the legislative intent."

Continuing further, it is stated in the said Book : "the Statute should be construed according to its subject matter and the purpose for which it was enacted. Thus Lord Campbell said, "it is the duty of the courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed". Referring to the statement of Lord Penzance, the Author quoted his words as follows: -

"I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter, consider the importance of the provisions, and the relation of that provision to the general object intended to be secured by the act, and upon a review of the case in that aspect decide whether

the enactment is what is called imperative or directory."

19. In the case of Haridwar Singh Vs. Bagun Sumbrui and Others, , the Supreme Court has observed regarding the aforesaid as under:-

"Several tests have been propounded in decided cases for-determining the question whether a provision in a statute, or a rule, is mandatory or directory. No universal rule can be laid down on this matter. In each case, one must look to the subject-matter and consider the importance of the provision disregarded "and. the relation of that provision to the general object intended to be secured. Prohibitive or negative words can rarely be, directory and are indicative of the intent that the provision is to be mandatory. Where a prescription relates to performance of a public duty and to invalidate acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, such prescription is generally understood as mere instructions for the guidance of those upon whom the duty is imposed. Where, however, a power or authority is conferred with a direction that a certain regulation or formalities shall be complied with, it seems neither unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right or authority".

20. The learned Advocate General had also put reliance on the decision in the case, of D. Rudriah v. Chancellor, University of, Agricultural Sciences, Bangalore AIR 1971 Mys 84, where the appointment of the Vice-Chancellor was questioned on the basis that nomination of one of the members of the Committee for recommending the names for selection of the Vice-Chancellor was illegal. The Bench of the Mysore High Court, after" observing "while determining whether the participation of any person who was not entitled to be present at a meeting, has, materially influenced the final decision in such meeting, it is sufficient that there is a reasonable possibility of such member being able to influence such decision and it is not necessary to prove positively that such member has in fact, influenced such decision of the meeting", held that in view of the protection provided by S. 44 of the Mysore University Agricultural Sciences Act (Act 22 of 1963) aforesaid cannot vitiate the decision of the Committee. Section 44 of the said Act provided as follows : -

"Savings of validity of acts and proceedings-

No act done or proceeding taken under this Act shall be questioned merely on the ground-

(a) of any vacancy or defect in the ,constitution of any authority, or

(b) of any defect or irregularity in such act I or proceeding not affecting the merits of the case.

As far as the Gujarat Act is concerned, we do not have an analogous section to said S. 44. Hence the act of an illegally constituted committee cannot be validated.

21. Mr. Tanna, learned counsel appearing for the respondent 3, invited our attention to S. 57 of the Gujarat University Act, which states:

"No Actor proceeding of any authority or "other body of the University shall be invalidated merely by reason of any vacancy in its membership."

It is difficult to perceive that such a provision can at all assist the respondents in the present case, since the question is of disqualification of members in the present case. We do not think the provision in S. 57 will validate an illegally constituted Committee.

22. In the case reported at Basudeva Vs. Rex, , it has been stated that the connection envisaged should be direct and clear as between cause and effect and not remote and doubtful. We feel that the said connection of Mr. K. N. Shah is direct and clear and cannot be styled as remote and doubtful. In A.K. Roy and Another Vs. State of Punjab and Others, Of the Food Adulteration Act came to be interpreted In that case, the Supreme Court held, that

"Where a power is given to do a certain thing in a certain way, the thing must be done, in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the legislature in enacting S. 20(I) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise."

To come to this conclusion, the Supreme Court relied upon the language used in Craies on Statute Law, wherein it is stated: -

"If the requirements of a statute which prescribes the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceeding."

In our view, the principle propounded in this decision wholly supports the contention of Mr. Patel in this connection.

