

(1965) 03 PAT CK 0011

In the Patna High Court

Case No : Misc. Judicial Case No. 983 of 1964

Shree Narain Sinha and Others

APPELLANT

Vs

University of Bihar and Others

RESPONDENT

Date of Decision : 15-03-1965

Acts Referred:

Bihar State Universities Act, 1976 — Section 48A(10), 48A(6), 52, 58
Constitution of India, 1950 — Article 226

Citation : AIR 1966 Patna 47

Hon'ble Judges : Ramratna Singh, J; R.J. Bahadur, J

Bench : Division Bench

Advocate : Basudeva Prasad, Sheo Kumar Singh, Kamlapati Singh and Prem Shankar Sahay, for the Appellant; Balbhadra Prasad Singh, M.M. Gajadhar, H.K. Thakur, D.K. Choudhary, Bhubneswar Nath, S. Mustafi, Gopi Krishna Sinha and Lalnarain Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Ramratna Singh, J.—This is an application for a writ in the nature of certiorari for quashing the order of the Chancellor (respondent 2) of the University of Bihar dated the 17th June 1964, by which he set aside the election of the four petitioners and one Srimati Sundari Devi (not impleaded in the present proceeding) as non-teacher members of the syndicate of the University at a meeting of the senate held on the 31st March 1963. Respondent 1 is the University of Bihar through its Vice-Chancellor, and respondent 3 is Shri Radhanand Jha, who challenged the election before the Chancellor u/s 52 of the Act.

2. The University was established under Bihar Act XIV of 1960, which came into force on the 12th July 1960. Extensive amendments were made to the Act in 1962, and then the senate was constituted. Steps were then being taken to constitute the syndicate; and a meeting of the senate was called on the 30th November 1962, for electing five non-teacher members of the syndicate, as

required by Section 21 of the Act. But this meeting was adjourned to the 31st March 1963. There were twelve validly nominated candidates, including the petitioners and Radhanand Jha; and the petitioners and Srimati Sundari Devi were elected by a process of elimination as laid down in the relevant clause of Section 21. This election was set aside by the Chancellor on the 17th June, 1964, after obtaining the Vice-Chancellor's comments and after hearing all the persons concerned.

3. The petitioners have challenged the findings of the Chancellor as ultra vires, void and illegal. Mr. S. Mustafi who appeared for respondent 1 said that his instruction was merely to state facts, about which this court might be in doubt. Mr. Lalnarain Sinha, who appeared on behalf of the Chancellor, submitted that the Chancellor was not at all personally interested in the result of the case; but he supported the impugned order on the ground that it did not suffer from any illegality or infirmity. Respondent 3 supported the impugned order in all respects.

4. The limits of the jurisdiction of the High Court in issuing a writ of certiorari under Article 226 of the Constitution are now well-settled--see Syed Yakoob Vs. K.S. Radhakrishnan and Others, and Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, . They are :

(1) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or tribunals; these are cases where orders are passed by inferior Courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction.

(2) A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

(3) Want of jurisdiction may arise from the nature of the subject-matter, so that the inferior Court might not have authority to enter on the inquiry or upon some part of it. It may also arise from the absence of some essential preliminary or upon the existence of some particular facts collateral to the actual matter which the Court has to try and which are conditions precedent to the assumption of jurisdiction by it. But once it is held that the Court has jurisdiction but while exercising it, it made a mistake the wronged party can only take the course prescribed by law for setting matters right inasmuch as a Court has jurisdiction to decide rightly as well as wrongly.

(4) There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court.

(5) An error of law which is apparent on the face the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.

(6) In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

(7) Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari.

(8) Whether or not an impugned error is an error of law, and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case, and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

The summary of the findings of the Chancellor contained in the last two paragraphs of the impugned order is reproduced below :

"In conclusion, I hold :--

(a) That the Senate meeting of 31-3-63 was not properly constituted as 18 donors illegally claiming to be life members, and seven other persons illegally claiming to be Principals of Colleges and ex officio members of the Senate as such were treated as members and allowed to participate in the proceedings :

(b) that the exclusion of Mr. Jagdish Pandey and Dr. Smt. Sashilata Verma, Principals of two Colleges, from attendance at the meeting and from participation in its proceedings on the 31st of March 1963, was illegal;

and

(c) that the result of the elections to the Syndicate of five non-teacher members at that meeting, was materially affected by the participation therein of as many as twenty five unqualified persons and by the exclusion of two Principals who were qualified to be members.

