
(1952) 08 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 1 of 1952

Surendra Mohan Patnaik

APPELLANT

Vs

Gopal Chandra Patnaik and Others

RESPONDENT

Date of Decision : 22-08-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Orissa General Clauses Act, 1937 — Section 14
Utkal University Act, 1943 — Section 12, 5, 5(6), 8(3)

Citation : AIR 1952 Ori 359

Hon'ble Judges : Jagannadhadas, C.J.;Panigrahi, J;Narasimham, J

Bench : Full Bench

Advocate : B.M. Patnaik, for the Appellant; H. Mohapatra, R.N. Misra and S.K. Ray, for the Respondent

Final Decision : Dismissed

Judgement

Das, C.J.—This is an application by the Petitioner who is a nominated fellow of the Utkal University, made under Article 226 of the Constitution for the issue of a writ in the nature of Quo Warranto as against the Vice-Chancellor and certain fellows of the Utkal University, challenging the election of some of them to the Senate of the University in the following circumstances :

2. The application arises out of the requirement in Section 12 of the Utkal University Act, which provides for the compulsory retirement of one-fifth of the elected Fellows of the Senate in rotation at the end of each year. The names of the persons who have to be retired are determined by the process of balloting, to be conducted by the Vice-Chancellor, as provided in the Statutes framed by the Senate under the University Act. The names of those persons who were to retire by the end of December, 1952, were in fact determined by the process of balloting carried out by the then Vice-Chancellor. Thereupon a fresh election to fill those seats was held. The opposite party Nos. 10 to 16 are the persons so balloted out on 26-7-51 and opposite party Nos. 1 to 7 are the persons who were

elected in their place and whose term of office as senators commenced from 1-1-52. The opposite party No. 9 is the Vice-Chancellor of the Utkal University.

At the relevant dates the Vice-Chancellor was Sri C. M. Acharyya, and at the present. Vice-Chancellor is Sri P. Misra. It would appear that to determine the names of persons who were to retire by the end of 1951, an earlier ballot was conducted on 11th July, 1951. At that time, the Vice-Chancellor balloted out only 2 persons, viz., Opposite Party No. 8 & 14 ; but it is stated that the Vice-Chancellor discovered that to be a mistake. He accordingly cancelled the results of the said balloting on 17-7-51, and conducted a fresh one, on the 25th July, 1951. The consequential elections thereupon held are now in dispute. It is common ground that the balloting conducted by the Vice-Chancellor on the 11th July, whereby he balloted out only two persons, was a mistake and that a larger number should have been balloted.

The dispute between the contending parties relates to the power of the Vice-Chancellor to cancel the previous balloting and to the correctness of the number of fellows who should have been balloted out at the second balloting i.e., whether it is six or seven. The balloting D/- 25-7-1951. was conducted on the footing that the number of persons to be balloted out was seven while according to the petitioner, it was only six. The petitioner challenges the validity of the balloting dated 25th July, 1951, which was conducted on the footing that the number of persons to be so balloted out was seven while according to the petitioner it was only six. The petitioner challenges the validity of the balloting, D/- 25th July, 1951, and all the elections consequential thereupon in the circumstances mentioned above, as also the power of the Vice-Chancellor to cancel the earlier mistaken ballot.

3. One objection of a preliminary nature has been raised to the hearing of this application on behalf of the Vice-Chancellor, viz., that prior to the filing of this application, the petitioner presented to the Chancellor of the University, on 21-12-51, an application challenging the validity of these elections under the provisions of the University Statutes, and that by the date when this application to us was filed in this court, and even until actually it came up for hearing on the 17th of March, that application was pending with the Chancellor. The objection raised was that since that alternative remedy had been invoked by the petitioner and was still pending, we should not entertain this application. We did not desire to give any definite ruling on the point at that stage, and left that question as well as some other objections to the entertaining of the petition to be dealt with at the final hearing of this application and had adjourned it from time to time. We felt finally obliged to take up the hearing of the case on the 17th of March, in view of the fact that a meeting of the Senate had been notified to be held on the 25th of March.

During the course of the hearing, it was brought to our notice that the Chancellor had passed his orders on 23-3-52 on the petitioner's application to him dated 21-12-51. That order has now been placed on record at the instance of both the

parties. The objection, therefore, to the final disposal of this application made to us, on the ground of pendency of the application before the Chancellor, no longer exists. It is, therefore, unnecessary to deal with that objection. A number of other objections relating to the making of this application and the locus standi of the applicant to come to this court for the relief asked for, have also been taken and will be dealt with towards the end of this judgment.

4. To appreciate the grounds of the petitioner's objection, it is necessary to notice briefly the relevant provisions of the Utkal University Act and the Statutes framed by the Senate thereunder. The Utkal University was formed under the Utkal University Act, Orissa Act XIII of 1943, hereinafter referred as "the Act." The Senate thereof is constituted u/s 8 of the Act. By virtue of Subsections (1) & (2) of that Section, the first Senate of the University was to consist of (a) Ex-Officio Fellows, (b) Fellows for life and (c) Nominated Fellows. This first senate may, for purposes of convenient reference be called the "Nominated Senate" It was also provided by Sub-section (3) of Section 8 as follows :

"Upon the expiration of the period of office of the nominated Fellows of the first Senate mentioned in Sub-section (2) the next and every succeeding Senate shall consist of the (Fellows referred to in Sub-section (1) and the following other Fellows, namely, "Class I Elected Fellows (to be elected as per provisions of the said sub-section), Class II Nominated Fellows (13 to be nominated by the Chancellor as provided in the said subsection.)"

Sub-section (4) of Section 8 of the Act further provided that

"the period of office of the Fellows of the Senate other than ex-officio Fellows and Fellows for life shall be as may be prescribed by the Statutes."

It is common ground that the term of the office of the 1st group of the nominated fellows expired on 29-2-48. By virtue of Sub-section (3) of Section 8 already quoted above, the Senate with full complement of elected Fellows was thereafter due to be reconstituted composed of the four classes already mentioned, viz., (1) Ex-Officio Fellows; (2) Fellows for Life; (Sic) (3) Prescribed the various constituencies which were to return elected Fellows to the Senate and also the number which each such constituency is to return. It is unnecessary to notice all those provisions in detail except to say that (apart from other constituencies) the colleges in the State were entitled to send representative fellows to the senate as follows : The Ravenshaw College could return two fellows and each of the other degree colleges excluding the Cuttack Training College could return one fellow each, and all the other colleges put together, that is, the second-grade colleges and the Training College, Cuttack, could return one fellow.

The first senate constituted in accordance with the above provisions and with the prescribed complement of elected fellows, after the expiry of the term of office of the nominated fellows of the "Nominated Senate" may for convenient reference, hereinafter be referred to as the "First Elected Senate." It is with reference to the membership of such first elected senate and the compulsory retirement of some

of them by the balloting process as well as the election of fresh fellows, that the questions now in dispute on this application have arisen. The particular provisions which have given rise to the controversy may now be set out in greater detail.

5. Section 12(1) of the Act is in the following terms :

"As near as may be one-fifth of the elected Fellows of the senate shall retire in rotation at the end of each year in accordance with the provisions of the Statutes, and an equal number shall be elected to fill the vacancies so caused in accordance with the provisions of Section 8 of this Act and of the Statutes."

Under law 1 of Chapter VIII of the statutes, the following provisions have been made :

" The term of office of the elected Fellows shall be for a period of five years subject to the provision that after the first annual meeting following the first elections, the Vice-Chancellor shall, in accordance with Sub-section (1) of Section 12 of the Act, ballot out, as near as possible, one-fifth of such fellows;

Provided that the number balloted out together with the existing vacancies among the first elected Fellows arising from any cause whatsoever shall not exceed one-fifth of the number of such Fellows.

Every year, in three subsequent years, the same procedure shall be followed for . the balloting out of the elected Fellows from among the remainder of the first elected Fellows of the Senate.

If a Fellow elected at an annual election, after the first election, dies or resigns or otherwise ceases to hold office before the expiry of his term, a person shall be elected to fill the vacancy so caused and shall hold office for the remaining portion of the period of office of the Fellow whose vacancy he fills."

