

(2012) 11 KAR CK 0057

In the Karnataka High Court

Case No : Writ Petition No. 4340 of 2012 (S-RES)

Shri P.M. Parameshwaramurthy, Shri S. Umapathi, Shri B.G. Ganesh and Shri K.M. Manjunath **APPELLANT**

Vs

State of Karnataka and Others **RESPONDENT**

Date of Decision : 21-11-2012

Acts Referred:

Karnataka State Universities Act, 2000 — Section 17

Citation : (2013) ILR (Kar) 263 : (2013) ILR (Kar) 209 : (2013) 2 KarLJ 287

Hon'ble Judges : V. Suri Appa Rao, J;N. Kumar, J

Bench : Division Bench

Advocate : B.M. Arun, for the Appellant; K. Krishna, AGA for R1, Shri T.P. Rajendra Kumar Shungay for R-2, Shri P.S. Dinesh Kumar, Advocate for R5, Shri Subramanya Jois, for Sri M.R. Shailendra, Advocate for R6, R-3 and R-4, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—In this writ petition which is a public interest litigation, the petitioners seek a writ of quo warranto for ouster of 6th respondent from the post of Lecturer and consequently, the Registrar of the second respondent-Bangalore University and also seeking a writ of certiorari for quashing the appointment of the 6th respondent as the Registrar of the Bangalore University.

FACTUAL MATRIX

The facts in brief are as under:

The first petitioner was a student of second respondent-Bangalore University and has acquired his Master in Engineering course. He is a Patron Member of Builder Association of India-Mysore Centre, Life Member of Institution of Engineers(India), Fellowship, Institution of Environmental Engineers(India), Member of Indian Water Works Association, Secretary, Karnataka Environmental Research Foundation, Bangalore, Secretary Swadeshi Jagaran Manch, Bangalore

Zone. The fourth petitioner was a student of the second respondent-Bangalore University and he has acquired Bachelor of Engineering course. The other petitioners are also public spirited citizens. All of them are interested in the welfare of alma mater and are espousing the cause of public. They are aggrieved by the initial appointment of the 6th respondent as a Lecturer and subsequently his appointment as a Registrar of the second respondent-Bangalore University.

2. The 6th respondent was appointed as a Research Assistant on 18.10.1988. The minimum qualification for the purposes of Lecturer as per Item No. (3) A to Schedule-I of the notification issued by the University Grants Commission is a good academic record with atleast 55% marks or an equivalent grade at Master's Degree level in the relevant subject. Further, the candidate besides fulfilling the above qualifications should have cleared the eligibility test for Lecturers conducted by the University Grants Commission, CSIR or similar test accredited by University Grants Commission. No person shall be appointed to a teaching post in a University in a subject if he does not fulfill the requirements as to the qualifications for the appropriate subject. Any relaxation in the prescribed qualifications can only be made by the University concerned with the prior approval of the University Grants Commission. When the second respondent published a statute called "Conversion of posts of Research Assistants to Lecturers and Abolition of Vacant posts of Research Assistants in various Departments of Bangalore University", they called upon the heads of the various Departments to furnish particulars of all the Research Assistants. Those who possessed the qualification could be converted as Lecturers. The Chairman of the Department of Sociology addressed a letter dated 10.12.1993 furnishing the particulars of the 6th respondent. He stated that the 6th respondent has obtained only 53.1% in the M.A. degree examination. Moreover, he has not passed the NET examination. Hence, he will not be eligible if the guidelines are strictly enforced. Pursuant to a resolution of the Syndicate of the second respondent in its meeting held on 9.2.1994, the 6th respondent was kept under suspension by an order dated 14.2.1994 which was challenged by him by way of a writ petition before this Court. The Board of Appointment of second respondent in its meeting held on 12.3.1994 recommended for absorption of 6th respondent as a Lecturer of Sociology and they also recommended for relaxation of minimum percentage of marks of 55% at post graduate level, in view of his service as Research Assistant for five years which was in complete violation of proviso to paragraph (2) of the guidelines of University Grants Commission wherein prior approval of University Grants Commission was mandatory. By an order dated 19.5.1994, the suspension order was revoked and the 6th respondent was reinstated as Research Assistant. By virtue of the aforesaid resolution passed by the Syndicate on 13.6.1994, he was appointed as a Lecturer in Sociology by order dated 16.6.1994. However, the said order was modified on 4.8.1994 modifying the conditions of absorption. The said order modifying the conditions of absorption was challenged by the 6th respondent by way of writ petition which came to be rejected.

3. In the year 2002, one L. Vasudeva Murthy, a member of the Academic Council of the second respondent complained that the absorption of some of the Research Assistants as Lecturers was contrary to law. Then a verification was conducted. Though the 6th respondent did not possess the requisite qualification, no action was taken against the 6th respondent. The second respondent issued a notification dated 30.09.2002 inviting applications to fill up backlog posts in various Departments including the post of Professor in the Department of Sociology. The 6th respondent applied for the said post. In the meanwhile, the 6th respondent was again kept under suspension because of the resolution passed on 7.7.2007 by the Syndicate pending enquiry into certain irregularities including non-deposit of Rs. 19.58 lakhs collected from Study Centres and required to be deposited on 7.11.2005. However, the State Bank of Mysore later found the 37 cheques amounting to Rs. 14,91,000/- had become stale and was sent for revalidation. They were cleared on 12.7.2007. Dr. R. Venkata Subbaiah had filed writ petition in W.P. No. 10873/2003 for a direction not to select the 6th respondent to the post of Professor. During the pendency of the said writ petition, the 6th respondent was selected as a Professor and accordingly was appointed on 18.6.2003. Therefore the writ petition was amended seeking for cancellation of the said order appointing him as a Professor. The learned Single Judge after hearing all the parties was of the view that the 6th respondent did not possess the requisite qualification to be appointed as a Professor. Therefore, by an order dated 31.7.2007, the appointment of 6th respondent as a Professor was quashed. Aggrieved by the said order, the 6th respondent preferred a Writ Appeal No. 1416/2007. The Division Bench after hearing the parties affirmed the order of the learned Single Judge and dismissed the appeal. Consequent to the said order of the Division Bench, the 6th respondent was relieved from the post of Professor on 7.8.2007 with effect from 1.8.2007. The 6th respondent challenged the said order before the Apex Court. The Apex Court after hearing all the parties allowed Civil Appeal and set aside the order passed by the learned Single Judge as well as the Division Bench by its order dated 03.10.2008. It held that the 6th respondent had satisfied the qualifications required for the appointment to the post of Professor in the Bangalore University. Therefore, it directed the University to reinstate the 6th respondent within two months from the date of receipt of a certified copy of the order. After the said order, 6th respondent had been reinstated by the University.

4. It is further alleged that insofar as the irregularities regarding non-deposit of Rs. 19.58 lakhs as stated supra, the Registrar of the second respondent addressed a letter dated 4.09.2007 to the first respondent seeking approval to handover the case to Corps of Detectives. In the meanwhile, the 6th respondent filed an appeal before the Chancellor challenging his suspension. The Registrar of the second respondent had addressed one more letter dated 15.2.2008 to the first respondent seeking approval for initiating COD enquiry. In reply, the first respondent by letter dated 23.4.2008 informed the Registrar that filing of complaint is mandatory for starting COD enquiry. Accordingly, a complaint was

filed on 07.10.2008 before the jurisdictional Ulsoor Gate Police Station. In the meanwhile, on the same day that is on 07.10.2008, the Hon"ble Minister for Higher Education issued directions to close the file of the complaint, as it was found that COD enquiry was not necessary. On the same day, the first respondent issued a show cause notice to the 4th respondent-Vice Chancellor, u/s 10 of the Act as to why the resolution dated 07.7.2007 passed by the Syndicate be annulled. On 5.11.2007, the Principal Secretary, Higher Education Department had put up a note that he is convinced that COD should enquire into the allegation and took exception to the act of 6th respondent giving a representation requesting that the matter should not be referred to COD enquiry and the Hon"ble Minister for Higher Education agreeing over the same. However, the first respondent has subsequently by his order dated 24.11.2008 annulled the resolution dated 7.7.2007. Thereafter, the Hon"ble Minister for Higher Education had by its note dated 07.02.2009 directed the Vice Chancellor to take steps to withdraw the complaint. The complaint was subsequently withdrawn and a closure report was filed by the jurisdictional Police on 8.8.2009.

5. When the matter was pending before the Apex Court, 6th respondent filed his nomination paper on 23.4.2008 for contesting the elections to the Legislative Assembly of Karnataka as a candidate of Bharathiya Janatha Party. However, he was defeated in the said elections.

6. It is further stated the 6th respondent was a Guide to M. Venkataramanappa, a Ph.D. student. In the year 2003, serious allegations were made in respect of plagiarism in the thesis submitted by M. Venkataramanappa. The second respondent initially referred the matter to Institute for Social and Economic Change, Bangalore, a reputed Institution. An Expert Committee appointed by the said Institute had furnished a report to the effect that there is ample evidence to suggest plagiarism. The same was forwarded by the Registrar of the said Institution to the second respondent by a letter dated 14.2.2003. However, no action was taken. But the matter was referred to another Expert Committee. The new Expert Committee held that as it has assessed both the texts and found that the theoretical and historical background seems to be similar but it however held that conclusion part and locale of the study are different in both the text books. On coming to know of such a report, Professor Venkatagirigowda who served in the second respondent and was also a former Member of the Parliament and a highly respected academician addressed a detailed letter dated 13.8.2003 to the Chancellor seeking his intervention in the matter. In view of the hue and cry raised and serious allegations made, the Chancellor intervened in the matter and a notification dated 30.8.2006 was issued appointing Shri K.V. Irniraya, IAS(Retired) Officer to head the Commission and Shri Manohar Yadav, Associate Professor, Institute for Socio Economic Change, Bangalore, as the Member to enquire into the matter. The said Notification was challenged by M. Venkataramanappa in writ petition in W.P. No. 13031/2006 which came to be dismissed on 13.4.2007. M. Venkataramanappa had preferred a Writ Appeal in W.A. No. 843/2007 against the order dismissing the writ petition where he had