I, therefore, hold that the election to the Syndicate that took place at the meeting of the Senate on the 31st of March 1963, of five non-teacher members was null and void and I set aside the same.

I order fresh election to those seats."

5. The first contention of Mr. Basudeva Prasad, who appeared for the petitioners, was that the Chancellor acted in excess of his jurisdiction by setting aside the election of two of the elected candidates namely, Shri Shree Narain Sinha and Shri A.B. Jha, as their election was good and valid even on the statement made by Shri Radhanand Jha in his application dated the 3rd April, 1963 (Annexure B) to this petition. In the last sub-paragraph of paragraph 4 of his application, Shri Jha submitted that, in view of the number of votes secured by the successful candidates as also the defeated candidates, if the unqualified members had not voted, the result would have been that Sarvashri A. B. Jha, S.N. Singh, K.K. Singh, L.P. Sahi and Radhanand Jha would have been elected as non-teacher members of the syndicate. But this statement of Shri Radhanand Jha was based only on his inference and the Chancellor could not have acted on such a statement. An election dispute has to be decided by the Chancellor u/s 52 of the Act, which reads as follows :

"If any question arises whether any person has duly become, or is entitled to be a member of the Senate; the Syndicate or the Academic Council, the matter shall be referred to the Chancellor whose decision thereon shall be final."

It is manifest from the language of this section that after the necessary enquiry the Chancellor is required to give a decision according to his own judgment on the materials available and he is not to act on the statement or inference made by a party which is not supported by sufficient materials. This contention of Mr. Prasad must, therefore, fail.

6. Then, Mr. Prasad submitted that the order of the Chancellor suffered from several errors of law apparent on the face of the record. The first error is alleged to relate to that part of the Chancellor's order which deals with the case of donor life-members. It is admitted that eighteen members of this category participated in the meeting of the senate on the 31st March, 1963. The first meeting of the senate was to be held on the 30th November, 1962. A question arose whether those persons, who were life members, as donors, of the senate of the former University of Bihar constituted under the Act of 1951 could be deemed to be life-members of the new senate constituted under Bihar Act XIV of 1960. The old senate as also the other authorities constituted under the Act of 1951 ceased to exist, when that Act was repealed by Section 63 of Bihar Act XIV of 1960; and under the provisions of the new Act all the authorities, including the senate and the syndicate, had to be reconstituted in accordance with the provisions of the new Act. Under the old Act, a person who had donated Rs. 50,000 or more was entitled to be a life member of the senate; but under the Act of 1960, as amended by Bihar Act II of 1982, which came into force on the 1st March, 1962,

only a person who had donated at least a lac of rupees could be a life member of the senate. The relevant provision, which is contained in Section 17--Life members,(ii)--reads as follows :

"every person who has given, to the satisfaction of the Chancellor whether in one or more instalments, a sum of not less than one lac of rupees in cash or property of the equivalent value to, or for the purposes of, the University or of a college;"

7. The question, therefore, was whether the donor life-members of the old senate who had donated less than one lac of rupees could be treated as life members of the senate constituted under the new Act. Originally, the Chancellor refused to recognise as life members of the new senate those persons who had donated Rs. 50,000, or more, but less than one lac of rupees. Two of the donors (namely, Shri Baleshwar Prasad Choudhary and Shri Hemant Kumar Choudhary) affected by this order of the Chancellor, therefore, Sled writ applications on the 27th November, 1982, before the High Court. These writ applications were admitted and, pending final hearing of the applications, the appropriate university authority was directed by the Court to allow them to participate in the meeting of the newly constituted senate.

The case of Baleshwar Prasad Chaudhary Vs. State of Bihar and Others, . At the meeting of the senate on the 30th November, 1962, no business was transacted, as the Chancellor adjourned the election to the syndicate, so that other donors of the category, to which those who had been allowed by the High Court to participate in the meeting, might also be invited to do so. It may be mentioned here that there is some discrepancy in the present writ petition about the number of donors who were allowed by this Court to participate in the meeting. Mr. Prasad, however, said that only two such donors got the order of stay from the Court before the 30th November, 1962. According to him, two more donors got similar orders of the Court after the 30th November, 1962 and before the 31st March, 1983, But this was not admitted by the opposite parties. The number of such donors in the impugned order is three. In these circumstances, it may be assumed that the number was only three.