6. Again under Law 12 of Chapt. XV of the Statutes, the following has been provided for :

"12(a). Save as provided for in Sub-section (2) of Section 8 and in Sub-sections (1) and (2) of Section 12 of the Act, subject to the provision in Law 1 of Chapter VIII of the Statutes, the period of the Fellows of the Senate other than ex-officio Fellows and Fellows for life, shall be for a period of five years,

Provided that in balloting out the first elected Fellows at the end of each year, Fellows who are elected to fill the vacancies so caused, shall not be made to retire within a period of five years."

7. The facts with reference to which the contentions of the petitioner arise and to which the above provisions are to be made applicable "may be stated as follows : The term of the nominated senate expired on 29-2-48, and the number of the Fellows to be elected with reference to Section 8 (3) Class I of the Act, to the first elected senate, i.e., immediately on the expiry of the term of the first

nominated Fellows of the Senate was 43. The elections to those seats were made on the following dates :

3 Fellows from the legislative Assembly were elected on 19-7-48.

35 Fellows were elected on 20-7-48 consisting 2 from the Academic Council; 2 from the Ravenshaw College; 8 from other Colleges imparting education upto degree standard (other than Bakasire College and the Teachers" Training College) ; 8 Registered Graduates and 14 Registered Graduates. (Sic).

1 Fellow from the Sanskrit Parishad on 9-8-48.

1 Fellow from the Utkal Sahitya Samaj on 30-8-48.

1 Fellow from the Kalinga Historical Society on 7-9-48.

1 Fellow from the Balasore College on 25-11-49.

1 Fellow from the Training and Secondary Colleges on 25-1-50; making up a total of 43.

The first annual meeting after 29-2-48 appears to have been held on 30th March, 1949. Thereafter, there was balloting out of certain members in purported compliance with the provisions of Section 12 of the Act and of the rele-vent statutes. Elections consequent thereupon were held sometime before the end of 1949. Next year again in 1950, "after the second annual meeting of the Senate, which appears to have been held in March, 1950, there was a balloting on 20th of April, 1950, and elections followed thereupon before the end of December, 1950. The balloting and the consequent elections of the years 1949 and 1950, have gone unchallenged. The balloting in the year 1951, as already stated, was first held on 11th July, 1951, and the notification relating thereto issued by the Registrar, presumably under instructions of the Vice-Chancellor is as follows :

"Utkal University, Notification.

No. A. A./C. 3748 (E.C.)/51. In pursuance of the powers vested in the Vice-Chancellor under Sub-section (1) of Section 12 of the Utkal University Act, read with law (i) of Chapter VIII of the Statutes, the Vice-Chancellor was pleased to take up at 11-10 A.M. on Wednesday, the 11th July, 1951, the proceedings of balloting out as "near as one-fifth of the remainder of the first elected fellows of the Senate after the annual meeting of the Senate of 1951 as given below.

Total number of remainder of the first elected Fellows of the Senate

18

To be balloted out as near as 1/5th of 18

4

Number of vacancies in the Senate Regarding College Teachers"

2

Constituency Regarding Graduate Teachers"

1

Constituency

1

No. of Fellows to be balloted out

2

The following two fellows belonging to the constituencies mentioned against each of his name were balloted out :

(1) Sri Harihar Mahapatra, M.A., B.L., Advocate, Cuttack. (2) Raj Kumar Sri Lakshmi Narayan Bhanj Deo, B.A., Keonjhar.

Registered Gradu-ates" Constituency (Affiliated merged States)

University Office, Cuttack, 11th July, 1951

By order, D. P. Barai, Actg. Registrar."

One of the Senators, Sri P. Section Sundaram of Balasore appears to have written a letter dated 14-7-51 to the Vice-Chancellor pointing out that the number taken for balloting on 11-7-51 was a mistake. That the said calculation was a mistake is now admitted on all hands as already stated. The Vice-Chancellor seems to have realised his mistake and issued a notification No. A.A./C. 3386 dated 17th July, 1951, in which he stated as follows :

"Owing to certain irregularities in the procedure of balloting out the first elected fellows of the University held on the 11th July, 1951, the result of such balloting out by which Mr. Harihar Mohapatra, M. A., B.L., and Raj Kumar Sri L. N. Bhaj Deo, B.A., were balloted out, is hereby cancelled. There will be a fresh balloting on the 25th July, 1951, at 11 A.M. in the University Office."

The result of that fresh balloting out held on 25th July, was published in Notification No. A. A. C./4154/51 dated 26th July, 1951, which is as follows :

"Utkal University Notification

No. A. A. C-4154/51 :

In pursuance of the powers vested in the Vice-Chancellor under Sub-section (1) of Section 12 of the Utkal University Act read with Law 1 of Chapter VIII of the Statutes, the Vice-Chancellor was pleased to take up at 11 A.M. on Wednesday, the 25th July, 1951, the proceedings of balloting out as near as one-fifth of the first elected Fellows of the Senate.

By the date of balloting out two vacancies which had already occurred, having

been taken into account, the following 7 (seven) Fellows belonging to different Constituencies mentioned against each of them were balloted out :

"1.

Dr. Eanbehari Patnaik.B.Sc., M.B.,DTM., Professor, S.C.B., Medical College, Cuttack.

Registered College Teacher"s. Constitu-ency

2.

Mr. S. B. Chaudhary, B.S., B.L., Dip-in-Edn. Assistant Teacher, Bhakta Madhu Vidya-pitha, Cuttack.

Registered Graduate Teacher"s. Constitu-ency

3.

Mr. Padmnabha Mohapatra, M.A. Head Master, Nimapara High School.

4.

Mr. Ramnarayan Mohanty, M.A., (Edn.) (Leads) Sub-Regional Employment Exchange, Cuttack.

5.

Raj Kumar Sri L. N. Bhanj Deo, B.A., Keonjhar Palace, Keonjhar, (State).

Registered Gradu-ates" Constituency.

6.

Sri Paramananda Acharya, B,Sc., Superintendent Museum and Research, Bhubaneswar, (State).

7.

Pandit Ananta Tripathy Sharmd, M.A., P.O.L., M.L.A., Veshaja Mandir, Parlakimedi.

Orissa Sanskrit Pari-shad.

University Office, Cuttack, The 26th JuJy, 1951.

D. P. Barai, Acting Registrar.

The result of the consequential elections appeared in the notification No. A. A. C. 9157 (S.E.) 51 dated 15th December, 1951, which is as follows :

"Utkal University Notification

In continuation of this office notification No. A. A. C. 8513 (S.E.) 51, dated the 29th November, 1951, published in part II of the Orissa Gazette of the 7th December, 1951, and in pursuance of Law 5 of Chapt. XV of the Statutes," it is

hereby notified that the following persons are declared duly elected as Fellows of the Senate of the Utkal University from the constituencies mentioned against each :

Registered College Teachers" Constituency.

Sriram Chandra Bhanj Medical College, Cuttack

Bai Bahadur Dr. K. N. Misra Prof, of Glihical Surgery.

Registered Graduate School Teachers" Constituency.

Cuttack District

Shri Basanta Kumar Das, B.A., B.L., Head Master, Peary Mohan Academy.

Ganjam District .

Shri Anantha Ratha, B.A., B.ED. Head Master, Board High School, Rlusselkonda.

Puri District

Shri Dibyasinghti Pattana-yak, B.A., E.T., Head Master , Boxi Jagabandhu Bidyaclhar High School, Khurda.

Registered Graduates" Constituency.

1. Shri Gatikrishi Misra M.A., B.L., Advocate, Cat-tack.

2. Shri Gopal Chandra Patnaik, M.B., B.S., DTM., etc.

Civil Surgeon, Ganjam Berhampur.

3. Shri Surajmal Saha, B.A., B.L.,

income tax Practitioner Sahebzada Bazar, Cuttack.

Cuttack, The 15th December, 1951.

Sd/- C. M. Acharya, (LT. Col). Vice-chancellor & Returning Officer."

The contention of the petitioner is that in view of the fact that before the date of the first annual meeting in March, 1949, only 41 Fellows were in fact elected as appears from * the above enumeration of facts (one Fellow from the Balasore College having been elected on 25-11-49 and one Fellow from the Training and Secondary Colleges on 5-1-50, that is 19th April, 1949), the number of first elected Fellows should throughout be taken as only 41 and that by virtue of the Statutes above quoted, the number to be balloted out taken with the then existing vacancies out of the first elected Fellows should have been taken only at the constant figure of 8 (the nearest figure to one-fifth of 41).