challenged the constitution of the said Commission. The Division Bench dismissed the said appeal after recording its dissatisfaction in respect of report of the second Committee. Subsequently, one more notification dated 4.5.2007 was issued renewing the said appointment. The said Commission issued notice dated 14.05.2007 to M. Venkataramanappa as well as to the 6th respondent. They were afforded an opportunity of personal hearing. After considering the material, the Commission submitted a detailed report dated 25.7.2007 holding that allegations of plagiarism, ghost writing levelled against M. Venkataramanappa are proved. It further held that while the student has lifted the matter from two Kannada books of his guide, a closer examination shows that two Kannada books of a guide are themselves not original but are verbatim translations of other well known books and research papers written in English. After receipt of the Commission report, the Chancellor addressed a letter on 4.6.2008 to the first respondent and directed them to take steps to annul the decision of the Syndicate in awarding Ph.D. degree to M. Venkataramanappa. No action was taken. In those circumstances, L. Vasudevamurthy filed a public interest litigation before this Court in writ petition in W.P. No. 6091/2009 seeking for the implementation of the said report of the Commission. Both M. Venkataramanappa and 6th respondent were made parties and they were duly served. They filed identical statement of objections. The first respondent submitted to the Court that it will implement the directions of the third respondent and on that undertaking, the writ petition was disposed of by an order dated 7.3.2011. Accordingly, the Ph.D. degree granted to M. Venkataramanappa was annulled by an order dated 29.3.2011. The said order was again challenged by M. Venkataramanappa in writ petition in W.P. No. 13031/2006. The said writ petition came to be allowed by an order of this Court on 6.3.2012 holding that the State Government has no power to annul the degree granted by the University. This Court read down the said State Government order as an order directing the Appellate Authority to initiate such action with respect to the findings of the Enquiry Report. In pursuance of the orders passed in the said writ petition, the Vice Chancellor initiated proceedings for annulment of the Ph.D. degree awarded to Shri Venkataramanappa. The Academic Council in its meeting held on 09.05.2012 unanimously resolved to withdraw the Ph.D. awarded to Shri Venkataramanappa. Thereafter the resolution of the Academic Council was sent to the Syndicate for concurrence. Because of the un-precedented violence in the Special Syndicate meeting held on 07.05.2012 the physical meeting of the Syndicate could not be conducted. Therefore, the said agenda was sent by circulation. The Registrar who was the Guide to Shri Venkataramanappa was disabled to express his opinion on the issue. The agenda was issued by the Registrar(Evaluation) as authorised by the Vice Chancellor. Out of the 21 syndicate members, 15 members including the Chairman responded and concurred with the unanimous resolution of the Academic Council dated 09.05.2012. Then on 28.05.2012 in the said Special meeting of the Syndicate by circulation, after taking note of the recommendation of the Academic Council, by majority of 2/3 of the total members of the

syndicate resolved to withdraw the Ph.D. degree awarded to Shri Venkataramanappa. They also resolved to issue the show cause notice to him as required under sub-section (2) of the Act. The University gave effect to the said resolution on 30.06.2012. Accordingly, the University passed an order on 30.6.2012 withdrawing the Ph.D. degree in Sociology awarded to Shri Venkataramanappa. Against the said order, he has preferred Statutory Appeal before the Chancellor which is pending consideration.

7. Against this background the petitioner's grievance is that the 6th respondent was severely indicted for plagiarism by the Commission not merely in respect of the thesis on which he was conferred the Ph.D. degree but also in his role as a Guide for the thesis of his student Shri Venkataramanappa. Such a tainted person is appointed as the Registrar by the first respondent by its notification dated 2.11.2011. The 6th respondent was not qualified. He is an usurper of office. He is a man of questionable character and integrity. As a Registrar (Administration), he will foresee the working of one of the biggest Universities in India and exercise powers including u/s 17 of the Act. After his appointment, he is in the news daily for reasons which are anything but academic. There is great resentment in the staff, faculty and all concerned, especially by persons who are highly qualified for being appointed to the said post and who are several years senior to him. The Registrar is appointed by the first respondent in exercise of power u/s 17 of the Act. Initially under the Act, one was required to be an officer belonging to all India services working in Super Time Scale to be appointed as the Registrar. The same was amended by Ordinance 2 of 2010 which states that he should be an officer not below the rank of Group 'A' Officer of the Super Time Scale or a Member of the faculty of any University working as a Professor for at least ten years. However by amended Act 8 of 2011 while replacing the aforesaid Ordinance, the term of ten years was reduced to five years. They are not surprised if the said amendment diluting the entire provision was brought into effect only to enable the 6th respondent to occupy the coveted post. There was no object and reason behind the enactment and the entire action is a colorable exercise of power.

8. The Registrar is to be an Academician of unblemished record and impeccable character. He is to inspire confidence in the higher educational fraternity. In the instant case, admittedly the 6th respondent is not qualified under the University Grants Commission Regulations. His past character does not inspire confidence. The University is a temple of learning to prepare future citizens. By any yardstick, the appointment of 6th respondent is clearly unsustainable and undesirable. The Registrar is like a Chief Executive Officer. He is a link between the Vice Chancellor and Chancellor and the Pro-Chancellor. Onerous duties and responsibilities are cast on the Registrar under the Scheme of the Act. By virtue of being Registrar, he is also an Ex-Officio Member of various Universities. u/s 18 of the Act, he is an Ex-officio Member of the Academic Council, Syndicate and Finance Committee. He is also a Custodian of Records, common seal and other properties of the University. Further, he exercises powers under the Statutes,

Ordinances and Regulations and as also others that may be allocated to him by the Vice Chancellor. All these were ignored or bypassed while considering his appointment. Therefore, they are before the Court seeking his removal from the said post.

9. Mainly, they contend because he did not have the requisite merit even to be appointed as a Lecturer, he has been appointed as a Professor. The initial appointment being void, it is to be held that he does not possess the requisite qualification to be appointed as a Registrar. Secondly, the first respondent has not taken into consideration the several acts of commission and omission including indulging in the act of plagiarism, as clearly indicted by the Commission and therefore, his appointment to an important post like the Registrar is vitiated. The first respondent failed to see that the post of Registrar of a University requires a person of unquestionable and impeccable character and integrity and the 6th respondent was a man of questionable character and stigmatized personality and therefore, his appointment effected mechanically without considering his background is arbitrary, bad in law, unreasonable and deserves to be set aside.

10. The 1st respondent-the State, has filed the statement of objections on 21.09.2012. Their stand is that all the contentions in the writ petition are pertaining to the internal affairs of the Bangalore University. The Resolution of the University dated 07.07.2007 was annulled on the basis of the clarification received by the Government that the irregularities said to have been committed by the 6th respondent as there was no proper documents to show non-remittance as also the decision to conduct COD enquiry was taken only on oral submissions by the then Finance Officer of the Bangalore University. They have appointed the 6th respondent as Registrar of the Bangalore University as per the power vested in it u/s 17 of the Karnataka State Universities Act, 2000. There are no legal infirmities in appointing 6th respondent as Registrar. Therefore, they sought for dismissal of the writ petition.

11. The 6th respondent has filed a detailed statement of objections traversing the allegations in the writ petition. It is his case that the petitioners have questioned his appointment as a Lecturer in the year 1994 nearly 18 years after the appointment and therefore, the writ petition is liable to be rejected solely on the ground of delay and laches. Later, he was appointed as a Professor. His appointment as a Professor has been upheld by the Hon''ble Supreme Court of India. The same cannot be re-opened. The principles of res-judicata, issue estoppel applies. Without prejudice to the aforesaid contentions, he has cited initially by a notification dated 28.12.1987, applications were invited from eligible candidates to the post of Research Assistants in various subjects including Sociology. He was one of the applicants. The qualification for the post of Research Assistant was a First Class or Second Class Master Degree of the Bangalore University or any other recognized Universities. He had secured 53.1% in the Master Degree Examination and at that time Second Class is awarded to

the candidates who were secured 50% to 59% of marks. Thus, he was eligible to be appointed. The Bangalore University framed a statute called "Conversion of certain posts of Research Assistants to that of Lecturers and abolition of the vacant posts of Research Assistants in the various Department of Bangalore University". The said statute received assent of the Government on 04.10.1993. By the said statute a number of posts of Research Assistants were converted into those designated as Lecturers. Thereafter, by an order dated 16.06.1994 he was appointed as Lecturer in Sociology. The minimum marks fixed was 55% at Master level in the subject. However, a relaxation of 5% is provided from 55% to 50% of marks at the Master level for SC/ST category. The 6th respondent belongs to the said reserved category. On 30.09.2002 a Notification was issued inviting applications to fill up Backlog vacancies in various departments including the post of Professor in the Department of Sociology. He was appointed as Professor in Sociology. The said appointment was challenged by a writ petition. The appointment was set aside by the learned Single Judge, appeal also came to be dismissed. However, the Supreme Court set aside the orders of this Court and upheld his appointment as Professor and he was reinstated into service. He denied the allegations that he had contested election when he was an employee of the University is false and incorrect. He was not in the service of the University at that point of time when his appointment as Professor was set aside he was out of service and therefore, when he contested for the election he was not in the service of the University. The allegations regarding non-deposit of cheques and other financial irregularities was the subject matter of the writ petition before this Court. It was considered by the Division Bench of this Court and therefore, the same cannot be agitated in this public interest litigation. All the prayers made against the respondents in the said writ petition was rejected. Therefore, the petitioner cannot re-agitate the said matters in this writ petition. The report of the Commission has been given effect to and therefore, on that basis the question of taking action against this respondent does not arise at all. The allegations made against him are all derogatory and are without any basis. This respondent was qualified to be appointed as Registrar. The State has appointed him as Registrar. The petitioner cannot have any grievance about the same. A writ of quo-warranto does not lie since this respondent is qualified to hold the post. Therefore, he sought for dismissal of the writ petition.

12. After the matter was heard and adjourned for furnishing particulars by the University, the State came up with additional objections, which is dated 19.11.2012. It is stated that the Government has quite carefully considered the entire material which has been placed before it while taking bonafide decision in appointing 6th respondent as a Registrar of the Bangalore University. The report submitted by the Committee has been forwarded to His Excellency Chancellor of the University for appropriate action in the matter. The said report has suggested that for awarding recurrence of such events as has been noticed in the said report that Ph.D. regulations has to be amended, appropriate actions in that regard has been taken directing the Syndicate of the University to effect suitable

amendments to the Ph.D. Regulations. The Syndicate of the University having passed a Resolution to revoke and withdraw the Doctoral Degree conferred on Sri. Venkataramanappa, the said degree has been withdrawn by the University. A Statutory Appeal is now pending before His Excellency the Chancellor of the University. In view of the Ruling of the Division Bench of this Court in the Public Interest Litigation filed by Sri. L. Vasudeva Murthy and in view of the finding contained therein, there was no adverse material against the 6th respondent therein, rendering him ineligible for appointment as the Registrar of the Bangalore University. Keeping in view the scope of Section 17 of the Karnataka State Universities Act, 2000 and the plenary powers u/s 17 thereof was conferred on the Government, the appointment of the 6th respondent has been ordered after objectively considering every one of the germane aspect of the matter. Therefore, the writ of quo-warranto for annulling the appointment of the 6th respondent as a Lecturer and for consequential writ of similar nature for declaring the appointment of the said respondent as the Registrar of the University also being misconceived, in the totality of the circumstances of the case. Therefore, they sought for dismissal of the writ petition.

RIVAL CONTENTIONS

13. Sri. B.M. Arun, learned Counsel appearing for the petitioner contended that the 6th respondent do not possess the requisite qualification to be appointed as a Lecturer. Now, such a person has been appointed as a Professor. Thereafter he has been appointed as Registrar on the basis of such qualification. If the appointment of the petitioner at the inception is bad, void-ab-initio, then his appointment as a Registrar would be contrary to statutory provisions and as he does not possess requisite qualification to hold the said post, his appointment as Registrar is liable to be quashed. Secondly, he contended even if the petitioner's qualification as a Professor cannot be gone into because of the Judgment of the Apex Court upholding the said appointment, before he was appointed as a Registrar, the 1st respondent has not taken into consideration the relevant facts which they ought to have been taken note of before appointing him as a Registrar. Merely because he possess the requisite qualification namely, five years experience as Professor in the University by itself is not sufficient to appoint him as a Registrar. The 1st respondent in exercise of plenary power as contended by them were bound to take note of the record of the 6th respondent and then they ought to have appointed him. In the instant case, they have not taken into account the orders of suspension passed when he was working as a Lecturer, request made for initiation of enquiry by the Cops of Detective and more importantly the report of the Committee of Experts which have categorically stated that he has indulged in plagiarism and abetted plagiarism while he was guiding a student. Such a person has been appointed as a Registrar which is not in the interest of public and therefore, he submits a case for issue of a writ of quo-warranto is made out and 6th respondent ought to be removed from the post of Registrar.