8. Again, having considered several representations, including a letter from Shri Mahesh Prasad Siuha, the Chancellor wrote to the Vice-Chancel lor on the 23rd March, 1963 (see Annexure F to the petition), asking him to invite all those donors who had paid Rs. 50,000 or more but less than one lac of rupees to attend the next meeting of the senate on the 31st March, 1963, provided they proved to the satisfaction of the Vice-Chancellor that they had paid that amount before the relevant date. Accordingly, eighteen persons attended the meeting of the new senate on the 31st March, 1963, as donor life-members.

9. The fact that all these eighteen persons participated in the meeting and voted for the election of the five non-teacher members of the syndicate was not disputed. Three of them were allowed to participate on account of the ad interim order of the High Court, and the rest were allowed to participate on account of

the Chancellor's subsequent order conveyed through his letter dated the 23rd March, 1963, to the Vice-Chancellor. After the 31st March, 1963, and before the Chancellor's impugned order was passed, the High Court had finally decided the matter and refused to grant any writ to any of the donor petitioners. The effect of this decision was that those who had paid less than one lac of rupees could not be donor life-members of the senate constituted under the new Act. The Chancellor, therefore, held in the impugned order that the participation by these three donors in the election meeting on the 31st March, 1963 was illegal.

10. Then, the Chancellor discussed the case of the remaining fifteen donors who had been allowed under his order to take part in the election; and he came to the conclusion that the participation of such unqualified donor members at the meeting vitiated the proceedings and invalidated the election. In this connection, he referred to Section 54 of the new Act, which lays down that no act or proceeding of any university authority or body shall be invalid by reason of any vacancy among its members, and to Section 21 (1) (i) (d), according to which the election of non-teacher members of the syndicate is not to be affected by the non-participation of the members not present at the meeting; and observed that there was no provision in the Act, like Article 100(2) or Article 189(2) of the Constitution of India, declaring the validity of a meeting in spite of the participation by persons who were not qualified to participate in the proceeding.

11. Mr. Prasad submitted that the participation by three or four of the old donors under the orders of the High Court could not affect the election, inasmuch as the illegality remained in abeyance during the period in which the matter remained pending in the Court, and the final order of the Court could not relate back. Consequently, it was contended, that these donors validly voted at the election on the 31st March, 1963.

12. On the other hand, Mr. Lalnarain Sinha submitted that the final order of this Court dismissing their applications under Article 226 of the Constitution related back and these three donors were not entitled to vote at the election. His arguments in support of this submission were these. Ordinarily, lights arise out of statutes, or under common law; and any contravention of any mandatory provision thereof renders a transaction void from its inception. Such a transaction is not only bad but incurably bad; and there is no need for an order of the Court to set it aside. For instance, a contract to which a minor is a party is void as against him; and in a suit by the other contracting party the Court cannot make any order which will ultimately prejudice the minor as such. If, therefore, the Court makes an interlocutory order against the defendant in such a suit and ultimately accepts the plea of the defendant that he was a minor at the time of the contract, the interlocutory order which was prejudicial to him would be deemed to have no effect from the beginning. In this connection, Mr. Sinha also referred to the well-known maxim that an act of the Court shall prejudice no one. The position is, however, different in the case of a voidable transaction. Such a transaction is not automatically void. Something must be done to avoid it. There