In the present case, it being admitted that by the dates of the balloting in 1951, that is 11th July, 1951, there were already two vacancies existing amongst the first elected Fellows, the number to be balloted out, it is contended, could only

be six; while as a matter of fact, on 25th July, 1951, admittedly seven were balloted out. The first point raised is that the balloting of seven Fellows instead of six, renders the balloting and the consequential elections entirely void.

The further contention raised is that the validity of the balloting dated 25th would in any case depend upon the existence of the power which the Vice-Chancellor purported to exercise on 17th July, 1951, viz., that of cancelling the results of the earlier balloting dated 11th July, 1951, whereat he balloted out only two persons. It is contended that the Vice-Chancellor had no power to cancel the first balloting and had therefore no power to hold a second balloting whether six or seven as the case may be. The third point raised is that in any case, the first balloting dated 15th July, 1951, at which two were balloted out, though based on a mistaken assumption was valid so far as it went and what at best the Vice-Chancellor could have done was to ballot out four more or five more as the case may be, and that the balloting out seven persons ignoring or purporting to cancel the first balloting was illegal.

8. So far as the last point is concerned, I feel no hesitation in coming to the conclusion that that argument is not tenable. The validity of that argument may be tested on the assumption that the first two contentions cannot prevail. If, on that assumption, the Vice-Chancellor was right in taking seven as the correct number to be balloted out in view of the existing vacancies and if the Vice-Chancellor had the power to correct the mistake he committed in the first balloting, by cancelling the same, I do not see under what provision or under what legal principle he is obliged to maintain the first pro tanto, and to supplement it by further balloting of the required additional number.

The question on these assumptions is not whether it would not have been better for him to have merely supplemented the previous balloting when he discovered the mistake but whether his going through the process of balloting wholesale once again, can be said to be illegal on account of the fact that there has been a previous balloting of two by mistake, provided of course he had the right at all to correct his own mistake. It has been suggested that since admittedly the actual process of balloting as disclosed in paragraph 11 of the affidavit filed on behalf of the Vice-Chancellor dated 11-2-52, is done by drawing out slips, one by one, and not by taking out the requisite number of slips at one and the same time in a bunch, the elimination of any particular elected fellow would be the same whether the balloting was done in two stages of two and five, with a substantial interval between the two or of all the seven successively one after another.

I must confess that I have been unable to appreciate this argument. It is not the function of the Court to weigh nicely the element of chance in one process or the other. To my mind, the only question is so far as this argument is concerned, whether there is anything requiring the Vice-Chancellor to go through the process only by way of supplementation rather than by doing it all over again, as he chose to do. Indeed, it appears to me to be quite arguable that if he had adopted the former course, there would have been room for some serious

objection. The terms of Section 12 of the Act which contemplate retirement of the balloted fellows on one and the same date and the terms of the relevant provision of law 1 of Chapter VIII relating to balloting appear to me to contemplate the whole process of balloting as a single transaction. Whether this will necessarily exclude a balloting done in two stages, if there is any unavoidable interruption is unnecessary to consider for the present case.

But to my mind it is clear that where the first balloting was done under a total misconception that only two were required to be balloted out, while the number to be balloted out was seven, a further balloting of another five at a later stage would not amount to balloting as a single transaction, because, it would at least lack continuity of action and purpose. If, therefore, the Vice-Chancellor thought that in view of the likelihood of this objection he should go through the balloting all over once again, I am not prepared to say that he should have maintained the results of the first balloting of two and should have proceeded if at all to supplement the same by the balloting of another six or seven as the case may be.

9. In this context, I may as well notice another incidental and relevant matter. Of the two persons balloted out on 11th July, 1951, one is opposite party No. 8 Sri Harihara Mahapatra. The petitioner in his supplemental petition dated 29th January, 1952, which he obtained leave to file, has stated as follows :

"The Utkal University Notification dated 17th July, 1951, cancelling the earlier notification was mala fide inasmuch as the object of the cancellation was to retain opposite party No. 8, as a fellow of the University the said opposite party No. 8 being a prominent and useful member of the Syndicate and a long time associate of the then Vice-Chancellor."

If this allegation had been substantiated, different considerations might have arisen with reference either to the validity of the cancellation or of the fact that the entire balloting was done all over again. But apart from this bare allegation, no evidence of the mala fides has been given. When in the course of the hearing, the petitioner's advocate was about to close his argument, the Court drew his attention to the fact that no positive evidence of the alleged mala fides had been so far given, and asked him whether he proposed to press that allegation, he stated that he was not prepared to withdraw that allegation, but that he had no further evidence about it except what has been slated in the petition dated 29th January, 1952. Obviously the allegation in the petition, is not proof thereof. On the material placed before us, it is only fair to find expressly that no mala fides of the then Vice-Chancellor as alleged above, has been made out. The questions, that have been raised in this case, must therefore be treated as mere questions of law in their application to the facts appearing in the case, and are free from any complications, due to the alleged absence of bona fides so far as any actions of the then Vice-Chancellor are concerned.

10. I should also mention another matter at this stage. On the last day of the hearing when the counsel for the petitioner started his reply he raised a point

that the balloting of 25th July, 1951, was in fact confined to the original 41 first elected fellows according to him and that the two persons elected on 25-11-49 and 5-1-50 (one from Balasore and the other from the Training and Secondary colleges) were in fact not included in the ballot and therefore either the entire balloting was invalid or the number for balloting for the purpose of calculating the proportion of 1/5 should have been confined to 41 and not to 43. We could not see how he was entitled to raise this point at the stage of reply. His answer was that the fact that two persons were elected later to make up the number 43 came to the notice of the Court on a statement filed by the advocate for the Vice-Chancellor on 19-3-52, when the arguments were proceeding and that therefore he had no opportunity to state the relevant facts in answer to the same and to formulate the legal position thereupon.

It is to be noticed that this additional information was filed on 19-3-52 by the advocate in answer to what was called for by the Court itself on a previous date of the hearing. No objection was taken to the filing of that additional information when it was so filed. We could not, therefore, see our way to permit the advocate to raise this new point in reply based on additional allegation of fact. But in any case, we intimated to the counsel for the petitioner that if he now objected to the use of the information contained in the memo dated 19-3-52, filed by the advocate for the Vice-Chancellor we were prepared to allow him to argue, whether that information should be made use of or not by us; but that we cannot permit him to raise the legal argument at the stage of reply, on additional facts. Learned counsel thereupon stated to us that he does not want the statement dated 19-3-52 to be excluded from consideration, but that he wanted permission to build up a fresh legal argument on that basis and in the light of the additional facts he wanted to state in answer thereto. This we had not option but to decline, having regard to the state at which the protracted arguments had by then reached.

11. The questions, therefore, that require serious consideration are (1) Whether the number to be taken for balloting is to be nine or eight, that is in the particular instance seven or six, having regard to the existence of two vacancies already. (2) Whether the Vice-Chancellor was competent to cancel or ignore the previous balloting dated 11th July 1951; and whether the balloting dated 25th July 1951, even it was for the correct number could be said to be valid before the previous balloting was set aside or cancelled by the appropriate authority.

12. In considering the first question, a minor and what appears to me an unsubstantial argument may in the first instance be noticed. The proviso to one of the relevant statutes above quoted, says that the number balloted out, together with the existing vacancies among the first elected Fellows arising from any cause whatsoever shall not exceed one-fifth of the number of such Fellows. It has been contended that whatever other difficulties of construction there may be as to whether the one-fifth is to be taken with reference to 43 or 41, this provision indicates that the total number was not to exceed one-fifth of the

prescribed number. It is argued that even if the prescribed number is taken as 43, one fifth of 43, would be $8\frac{3}{5}$ ths and that if seven are balloted out in the particular year that would mean that the number balloted together with the existing two vacancies would be 9, which would exceed $8\frac{3}{5}$ ths. It is said that this is contrary to the specific provision and hence that only 6 and not 7 were to have been balloted.