14. Per contra, Sri. Subrahmanya Jois, learned Senior Counsel appearing for the 6th respondent submitted the report of the Commission was not before the Government. Therefore, the Government did not look into the same and therefore, they cannot be found fault with. The 6th respondent was a guide of Sri. Venkataramanappa. The finding is his student has lifted sufficient pages from his book and obtained a Doctoral Degree. In fact, the 6th respondent is the aggrieved person, as without his permission his work has been made use by Venkataramanappa and on that ground he cannot be penalized or found fault with. The appointment is made u/s 17 of the Act. The Authority which is vested with the power to make such appointment is the Government and it is not in dispute that the Government has made the appointment. The qualification prescribed to hold the post of Registrar is that he must be a Professor for a period of five years. Admittedly, the 6th respondent possesses the said qualification. Once a person appointed possess the requisite qualification, there is no scope for any judicial review by the Court to find out whether the person appointed is suitable for the said post as held by the various judgments of the Apex Court. Therefore, the writ petition filed is not maintainable and requires to be rejected. There are no allegations of malafide against the 6th respondent and therefore, no case is made out for quashing his appointment.

15. The learned Government Advocate supporting the order of appointment, submitted that the authorities being convinced that the 6th respondent did possess the requisite qualification and there was no adverse material against him, by virtue of the power conferred u/s 17 have appointed him and therefore, there is no illegality committed by the 1st respondent. He has also made available the entire records pertaining to the appointment of 6th respondent.

16. The learned Counsel appearing for the University, though no objections were filed on their behalf, supported the order of appointment and also furnished the particulars sought for by the Court, by way of a memo.

POINTS FOR CONSIDERATION

17. In the light of the aforesaid facts and the rival contentions, the points that arise for our consideration in this writ petition are as under:

- 1) Whether the 6th respondent did not possess the requisite qualification to be appointed as a Lecturer and consequently as a Professor in the University and therefore, his appointment as a Registrar is vitiated?
- 2) Whether the appointment of 6th respondent as a Registrar is arbitrary and is void for non-consideration of his past records and the material which was against him and also not in accordance with law.

RE. POINT NO. 1:

18. The material on record discloses that 6th respondent has obtained 53.1% in the M.A. Degree examination. He has not passed the NET Examination. Initially, he was appointed as a Research Assistant on 18.10.1988. Subsequently, in view

of the UGC Regulations when the post of Research Assistant were converted as that of Lecturers, as he had put in more than five years experience as Research Assistant, he was appointed as a Lecturer. The regulations provided that minimum marks to be eligible for such appointment was 55%. However, the percentage of marks would be relaxed by the University with the prior approval of the UGC. In the instant case, the University has relaxed the percentage of marks, in lieu of five years of experience as Research Assistant as the 6th respondent belonging to SC community was appointed as the Lecturer. The said appointment as Lecturer was not challenged by anyone. It is only when the notification was issued to fill up a backlog vacancies of Professor in Sociology, writ petitions were filed before this Court for a direction to see that 6th respondent an applicant to the said post is not selected on the ground that he does not possess requisite qualification. During the pendency of the writ petition he was selected as a Professor. Then, the writ petition was amended seeking the relief of quashing of the said appointment. The learned Single Judge of this Court quashed the appointment of the 6th respondent as Professor. Writ appeal filed against the said order was dismissed. However, Supreme Court set aside the order of this Court and held that the 6th respondent did possess the requisite qualification to be appointed as the Professor and therefore, he directed reinstatement of the 6th respondent to the said post. The said order has become final. Once the Apex Court holds that the 6th respondent possesses the requisite qualification to be appointed as a Professor, it is not open to this Court in these proceedings to enquire into and find out whether his initial appointment as Lecturer was valid or not and again find out whether on the day he was appointed as a Professor whether he had the requisite qualifications. The said matter is now concluded by the Judgment of the Supreme Court and it is binding on the Court. Therefore, on that ground it is not possible for this Court to hold that the appointment of the 6th respondent as Registrar is vitiated.

RE. POINT NO. 2:

19. The qualification prescribed for the post of Registrar under the Karnataka Universities Act, 2000 is as under:

Section 17: The Registrar shall be a whole time Officer of the University. The State Government may appoint an Officer not below the rank of Group "A" Officer of the Super Time Scale or a Member of the Faculty of any University working as a Professor for atleast five years, to be a Registrar of a University.

20. At this stage, it is interesting to note the previous history of the Section when the Act came into force in 2000. The qualification prescribed for the Registrar on the day the Act came into force was as under:

The Registrar shall be a whole time Officer of the University. The State Government may appoint an Officer belonging to All India Services working in Super Time Scale to be the Registrar of a University before the provision which was come into force from 13.09.2001 to 19.05.2010.

21. By Ordinance of Act No. 5 of 2010 Qualification sought to be modified is as under:

The Registrar shall be a whole time Officer of the University. The State Government may appoint an Officer not below the rank of Group "A" Officer of the Super Time Scale or a Member of the Faculty of any University working as a Professor for at least ten years, to be a Registrar of a University.

Thus, the legislature thought it fit to make a provision for a teacher and a professor to be appointed for the post of Registrar, may be with the object of maintaining high academic standards and maintaining academic discipline and academic rigor. More over what appeared to have weighed with the legislature is that, a teacher normally would be a person of impeccable character. He is respected in the society. In our culture he is treated as a God and next to parents. They did not want these teachers to be under the control of a bureaucrat, as was the position earlier. Therefore, the law was amended providing a professor of 10 years experience to be eligible to be appointed as the Registrar of the University. This would enable the University to maintain high standard that is expected of them, which is only possible if a teacher with character occupies the said post. This appears to be the object behind the aforesaid amendment.

22. However, by Act No. 8 of 2011 which came into effect from 08.02.2011, the qualification was further modified reducing the number of years of experience as Professor to five years, as set out above. The amended provision came into force from 8.2.2011. The 6th respondent was appointed as Registrar on 2.11.2011. The petitioners have alleged that they are not surprised that if the said amendment diluting the entire provision was brought into effect only to enable the 6th respondent to occupy the coveted post. There was no object and reason behind the enactment and the entire action is a colourable exercise of power.

23. Be that as it may. From the reading of the aforesaid provision, it is clear that the power to appoint a Registrar vests with the State Government. The qualification prescribed is (a) An Officer not below the rank of Group "A" Officer of the Super Time Scale or (b) A Member of the Faculty of any University working as a Professor for atleast five years. In the instant case, it is not in dispute that both these conditions are satisfied. Therefore, the question for consideration is, is there any scope for interference by this Court under Article 226 of the Constitution of India by way of a writ of quo-warranto.

SCOPE OF WRIT OF QUO-WARRANTO

24. The scope of the writ of quo-warranto and the jurisdiction of the High Court to interfere in the appointment under Article 226 of the Constitution of India arose for consideration before the Constitution Bench of the Apex Court in the case of The University of Mysore and Another Vs. C.D. Govinda Rao and Another, The Constitution Bench has approved the following observations of Halsbury:

An information in the nature of quo-warranto took the place of the obsolete writ of quo-warranto which lay against a person who claimed or usurped an Office, franchise, or liberty, to inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.

25. After referring to the said observations, the Supreme Court held as under:

Broadly stated, the quo warranto proceeding affords a Judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognized in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, *inter alia*, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

26. At para 13 explaining the scope of writ of quo warranto and the difference between quo-warranto and certiorari, it has been held as under:

In dealing with the complaints made by citizens in regard to appointments made by academic bodies, like the Universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show that the High Court applied tests which would legitimately be applied in the case of writs of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane and relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations

made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that appellant No. 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified.

27. Therefore, from the aforesaid judgment, it is clear in a writ of quo-warranto what the Court is expected to look into is whether the office in question is a public office, whether the appointment has been made in accordance with law or not and before making such appointment all relevant factors have been carefully considered before coming to the conclusion that the incumbent should be appointed to the said post. They have pointed out that the tests to be applied by the High Court in case of writ of certiorari is different from the tests to be applied in the case of writ of quo-warranto. What the High Court should consider in the case of quo-warranto is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should show due regard to the opinion expressed by the Board and its recommendation on which the Chancellor acted. In the said case the Board had considered the relevant factors carefully and ultimately came to the conclusion that the appellant No. 2 should be recommended for the post of Reader. Therefore, it follows, in a writ of quo-warranto, the Court has to examine first whether the person appointed to a public post possessed the requisite qualification prescribed by the statute, and before making appointment of such person, all relevant factors should be carefully examined. If these two conditions are satisfied then there is no scope for interference with the decision appointing such person.

28. Yet another judgment of the Supreme Court on which reliance is placed in almost all the judgments of the Supreme Court, is the case of R.K. Jain Vs. Union of India and Others, it has been held as under:

Judicial review is concerned with whether the incumbent possessed of qualification for appointment and the manner in which the appointment came to be made or the procedure adopted whether fair, just and reasonable. Exercise of judicial review is to protect the citizen from the abuse of the power etc. by an appropriate Government or department etc. In Courts considered view granting the compliance of the above power of appointment was conferred on the executive and confided to be exercised wisely. When a candidate was found qualified and eligible and was accordingly appointed by the executive to hold an office as a Member or Vice-President or President of a Tribunal, we cannot sit over the choice of the selection, but it be left to the executive to select the personnel as per law or procedure in this behalf.

29. In para 74 of the said judgment, the Apex Court has said how this proposition of law has to be understood, which is as under:

Shri. Harish Chander, admittedly was the Senior Vice President at the relevant

time. The contention of Shri Thakur of the need to evaluate the comparative merits of Mr. Harish Chander and Mr. Kalyansundaram a seniormost member for appointment as President would not be gone into in a public interest litigation. Only in a proceedings initiated by an aggrieved person it may be open to be considered. This writ petition is also not a writ of quo warranto. In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person.

30. Again in this decision the Apex Court has pointed out the differences between the writ of certiorari and the quo-warranto and the approach of the Court in exercise of judicial review. R.K. Jain case was not a case of quo-warranto. It is a case of writ of certiorari. In service jurisprudence, there is a need to evaluate the comparative merit. It cannot be done in a public interest litigation, where a writ of quo-warranto is sought. In a writ of quo-warranto the judicial review is concerned with the question whether the incumbent possessed qualification for appointment, and the manner in which the appointment came to be made or procedure adopted is fair, just and reasonable, and whether the selection is as per law and procedure in this behalf.

31. The Apex Court in the case of High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others, held as under:

The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo-warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing a writ, the court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of writ of certiorari.