23. Again, in the case reported at Thakur Pratap Singh Vs. Shri Krishna Gupta and Others, , the Supreme Court has observed that some rules are vital and go to the root of the matter; that they cannot be broken; that others are only directory and breach of them can be overlooked provided there is substantial compliance with the Rules read as a whole and provided no prejudice ensues. Proceeding further, the Supreme Court held in the said case that it is a well settled general rule that an absolute enactment must be obeyed or fulfilled exactly but it is sufficient if a directory enactment is obeyed or fulfilled substantially. The principle, in our opinion, as to whether a statute is mandatory or directory has been succinctly laid down in 1 the decision reported in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, wherein it is stated as under: -

"It is well established that an enactment in form mandatory might in substance be directory, and that the use of the word "Shall", does not conclude the matter. The question was examined in length in "Julius v. Bishop of Oxford" (1880) 5 AC 214, and various rules were laid down for determining when a statute might be construed as mandatory and when as directory. They are well known, and there is no need to repeat them. But they are all of them only aids for ascertaining the true intention of the legislature which is the determining factor, and that must ultimately depend on the context

24. We have, therefore, to examine the relevant provisions of the Gujarat University Act; the impact the Search Committee will have in suggesting names for selecting the Vice-Chancellor of a University; and the intention of the Legislature to keep that high office as pure as possible in order to achieve the desired goal of having an independent Vice-Chancellor. We shall in a nutshell mention certain direct features as to how the Vice-Chancellor has an authority over the above said institutions. Section 8 states that the Vice-Chancellor is one of the officers of the University. Section 11 deals with the powers of the Vice-Chancellor and reads as follows:

"11(1) The Vice- Chancellor shall be the principal executive and academic officer of the University and shall, in the absence of the Chancellor, preside at meetings of the Court and any convocation of the University. He shall be an ex officio member and the Chairman of the Executive Council and of the Academic Council. He shall be entitled to be present, with the right to speak, at any meetings of any other authority or body of the University, but shall not be entitled to vote thereat unless he is a member of that authority or body.

(2) The Vice- Chancellor shall have power to convene meetings of the Court, the Executive Council and the Academic Council. He may delegate this power to any other officer of the University.

(3) It shall be the duty of the Vice-Chancellor to ensure that this Act, the Statutes, Ordinances and Regulations are faithfully observed and he shall have all powers necessary for this purpose.

(4)(a) In any emergency which, in the opinion of the Vice-Chancellor requires that immediate action should be taken, he shall take such action as he deems necessary and shall at the earliest opportunity thereafter furnish information regarding his action to such officer, authority or body as would have in the ordinary course dealt with the matter.

(b) When action taken by the Vice-Chancellor under this sub-section affects any person in, the service of the University such person shall be entitled to prefer an appeal through the said officer, authority or body to, the Executive Council within fifteen days from the date on which such action is communicated to him.

(5) The Vice-Chancellor shall give effect to the orders of the Executive Council regarding the appointment, dismissal, suspension and punishment of the persons

in the service of the University or teachers of the University or regarding the recognition or withdrawal of the recognition of any such teacher and shall exercise general control over the affairs of the University. He shall be responsible for the discipline of the University in accordance with this Act, the Statutes and Ordinances.

"(5A)(a) Subject to the provisions contained in sub-section (4) and notwithstanding anything contained in sub-section (5) where the Vice-Chancellor after making such inquiry as he deems fit is of opinion that the execution of any order or resolution of an authority specified in or declared u/s 15, or the doing of anything which is about to be done or is being done by or on behalf of the University-

(i) is inconsistent with the provisions of this Act or of any statute, ordinance, rule or regulation, or

(ii) is not in the interest of the University, or

(iii) is likely to lead to breach of peace, he may forward a copy of the order or resolution or, as the case may be, refer the doing of the thing with a statement of reasons, to the authority which made the order or passed the resolution or proposes to do the thing for reconsideration by that authority as to whether the said order or resolution may not be rescinded, or revised or modified in the manner stated by him, or the doing of the thing be refrained from.