It appears to me, however, that this provision has to be understood with reference to Section 12 (1) of the Act which is the parent provision. That provision requires that as near as may be one-fifth of the elected fellows shall retire at the end of each year. If the number of elected Fellows is to be taken as 43 (and not 41), this provision must be taken to have enjoined that "nine" and not "eight" shall retire, because, 9 is nearer to $8\frac{3}{5}$ ths than 8. Therefore, the provision which states that the number balloted out together with the existing vacancies shall not exceed one-fifth of the number of such fellows, must be taken to mean that it shall not exceed what is already provided for in this behalf in Sub-section (1) of Section 12 of the main Act. To construe it otherwise, would bring about a conflict with the provision of the main Act itself. I have, therefore, no doubt that this particular argument as an independent argument has no substance.

13. The substantial question, however, is whether the one-fifth is to be calculated, in the facts of the present case, with reference to 43 or 41. It is unnecessary to quote in extenso the relevant provisions which bear on this matter and which have already been set out. The main contention on behalf of the petitioner on this part of the case is that the relevant provisions in the statutes refer to "first elections" and "the first elected fellows" and that these phrases can be understood only in one way, viz., as indicating the number of those who were in fact, elected on the first occasion or at any rate before the first annual meeting. Thus, it has been pointed out that the first of the provisions, (vide page 12 of the University Statutes, Chapter VIII, Rule 1 under Class I -- Elected Fellows) refers to the first annual meeting following "the first elections" and the proviso thereto refers to vacancies among "the first elected fellows" and the subsequent provision refers to the balloting out from among the remainder of "the first elected Fellows". The subsequent provision refers to a Fellow elected at an annual election after "the first election". Similarly, the proviso to Law 12 of Chapter XV of the Statutes (See p. 77) refers to balloting out "the first elected fellows" at the end of each year.

It is argued that all these phrases in the context can have reference only to those who have been in the first instance elected and to no other. Indeed, taken very literally, this may only mean that on the facts as they have transpired (since only 3 were elected in the very first instance on 19-7-1948) only $\frac{1}{5}$ th of 41. This will practically reduce Section 12 (1) to a dead letter. To escape this position, learned counsel for the petitioner would extend the meaning of first elected fellows to all those who were elected till the 1st annual meeting, though at

different and unconnected dates. It is not easy to see how the drawing of this line at that point, can fit in with the literal connotation of the phrase "first elected fellows".

14. One has, therefore, to construe the statutes in the light of and harmoniously with the parent provision in the Act, viz., Section 12 (1). The Statute-making power of the Senate is in terms subject to the provisions of the Act by virtue of Section 19 (1) thereof. Now Section 12 (1) clearly provides that at the end of each year, as near as may be, one-fifth of the elected fellows of the Senate shall retire in rotation. Clearly in the context, the words "elected fellows" in Section 12 (1) refer back to what is specified under class I in Sub-section (3) of Section 8 as "the elected Fellows". Prima -facie it is one-fifth of the number of those fellows as a class and as provided therein that are enjoined to retire at the end of each year. It is not disputed that the strength of that class as it stood with reference to the facts at the time when the term of the nominated Senate expired and the first elected Senate had to be constituted was 43. The strength of that class remained 43, notwithstanding that two members of that class were not in fact elected then but were elected in the next two years. Sub-section (1) of Section 12 would, therefore, prima facie indicate that the proper figure for annual retirement was one-fifth of 43, and not one-fifth of 41, at least so long as the strength of the class did not vary with reference to the springing up of new colleges or going out of old colleges.

The question, therefore, as I look at it, is whether the use of the phrases "first election" and the "first elected fellows" of the Senate in the Statutes was intended to modify what has been provided for in Sub-section (1) of Section 8, and whether such modification, if any, was permissible, if it is assumed by way of argument that what the statutes provide is intended to be a modification of what is enacted in Sub-section (1) of Section 8 of the Act, I have no doubt that the statutes would have to be pronounced ultra vires; but as I shall presently show, the statutes can be construed harmoniously with the Act and in my opinion no question arises that the statutes modify what is prescribed in the Act. It has, however, been argued, that Section 8 (1) does not by itself provide any absolute standard with reference to which, the number of fellows to retire in rotation at the end of each year can be said to be fixed and that the number itself is one which may be dependant upon what the statutes provide, and that, therefore, even if the language of the Statutes indicates a number different from what prima facie appears from the Act, this is not objectionable because Section 12 (1) itself provides for it. In my opinion, however, this contention is not tenable, having regard to the wording of Sub-section (1) of Section 12, which runs as follows :

"As near as may be one-fifth of the elected fellows of the Senate "shall retire in rotation" at the end of each year "in accordance with the provisions of the Statutes", and an equal number shall be elected to fill the vacancies so caused in accordance with the provisions of Section 8 of this Act and of the Statutes."

It appears to me to be quite clear from this that the rule for retirement in rotation fixes the number by indicating two definite factors, viz., (a) it is to be one portion of the elected Fellows which in the context means the class specified as Class I in Sub-section (3) of Section 8, and as provided therein; (b) that portion is to be a number as near as may be to one-fifth of that class. What is left over to be provided in the Statutes is the process of retirement in rotation at the end of each year and not the members so to retire.

The phrase "in accordance with the provisions of the statutes" qualifies the phrase "shall retire in rotation" and not the phrase "as near as may be one-fifth of the elected fellows". It appears to me therefore that what the statutes were intended to provide for is only the procedure regarding the retirement in rotation and nothing else. This is confirmed by Section 19 of the Act. That section provides under Clause (1) of Sub-section (1), certain matters for which the statutes shall provide and by Clause (2) of Sub-section (1), matters for which the Statutes may provide. It is to be noticed that item (f) of Clause (i) of Sub-section (1) of Section 19 specifies as one of the matters which shall be provided by the statutes, viz.,

"the procedure to be followed for retirement of elected fellows of the Senate and election of Fellows and members respectively to fill vacancies in the Senate and Syndicate u/s 12."

In this connection, my attention has been drawn to item (k) of Clause (ii) of Sub-section (1) of Section 19, which provides for Statutes being made "generally for carrying out the provisions of the Act." But that does not appear to me to make any material difference in the present discussion which depends entirely on what is the true construction of Sub-section (1) of Section 12. Indeed, it is worth while noticing that even the very provision in the Statute which prescribes balloting by the Vice-Chancellor as the method to be adopted for annual retirement in terms says : "The Vice-Chancellor shall, in accordance with Sub-section (1) of Section 12 of the Act, ballot out one-fifth of such fellows."

Thus, it is quite clear that the Statute was meant only to carry out what is indicated in the Sub-section (1) of Section 12 of the Act, and not to modify it by limiting its connotation in any particular way. The question, therefore, is how the phrases as used in the Statutes "first election" and "the first elected fellows" (in spite of their appearing to convey limited meaning in their literal sense) should be understood in a manner which harmonises the same with Sub-section (1) of Section 12 of the Act, and what in fact was intended to be the true meaning conveyed by those phrases in the context.

15. To understand the meaning of the phrases "first election" and "the first elected fellows" as used in the Statutes already quoted above, one has to keep in mind the scheme of the Act as already set out. The act provided for the first Senate under the Act to be what may be virtually called the nominated Senate. It further provided that on the expiration of the period of office of the nominated

Fellows of the first Senate, the next and the every succeeding Senate shall consist of a prescribed group of elected Fellows and a few nominated Fellows in accordance with certain specified provisions. Therefore, the first Senate which followed the expiration of what may be called the nominated Senate may aptly be referred to as "the first elected Senate" and the elections which go to compose that first elected Senate as "the first elections" and the fellows who comprise that first elected Senate as "the first elected Fellows". The first elected Senate and the first elected Fellows in this context, are in contradistinction to the previous nominated Senate on the one hand and the succeeding elected Senates on the other.

It is only to specify that what the Statutes have in view in the material provisions is the first Senate as so constituted with the prescribed quota of elected members, as contradistinguished from succeeding elected Senates referred to in Sub-section (3) of Section 8 of the Act, that the phrases "the first elections" and "the first elected Fellows" have been used and (?) not indicate any stress on the mere time and occasion of the very first elections in point of time as a limiting factor. Construed in that way, it appears to me that the whole purpose of the Act and the Statutes is more harmoniously worked out than by adopting the other constructions put forward laying stress on the literal connotation of the phrases "first elections" and "first elected fellows."