32. The Apex Court in the case of B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others, dealing with the scope of a writ of quo-warranto at para 47 held as under:

The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a Writ of Quo Warranto. The jurisdiction of the High Court to issue a Writ of Quo Warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules.

33. The Supreme Court in the case of N. Kannadasan Vs. Ajoy Khose and Others, dealing with the scope of writ of quo-warranto has held as under:

107. Power of judicial review, although is very restricted, cannot be denied to be exercised when relevant fact is not considered. It is now a well-settled principle

of administrative law that the doctrine of error of law apparent on the face of the record inter alia would take within its umbrage a case where statutory authority in exercising its discretionary jurisdiction did not take into consideration a relevant fact or based its decision on wholly irrelevant factors not germane for passing the order.

114. It may be true that the statute does not lay down an objective criterion. Such objective criteria cannot also be laid down keeping in view the status of the parties. Such appointment, however, must be made keeping in view the independence of judiciary; as the incumbent of the post would discharge judicial functions of grave importance.

123. Administrative law moreover has much developed since then. The approach of the Privy Council decision in Hubli Electricity Co. Ltd. Case does not commend to us. Where an opinion was not formed on relevant facts or within the restraints of the statute as an alternative safeguard to the rules of natural justice where the function is administrative, evidently judicial review shall lie.

126. While exercising the power of judicial review in a case of this nature, the Court would not be concerned with the merit of the decision but with the decision-making process. If it is found that the decision-making process has not been adhered to, indisputably, judicial review would lie.

131. Concededly, judicial review for the purpose of issuance of writ of quo-warranto in a case of this nature would lie:

(A) in the event the holder of a public office was not eligible for appointment;

(B) processual machinery relating to consultation was not fully complied.

The writ of quo warranto proceedings affords a judicial remedy by which any person who holds an independent substantive public office is called upon to show by what right he holds the same so that his title to it may be duly determined and in the event it is found that the holder has no title he would be directed to be removed from the said office by a judicial order. The proceedings not only give a weapon to control the executive from making appointments to public office against law but also tend to protect the public from being deprived of public office to which it has a right. It is indisputably a high prerogative writ which was reserved for the use of the Crown. The width and ambit of the writ, however, in the course of practice, have widened and it is permissible to pray for issuance of a writ in the nature of quo warranto.

135. Issuance of a writ of quo warranto is a discretionary remedy. Authority of a person to hold a high public office can be questioned inter alia in the event an appointment is violative of any statutory provisions. There concededly exists a distinction in regard to issuance of a writ of quo warranto and issuance of a writ of certiorari. The scope and ambit of these two writs are different and distinct. Whereas a writ of quo warranto can be issued on a limited ground, the considerations for issuance of a writ of certiorari are wholly different.

148. We have found hereinbefore that the appellant was not eligible for appointment to a public office and in any event the processual machinery relating to consultation was not fully complied with.

34. The Supreme Court in the case of Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others, dealing with the scope of writ of quo warranto, after referring to the aforesaid judgment and in particular to the judgment of the Constitution Bench which highlighted the role of Chief Secretary and the ultimate decision of the Chief Minister in appointing a person for the highest post in the State, namely, Chief Secretary, in E.P. Royappa case held as under:

33. If we apply the same principles to the appellant, who was appointed as Chairman of the Electricity Board by the Chief Minister, after fulfilling the criteria, the said appointment cannot be interfered with lightly without adequate material about his integrity or inefficiency in service.

(Underlining by us)

35. After taking note of all these decisions, the Apex Court in the case of Centre for PIL and Another Vs. Union of India (UOI) and Another, held as under:

36. While making the recommendation, the service conditions of the candidate being a public servant or civil servant in the past is not the sole criterion. The HPC must also take into consideration the question of institutional competency into account. If the selection adversely affects institutional competency and functioning then it shall be the duty of the HPC not to recommend such a candidate. Thus, institutional integrity is the primary consideration which the HPC is required to consider while making recommendation u/s 4 for appointment of the Central Vigilance Commissioner.

42. Judicial review seeks to ensure that the statutory duty of the HPC to recommend under the proviso to Section 4(1) is performed keeping in mind the policy and purpose of the 2003 Act. We are not sitting in appeal over the opinion of the HPC. What we have to see is whether relevant material and vital aspects having nexus to the object of the 2003 Act were taken into account when the decision to recommend took place on 3.9.2010.

43. Appointment to the post of the Central Vigilance Commissioner must satisfy not only the eligibility criteria of the candidate but also the decision making process of the recommendation. The decision to recommend has got to be an informed decision keeping in mind the fact that CVC is an institution has to perform an important function of vigilance administration. If a statutory body like the HPC, for any reason whatsoever, fails to look into the relevant material having nexus to the object and purpose of the 2003 Act or takes into account irrelevant circumstances then its decision would stand vitiated on the ground of official arbitrariness. Under the proviso to Section 4(1), the HPC had to take into consideration what is good for the institution and not what is good for the candidate. When institutional integrity is in question, the touchstone should be

"public interest" which has got to be taken into consideration by the HPC and in such cases the HPC may not insist upon proof.

46. While making recommendations, the HPC performs a statutory duty. Its duty is to recommend. While making recommendations, the criterion of the candidate being a public servant or a civil servant in the past is not the sole consideration. The HPC has to look at the record and take into consideration whether the candidate would or would not be able to function as a Central Vigilance Commissioner. Whether the institutional competency would be adversely affected by pending proceedings and if by that touchstone the candidate stands disqualified then it shall be the duty of the HPC not to recommend such a candidate. In the present case apart from the pending criminal proceedings, as stated above, between the period 2000 and 2004 various notings of the DoPT recommended disciplinary proceedings against Shri. P.J. Thomas in respect of the Palmolein case. Those notings have not been considered by the HPC. As stated above, the 2003 Act confers autonomy and independence to the institution of the CVC. Autonomy has been conferred so that the Central Vigilance Commissioner could act without fear or favour.

47. We may reiterate that the institution is more important than an individual.

36. Finally, in the concluding portion, they laid down certain guidelines. One such guideline which is relevant for the purpose of this case is as under:

Para 88 (vi) The empanelling authority, while forwarding the names of the empanelled officers/persons, shall enclose complete information, material and data of the officer/person concerned, whether favourable or adverse. Nothing relevant or material should be withheld from the Selection Committee. It will not only be useful but would also serve larger public interest and enhance public confidence if the contemporaneous service record and acts of outstanding performance of the officer under consideration, even with adverse remarks, are specifically brought to the notice of the Selection Committee.

37. Therefore the quo-warranto proceedings is the judicial remedy by which any person who holds an independent, substantive public office is called upon to show by what right he holds the said office. This gives the judiciary, a weapon to control the executive from making appointment to public office, against law. It tends to protect the public from usurpers of public office. It is indisputably a high prerogative writ. Judicial review in our Constitutional scheme itself is a part of its basic structure. Decisions which are arrived at by the Executive or Judiciary are subject to judicial review. While exercising the power of judicial review, the Court would not be concerned with the merit of the decision, but with the decision making process. Judicial Review is concerned with the question whether the incumbent possessed qualification for appointment to a public office, and the manner in which the appointment came to be made or procedure adopted is whether fair, just and reasonable, and whether the selection is as per law and procedure in this behalf. Therefore the Court has to examine first whether the

person appointed to a public post possess the requisite qualification prescribed by the statute and before making appointment of such person, all relevant factors should be carefully examined. The jurisdiction of High Court to issue a writ of quo-warranto is a limited one. However, the power of judicial review, although is very restricted, cannot be denied to be exercised when relevant fact is not considered. The width and ambit of the writ, however, in the course of practice, have widened as held by the Apex Court in Kannadasann's case. Administrative law moreover has much developed over the years. Where an opinion was not formed on relevant facts or within the restraints of statute as an alternative safeguard to the rules of natural justice, where the function is administrative, evidently judicial review shall lie. It is now a well settled principle of administrative law that the doctrine of error of law apparent on the face of the record *inter alia*, would take within its umbrage a case where statutory authority in exercising its discretionary jurisdiction did not take into consideration a relevant fact or based its decision on only irrelevant factors not germane for passing the order. Approving this view, a larger Bench of the Apex Court in the case of Centre for PIL has held that appointment to the public post must satisfy not only the eligibility criteria of the candidate but also the decision making process. The decision taken by a statutory authority, without looking into the relevant material having nexus to the object and purpose of the Act, under which the appointment is made or takes into account irrelevant circumstances, would stand vitiated on the ground of official arbitrariness. While making such appointment, the authority performs a statutory duty. The criterion of the candidate being a public servant and he possesses the requisite qualification prescribed for the said post is not the sole consideration. The authority has to look at the record and take into consideration whether the candidate would or would not be able to function in the public post. When institutional integrity is in question, the touch stone should be "public interest". The institution is more important than the individual. Appointment to the post must satisfy not only the eligibility criteria of the candidate but also the decision making process. The decision should be an informed decision. It is on consideration of the complete information and material, the appointment has to be made. That would constitute a fair and transparent process of consideration of an eligible candidate before he is appointed. If this exercise is not done, it amounts to non-application of mind, arbitrary exercise of power and it offends Article 14 of the Constitution.

38. If the statute prescribes a procedure for appointment, the said procedure has to be strictly followed. Otherwise, the order appointing the person to the public post would be vitiated as held in the case of both Kannadasan as well as Centre for PIL case. The question is, if the statute does not prescribe any procedure for appointment of a person to a public office, what is the procedure to be followed by the Government. It does not mean that the Government is under no obligation to follow any procedure and has unbridled power to exercise the power in the manner they like. The rule of law inhibits arbitrary action and also make it liable to be invalidated. Procedural fairness is implied. Where statute confers

wide power coupled with wide discretion on the authority, if the procedure adopted by the authority offends the fundamental fairness or established ethos, the order stands vitiated. The decision making process remains bad. Absence of arbitrary power is the first essential of rule of law upon which our whole Constitutional system is based. The rule of law from this point of view means that decisions should be made by the application of known principles of rules. If a decision is taken without any principle or without any rule, such a decision is antithesis to a decision taken in accordance with the rule of law.

39. What should be the approach of the Court in such matters is dealt with by the Supreme Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, wherein it is held as under:

The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will. It is insisted that the Government action be based on standards that are not arbitrary or unauthorised. It must therefore be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. This Rule also flows directly from the doctrine of equality embodied in Article 14. That Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action conform to some standard or norm which is rationale and nondiscriminatory.

40. In the case of *The Consumer Action Group and Another Vs. State of Tamil Nadu and Others*, it is held as under:

29. Whenever any statute confers any power on any statutory authority including a delegatee under a valid statute, howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere the statute confers and such exercise of power must stand the test to (sic) judicial scrutiny. This judicial scrutiny is one of the basic features of our Constitution. The reason recorded truly discloses the justifiability of the exercise of such power xxxx.