must be an order of the Court to set it aside or some other act recognised by the law as sufficient for the purpose. In such a case the judgment of the Court setting aside the transaction shall not relate back so as to prejudice an innocent person who was not a party to or aware of the voidability of the transaction. It is illustrated by an English decision in *Wiseman v. Wiseman* (1953) 1 All E. R. 601. One Mr. Wiseman obtained a decree for divorce from his first wife and then married another woman and had a son from the second wife. In an action by the first wife the Court set aside the decree for divorce. The result was that the second marriage was declared to be void; and a question arose how far the declaration affected that marriage. Lord Denning said that, in the circumstances of the case, the said declaration about the second marriage would not relate back so as to cause prejudice to the child born of that marriage, inasmuch as the second marriage was valid during the period from the date of the decree in the divorce proceeding to the date when it was declared to be void. The child was, therefore, held to be legitimate. Lord Denning relied on the earlier decision of *Elliott v. Boynton* (1924) 1 Ch. 236 (251). That was a case by the landlord for re-entry on account of forfeiture of a tenancy and for mesne profits since the date of the breach of covenant. Doctrine of the relation back was not applied in that case, because the result of applying the doctrine would be to turn into a wrongful act that which at the time it was done was not wrong at all. Conversely, therefore, a Court cannot be refusing to apply the doctrine turn into a lawful act that which at the time it was done was absolutely unlawful or void ab initio. Of course, if the statute itself [e.g. Articles 100(2) and 189(2) of the Constitution, which have been referred to by the Chancellor] cures such an illegality at the inception, the position would be quite different; but there is no provision to this effect in the relevant Bihar Act in respect of a person who has illegally acted as a member of the senate. Hence, Mr. Sinha said that, in the instant case, some of the donors were allowed under an interim order of this Court to participate in the voting at the election of the non-teacher members of the syndicate, but they were ultimately found by the Court to have been not at all qualified to be donor members of the senate in terms of the relevant provision of the Act. In other words, their participation in the election was an act void ab initio; and the final judgment of the Court would relate back.

13. In answer to the above reasons urged by Mr. Sinha, Mr. Prasad submitted that the interim order of this Court was an order passed in its special jurisdiction and, unless it was vacated by a subsequent interlocutory order, as distinguished from the final judgment disposing of the application under Articles 226 and 227, the interim order of the Court created in these donors during the intervening period the right to function as a member of the senate; and, therefore, the final judgment could not invalidate the act done by such a member during that period. On the question of prejudice he submitted that the members of the senate, including these donors, may have performed several acts, which if set aside on the basis of the doctrine of relation back might prejudice innocent third parties. He submitted that there is a class of void transactions which are not void ab initio

and, when such transactions are set aside by a Court, the final judgment does not relate back. In the instant case, the Court passed an interim order in favour of these donors for the reason that at that stage it was not sure about their status and it allowed them to participate in the meeting of the senate. Hence, it was submitted that, in the absence of any specific direction in the final judgment, the participation of these donors was quite valid in law.

14. From the foregoing discussions, it is evident that the question is at least debatable and, therefore, the view taken by the Chancellor cannot be said to be an error apparent on the face of the record.

15. Mr. Prasad also submitted that the Chancellor could not act on the final judgment of this Court, as an appeal against it is pending before the Supreme Court. But in the absence of any stay order by the Supreme Court, this submission is without any force.

16. At one place, the Chancellor, has said that it is "admitted that 18 persons who were not qualified to be senators" participated in the election. Mr. Prasad submitted that this was an error on account of the word "admitted". But this is also a mistake of fact.

17. The next submission of Mr. Prasad was that out of the remaining fifteen donor life members, three, namely, Mahant Rameshwar Dass, Mahant Shivshankar Gir and Sri Chandradhari Singh had actually donated a lac of rupees each, as stated in paragraph 21 of the petition; and, inasmuch as this fact is not denied, these three gentlemen were qualified to participate in the meeting. To this extent, therefore, the Chancellor's order is factually incorrect. But mistake of fact cannot be a ground for issuing a writ of certiorari.

18. With regard to the other twelve donors who participated in the meeting under the order of the Chancellor, Mr. Prasad submitted that their participation was also perfectly legal, because this order of the Chancellor must be deemed to have been made u/s 58 of the new Act, which reads as follows:

"If any difficulty arises with respect to the establishment of the University or in connection with the first meeting of any authority of the University or otherwise in first giving effect to the provisions of this Act or the Statutes the Chancellor may, at any time before all the authorities of the University have been constituted, by order make any appointment or do anything consistent, so far as may be, with the provisions of this Act and the Statutes, which appear to him necessary or expedient for the purpose of removing the difficulty, and every such order... shall have effect as if such appointment or action had been made or taken in the manner provided in this Act;

Provided that, before making any such order, the Chancellor shall ascertain and consider the opinion of the Vice-Chancellor, and of such of the appropriate authorities of the University as may have been constituted, on the proposed order."