(b) Where the authority after reconsideration revises or modifies the order or the resolution in the manner stated by the Vice-Chancellor, then" " notwithstanding anything contained in Clause (e) such revised or modified order or resolution shall revive from the date of -such revision or modification.

(c) Where the authority revises or modifies the order or resolution in such manner as is inconsistent with the manner stated by the Vice-Chancellor, the Vice-Chancellor shall refer the matter to the State Government for its decision.

(d) The State Government may, on such reference, being made, revise or modify the order or resolution or direct that the order or resolution shall continue to be in force with or without modification permanently or for such period as it may specify:

Provided that the order or resolution shall not be revised or modified or continued by the State Government without giving the concerned authority a reasonable opportunity of showing the cause against the order.

(e) The order, resolution or, as the case may be, the doing of thing shall remain in abeyance from the date of the action of the Vice-Chancellor of forwarding the copy of the order or resolution or of making reference under CL (a) till the date of the order of the State Government under Clause (d)".

(6) The Vice-Chancellor shall exercise such other powers as may be prescribed by the Statutes, Ordinances, and Regulations."

25. From the above provision, it is clear that the Vice-Chancellor is the Chairman of the Executive Council and also the Academic Council and has the right to convene the Executive Council and the Academic Council. The Executive Council and the Academic Council as per the provisions of the Act have the power to frame the rules, regulations and statutes. Thus, the Academic Council and the Executive Council of the University can exercise its influence over the Vice-Chancellor in all the functions wherein these Councils have a right to perform. The powers conferred upon the Executive Council and the Academic Council extend to all the functions of the Universities and also to functions of its affiliated, recognised and approved institutions. These are all spelt out in Ss 19, 20, 21 and 22 of the Act. Section 16 deals with the members of the Court of the University. Section 16 in sub-section (1) under the heading "Class 11 Ordinary Members" sub- clause (iii) says:

One member by headmasters of secondary schools within the University area from among themselves in the manner specified in the statutes."

Section 16(vii)(a) and (b) states:

" (vii) three members by the governing bodies of colleges affiliated to the University in the manner specified in the Statutes, as follows : -

(a) one member by the governing bodies of such colleges situated within the limits of the City of Ahmedabad as constituted under the Bombay Provincial Municipal Corporations Act, 1949, and

(b) two members of the governing bodies of such college situated outside the limits of the City of Ahmedabad;"

Section 16(viii) states

"(viii) forty-two members by teachers of affiliated colleges (excluding Deans of Faculties and Principals of Colleges) of whom fourteen shall be teachers having teaching experience of not less than ten years in a college or in any University established by law in the State from amongst themselves in the manner specified in the statutes";

Section 16(ix) states :

"(ix) such number of Principals of affiliated colleges, not exceeding thirty five, as may be -fixed in the proportion of one for every four Principals of such colleges, from amongst themselves in the manner specified in the Statutes."

Section 19 deals with the Constitution of the Executive Council. Section 19(vii) states that the Executive Council shall consist of three principals of affiliated colleges elected by the Court from amongst its members. Section 19(ix) states that the Executive Council shall consist of three teachers of affiliated colleges other than principals elected by the Court from amongst its members. Section 19(xii) states that Executive Council shall consist of one representative of the governing bodies of the affiliated colleges elected by the Court from amongst its

members. Section 21(1)(v) states that the Academic Council shall consist of "two persons nominated by the Executive Council from amongst its members". Section 21(vii) states that the Academic Council shall consist of "Two representatives of Heads of recognised institutions elected by them from amongst themselves, in the manner specified in the Statutes." Thus, reading the above said Constitution of Court, Executive Council and