30. When such a wide power is vested in the Government it has to be exercised with greater circumspection. Greater is the power, greater should be the caution. No power is absolute, it is hedged by the checks in the statute itself. Existence of power does not mean to give one on his mere asking. The entrustment of such power is neither to act in benevolence nor in the extra statutory field. Entrustment of such a power is only for the public good and for the public cause. While exercising such a power the authority has to keep in mind the purpose and the policy of the Act and while granting relief has to equate the resultant effect of such a grant on both viz., the public and the individual xxxx

41. Therefore, in the absence of any express provision providing the procedure for such appointment, the action of the State would not only be fair, legitimate, it should be above board and should be exercised with great circumspection. Having regard to the importance of the Office, the duties attached to the Office and the institution in which the Office is held, sufficient care is to be taken by the Government before making such appointment. One such guarantee of exercise of fairness is that the antecedents, the character and the past records of the candidate should be taken into consideration. Verification of character and antecedents is one of the important criterion before a person is appointed to a post under the statute and is a relevant factor. There should be proper application of mind to the material before it, before such an appointment is made. It has nothing to do with the candidate satisfying the requisite qualification prescribed for the said post. If the candidate do not possess the requisite qualification, he would not be in the zone of consideration at all. Merely because he possesses the requisite qualification, his appointment is not automatic. It is here that the Government should apply its mind. In cases of the candidate satisfying the qualification, is there any material by way of record which speaks about his character, conduct in the past, any adverse remarks or any outstanding performance of the officer, are to be considered. It is here the role of judiciary comes into operation. A writ of quo-warranto gives the judiciary a weapon to control the Executive from making such appointments to the public office against law and to protect the public from the consequences flowing from undesirable elements being appointed to such posts. That is the judicial remedy available to a citizen of this country. This would be the scope and ambit of a writ of quo-warranto. More so, in the present day where arbitrary appointments are made on extraneous consideration, contrary to law, without application of mind, without taking into consideration relevant factors and mechanically, the Constitution casts an obligation on the Higher Courts to review these decisions, when the post involved is a public post, in a proceedings by way of public interest litigation. That is the essence of separation of power contemplated under the Constitution to preserve the democracy and to protect public interest. Therefore, the judiciary cannot be a silent spectator. The time has come where the appointment to an office holding sensitive and important post should be done in a transparent manner giving no scope for any grievance.

42. In this context it is a matter of great concern for this Court to know where the University education in this country is heading for and how the persons who are incharge of education are conducting the affairs of these educational institutions and what is in store for the future generation in this country.

UNIVERSITY EDUCATION

43. Sri. Pandit Jawaharlal Nehru, the Prime Minister of India, speaking about the University, stated as under:

A University stands for humanism, for reasons, for the adventure of ideas and for the search of truth. It stands for the onward march of the human race towards

even higher objectives. If the universities discharge their duty adequately, then it is well with the nation and people.

44. Sri. Humayun Kabir, a great educationist of our times, while explaining the role of Universities in the reconstruction of Indian life, observed as under:

One of the major tasks of Universities all over the world is to train the future leaders of society. Universities in India have a special responsibility in this respect, for here hardly one out of a hundred have the opportunity and the privilege of study at a university. Those who have been so fortunate will justify their selection only if they serve in a spirit of dedication and humility. There are bound to be differences on the score of material success among those who leave the portals of the universities. They will also differ in intellectual attainment, but they must not differ in their urge to serve. Character, knowledge and vision have been necessary in all periods of human history. Today, when scientific progress, has unified the world and opened out vistas of unlimited progress, but also at the same time indicated the risk of destruction and death, they have become indispensable conditions of human survival. Universities must in this complex and challenging situation train men and women who have character, vision and knowledge, and can create out of the manifold traditions of the past a new set of values founded on the reconciliation of faith and rationalism.

45. Sri. G.S. Pathak, the Vice President of India, speaking about the education in democracy has observed as under:

A University possesses an atmosphere of intellectuality, academic freedom and moral dignity. The teacher and the student breathe that atmosphere with exhilarating effect. In the words of Lord Robbins, a University is a fountain of ideas and spiritual leadership. Indeed, our Universities should be storehouses of accumulated knowledge gathered in this ancient land of ours and also coming from outside. An Indian University should be an epitome and glory of the Indian civilization. It should be a mirror of Indian national life. There should be an intimate relationship between the University and national aims and aspirations. The academics in the University should be able to make an assessment of the impact of our Constitution and the laws on the social life in the country. An evaluation of our progress by a University expert would be a study of great public utility. In the climate of academic freedom, a fearless but constructive criticism of our policies would be of immense value. The evaluation of judicial decisions and an assessment of changes which have come in social life as a consequence thereof would be highly interesting. The detachment with which the academics view social problems would lend authority to their conclusions.

46. The Apex Court in the case of Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others, dealing with University Education in the country has held as under:

24. University imparts education which lays foundation of wisdom. Future hopes and aspirations of the country depends on this education, hence proper and

disciplined functioning of the educational institutions should be hallmark. If the laws and principles are eroded by such institutions it not only pollutes its functioning, deteriorating its standard but also exhibits to its own students the wrong channel adopted. If that be so, how could such institutions produce good citizens? It is the educational institutions which are the future hope of this country. They lay the seed for the foundation of morality, ethics and discipline. If there is any erosion or descending by those who control the activities all expectations and hopes are destroyed.

47. The Apex Court in the case of State of Orissa and Another Vs. Mamata Mohanty, has held as under:

29. Education is the systematic instruction, schooling or training given to the young persons in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. The excellence of instruction provided by an educational institution mainly depends directly on the excellence of the teaching staff. Therefore, unless they themselves possess a good academic record/minimum qualifications prescribed as an eligibility, it is beyond imagination of anyone that standard of education can be maintained/enhanced.

18.... we have to be very strict in maintaining high academic standards and maintaining academic discipline and academic rigour if our country is to progress.

30....Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs.

48. The report of the Committee on some problems of University administration reads as under:

The most important factor in the field of higher education is the type of person entrusted with each teaching. Teaching cannot be improved without competent teachers.... The most critical problem facing the universities is the dwindling supply of good teachers.... The supply of the right type of teachers assumes, therefore, a vital role in the educational advancement of the country.

IMPORTANCE OF CHARACTER

49. Sri. Dr. S. Radhakrishnan, President of India, a teacher par excellence for over a period of 40 years, dealing with the importance of character in a student's life as well as in public life has stated as under:

Character is destiny. Character is that on which the destiny of a nation is built. One cannot have a great nation with men of small character. If we want to build a great nation, we must train young men and women who have character. We must have young men and women who look upon others as the living images of themselves as our Shastras have often declared. But whether in public life or in a

student life, we cannot reach great heights if we are lacking in character. We cannot climb the mountain when the very ground at our feet is crumbling. When the very basis of our structure is shaky, how can we reach the heights which we have set before ourselves? We must all have humility.

50. How important character and conduct are in a teacher in addition to academic learning has been emphasized by Vasistha Dharma Sutra, in the following verse:

The substance of this may be rendered thus:

Mere academic learning with the knowledge of all its accessories will not purify one who is not of good conduct. His meticulous learning divorced from character will leave him in the lurch and fly away at the end of his life like birds which fly away from their nest when wings sprout.

51. Therefore, a University is a place where the rudiments of citizenships are imbibed. Apart from the mere acquisition of knowledge, it is a good training ground for the development of character, comradeship and toleration. The purpose of all education is to present a coherent picture of the universe and an integrated way of life. The end of education is the pursuit of perfection. General education is that which prepares young people for the common life of the scientific age and social democracy. It not only stresses the understanding of the main concepts and broad techniques of natural and biological sciences but also the appreciation of that fund of culture and knowledge, art and literature, language and thought which characterize, and give stability and meaning to, our social organization. It takes into account the great scientific generalizations, spiritual truths, aesthetic conceptions, moral and cultural values, so necessary for the modern man to understand himself and the world in which he has to live. Our system of education has also to have the capacity to inspire original thought and to make people dream about bigger and nobler things. Originality of thought is essential for the progress and advancement of humanity. Otherwise stale uniformity will make life sterile and inert. Life needs for its fulfillment novelty, freshness, variety and beauty. Universities are not merely training grounds for the young of each generation but also the repositories and guardians of learning and culture and we shall be jeopardizing our future if the highest academic standards are not consciously and continuously maintained in them. The surest way of achieving this is, selection of only those who are fit and earnest, among teachers. It is of utmost importance we take utmost care in recruiting teachers of high quality, in maintaining their stature and standards at a proper level and in return ensuring that their work, their personality and their influence are wholly and invariably good. It is necessary to devise satisfactory methods of selection and appointment, as well as of scrutiny and control, so that good men do not suffer for non-academic reasons, nor others find easy access to such posts for extraneous consideration and for non-academic reasons.

52. If a teacher is preferred to an administrator, to administer an educational

institution like a University, even if he is not good in teaching, there cannot be any compromise in so far as character and conduct is concerned. Character is that on which the destiny of a Nation or any Institution is built. One cannot have great Nation or a great Institution with men of small character. We cannot reach great heights if we are lacking in character. An Indian University should be an epitome and glory of the Indian Civilization. It should be a mirror of Indian national life. Universities in the present complex and challenging situations shall train men and women who have character, vision, and knowledge and can create out of the manifold traditions of the past, a new set of values founded on reconciliation of scientific knowledge, faith, and rationalism. The educational institutions are the future hope of this country. They lay the foundation of morality, ethics, and discipline. If there is any erosion of values or deterioration in standards in those who control the activities of these educational institutions, all expectations and hopes are destroyed. This is what is to be kept in mind by the authorities, before making an appointment to a public post in a University. If an academician is preferred to a bureaucrat to be an administrator, probably this is what has weighed in the mind of the legislators. But in selecting an academician, if this object is not kept in mind, the said appointment would be contrary to law and runs counter to the object of the Act. Then there is no nexus between the appointment and the object sought to be achieved by the Act, in particular after amendment to Section 17 of the Act. Then, the appointment would be contrary to law.

53. It is in this background, we have to see what is this plagiarism about.

WHAT IS PLAGIARISM

54. "Plagiarism" derives from the Latin word *plagiarius* meaning "kidnapper" or "abductor". It is the theft of someone's creativity, ideas or language, something that strikes at the very heart of academic life. It is the form of cheating and is generally regarded as being morally and ethically unacceptable. Plagiarism includes reproducing someone else's work, whether it be a published article, chapter of a book, a paper from a friend or some file, or whatever. Plagiarism also includes the practice of employing or allowing another person to alter or revise the work which a student submits as his/her own, whoever that other person may be.

55. Plagiarism is defined in dictionaries as the "wrongful appropriation", "close imitation" or purloining and publication" of another author's language, thoughts, ideas or expression and the representation of them as one's own original work.

56. Plagiarism is defined in multiple ways in higher education institutions and universities. Stanford University sees plagiarism as "use, without giving reasonable and appropriate credit to or acknowledging the author or source, of another person's original work, whether such work is made up of code, formulas, ideas, language, research, strategies, writing or other form". Yale University views plagiarism as "the use of another's work, words, or ideas without

attribution" which included using a source's language without quoting, using information from a source without attribution and paraphrasing a source in a form that stays too close to the original. Princeton University perceives plagiarism as the deliberate use of "someone else's language, ideas, or other original (not common knowledge) material without acknowledging its source. Oxford University characterizes plagiarism as the use of a writer's ideas or phraseology without giving due credit. Brown University Library explains plagiarism to be "appropriating another person's ideas or words (spoken or written) without attributing those word or ideas to their true source. As well known institutions, they reflect a common academic definition of plagiarism. Lack of citation, giving credit or attribution is considered to be plagiarism.