But this submission ignores the proviso to the section. It was conceded that, inasmuch as the senate had already been constituted, it was the duty of the Chancellor to ascertain and consider the opinion of the Vice-Chancellor and of the senate before making any order u/s 58. From the facts stated earlier, it is manifest that the Vice-Chancellor's opinion was not obtained before the Chancellor communicated his order in the letter dated the 23rd March, 1963, nor was the senate ever consulted in the matter. In order to get over this obstacle, Mr. Prasad said that the consultation required by the proviso was merely directory, and not mandatory and, therefore, the failure on the part of the Chancellor to consult the Vice-Chancellor of the senate made, at the worst, his order dated the 23rd March, 1963, irregular but not illegal. On the other hand, it was contended on behalf of Sri Radhanand Jha that the consultation required by the proviso was mandatory; and this contention is well founded. It will be noticed that u/s 58 the Chancellor is empowered to make a final order for the removal of any difficulty and that such an order has sanctity of a provision in the Act. That is why the legislature required the Chancellor by inserting the proviso, to ascertain and consider the opinion of the authorities which had come into existence by the time his order was to be made; otherwise the Chancellor might act arbitrarily. The decision of the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, , with regard to the failure of the Government to consult the commission under Article 320(5) of the Constitution cannot help Mr. Prasad, because the commission is only a recommending body while in the instant case the Chancellor's order is final. Further if two interpretations of Section 58 are possible and the Chancellor accepts one interpretation, it cannot be said to be an error apparent On the face of the record.

19. Another ground given by the Chancellor for the invalidity of the election was the participation at the meeting for the election of certain persons as Principals of colleges, though they had not been validly appointed, and the non-participation of some who were validly appointed Principals, on account of the rulings of Vice-Chancellor who presided over the meeting. In this connection, the relevant provisions are contained in Rules (8) and (10) of Section 48A, which are reproduced below :

"(6) Subject to the approval of the Univerity, appointments, dismissals, removals, termination of service or reduction in rank of teachers of an affiliated college not belonging to the State Government shall be made by the governing body of the college on the recommendation of the Commission."

"(10) Notwithstanding anything contained in the preceding sub-sections, it shall not be necessary for the governing body to consult the Commission if the appointment to a post of teacher is not expected to continue for more than six months and cannot be delayed without detriment to the interest of the College :

Provided that if it is proposed to retain the person so appointed in the same post for a period exceeding six months or to appoint him to another post in the college the concurrence of the Commission shall be necessary in the absence of

which the appointment shall be deemed to have been terminated at the end of six months."

The Chancellor rightly thought that Sub-section (10) contained an exception to Sub-section (6) merely in respect of the provision for consultation with the Commission and that the approval of the university was always necessary, as required by Sub-section (6). He also interpreted the two sub-sections read together to mean that it would not be necessary to consult the Commission only when the appointment to a post is not expected to continue for more than six months and, therefore, if originally the idea was to make the appointment for more than six months, the Commission must be consulted. This interpretation cannot be said to be untenable or patently wrong.

20. One of the Principals, who participated in the election meeting, was Shri Amarnath Mukherji, of the Areraj College. He was originally appointed for more than six months, but the Vice-Chancellor moved the Chancellor to approve this appointment for six months only with effect from the 1st September, 1962, and approval was accordingly given by the Chancellor. But the period of six months from the 1st September, 1962, expired at the end of February, 1963; admittedly, the concurrence of the Commission was not obtained for the continuance of Shri Mukherji as the Principal with effect from the 1st March, 1963. In other words, Shri Mukherji was not a validly appointed Principal on the 31st March, 1963, when he participated in the election meeting. Mr. Prasad frankly conceded that this was the correct position.

21. Another gentleman, Shri M. Giri of Siwan College was appointed Principal by the governing body of the college on or about the 25th February, 1963, against the vacancy caused by the grant of leave for two years to the permanent Principal. Initially, the appointment of Shri Giri by the governing body was for more than six months, but the Secretary of the College treated this appointment as one for a period of six months only. The approval of the university to this appointment was never obtained. Hence, the Chancellor was right in holding that the appointment was invalid. Another reason given by the Chancellor for the illegality of this appointment is that, in view of the fact that the vacancy was for two years, the provisions of the law could not be circumvented by making the appointment of Shri Giri for six months only at the beginning. Mr. Prasad submitted that this interpretation of the law was not correct; but the interpretation made by the Chancellor cannot be said to be wrong, in view of the words "if the appointment to a post of teacher is not expected to continue for more than six months", occurring in Sub-section (10). In this connection it may be noted that, according to the definition, Section 2(p) of the Act, "teacher" includes a Principal.