16. These rules are intended to provide for what may be called a permanent elected component not subject to simultaneous dissolution. The usual way in which such a body is constituted is that a particular fraction thereof should retire every year so that the whole body does not go out all at once, creating a gap until the next elections. That fraction usually has relation to the period of office of the members, so that the retirement by rotation comes about in course of time normally and by the lapse of the period of office of each elected member. Since however, all persons who are elected in the process of the first constitution of the body, would in the usual course be elected at or about the same time and their continuance for the prescribed full period of office would necessarily bring about a virtual dissolution of the body, it is generally provided in specific terms that all those who come in as part of the first constitution of the body, will have their terms of office curtailed in stages, so as to bring about a complete retirement of all such people during the whole of the allotted period of office.

The process generally adopted to bring about this result is that of balloting and the essentials of that balloting process are generally that every person who has become a member by election which constitutes what may be called the first election, (that is, the totality of elections which go to make up the full complement of the first elected Senate) will, while having their tenure of office for the allotted period, take it subject to the chance of that term, being shortened by a process of balloting. This is a chance which is shared equally by all of them who come within that category, but it does not extend to any person

outside that category. That is to say, a person who has to come in the place of a balloted out person is not subject to be balloted out (?) is a person who fills a casual vacancy arising with reference to a person who has been elected in the place of a balloted vacancy, so subjected. It is also an essential part of this rule that if at the date of the balloting there are already vacancies arising out of what may be called the first elected group, the number of those vacancies is to be deducted from the number to be balloted out.

It appears to me to be quite clear that these principles are much better carried out both in letter and in spirit by construing Sub-section (1) of Section 12 and the relevant Statutes having reference to the number of "first elected fellows", construing that phrase as indicating a category provided in the Act and with reference to the facts at the first constitution and not as having reference to the mere chance of some elections having or not having in fact taken place prior to the first annual meeting. Otherwise, an anomalous situation would arise. If in the first instance, for one reason or other quite a substantial number out of the strength of the elected class as originally provided do not get elected, one section of the body would be composed of persons who take their seats subject to the chance of their terms of office being curtailed by balloting, and the others would take without this liability for curtailment of their office. Thus, we shall have two sections of the body rotating in different ways, one section rotating wholesale once in every five years, while the other section rotates partially 1/5 each year. It will be a standing feature of such a body that much more than 1/5th of the elected group will retire once every five years while in other years much less than 1/5th of the elected group will retire each year. This is wholly different from what the Act provides in Sub-section (1) of Section 12. I can see no reason for the existence of any such anomaly in working out the rules. Indeed, it appears to me that the framers of the Statutes did not contemplate any portion of the elected section of the Senate to remain unfilled by the date of its first constitution and did not contemplate the possibility of any such anomaly arising as above indicated. It would be reasonable, therefore, to construe the Statutes so as not to bring about any such anomaly. In my view, therefore, the phrase "first election" in the Statutes has reference not merely to that group of elections which were in fact carried out at the very first instance, but the totality of those elections which go to make up the elected portion of the first elected Senate as provided in Section 8 of the Act and with reference to the facts in existence at the time when the nominated Senate ceased to function.

17. It has been urged that since Section 8 of the Act provides for a strength in the elected group which may be variable from time to time, inasmuch as each degree college is entitled to send one representative and there may be increase or decrease in the number of degree colleges from time to time, this would lead to the adopting of a variable number for purpose of balloting year to year and that that would not have been contemplated. It appears to me that the very fact that the number may be variable with reference to the increase or decrease in the number of degree colleges is an argument not against construing the Act and

the Statutes as I am inclined to do, but in favour of it. It is, however, unnecessary, to develop that point and to decide and express any opinion as to what would be the position if in fact there is a later increase or decrease in the degree colleges. It is sufficient to say that the Statutes in terms refer only to the situations arising in the first four years after the termination of the nominated Senate and that the framers obviously did not contemplate as has been justified by events any such sudden increase or decrease during that period which may materially affect the position. Indeed, it must be said that they may not even have contemplated the likelihood of any college remaining unrepresented for within the first elections. Whatever this may be, I am quite clear in my mind that the Act and the Statutes mean only the 1/5th of the elected group as provided in Section 8 and as at that time, i.e. that the proportion of one-fifth provided in the section of the Act, and in the Statutes, has reference to strength of the elected fellows as provided in the Act and having regard to the number of degree colleges which were in existence at the date when the nominated Senate cease to function and when in that sense the first elected Senate came into existence.

18. I have discussed, somewhat at length the connotation of the phrases "first elections" and "first elected fellows" as used in the Statutes so as to harmonise (them?) with the parent provisions in Section 12(1) of the Act, in view of the very strenuous argument advanced in this case on behalf of the petitioner, whose counsel laid stress on what is said to be the literal meaning of those phrases. But it appears to me that even understanding the phrases literally as the petitioner's counsel would contend, no difficulty arises in the present case. The provision as regards the first balloting after the nominated Senate is as follows :

"The term of office of the elected fellows shall be for a period of five years subject to the proviso that after the first annual meeting following the first elections, the Vice-Chancellor shall in accordance with Sub-section (1) of Section 12 of the Act, ballot out as near as may be, one-fifth of such fellows."

There is no mention in this statute of "first elected fellows", but only of "first elections". The Statutes purport to provide for the term of office of "elected fellows" and while providing for a period of five years in generals provide also that the "elected Fellows" following the first nominated Senate are liable to have their term shortened by balloting one-fifth thereof. Therefore, the phrase "such fellows" in this Statute was clearly meant to refer not to "first elected fellows" in the literal sense which phrase does not find any mention therein, but to "elected fellows" as a class (which is mentioned earlier therein) and in accordance with Sub-section (1) of Section 12. Hence to my mind, even for the first balloting in this case and irrespective of the literal meaning of "first elected fellows" the Statutes prescribe that the number for balloting should be taken at 1/5 of the "elected fellows" which must be understood from Section 12(1) and Section 8(4) Class I.

19. Again, if we turn to the Statute which applies to the year 1951, which is the 3rd year, the relevant provision is as follows.

"Every year in three subsequent years, the same procedure shall be followed for the balloting out of the elected fellows from among the remainder of the first elected fellows."

If the phrase "first elected fellows" is to be understood as having the literal meaning contended for the different phrase "elected fellows" in this statute is significant. There can be no doubt that by the date when this 3rd balloting had to be conducted in 1951, the full quota of actually elected fellows was 43. I can see, therefore, no difficulty in thinking that in any case, for the balloting of 1951, the 1/5th has to be calculated with reference to 43 and not the previous 41.

Further, there is another provision which throws light on the connotation of the phrase "first elected fellows." Statute 12 in Chapt. XV of the University Statutes, in (a) contains a proviso as follows :

"Provided that in balloting out the first elected fellows at the end of each year, fellows who are elected to fill the vacancies so caused shall not be made to retire within a period of five years."

That is to say, those elected fellows who came in the place of balloted vacancies are not subject to any further balloting. There is no similar provision at all that those who have not been elected in the first instance, but still go to make up the original constitution of the elected complement of the Senate are not liable to have their term of office shortened by balloting. The absence of such a provision to my mind clearly implies that while for the purpose of calculating the figure one-fifth the number of "elected fellows" as a class and as provided in Section 8 with reference to the first elected constitution is to be taken, the persons to be in fact balloted out would necessarily be those who have been actually by the time of the ballot, returned to these constituencies in the course of the "first constitution" of the elected Senate and holding their seats. To my mind, the first constitution of the elected Senate is a process which continues until the full complement as prescribed is completed, and is not necessarily conditioned of the first annual meeting.

20. In the course of the discussion, our attention has been drawn to the provisions re-lating to the elections of Council of State and the Legislative Councils in the Government of India Act, and the Representation of People Act where there are similar provisions. I have gone carefully through all those provisions. They are somewhat differently worded, and there is nothing in those provisions which afford any substantial help on the question which we have to decide with reference to the relevant provisions in the University Act and the connected Statutes. I therefore refrain from noticing them in order to avoid burdening this judgment. There seems to be nothing exactly corresponding to these provisions in the Madras University Act, but there is probably some near approach to it in the provisions of the Patna University Act, and its regulations. Regulation No, 3 in Chapt. II thereof under the proviso to Clause 2, says that any representative or nominated fellow of the Senate "as First constituted"

immediately after the commencement of the Patna University Amendment Act, 1932, shall be liable to be balloted out from the date of his election or appointment in accordance with the provision of regulation I of Chapt. 41, which is as follows : "A selection by lot shall be made from among the representatives or nominated fellows of the Senate "as first constituted" immediately after the commencement of the Patna University Amendment Act, with a view to determine so far as necessary, who amongst such fellows, shall retire so that one-fifth or as near as may be of each category may retire annually." This provision indicates that the proportion intended to be calculated, is with reference to the "first constitution" and not with reference to the merely accidental fact of first election. I am, therefore, clearly of the "opinion that the balloting so far as it was conducted on the footing that the persons who have to be retired at the end of 1951 are nine, and not eight, and that taking the two casual vacancies already in existence only seven were to be balloted, was correct and not vitiated on the ground that a larger number than what was required has been balloted, and made com-pulsorily to retire.