57. The modern concept of plagiarism as immoral and originality as an ideal emerged in Europe only in the 18th century, particularly with Romantic movement. Since the 18th century, new morals have been institutionalized and enforced prominently in the sectors of academia and journalism, where plagiarism is now considered academic dishonesty and a breach of journalistic ethics. Plagiarism is not a crime per se but is disapproved more on the grounds of moral offence. Within academia, plagiarism by students, professors, or researchers is considered academic dishonesty or academic fraud, and offenders are subject to academic censure, up to and including expulsion. For professors and researchers, plagiarism is punished by sanctions ranging from suspension to termination, along with the loss of credibility and perceived integrity. In academic world plagiarism by students is a very serious offence that can result in punishments such as a failing grade on the particular assignment or for the course. For cases of repeated plagiarism or for cases in which a student commits severe plagiarism (example submitting a copied piece of writing as original work) a student may be suspended or expelled. In many universities, academic degree or awards may be revoked as a penalty for plagiarism. Therefore, plagiarism in short means theft of some one's creativity, ideas, language and it is a form of cheating. In academic circles it is considered as dishonesty and academic fraud. It is morally and ethically unacceptable. It shows lack of character. (Ref. Wikipedia, the free encyclopedia, etc.).

RELEVANT FACTORS

58. It is in this background, the question is what are the relevant factors which the Government ought to have considered before making the appointment of the 6th respondent as a Registrar. The material on record relating to 6th respondent discloses the following facts:

Firstly, the information furnished by the university to Court and the material on record discloses that on 31.10.1995 M. Venkataramanappa got himself registered for a Ph.D. Course in the Bangalore University. Ph.D. Registration Committee granted approval for registration of M. Venkataramanappa for Ph.D. Degree on the topic "Small Farmers in Rural Karnataka and Sociological Study" in English language. Accordingly a communication was issued to him on 29.01.1996

appointing Dr. Y. Narayana Chetty as Guide to him. On 11.11.1997 he submitted two progress reports and one fraction report for the period 31.10.1995 to 30.12.1996 to the Ph.D. Registration Committee. Again on 14.07.1998 he submitted two progress reports for the periods from 01.01.1997 to 03.06.1997 and 01.07.1997 to 31.12.1997 to the Ph.D. registration Committee. On 27.01.1999 he passed pre Ph.D. examination. Thus he took three years time to pass the pre-Ph.D. examination. On 29.11.1999 permission was granted to him to submit thesis within six months. However, within aforesaid six months period M. Venkataramanappa did not submit the thesis. According to the Regulations of Ph.D. Course of Bangalore University a candidate shall work for a minimum period of three years from the date of provisional registration under the supervision of a Guide. A candidate should complete his or her research work and submit the thesis to the University within five years from the date of the provisional registration. Extension beyond five years may be permitted by the Ph.D. Registration Committee on the recommendation of the Guide and with the approval of the University for a maximum period of one year. In case of the Teachers of the University/Affiliated Colleges, other research workers, who cannot carry out full time research, the maximum period for submission of thesis shall be seven years.

59. In the instant case, M. Venkataramanappa ought to have submitted the thesis within five years and he could have sought for one year extension. The provisional registration was made on 31.10.1995. The thesis should have been submitted on or before 31.10.2000. Even if he was entitled to extension by one year, he should have submitted the thesis before 31.10.2001. Within the aforesaid period no thesis was submitted. On the contrary on 27.03.2002 he requested for change of language to submit his thesis from English to Kannada with consent of his Guide Dr. Y. Narayana Chetty. On 29.08.2002 permission was accorded by Ph.D. registration Committee for change of both the language from English to Kannada and also guide from Dr. Y. Narayana Chetty to the sixth respondent. On 14.09.2002 the payment prescribed for submission of the thesis was paid by M. Venkataramanappa. On 23.09.2002 he submitted the Ph.D. thesis styled as "Grameena Karnatakada Sanna Raithara Ondu Samaja Shasthriya Adhyayana" in Kannada language. On 11.11.2002 Ph.D. Degree has been awarded to him. The aforesaid dates speak for themselves. A person who could not submit the thesis within a period of six years has with the change of Guide submitted the thesis within one month and within two months the thesis is accepted and he has been awarded the Ph.D. Degree.

60. It is in this context the complaint was lodged with the University which resulted in the University requesting the Institute of Social and Economic Change, Nagarbhavi, to verify the thesis submitted by M. Venkataramanappa regarding the allegation of plagiarism. On 14.02.2003 the Registrar of the National Institute of Social and Economic change forwarded a report. In the report the dissertation by the Research Supervisor that is sixth respondent was referred to as D1 and that of the doctoral student as D2. In the said report it is

clearly set out how plagiarisation has been done by the doctoral student. In the end at para-5 it is recorded as under:

On the above counts, I find there to be sufficient evidence to demonstrate acts of plagiarisation by the author of D2, and in the course of comparing D2 with D1, I have found similar practice by the author of D1 as well. These acts of plagiarisation do not appear to be simply out of ignorance or lack of initiation into the ways of carrying out a reference work, styles of citation etc. On the contrary, the fact that labels of photographs and their contents are attempted to be modified gives room to find a willfull effort to claim the work of others as ones own, as the definition of plagiarisation showed earlier describes the term. Such an act of plagiarisation cannot be, as in the case of D2 here, without the research guide become aware of it. This is especially so in the case of D2, for its author has not only lifted and translated paragraphs after paragraphs in at least two chapters from, that of the work by the research guide, and quite a few photographs are likewise used but with deliberate manipulations. A research guide certifies the originality of the work carried out by his/her student, and thus cannot be unaware of ones own work to have been plagiarised while affixing a signature to such a dissertation.

There is ample evidence to suggest plagiarisation not only in the dissertation referred to me for assessment, but also in the dissertation of the research supervisor that forms the basis for plagiarisation by the student. In my view, the Dissertations referred to herein as D2, and D1 provide an ideal context for the University to take serious view of its doctoral studies programme, the process of research supervision and carrying out doctoral research by students, and the examination of the dissertation by experts. This, I think, is urgently needed when one hears too often that it is now possible to have a dissertation written up for a fee by ghostwriters. The sanctity of a doctoral degree cannot be subjected to such market forces.

61. When this report was placed before the Syndicate after considering the said report and after detailed discussion, the Syndicate on 18.02.2003 resolved to refer the matter to a new expert committee consisting of persons outside Karnataka, as during the course of the proceedings of the Syndicate, Dr. Siddalingaiah, Dean of the Arts Faculty clearly stated that he has examined the thesis submitted by the said M. Venkataramanappa and he was satisfied that there was no plagiarism and no decision should be taken in a hurry. The new expert committee was headed by its Chairman Prof. Hira Adyanthaya, Vice-Chancellor, Tilak Maharashtra Vidyapeeth, Pune, Dr. S.V. Shirol and Dr. Venkataratnam as its members. After going through the two books which were made available to them, they were of the opinion that title of both the research work seems to be similar. They found that a detailed explanation from the candidates and the Guide is required to arrive at a decision with regard to the plagiarisation is concerned. Thereafter they called for the explanation from both the Guide and the student. On receipt of the explanation, the same was

circulated among them and they gave the report. They stated that the theme of the thesis and the title of the book published by the author (incidentally the guide of the candidate), are in adjacent fields. This might have given rise to the charge of plagiarism from the book under reference. The empirical data collected by the candidate and the focus of the thesis are distinct. However, reproduction of the material by the candidate from the book under reference could have been minimized, annotated and analysed by him. This would have increased the research value of the thesis and indicated the analytical capability of the student. Ph.D. course is a training in research methodology. Therefore it has its inherent limitations. If the candidate wants to publish the thesis in a book form, editorial skills need be employed and norms and proprieties of University Publications observed. Plagiarism as an intellectual offence arises out of verbatim reproduction from a published material without the permission and acknowledgement of the author (and thereby harming the author's right/interest). In this case, the candidate has earlier taken the permission of the guide and the guide has allowed him to use the material from the book. This fact has been acknowledged by both in their explanations. As such, the practice adopted by the candidate does not fall under the charge of plagiarism.

(Underlining by us)

62. From the aforesaid second report, it is clear they did not substantially differ from the finding recorded in the earlier report. Because the sixth respondent had given his consent to use the material from his book, according to them, it does not constitute plagiarism. As no action was taken in spite of the aforesaid two reports there was a hue and cry in the academic circles. Therefore, Prof. K. Venkatagiri Gowda, an academician of repute and a former Member of Parliament addressed a letter to the chancellor of the University bringing to his notice the second report and the conclusion reached by the experts and an attempt is made to hush up the whole incident and requested the Chancellor to take appropriate action. It is thereafter the Chancellor after realizing the seriousness of the allegations, noticed that out of three members of the Tilak Maharashtra Vidya Peetha one member was not even familiar with Kannada language and the thesis submitted by the student was in Kannada and therefore they could not understand. Further, he also took note of the fact that the student was registered under guide Dr. Y. Narayana Chetty and even after six years, he was unable to submit any thesis. Then he sought for change of guide and the language. The sixth respondent was appointed as a guide in the month of August 2002 and within a span of one month in September 2002 the thesis is submitted. Therefore, he was of the view that it creates a doubt and suspicion as to how the thesis made entirely in Kannada could have been called a original piece of work by the said Committee of Tilak Maharashtra Vidya Peetha and the University could accept the report. The manner in which the guide had been suddenly changed and the thesis submitted in a short period after change of guide gives rise to doubts of some motive behind the events. Therefore, he appointed Sri K. V. Irniraya, IAS (Retd) to head a Commission with Shri Manohar S. Yadav, Associate

Professor, Institute for Social and Economic Change, Bangalore, as member, (a) to enquire into the allegations of plagiarism of Ph.D. thesis and ghost writing of the Ph.D. thesis submitted by Sri M. Venkataramanappa, (b) involvement of Dr. Chikkamelurappa alias Prof. B. C. Mylarappa and (c) the allegations relating to change of guide and submission of thesis in a short period and any motive behind the same.

63. Sri. M. Venkataramanappa challenged this notification by filing a writ petition before this Court in W.P. No. 13031/2006 which came to be dismissed on 13.04.2007. Aggrieved by the said order he preferred W.A. No. 843/2007. The Division Bench of this Court in the said Writ Appeal had an occasion to consider both these reports. After referring the aforesaid facts and the appointment of third Committee by the Chancellor it held as under:

The material on record discloses that the respondent University at the first instance referred the thesis submitted by the appellant to the Institute for Social and Economic Changes and they submitted a report on 14.02.2003 stating that there is prima facie evidence of plagiarisation on the part of the appellant (emphasis is supplied by us). Ignoring this report submitted by the Institute for Social and Economic Changes, the respondent University appointed a committee of three outside experts. It is worth nothing that this expert committee submitted its report stating that the allegation of plagiarism is baseless; interestingly the academic council of the Syndicate of the respondent University without demur accepted the report submitted by the committee of three experts. Having secured the concerned file from the office of the Chancellor we have perused the same and furthermore gone through very meticulously and carefully to reach at the bottom of truth with regard to the allegation of the plagiarism by the appellant and the same discloses that the report submitted by committee of three experts and the decision of the academic council of the Syndicate of the respondent University accepting the report was not at all communicated to the Chancellor. The notings in the file of the Chancellor discloses that the file in question remained dormant for long length of time without being brought to the notice of the Chancellor. Therefore we are of the considered view that the respondent University, for the reasons best known to it, failed to comply in letter and spirit the directions issued by the Chancellor in his communication dated 29.03.2003 on the point at controversy.