22. The appointment of five other Principals, viz., Shri Bholanath Singh (Motihari College), Shri Sushil Kumar Singh (Jagdam College), Shri Satrugan Prasad Singh (Rosera College), Shri R.P. Agarwala (Sitamarhi College) and Shri Nagendra Prasad Singh (Jainagar College) was also held rightly by the Chancellor

to be bad, inasmuch as approval of the university had not been taken to their appointments. The Chancellor was also right in holding that, until the appropriate university body is not constituted for the purpose of giving approval on behalf of the university to such appointments, such power can be exercised by the Vice Chancellor with the approval of the Chancellor (see Section 59(2) of the Act). In the cases of Shri Bhola Nath Singh, Shri Sushil Kumar Singh and Shri Satrugan Prasad Singh, approval of none of these authorities had been obtained. It is also remarkable that, before his appointment as Principal of the Rosera College, Shri Satrugan Prasad Singh was a lecturer in Hindi in a college at Motihari. He took leave from that college and was appointed Principal temporarily by the governing body of the Rosera College on the 31st March, 1963, and he joined this College on the 26th March, 1963. But only three days after participating in the meeting on the 31st March, 1963, this gentleman resigned from the post of Principal and joined again his original post as lecturer in the Motihari College.

23. Shri Agarwala was appointed the acting Principal of the Sitamarhi College sometime in March, 1963, by only the Secretary of the governing body; and, at the request of this Secretary, the Vice-Chancellor permitted Shri Agarwala to represent the college in the meeting of the senate on the 31st March, 1963. The Chancellor has rightly observed that this permission granted by the Vice-chancellor could not amount to the approval of the appointment by the University. The circumstances leading to the appointment of Shri Nagendra Prasad Singh as Principal of the Jainagar College are also interesting. Long before the 31st March, 1963, his appointment as Principal of that college was not approved by the then governing body in its proceedings in January, 1962. In view of this fact, the University Service Commission terminated his services and the Chancellor agreed with them. The subsequent governing body, however, treated the proceedings of the original governing body as an order of termination or the services of Shri Nagendra Prasad Singh, cancelled the same at their meeting and restored him to his original appointment as Principal in February 1963. The Chancellor was, therefore, right in holding that this order of the subsequent governing body against the Chancellors's order confirming the termination of Shri Singh's services as Principal was without jurisdiction. At the meeting of the senate on the 31st March, 1963, the Vice-chancellor ruled that he treated Shri Singh's appointment by the subsequent governing body as a fresh appointment for a period not exceeding six months not requiring any approval of the university. But the Chancellor rightly held that this decision of the Vice-Chancellor could not validate the appointment of Shri Singh in the absence of Chancellor's approval and that it was for the governing body--not for the Vice-Chancellor--to limit the appointment to a period of six months only. It has been asserted in the petition that the Chancellor's order in respect of Shri Singh is illegal, as a writ application filed by Shri Singh challenging the validity and legality of an earlier order of the Chancellor was still pending in the High Court; but there is no assertion that any order of stay or injunction was passed on the said writ application.

24. In view of the foregoing discussions, the Chancellor did not commit any error of law in treating the appointments of the aforesaid seven Principals as invalid; and he was justified in holding that the election was vitiated on account of the participation of these seven principals.