The second point that has now to be considered is (as has already been formulated earlier) the following : Whether the Vice-Chancellor was competent to cancel the previous balloting dated 11th July 1951, and whether the balloting dated 25th July, 1951, even if it was for the correct number, can be said to be valid before the previous balloting was set aside or cancelled by the appropriate authority. On a consideration of this question, two basic assumptions of fact have to be borne in mind : (1) The balloting dated 15th July, 1951, which was confined to two, instead of seven, was admittedly a clear mistake; (2) The cancellation of the previous balloting on a realisation of this mistake by the then Vice-chancellor is not proved to be mala fide and must be taken to be bona fide. The question therefore, substantially is whether the Vice-Chancellor had or had not the power to correct his own mistake, by cancelling it, in order to clear the ground for a fresh and correct balloting. At the outset of the consideration of this question, it will be convenient to deal with a contention raised in answer by the respondent-University on this part of the case. It is urged on its behalf that if the mistaken balloting of the 11th July, 1951, stood in need of cancellation by a higher authority that must be taken to have been done by the Chancellor, having regard to the facts to be presently stated.

21. After the Vice-Chancellor issued his notification dated 17th July, 1951, cancelling the balloting of 11th July, 1951 and intimating that a fresh ballot will be conducted on the 26th July, 1951, and after the 2nd balloting was conducted one of the persons so balloted out at this second balloting, viz., Dr. Bana Behari Pattnaik, who is opposite party No. 10 in this application, invoked the powers of the Chancellor under Sub-section (6) of Section 5 of the Act by filing an application to him on 6th October, 1951, to cancel the notifications of the Vice-Chancellor, dated 17th and 25th July, 1951 as being in contravention of the Statutes. This application was ultimately rejected by the Chancellor on 12-11-51. It is claimed on behalf of the University that the order of the Chancellor dated

12-11-51, amounts in substance, to an annulment by the Chancellor of the first mistaken balloting of the 11th July, 1951, and that therefore, irrespective of the question whether the Vice-Chancellor had the power or not to cancel or ignore the previous balloting, the ground was cleared for the second balloting and for the subsequent elections thereupon.

I am unable to agree with this contention. The Chancellor before passing his order called for a report from the Vice-Chancellor which states all the facts. There can be no doubt that the Chancellor distinctly held, what is now admitted, viz., that the first balloting was a mistake. He was also of the view that the Vice-Chancellor had no power to cancel his previous balloting and that he should have invoked the Chancellor's powers to get the first balloting annulled by him. But in the view of the Chancellor, what has been subsequently done by the Vice-Chancellor in balloting out seven fellows, was in accordance with the requirements of law, and was not in any way vitiated by mala fides, or procedural error. Consequently and in view of the fact that there had been delay on the part of the applicant before him, in invoking his jurisdiction, the Chancellor was pleased to decline to entertain the appeal with the following remarks :

"I feel that this is a fit case for condoning the Vice-Chancellor's bona fide mistake."

It is claimed that this amounts to a rectification of the irregularities, if any which preceded the second balloting which, otherwise, was held to be correct. I am unable to take this view of the order of the Chancellor. If the Chancellor, in terms, purported to cancel the notification as to the first balloting, or, at any rate, rectified the cancellation made by the Vice-Chancellor, and adopted it as his own, it may have been possible to argue that the alleged difficulties in the way of the second balloting had been cleared. It might then have been possible to maintain that the second balloting which was otherwise in order, was not vitiated by the precedent irregularity, if any, which had been removed ex post facto. That would have been a matter for tenable argument, on the merits of which, I say nothing. And that is probably what was meant, when the Chancellor stated that he condoned the Vice-Chancellor's bona fide mistake. But in terms, what the Chancellor was pleased to do was a refusal to cancel the second balloting, though he thought it was preceded by irregularities, and a "condonation" of the Vice-Chancellor's mistake, which was two-fold, viz., a mistaken balloting and an ultra vires cancellation. I am, with respect, unable to ascribe any legal effect to the "condonation" which so far as I can see, is not explicitly provided for, nor implicitly provided for, nor implicit in the power given to the Chancellor u/s 5 (6) of the Act.

I am therefore unable to subscribe to the contention that if the first mistaken balloting required in law cancellation at all by a higher authority, the Chancellor's order dated 12-11-51, can be taken to be tantamount to such cancellation.

22. The question, therefore, that has to be considered, is whether the mistaken

balloting dated 11th July 1951, stood valid, until cancellation and in that sense required to be cancelled. If so, it may undoubtedly be arguable that the second balloting would be invalid, if conducted before such cancellation and then the question would arise whether the Vice-Chancellor had the power to cancel his own previous order.

23. The argument on behalf of the petitioner on this part of the case, as I understood was as follows : The power of balloting has been vested in the Vice-Chancellor, by virtue of the Statutes of the University. That power once exercised with reference to a particular occasion that gives rise to it, is exhausted. The principle of Section 14 of the Orissa General Clauses Act, which provides that "When a power is conferred by an Orissa Act, that power may be exercised from time to time as occasion requires" does not apply to the statutory functions given by virtue of the University Statutes, or in the alternative, if it does, it cannot apply to a case where the previous exercise of that power was mistaken. It is next argued that the Vice-Chancellor, having issued a notification announcing the results of the 1st balloting and having also got it published in the official Gazette of Orissa, the proceedings had assumed a certain stage of finality, which cannot be undone by the fresh exercise of his power as the Vice-Chancellor. It has been urged that the only remedy which the Act provides for such cases is to invoke the Chancellor's jurisdiction u/s 5 (6) of the Act for annulment of the proceeding and that the only course for the Vice-Chancellor, when he discovered his mistake, was to apply to the Chancellor and to get the first balloting annulled before he could conduct the second balloting.

On the other side, it has been contended that neither the act of balloting, nor the issue of the notification as regards the same, amounts to a proceeding which falls within the purview of the power of the Chancellor u/s 5 (6) of the Act, and that the mere fact that the Results of the first balloting have been notified and published in the official Gazette, is, by itself, of no legal consequence, and that the Vice-Chancellor has got the power of balloting and that therefore, can exercise it afresh u/s 14 of the Orissa General Clauses Act if the occasion required it. It is further urged that in any case, what the Vice-Chancellor has done in balloting out two persons, is a purely executive act though, under statutory authority, and that the Vice-Chancellor had the inherent power to correct his own mistake in respect of such an executive act.

24. Arguments have been addressed to us as to whether the process of balloting entrusted to the Vice-Chancellor under the Statutes and the declaration of the results, amounts to a proceeding or not, and as to what exactly is the scope of the power of the Chancellor for annulling proceedings of the University u/s 5 (6) of the Act. I do not feel called upon to enter into a consideration of that aspect of the arguments, because even if the balloting amounted to a proceeding, and fell within the scope of the powers of the Chancellor u/s 5 (6) that, in my opinion, would not by itself, preclude, as a matter of law, the power of the Vice-Chancellor, if any, to correct his own mistake by adopting the form of cancellation

of his previous mistaken action. The power of correction by a higher authority is not necessarily inconsistent with the co-existence of the power of the original authority to correct its own mistake. Of course, this is not to say that, as a matter of practice and prudence, it is not much better in all such cases, to invoke the power of higher authority for correction in order to obviate imputation of mala fides or arbitrariness. But the purely legal question in all such cases" is whether the authority concerned, has the power to correct its own mistake, or whether there is anything in the scheme of the Statutes or as regards the conditions and limitations under which the statutory power is to be exercised, (which carries with it or) negatives the power of self-correction, or whether there is anything as regards the nature of the act done or the formalities with which it is to be clothed, which gives it a certain degree of finality so far as that very authority is concerned.