Further it is seen from the file of the Chancellor referred to above that for the first time in the month of June 2006 the report submitted by the committee of three outside experts and acceptance of the same by the academic council of the Syndicate of the respondent University was brought to the notice of the Chancellor. It is to be observed in this context that the Chancellor noticed the fact that the respondent University ignored the independent report which in our view unbiased one, submitted by the Institute of Social and Economic Changes. It is not in dispute that the thesis submitted by the appellant is in Kannada. The Chancellor noticed the fact that one member of the expert committee was not

familiar with Kannada language. Further it is seen from the record that one member of the expert committee without examining the thesis papers in question and without participating in the deliberation of the Committee authorized the Chairman of the Committee to take decision and to abide by it; quite possible that member might have been one who was not knowing Kannada language. Under the peculiar circumstances, the Chancellor had rightly exercised his power u/s 8 of the Act and issued the impugned notification constituting a committee of three experts to enquire into the matter.

(Underlying by us)

64. So the third Committee had before it the report submitted by the Institute of Social and Economic Change, Bangalore. It also had the report submitted by the Three member expert Committee headed by Prof. Hira Adyanthaya, Chairman. Thereafter they commenced their work in right earnest. The first sitting was held on 11.09.2006 at Jnana Bharathi Campus, Bangalore University followed by sittings on 13.09.2006 and 15.09.2006. The terms of reference to the Committee was as under:

1. To enquire into the allegations of plagiarism and ghost writing in the Ph.D. thesis submitted by Sri M. Venkataramanappa and involvement of his guide Dr. Chikkamelurappa alias Prof. B.C. Mylarappa-sixth respondent.
2. To examine the allegations regarding any motive behind the sudden change of guide.
3. Submission of the thesis in a short period after change of guide-any motive behind the same.

65. The Commission examined all relevant documents and files relating to the issue. The thesis submitted by M. Venkatkaramanappa in Kannada was examined in detail and compared it with the contents of two Kannada books published by his guide sixth respondent in the year 1998. The two Kannada books are:

1. Krishi Karmikaru Ondu Samaja Shastriya Adhyayana;
2. Grameena Baduku Mattu Samajika Chaluvali.

66. In addition, the Ph.D. thesis of Dr. B.C. Mylarappa was also examined in detail by the Commission. It was noticed that the book "Krishi Karmikaru Ondu Samaja Shastriya Adhyayana" is the Kannada version of the guides Ph.D. Thesis in English. On comparing the contents of Shri M. Venkataramanappa Kannada Ph.D. thesis with the contents of his Guide's two Kannada Books, it was found that Sri M. Venkataramanappa had copied nearly 100 pages word to word from these books and put the same in his thesis containing about 200 pages without giving references or acknowledging the source. The details of word to word copying is given below:

67. In addition to this large scale word to word copying from his Guide's Kannada books, Sri M. Venkatarakaramanappa appears to have made liberal use

of the photographs in his Guide's Ph.D. Thesis. As there was prima facie evidence of verbatim copying from his Guide's books, the Commission of Inquiry decided to issue a notice to both Sri M. Venkataramanappa and Dr. B.C. Mylarappa (6th respondent) on 14.05.2007 seeking their explanation. They were also given an opportunity of personal hearing on 04.06.2007 with a request to give a list of documents and witnesses to be examined in support of their defence. The above notices were served on both of them.

68. On the day of personal hearing, both the research student and his guide remained absent despite notice. Instead, an advocate sought permission to appear on their behalf. The request was examined with reference to the specific provisions of Bangalore University Statutes read with provisions of the Karnataka State Universities Act, 2000. They were informed that in view of prohibition in law, the Advocates are not entitled to appear for their clients. Therefore the Commission decided to give both of them one more opportunity of personal hearing and fixed the date as 14.06.2007. Notices were served on both of them accordingly. On 14.06.2007 M. Venkataramanappa appeared and made his oral and written submissions. Thereafter he was examined by the Commission. His depositions was video recorded for official record purposes. In fact in the course of his evidence though initially he denied the charge, he admitted he had no satisfactory explanation to the charge of verbatim copying of nearly 100 pages from his Guide's book. So also for not giving proper references in the thesis. On 14.06.2007 the sixth respondent also appeared briefly for personal hearing. But he did not come forward to put in his say on the ground that he was very busy with the examination work. He requested for 4 to 5 days time to make his submissions. Time was granted and hearing was fixed on 23.06.2007 as per his suggestion. On that day he failed to appear. He requested through his Advocate seeking further time. Though the Commission was reluctant to give time, still they adjourned the case and fixed the hearing date as 28.06.2007. On 28.06.2007 sixth respondent again remained absent. There was no request for further time or opportunity and thereafter they proceeded to look into the material on record and record their evidence. A detailed report is submitted.

69. The findings recorded by the said Commission are as under:

a) On detailed examination of the entire evidence on record the Commission is of the view that the claim of plagiarism and ghost writing levelled against Sri M. Venkataramanappa are fully proved. By copying nearly 100 pages word by word from his guide's book without giving acknowledgement or reference and using the same in his thesis and by reproducing several photographs from his guide's thesis and books and using them in his thesis with changes and manipulation clearly shows his criminal intention to use others works, ideas and writings as his own. This is clearly a case of fraud and unashamed plagiarism.

b) The research student's move to change the guide and the language of his thesis after a lapse of six years appears to be part of a plan to use the readily available materials in the new guide's Kannada books and hence the change is

motivated. With this change, the research student could prepare a thesis in Kannada within 25 days from the date of change of guide. This he could accomplish by lifting the material verbatim from his guides books.

c) The new guide, Prof. B.C. Mylarappa has admitted before the Expert Committee that he had given oral permission to the research student to use the materials of the preparation of his thesis and research student has lifted over 100 pages from these books without any acknowledgement. As such there is close collaboration and collusion between the guide and the student. Further, the guide has recommended the thesis for award of Ph.D. Degree with the full knowledge that the thesis contained plagiarized material from his own books. The conduct of Prof. B.C. Mylarappa is thus unethical and reprehensible. His collusion and complicity is fully established beyond any doubt.

(Underlining by us)

(d) The Commission of Inquiry did not see much of original body of material in the two Kannada books of the guide and as such did some exercise to test their veracity as well. To trace the original sources the commission consulted a few books written in English, which have been mentioned once or twice in guide's Kannada Books MB1 and MB2. To its surprise the commission found that materials from these English sources have been uninterruptedly facsimiled to carve out the MB1 one of the main sources used for copying by the student. On page 6 of MB1 a mention of a source (Satyanarayana G-1992-1993) has been made. Except one time mention nowhere else this source has been cited in MB1. But immense size of material from this source gets into the construction of MB1. The commission of inquiry went through the book written by G. Satyanarayana titled "Changing Agrarian Structure and Labour Relations" (1992) published by Rawat Publications, Jaipur, India. (Henceforth referred as SB1). While comparing the material from both the sources has translated bulk of SB1 into Kannada and has shifted it directly to MB1. The material that he has drawn from pages 1 to 23 of the first chapter of SB1 is translated into Kannada and put as pages 4 to 31 of MB1. The translation is word by word and the content of the original English sentence is fully reflected in its Kannada version. Thus the entire translated Kannada text is the same as the original English text. The concerned chapter in SB1 is titled "Review of Literature" where as the whole of translated material entering into MB1 finds shelter under the title "Sambanditha Sahityavalokana" (Review of Literature) starting from second half of the page no. 4 of MB1. In a similar manner the author of MB1 lifts large bulk of material from the District Census Hand Book, Kolar District, Series 9 Karnataka 1981, edited by B.K. Das (Henceforth referred as DC1). The research guide has translated the same into Kannada and places it in MB1. A total of about 12 pages from pages 8 to 19 and a part of page 22 of DC1, he lifts and puts in pages 52 to 79 of MB1 in Kannada form. Except on page 60 of MB1 nowhere else he cites the source of DC1.

So it is clear that while the student has lifted material from the two Kannada

books of his guide, a closer examination shows that the two Kannada books of guide themselves are not original but are verbatim translations of other well known books and research papers written in English. While using the translated material the research student should have either acknowledged the source of Kannada version or the original English sources. He has not done so with the result that he gives an impression that the entire lifted material is the product of his own thinking and writing, thereby indulging in plagiarism. Thus it appears that both the guide and the research student are guilty of plagiarism.

(Underlining by us)

70. Secondly, on 07.07.2007 the Syndicate resolved to place sixth respondent under suspension pending enquiry to certain irregularities including non-deposit of Rs. 19.58 lakhs collected from study centers and required to be deposited on 07.11.2005. Subsequently the Manager of the State Bank Mysore, by letter dated 12.07.2007 had intimated that 37 cheques amounting to Rs. 14,91,000/- were found and sent for re-validation as they had become stale. Therefore from 07.11.2005 to 12.07.2007 the said amounts were not realized. Therefore the Registrar of the second respondent addressed a letter to the first respondent seeking approval for initiating COD enquiry. A reply was sent to the effect that unless they lodge a complaint to the jurisdictional police, COD enquiry cannot be commenced. Accordingly, FIR was lodged. At that stage, the Hon'ble Minister for Higher Education issued a direction to close the file as he found that COD enquiry is not necessary. The Government also issued a show-cause notice to the Syndicate to show cause why the resolution dated 07.07.2007 should not be annulled. The Principal Secretary, Higher Education was not convinced and therefore, he wanted a COD enquiry. However, in view of the directions issued by the Minister, the complaint lodged was withdrawn and the resolution was also annulled. In this regard, the petitioners have produced material on record to show under what circumstances the Minister passed an order. It is at Ex. P11. It shows he was of the view that though a decision was taken by the Syndicate to entrust the enquiry to COD and in this connection to register a complaint against sixth respondent, it was not done. But when the Supreme Court set aside the order of the High Court and directed reinstatement of the sixth respondent, in a hurry they have lodged the complaint on 07.10.2008. In that context, as the entire action was taken on the basis of oral submission of the Finance Adviser, there was no substance in the complaint against him and therefore he passed an order holding that there is no necessity for a COD enquiry and he directed closure of the case.

71. Thirdly, the material on record further shows after he was relieved on 07.08.2007 in pursuance of the order of the High Court setting aside his appointment as Professor, he contested in the General election to the Karnataka Legislative Assembly by filing nomination on 23.04.2008 as an official candidate of Bharatiya Janatha Party. But he lost the election. On 03.10.2008 the Supreme Court allowed his appeal, set aside the order of dismissal and directed

reinstatement. It is thereafter the Minister has passed the aforesaid order, which demonstrates the intervention of the Minister belonging to a party from which the sixth respondent contested the election as official candidate and lost the election.