25. The next ground given by the Chancellor in the impugned order is the non-participation (on account of an order of the Vice-Chancellor) of Shri Jagdish Pandey and Dr. Sashilata Varma, Principals, respectively, of the Pandaul College and the J. P. Manila College at the general meeting of the senate held on the 31st March, 1963, though they had in fact been invited to the meeting of the senate on the 30th November, 1962. Only one comment was made by Mr. Prasad in respect of this finding of the Chancellor; and in order to appreciate it, some past history must be stated. It appears that Shri Jagdish Pandey had filed two applications--one under Article 226 and the other under Article 227 of the Constitution before the High Court: and they were disposed of on the 30th April, 1964. (See *Jagdish Pandey Vs. Vice-Chancellor, University of Bihar and Another*, . Originally, Shri Jagdish Pandey had been appointed Principal by the governing body of the college at a meeting held on the 23rd September, 1961, and this appointment was approved by the University of Bihar on the 24th January, 1962, and an application challenging this appointment was dismissed by the High Court on the 11th May, 1962. Thereafter, Bihar Act XIII of 1962 was enacted, and it came into force on the 21st April, 1962. Section 4 of this Act laid down that all appointments made on or after the 27th March, 1962, shall be subject to such orders as the Chancellor of the University, may, on the recommendation of the University Service Commission established u/s 48A of Bihar Act IV of 1962, pass with respect thereto. In view of this provision, on the recommendation of the University Service Commission, the Chancellor, through his Secretary's letter dated the 18th November, 1963, directed that Shri Jagdish Pandey might continue as Principal temporarily and the governing body of the college might give him a year or two to appear at the relevant qualifying examination to enable him to obtain a second class, otherwise his services would be terminated. It was against this order that Shri Pandey filed the aforesaid applications under Arts. 226 and 227 of the Constitution. It appears that these applications were dismissed by the High Court on the 30th April, 1964. In the impugned order, however, which is dated the 17th June, 1964, the Chancellor stated:

"It has since been decided by the High Court that he ought to have been allowed to attend the Senate meeting."

Mr. Prasad submitted that this statement was wrong; and in support of this contention he relied on the aforesaid decision of the High Court in the case of *Jagdish Pandey Vs. Vice-Chancellor, University of Bihar and Another*, . But what the High Court held in that case was that the order of the Chancellor dated the 18th February, 1963, was good, i.e. Shri Jagdish Pandey was entitled to continue as the Principal of the College for a year or two with effect from the 18th February, 1963 at least, though his contention that he was entitled to continue as

the Principal permanently without appearing at any examination was rejected. It cannot, therefore, be said that the aforesaid inference of the Chancellor is incorrect. When the High Court upheld the Chancellor's order communicated through his Secretary's letter dated the 11th August, 1963, Shri Pandey was validly acting as Principal on the 31st March, 1963; and it was apparently for this reason that the Chancellor drew the above inference from the order of the Court. Moreover, it is at the worst, a mistake of fact which cannot be a ground for the issue of a writ of certiorari. Regarding Dr. Sashilata Verma, the Chancellor has stated in the impugned order that "the same applies" to her, and this statement was not challenged by Mr. Prasad. Hence, the same comments apply to the case of Shri Jagdish Pandey and Dr. Verma.

26. Mr. Prasad referred to the following passages in the impugned order :--

"The maximum and the minimum votes secured in the last round were 76 and 54. The last of the successful candidates in the last round got 63 votes as against the person below who got 54 and who was eliminated. The difference was such that the result might have been materially affected by the participation of 18 such persons who were not qualified to be senators as its donor life-members. The difference between the first and the last of the successful candidates was only 13 and the difference in votes between the person who was eliminated in the last round and the last of the successful candidates in that round was only 9. So far as the petitioner is concerned, in the fourth round he got 49 votes as against 53 votes which were obtained by the person immediately above him, the difference being only 4. Thus by the participation of 18 unqualified members in the election, I hold, the result of the election was materially affected and the election to the syndicate is, therefore, void."

After discussing the case of the Principals, the Chancellor observed :

"From the above detailed discussion regarding each of the Principals it will be clear that out of 9 persons who took part in the election on that day claiming to be Principals, seven were not legally Principals on that day and the election is therefore vitiated on account of their participation. These votes in addition to the 18 votes of the alleged donors have in my opinion, materially altered the result of the elections to the Syndicate. Even leaving aside the cases of these Principals, the participation by the 18 alleged donors who were not qualified to be Senators on account of not being life-members is sufficient to vitiate the election and the result of the election has been materially affected by their participation."

Mr. Prasad laid stress on the expression "materially affected" and relied on the decision of the Supreme Court in *Vashit Narain Sharma Vs. Dev Chandra and Others*, wherein that expression as used in the Representation of the People Act was interpreted. But a provision of the Representation of the People Act, or the interpretation of that provision, is not all relevant to the instant case. In Bihar Act XIV of 1960, the only provision regarding the manner in which an election

shall be challenged and the authority which shall decide an election dispute is contained in Section 52 thereof. This section does not contain any expression similar to the above expression used in the Representation of the People Act. A perusal of the impugned order as a whole shows that the Chancellor used the expression "materially affected" only as a convenient mode of expressing his view that the election was bad. This is manifest from the fact that the Chancellor also found that the participation of the donor members and seven Principal members in the election vitiated the proceedings. It is also remarkable that the election in the instant case was by the process of elimination; and every vote is material when such a procedure is adopted. It was conceded at the bar that there is no provision for any election under the Representation of the People Act by the process of elimination. For this reason too, therefore, the decision of the Supreme Court is of no assistance in the instant case.