It has accordingly been contended that the fact that the Vice-Chancellor issued a notification as regards the first mistaken balloting, gives it a degree of finality which precludes its being cancelled or ignored by the very authority who committed the mistake. It is therefore necessary to examine some of the provisions of the Statutes providing for notification in the Gazette. Under Law 5 of Chapter XV of the University Statutes at p. 63 of the University Publication, it is provided that :

"The results of all elections shall be published in the official Gazette and shall have effect in the case of anticipatory elections from the date of occurrence of the vacancy, and, in other cases, from the date of the declaration of the result of the election."

In view of this provision, and the further provision relating to objections to the elections being maintainable by way of an application to the Chancellor, who has been given the final authority to decide any such election disputes, it would appear that the publication of the results of the election in the official Gazette, is final, so far as the Vice-Chancellor is concerned, and it is arguable that he cannot himself vary the original declaration of results, once published, however mistaken it may be. But there is no such provision so far as balloting is concerned. There is no statute at all providing for the publication in the official Gazette of the balloting, nor is any other formality for it prescribed nor is any other authority vested in anybody else to decide disputes if any, arising out of balloting. If the Vice-Chancellor has adopted the procedure of publishing the results of balloting in the official Gazette, that was only a bona fide step taken to give publicity. Such publication cannot impart to the results of balloting any further legal consequence. It has been pointed out in the discussion that Clause (2) of Law 9 of Chapter XV of the Statutes shows that :

"Whenever a vacancy occurs in the case of death or resignation, or is about to occur in any other case, the Vice-Chancellor shall, in accordance with the power vested in him in Law 2 of this Chapter direct the Registrar to notify the fact in the official Gazette."

It has been consequently urged that the notification of the balloting in the official Gazette was substantially a notification under the provision. I do not think it can be so treated. The actual election came up much later in November and December. Though balloting is a preliminary step for such elections, a notification of the results of balloting is not necessarily a notification issued under Clause (2) of Law 9 of Chapter XV; whereas in this case the balloting has been conducted long prior to the elections and no steps in pursuance of Law 2 of Chapter XV of the Statutes have been taken. The separate notification contemplated under Clause (2) of Law 9 of Chapter XV has in fact in this instance, been issued on 11-9-50, and published in the Orissa Gazette dated 14-9-51, in part II, p. 454, and there is therefore no foundation for this argument. That notification is as follows :

"UTKAL UNIVERSITY NOTIFICATION

No. A.A.C./54/50 (SE)/51.

It is hereby notified for information of those concerned that preliminary arrangements for the election to the existing vacancies in the Fellowships of the Senate of the Utkal University for the year 1951-52 as given below will be made from October next.

The date and the hour of poll has been fixed for Friday, the 14th December, 1951, at 12 noon.

vacancies:

(1)

College Teacher's Constituency (i) Revenshaw College (Faculty of Arts.) (ii) Sriram Chandra Bhanj Medical College, Cuttack (iii) Bhadrak College, Bhadrak

1

1 1

3

(2)

Registered Graduate Teachers' Constituency (i) Cuttack District (ii) Puri District (iii) Ganjam District

1 1 1

3

(3)

Registered Graduates' Consti-tuency (At least two of the seats shall be filled up by the representatives of the Merged States)

3

(4)

Learned Societies in Orissa (Orissa Sanskrit Parishad)

1

Total number of vacancies

10

X X X X

By Order

University Office, Cuttack, The 11th September, 1951.

G. C. Rath, Registrar".

No other legal provision, with reference to which can be maintained that the publication of the results of the balloting imparts to it a finality, which cannot be undone, by the very authority responsible for such publication, has been brought to our notice. I am, therefore, unable to agree with the contention that the fact that the result of first balloting has been published by the Vice-Chancellor necessarily gives it a finality so far as he is concerned.

25. As regards the contention that Section 14 of the Orissa General Clauses Act does not apply to the powers vested in the Vice-Chancellor under the statutes framed by the Senate, I do not see any force in it. Since these were made by the Senate in pursuance of Section 19 of the Utkal University Act, I think they must, for all legal purposes, be taken as a part of the Act; See -- "Baluram v. Bai Parinabai" 11 Ind Cas 351 (Bom) and -- "Roopchand Rangildas v. Haji Hussein Haji Mahomed 24 Ind Cas 437 (Bom). Therefore, Section 14 of the Orissa General Clauses Act would seem to be applicable. Even otherwise, the principle underlying that section is of general and wider application and does not at the present day appear to me to depend merely upon a statutory basis. It may be true, as stated in Vol. 31, Halsbury Laws of England, p. 476, Note "M" that there was at one time an inconvenient common law doctrine of somewhat uncertain extent to the effect that "a power conferred by a statute was exhausted by its first exercise", but that doctrine appears to have long since become obsolete. That old rule itself seems to have applied to the case of a power given to the Crown by the Statutes. I am also unable to agree with the contention that even if Section 14 of the Orissa General Clauses Act or the principle underlying it, is applicable to the power of balloting conferred on the Vice-Chancellor, that principle be invoked for the fresh exercise of the power, when the first exercise thereof, was under a mistake. I have been shown no authority in support of any such distinction. I am unable to see how, where the first exercise of the power was mistaken it cannot be said that a further occasion for a fresh exercise of the power has arisen. In my view, if the authority which exercised the power has also the power to correct its own mistake, then on such correction, a fresh occasion for the exercise of the power arises. Therefore, the question really turns

on whether the authority which committed the mistake has the power to correct its own mistake.

26. The question at issue has therefore to be determined on broader consideration having regard to the scheme of the Act. What the Vice-Chancellor exercises when he conducts the balloting is a merely statutory function, which does not involve a judicial or quasi-judicial element therein. It is a purely executive act. It may be true, as characterised by learned counsel for the petitioner that in conducting the balloting the Vice-Chancellor is executing the law as he understood it and proceeded on a wrong construction of the relevant statutes; but it is nonetheless an executive function that, he discharges. In respect of such an executive function. I am unable to see why the Vice-Chancellor should not be entitled to correct his own mistake, or review his own act, provided of course, such correction or review is bona fide, and not for any ulterior purpose or arbitrary, which is the pre-requisite for all valid exercise of statutory powers, I am inclined to think that in such matters, there is a broad distinction between the exercise of executive functions and the exercise of judicial or quasi-judicial functions. As regards the latter, it is beyond dispute that a power of going back on or modifying a prior act or decision must be derived from a specific law or statute; but it appears to me that in the exercise of executive functions, the power to review one's own act or decision or to correct one's own mistake, is inherent, unless there is some other statutory provision which limits or prohibits it; for unless as a result of such executive action, other present and vested rights are affected. If in the present case, either the balloting itself or the notification and the publication of the results of balloting can under the scheme of the Act and of the Statutes be held to interfere with any present and vested rights of the Fellows of the University, I should have hesitated to say, notwithstanding that the balloting is an executive act, that the act is open to cancellation or review by the Vice-Chancellor. But I am unable to see how in the present case, the balloting conducted so much in advance of the elections can be said to have legally affected any vested rights at that stage. Indeed, I am doubtful whether such balloting should or need have been conducted at all so much in advance of elections. It is true that balloting is a step preliminary to the compulsory retirement of some of the elected Fellows and brings about that retirement in due course. But when conducted so much in advance of actual elections, as in this case, I do not think that it is necessary to hold that the power of bona fide correction of a mistake is excluded. To some extent, it may be said that the stage of present and vested rights has been reached when the notification of this anticipated occurrence of the vacancy as a result of the balloting is issued by the Registrar in pursuance of Statute 9 read with Statute 2 of Chapter XV of the Statutes; because, before issue of such notification approval and concurrence of the Chancellor has to be obtained for the time and date of the consequential elections brought about by the balloting. Since in the present case, the original balloting itself was mistaken and the anticipatory notice contemplated under Statute 9 (2) of Chap. XV was issued only on 11-9-51, and

published in the official Gazette on 14-9-51, I am inclined to the view that the Vice-Chancellor had on 17th July, 1951, power to correct his own bona fide and patent mistake. That he did in this case by adopting the form of cancellation of the previous balloting. I can see no reason why that should be held to be invalid.