WHAT THE FILE CONTAINS

72. The learned Government Advocate has made available to the Court, the concerned file. In the record maintained in this regard, there is a reference to the amendment brought about to the Act providing for appointment of a Professor with five years experience as a Registrar. A doubt arose in their mind that a Group-A official retires at the age of 60 years whereas the Professor retires at the age of 62 years. In that context if Professor is appointed as Registrar at what age he would retire. So legal opinion was sought. Then the Higher Education Minister as well as the Chief Minister were of the view as the previous Registrar was appointed until further orders, the question of age would not arise. Therefore, in his place the sixth respondent could be appointed. Therefore, the sixth respondent came to be appointed until further orders on 02.11.2011. Then we find in the file a recommendation from Sri. K. Narahari, Ex. MLC to the Higher Education Minister requesting for appointment of the sixth respondent as the Registrar. Then there is a letter from Bangalore University Employees Association requesting for sixth respondent's appointment as the Registrar. Then we also find a brief Bio-Data of the sixth respondent prepared by him. In the said Bio-Data which he has made available the facts which are set out in the writ petition are conspicuously absent. That is all what is found in the file.

APPLICATION OF MIND

73. In the original statement filed by the Government before this Court, it was not their case that they had taken into consideration all relevant factors and made the appointment. It is after a day's argument when the case was adjourned they have come up with this additional statement stating that before the order of appointment was passed, they have carefully considered the entire material which was placed before it, while taking the bona fide decision in appointing the sixth respondent. In this background let us see what they have stated in the statement filed on 21.09.2002. The relevant portion reads as under:

It is respectfully submitted that almost all the contentions in the Writ Petition are pertaining to the internal affairs of the Bangalore University. The resolution of the University dated 07.07.2007 was annulled on the basis of the clarifications received by the Government that the irregularity said to have been committed by the 6th Respondent as there was no proper documents to show non remittance as also decision to conduct COD enquiry was taken only on oral submission by the then Finance Officer of the Bangalore University.

3. It is submitted that this Respondent has taken action in appointing 6th Respondent as the Registrar of the Bangalore University as per the powers vested in it u/s 17 of the Karnataka State Universities Act 2000. There are no

legal infirmities in appointing the 6th Respondent as Registrar.

The additional statement of objections was filed on 19.11.2012. The relevant portion reads thus:

2. In supplementation of the Statement of Objections dated 21.09.2012 that the Government has filed in the aforementioned Writ Petition, and in amplification thereof it is respectfully submitted that the Government has quite carefully considered the entire material which had been placed before it, while taking its bonafide decision in appointing the 6th Respondent as the Registrar of the Bangalore University.

3. The report submitted by the Committee headed by Sri. Irniraya had been forwarded to His Excellency the Chancellor of the University, for appropriate action in the matter. The said report had suggested that, for avoiding recurrence of such events as have been noticed in the said report that the Ph.D Regulations had to be amended. Appropriate action in that regard has been taken, directing the Syndicate of the University to effect suitable amendments to the Ph.D Regulations.

4. Apart from that the Syndicate of the University having passed a resolution to revoke and withdraw the doctoral degree conferred on Sri. Venkataramanappa, the said degree has been withdrawn by the University. Assailing the name, Sri. Venkataramanappa has filed a statutory appeal before His Excellency the Chancellor of the University. The said appeal is pending adjudication before His Excellency the Chancellor of the University.

5. It is respectfully submitted that in view of the ruling of the Division Bench of this Hon"ble Court in the Public Interest Petition filed by Sri. L. Vasudevamurthy and in view of the findings contained therein, and in view of the findings contained therein there was no adverse material against the 6th respondent therein, rendering him ineligible for appointment as the Registrar of the Bangalore University. Keeping in view the scope of Section 17 of the Karnataka State Universities Act, 2000, and the plenary powers that Section 17 thereof conferred on the Government, the appointment of the 6th Respondent has been ordered after objectively considering every one of the germane aspects of the matter.

74. Therefore, when the State filed its counter on 21.09.2012 all that they have said is insofar as the irregularity said to have been committed by the sixth respondent, as there was no proper documents to show non-remittance as also decision to conduct COD enquiry was taken only on oral submission by the then Finance Adviser of the Bangalore University, the resolution of the Syndicate was annulled. However, he has been appointed by virtue of the power conferred u/s 17 of the Act. It is only after the arguments, the additional statement was filed on 19.11.2002 stating that they have carefully considered the entire material which had been placed before it. According to them, in Irniraya's Committee's report, recommendation is made for taking appropriate action to avoid

recurrence of such events and appropriate action is taken directing the Syndicate of the University to effect suitable amendments to the Ph.D. Regulations. Then they have referred to the Division Bench judgment in the Public Interest Litigation filed by Sri L. Vasudeva Murthy and in view of the findings contained therein, as there was no adverse material against the sixth respondent therein, rendering him ineligible for appointment as the Registrar of the Bangalore University, they have appointed him by virtue of Section 17 of the Act. Therefore, it is clear that the stand of the Government is only an after thought. The Government is not truthful.

75. Now we have set out above what the file contains. The three reports by the expert Committees and the findings recorded by the Committees are not in the file. In all the three committee reports, there is a categorical finding of plagiarism both by the student and the guide, the 6th respondent. In the second report, as the 6th respondent admitted that he gave permission to the student to make use of the material from his book, they were of the view that it does not constitute plagiarism. Insofar as third Commission is concerned in categorical terms they have recorded a finding that while student has lifted the material from the two books of his Guide, a closer examination shows that the two Kannada books of Guide themselves are not original but are verbatim translation of other well known books and research papers written in English. A categorical finding is given that the sixth respondent has colluded with his student and he also indulged in plagiarisation and he has also given consent for lifting nearly 100 pages from his book out of 200 pages of his student thesis. The main motive behind the change of Guide and the move to submit thesis in Kannada appears to make use of the guides two Kannada books. In his explanation to the expert committee earlier, the new guide (sixth respondent) had admitted having permitted the research student to use the material from his books, which clearly shows his deep involvement and collusion in his student activities. Further the guide has recommended the thesis for award of Ph.D. degree with full knowledge that the thesis contained plagiarized material from his own books. Therefore, they concluded that the conduct of the sixth respondent is thus unethical and reprehensible, his collusion and complicity is fully established beyond any doubt. This adverse finding in the said report is not taken note by the Government before appointing the sixth respondent, on the contrary, they say that there was no adverse finding against the 6th respondent. Even the copies of the earlier litigation and the orders passed by the Court are also not in the file. Even the earlier suspension order, the request for COD enquiry, the complaint filed with the jurisdictional police, the correspondence between the Government and the University, the order passed by the Minister, are all not available in the file.

76. They have also not looked into the record which shows after his termination from service he contested for election on a BJP ticket, but he lost the election. It showed his foray into politics. In the meanwhile, the Supreme Court set aside the order of dismissal directing the reinstatement. When he was reinstated, the authorities wanted to take action. The Minister belonging to the BJP directed

withdrawal of the complaint, closure of the case and also issued show cause notice to the Syndicate to show cause why the resolution should not be annulled and in the end of the day. Thereafter the Resolution was annulled. It is a political decision for political consideration. These facts are also not taken into consideration by the Government before appointing the sixth respondent.

77. Therefore, the contention in paragraph 2 of the additional statement that the Government has quite carefully considered the material which had been placed before it while taking its bonafide decision in appointing the 6th respondent, stands exposed. As none of the aforesaid material was available in the file, they could not have looked into it at all. Therefore, they have not looked into the relevant material as stated above, which they ought to have taken note of before appointing the 6th respondent to the post of Registrar. On the contrary, the material they have taken note of is not the relevant material at all. Therefore, it is a clear case where the Government did not take note of the relevant material relating to the 6th respondent and took note of irrelevant material which they ought to have excluded from their consideration and made the appointment. Thus, the appointment is bad and vitiated for the aforesaid reasons.

78. It is in this context, it is useful to refer to a judgment of the Apex Court in the case of Center for Public Interest Litigation and Another Vs. Union of India (UOI) and Another, where the appointment of the Chief Secretary in the Uttar Pradesh was challenged on the ground that ignoring the chargesheets filed against her in competent courts, the appointment was made, though she had the requisite qualification to be appointed and the Chief Minister had the jurisdiction to appoint her as the Chief Secretary, the Supreme Court observed as under:

20. The time has come when the postings of officers holding sensitive posts should be done in transparent manner giving no scope for any grievance. It is true that grievances can be made or allegations can be levelled for ulterior motive or with the intention of damaging the reputation of an officer who is likely to be appointed in a sensitive post, very often at the behest of persons angling for the post. In the peculiar background facts it was really desirable for the State Government to steer clear of controversy and not to post Respondent 3 as the Chief Secretary. By doing it, it has unnecessarily created further complications and invited criticism. We, therefore, direct the State Government to transfer Respondent 3 to some other post in the cadre/grade to which she belonged. The question of her suitability to be included in the cadre/grade, shall be examined in the writ petition itself. For the present, we do not express any opinion on that issue. The necessary steps for effectuating our order shall be taken within seven days. We make it clear that we have not expressed any opinion on the merits of the allegations as the matter is pending before the High Court and Justice Thomas Commission.

79. In the instant case, persons who have filed the writ petition are not the persons who are competing for the post of Registrar. They were all students of Bangalore University who are holding high post in life. They are interested in

alma mater, its proper functioning and in maintaining standard of education. When they came to know persons with this background are appointed which has brought down the image of the University, in the Public Interest, they have preferred this writ petition. There is no ulterior motive behind this litigation.

80. What emerges from the aforesaid discussion is:

(a) a Committee of experts have recorded a categorical finding that not only the sixth respondent has encouraged, colluded, connived with his student in plagiarism, but his thesis itself is a result of plagiarism;

(b) When his case was pending before the Supreme Court, he contests the General Election held to Karnataka Legislative Assembly, as an official candidate of a recognized political party, but lost the election. His party came to power in the said election. He succeeded in the Supreme Court. Then his party rewards him with appointment as Registrar;

(c) The concerned Minister of his party takes active role in (i) preventing initiation of COD enquiry, (ii) withdrawal of a complaint lodged by the University with jurisdictional police and (iii) filing of closure report by the police;

These are the credentials of the 6th respondent, before his appointment as Registrar. The post of Registrar is the Chief Executive Post in the University. The Registrar is expected to take steps to prevent such illegalities in the University. If he himself is accused of such illegal acts, how the University would be able to maintain standards and protect the interest of student community in particular and public interest in general? As stated by the Supreme Court, it is not the person, it is the Institution that counts. It is not only the personal integrity, but the institutional integrity also should weigh with the Courts and the only test is public interest. Though this Court is not sitting in judgment over the decision of the Government, as the Government has not performed its duty of considering all the aforesaid relevant material insofar as sixth respondent is concerned, it has not applied its mind and thus the appointment made by it is arbitrary, violates Article 14 of the Constitution. The procedure followed by the Government in appointment does not satisfy the tests prescribed for such appointment. It is also not in accordance with law as it is opposed to the object with which Section 17 of the Act was amended. Therefore, the appointment is bad. A case for issue of a writ of quo warranto is made out.

Hence, we pass the following:

ORDER

(i) Writ petition is allowed.

(ii) A writ of quo-warranto is issued ousting the 6th respondent from the post of Registrar of Bangalore University.

(iii) Parties to bear their own costs.