Academic Council and their powers, it is clear that the Vice-Chancellor who has to preside over and who is the Chairman of the Executive Council and Academic Council has ample connection and control through its Academic Council and Executive Council in respect of his University and also in respect of the University's affiliated, recognised and approved institutions. It is also clear from reading the above said sections narrated that these powerful bodies such as Court, Executive Council and Academic Council have effective representatives from the particular University and also from the University's affiliated recognised and approved institutions. In order to see that an independent member who will not have any connection with any of these institutions over which the Vice-Chancellor may have control, the Legislature thought it fit, in order to maintain the purity of the high office of the Vice-Chancellorship to recommend two out of three members of the Search Committee to be a member who is not a person connected with the University or with affiliated college, recognised institution or approved institution. The argument of the learned Advocate General that if the said provision is read as mandatory and the constitution of such committee is questioned on that basis, the performance of the duty by the said Committee would be set aside and thereby inconvenience and injustice would be caused to persons and public who have no control over them, cannot be countenanced for the simple reason that the damage that would be caused by the decision of such an illegal committee in spoiling the purity of the high office of the Vice-Chancellor will be greater.

26. In view of the aforesaid principles and considering the legislative intent in the present case, as also the manner and method in which S. 10(2)(a)(i) is couched, it is amply established that the direction contained therein for the purpose of selecting two members is mandatory in character.

27. We, therefore, answer issue No. I(a) in favour of the petitioners and against the respondents, holding that the Search Committee with Mr. K. N. Shah as one of its members was invalid, as Mr. K. N. Shah was a person, who was connected with the governing bodies of two affiliated colleges, as stated hereinabove.

28. Regarding issue No. I(b), the position is that S. 10(2)(a)(i) provides that one of the members should be a person nominated in the manner prescribed by the statutes by the Vice-Chancellors of all the Universities established by law in the State of Gujarat. The disqualification that attaches to Mr. K. N. Shah by reason of his being a member on the governing bodies of the aforesaid two colleges, also attaches to a candidate to be nominated by the Vice-Chancellors of all the Universities established by law in the State of Gujarat. Mr. K. N. Shah therefore,

could not have been nominated by the Vice-Chancellors on the said consideration, but it is a different matter altogether when it is required to be considered whether Mr. K. N. Shah is disqualified because he has been nominated by the Vice-Chancellors' constituency, as Vice-Chancellors constituency is connected with the University for the purpose of suggesting a name to be nominated in the Search Committee. In the first place, there is no provision which says that the Vice-Chancellors cannot nominate one of the Vice-Chancellors if he is otherwise qualified. In the next place, the connection of the Vice-Chancellors of all the Universities established by law in the State of Gujarat with the Gujarat University cannot be regarded as direct and clear as between cause and effect, but can only be regarded as remote and doubtful and so such a connection cannot be brought into play so as to disqualify Mr. K. N. Shah on that specific count. Issue No. 1(b), therefore, has to be answered against the petitioners.

29. Coming to issue No. 2, it has to be seen, one Ramanlal Joshi was nominated by the Chancellor as per the provisions of S. 10(2)(a)(ii). Pressing the very same argument advanced for the disqualification of Mr. K. N. Shah, Mr. Girish Patel contended that there is an implied prohibition for nominating persons in the Search Committee who are connected with the University or with any of its affiliated colleges, recognised institutions or approved institutions. Ramanlal Joshi is connected, according to Mr. Girish Patel, with affiliated colleges. The decisions we have cited above clearly establish that there must be strict compliance of the procedure. The legislative intent as we have seen is that, two members in the Search Committee must be persons not connected with the University or with any affiliated colleges, recognised institution or approved institution. We cannot import one more condition *dehors* the act by suggesting that the member to be nominated by the Chancellor also should be as suggested in S. 10(2)(a)(i). One can appreciate that if the person suggested by the Chancellor also is a person who is not connected with a University or with any of its affiliated college, recognised institution or approved institution. In that view of the matter, we do not think that, by necessary implication the member to be nominated in the Search Committee by the Vice-Chancellor under S. 10(2)(a)(ii) should also be a member who is not connected with the University or with any of its affiliated college, recognised institution or approved institution. This answers the second issue framed by us.