27. The next contention of Mr. Prasad was that the question whether a person was in terms of the relevant provision of the law a member of the senate or not on the 31st March, 1983, was a collateral fact to be determined for conferring the jurisdiction on the Chancellor to decide this election dispute; and, inasmuch as the Chancellor came to a wrong decision with regard to the said collateral fact, he could not give himself the jurisdiction to decide the election dispute. In support of this contention, he relied on *Raj Krushna Bose Vs. Binod Kanungo and Others*, and *Smt. Ujjam Bai Vs. State of Uttar Pradesh*, . But the second decision also says at page 836 of the report (S C R) : (at page 1630 of AIR) that there may be tribunals which, by virtue of legislation constituting them, have the power to determine finally the preliminary facts on which the further exercise of their jurisdiction depends. In the instant case, the jurisdiction on the Chancellor is conferred by the provision of Section 52 of the Act, from which it appears that the legislature has empowered the Chancellor to decide all matters relating to election, including the fact whether certain persons were entitled to participate in the election as members of the senate. Further the mistake of fact committed by the Chancellor regarding three donors who had each donated one lac of rupees and the error, if any, in respect of the validity or otherwise of the votes of three donors who participated at the election under the interim order of the High Court, or of the seven Principals, cannot affect the ultimate decision of the Chancellor, because the participation at the election of the remaining twelve donors and the forced non-participation of Shri Jagdish Pandey and Dr. S. Varma would vitally affect an election by the process of elimination.

28. The last contention of Mr. Prasad was that the participation of even those not qualified to vote at the election would not vitiate the proceedings of the meeting of the senate on the 31st March, 1963; and, therefore, the impugned order was wrong in law. In support of this contention, he relied on an English decision in *Imperial Chemical Industries, Ltd., In re* (1936) 1 Ch 587 at page 614; but a careful perusal of the decision shows that it does not support this contention. A meeting of a company was called to consider, among other matters, a new scheme. As to what happened at the meeting, it is necessary to reproduce the

following extracts from the decision:

"The chairman before putting the resolution pointed out that only shareholders with a pink portion on their voting cards could vote, that is, those who held ordinary shares. No attempt was made to clear the room of shareholders not holding ordinary shares, and admittedly a number of shareholders who did not hold ordinary shares remained while this meeting was held. The resolution was put to the meeting. It was declared carried by the necessary majority on a show of hands, but notwithstanding that fact a poll was demanded. It was not suggested that either on this show of hands or on the poll any but holders of ordinary shares voted."

Then, another meeting was held the same evening in respect of those members who held deferred shares. The relevant passage in respect of this meeting reads thus:--

"The chairman then put the resolution after pointing out that only shareholders with a green portion on their voting cards could vote, that is those who held deferred shares. On a show of hands the resolution was not carried and a poll was demanded, and the meeting was adjourned until 5.30 for the declaration of the poll. In the case of this meeting as in the case of the meeting of ordinary shareholders no attempt was made to clear the room of shareholders not holding the class of share in respect of which the meeting was convened, and admittedly a number of shareholders who did not hold deferred shares remained while this meeting was held. But as in the former case it was not suggested that either on the show of hands or on the poll any but holders of deferred shares voted." Then, their Lordships said :

"These being the circumstances, it is now suggested on behalf of the appellants that no valid separate meeting of holders of deferred shares was held We cannot see why a meeting should not be a perfectly good meeting of a class and a good separate meeting of the class, if the class in fact meets together, merely because some strangers, to whose presence nobody in fact objects, are within the same four walls."

It is manifest from what is stated above that the strangers had not participated in the voting in the above case, though they were present in the room. In the instant case, however, unqualified persons--most of the donors and seven of the Principals--had participated in the voting. Hence, the last contention of Mr. Prasad also fails.

29. In the result, there is no merit in the application and it is dismissed.

R.J. Bahadur, J.

30. I agree.