Issue No. 3

30. It is contended on behalf of the petitioners that the Search Committee has suggested six names or in any event five names. Ex. I states that a meeting of the Committee constituted for the purpose of the appointment of the Vice-Chancellor of Gujarat University was, as per provisions of CL 2(4) of the Statute under Schedule 1A, held on 4th July 1987 at 2.00 P.M. which was adjourned to 8-7-1987 and final meeting was held on 9-7-1987. Shri K Sivaraj, Chairman, Shri YL N. Shah and Dr. Ramanlal Joshi, members, were present. It has next been

stated in Ex. I that after deliberations it was resolved that for the post of Vice-Chancellor of Gujarat University, the recommendations of the Committee as formulated in Ex. I should be sent to the State Government

"Shri IL Sivaraj, and Dr. Ramanlal Joshi recommend the following names (arranged in alphabetical order) : -

1. Shri P. V. Bhatt, IAS (Retd),
2. Dr. P.D. Bhavsar, Retd. Director, ISRO,
3. Dr. M. N. Desai, Ahmedabad Professor of Chemistry, Gujarat University.

Shri K. N. Shah recommends the following three names (arranged in alphabetical order): -

1. Dr. P. D. Bhavsar,
2. Shri B. K. Mehta, Retd. Judge, High Court, Gujarat,
3. Shri Narhari M. Parikh, Lecturer in Psychology, Gujarat University".

The said Ex. I has been signed by all the aforesaid three persons on 9-7-1987 at the end of Ex. 1. It was, therefore, submitted that it should be noted that the name of Dr. P. D. Bhavsar appears twice in Ex. I and is contained in each of the panels mentioned in Ex. 1. It was, therefore, submitted on behalf of the petitioners that the committee had submitted two panels. In any event, it was submitted on behalf of the petitioners that the Committee had submitted five names. It was contended on the said basis that the whole proceedings were, therefore, vitiated.

31. As rightly submitted by the Advocate General, any deliberative body has to act by majority and further that the act of majority has to be considered as the act of the whole body and if any of its members does not concur with the decision, his view is only a dissenting note. In Ex. 1, it has been recorded that there were deliberations and that after deliberations, the majority had sent the three names as aforesaid. It is an accepted principle that unless there is some provision to the contrary in the instrument or in the statute, the resolution of the majority, upon any question is binding on the minority. This principle also gains support from the statement at pages 72 and 73 written by Shekilton on the Law and Practice of Meetings, 7th Edition. It is true that all the three members on the Search Committee have signed Ex. 1, but that would not make any difference in principle, Ex. I clearly shows the majority decision, as also the dissenting note and since the majority can act as majority as per the aforesaid principles, it cannot be said that the Committee had suggested six names or five names. The Committee acting through majority, therefore, has submitted three names only as per its own panel in accordance with the provisions applicable. It is, therefore, not correct to say that the Search Committee had suggested six names or five names. The other three names are contained only in a dissenting note. These three names have not been sent by the majority and so these three names

cannot be regarded as the names sent by the majority of the Committee, as the Committee in the present case acted through majority and not unanimously. The contentions of Mr. Patel in this connection are, therefore, devoid of force. We, therefore, answer first part of Issue No. 3 in the negative and the second part of Issue No. 3 by saying that the same does not arise.

32. In view of all the aforesaid, the nomination of Mr. K. N. Shah as one of the members of the Search Committee vitiates the whole proceedings and so any names suggested by a Search Committee wherein Mr. K. N. Shah is one of the members cannot be acted upon. We, therefore, restrain the respondent Government from implementing and acting upon the names recommended by the Search Committee for the purpose of appointment as Vice-Chancellor and further restrain the respondent Government from appointing Vice-Chancellor of the Gujarat University from amongst the names recommended by the Committee.

33. The rule is, therefore, made absolute to the aforesaid extent with no order as to costs.

34. Rule made absolute.