27. There is also another way of looking at the question. It is a well-known principle that

"where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

This principle has been laid down by the Privy Council in -- AIR 1936 253 (Privy Council) . The Privy Council in that case pointed out that the doctrine was applied to Courts in -- "Taylor v. Taylor", (1875) 1 Ch D 426 . But the terms in which the Privy Council laid down the doctrine, is much more general in its scope and appears to be applicable to the exercise of all Statutory powers, provided the prescribed method and manner of the exercise of that power is the essence of such exercise.

In the particular case before the Privy Council, they acted on this dictum not with reference to any exercise of the function of a Court, but to the powers of a Magistrate to take a Statement u/s 164, Criminal P. C. If as I am inclined to think, this dictum is applicable to all kinds of statutory powers, whose exercise only under certain prescribed conditions, is enjoined it appears to me that that principle is applicable in the present case. The Vice-Chancellor conducts the balloting as a preliminary step for the future compulsory retirement of certain Fellows of the University. That had to be done according to prescribed Statutes. It appears to me to be the essence of that process of balloting prescribed by the Statutes that the balloting must be for the correct number and as a single transaction. For instance, it cannot be disputed, and indeed, is the very argument of the petitioner in an earlier part of his case that if the balloting is for a larger number than what was really required by the statute, then the entire balloting would be void. I am unable to see why-- the same should not be the result where the balloting was for a lesser number under a mistake. The Vice-Chancellor who has been clothed by the statute, with the power of balloting must ballot out the correct number. Any balloting of a greater or lesser number would to my mind be a nullity. It has been argued that what the Vice-Chancellor has done in this case, is that he took a wrong view of the construction of the relevant statutes and that an act done under a bona fide mistaken construction of the relevant legal provision, cannot be said to be a nullity.

I am unable to accede to this contention. It is true that before exercising the power of balloting, the Vice-Chancellor has to determine for himself incidentally what number has to be balloted and that for that purpose, he has to apply his mind as to what is the correct construction of the relevant statutes. But his construction of the statutes is not conclusive to determine the validity of his act. The principle that a tribunal which has the power to decide upon facts which

gives rise to its jurisdiction, is not deprived of its jurisdiction even if it happens to decide those facts wrongly, cannot apply to a case of this kind.

The oft-quoted dictum of Lord Esher M. R. in -- "Reg v. Commr. for Special Purposes of the Income Tax" (1888) 21 QBD 313 elucidates this point clearly. In my view the present case falls, if at all, under the first category laid down in that dictum which is as follows :

"Where an inferior Court or tribunal or body which has to exercise the power of deciding facts, is first established by an Act of Parliament, the legislature has to consider what powers it will give to that tribunal or body. It may in effect, say that if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things it shall have jurisdiction to do such things and not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence, what they do may be questioned and it will be held that they have acted without jurisdiction."

It appears to me therefore that applying the above principle it can be said that the admittedly mistaken balloting by the Vice-Chancellor of only two Fellows on 11-7-51 is a nullity and I that therefore his purported cancellation thereof on 17th July, is quite in order.

28. For the above reasons, I am of the opinion that the balloting conducted by the Vice-Chancellor on 25th July, 1951, and published on 26th July is valid and that accordingly the consequential elections are not open to challenge on the above ground.

29. Having dealt with the merits of the application, and come to the conclusion as above stated, I shall now proceed to deal with a number of other objections raised on behalf of the respondent-University relating to the making of this application and the "locus standi" of the applicant to come to this court for the relief asked for, which, as stated in the earlier part of this judgment, have been reserved for consideration towards the end. These objections mainly are : (1) the applicant has no sufficient interest to maintain the application; (2). the applicant is guilty of "laches"; (3) the issue of the writ by this Court on a pronouncement that the elections are invalid, will disturb the quiet and peace of the University, without any corresponding benefit; (4) the alleged illegal acts of the Vice-Chancellor, and the consequential elections have produced no material injury to the interests of the University; (5) since the University statutes provide an adequate alternative remedy for decision of disputes arising out of election, this petition is not maintainable; (6) the objections raised are, to say the least, of doubtful legal validity and a court does not interfere on such objections.

30. The petitioner's counsel while controverting these objections, has raised the point that the first two objections are available to be taken by the University only at the stage when the Court grants leave to file the application; but not at the final hearing. He urges that this Court having admitted the application and taken,

up the matter for final hearing, after notice, should not now permit any such objections to be advanced. In support of this contention, learned counsel quotes the following passage from an American text-book "Ferris on Extraordinary Legal Remedies" p. 130, as follows :

"In case of private relators the necessity, policy of, and even the position and motives are all matters considered by the Court in exercise of its discretion. However, it is held in such a case the Court exhausts its discretion when it exercises it upon the preliminary application for leave to file, and that it must then proceed to determine the controversy, as in any other action, upon the law and the facts."

The applicability of the passage, quoted above, however, depends upon the practice of each court. Our attention has not been drawn to any similar dictum or passage from any English authority or text-book. But apart from this, no such settled practice has yet been developed in this Court with reference to writs of this kind, which are yet of infrequent occurrence. It may also be noticed that the very passage which the learned counsel quotes from "Ferris" also says as follows :

"This presumes, however, that the Court actually exercised its discretion, and accordingly it has been held that the Court is not deprived of the right to dismiss the proceedings if it subsequently appears that it acted through inadvertence and under a misapprehension of the facts."

Since in this case, no formal procedure by way of obtaining leave to file the motion has been adopted and since the motion has been admitted and taken up for final hearing without consideration of those aspects, I do not think that! we shall be justified in refusing to consider the validity of these objections,

31. The first objection is as regards the interest of the petitioner to maintain this application. It is a rather remarkable feature in this case that though all the persons balloted out at the second ballot and the persons elected consequent thereupon have been made parties to the application and notices have been served personally, none of them have come forward to support or oppose the application. The petitioner, it has been stated to us, without contradiction, is a nominated Fellow of the senate, who has been holding his seat since 1948. It is obvious, therefore, that no personal right of his is in any way affected by the elections he challenges or by the result of this application (See Ferris p. 170). Nevertheless, I do not think it can be said that he is not competent as a relator, to lay this information, before the Court to determine the validity of the elections challenged. It has been held that :

"To attack the possessor of an office in the corporation of a borough, the relator need not be a burgess. He has a sufficient interest if he is an inhabitant subject to Government of the Corporation."

-- "R. v. Hodge (1819) 106 ER 392(n), Hals-bury"s Laws of England (Hailsham),

Vol. IX, p, 812 at 813, and -- "King v. Speyer (1916) 1 K B 595 and 628. I am, therefore, unable to uphold the objection that the relator in this case has no interest to bring up this application. But it is obvious that the issue of a writ on the application of a person, like the petitioner, who has no personal and direct interest, is undoubtedly discretionary, and, therefore, the fact that none of the persons affected by the impugned balloting and by the consequential elections have come forward, is a circumstance for consideration in granting or re-fusing the writ.

32. Objections Nos. (2) & (3) may be taken up together as they involve similar considerations. Learned counsel for the petitioner contends that there is no question at all of laches of the petitioner in the present case. It is pointed out that the elections challenged were published in the Gazette on the 15th December, 1951, and that within seven days thereafter as provided by statute No. 6 in Chap. XV of the University statutes, the petitioner filed an application to the Chancellor, i.e., on the 16th December disputing the same. It is said that he was obliged to come up to this Court with his application dated 28th January, 1952, since no orders were by then communicated to the petitioner on his application to the Chancellor filed more than a month previous thereto.

While all this may be true, it must be noticed that the only objection taken on this application to the elections is not any irregularity or defect in the elections themselves, but the alleged invalidity of a much earlier step, viz., the balloting which was done in July 1951. The objection to elections which an interested person can file to the Chancellor which he is authorised to decide finally, is not an objection on the ground of illegality of any precedent and preparatory step. It cannot comprise within its scope the antecedent step of balloting. The statute in this behalf is as follows :

"Any objections "to the conduct" of an election or the manner of the results."

The objections, thus contemplated by the Statute are merely as to the "conduct" of elections including the counting of votes, but cannot have any reference to the much earlier process of balloting which is no part of the elections process itself, but is a step which brings about the election by the retirement of the persons balloted out. Therefore, neither the fact that the elections took place on the 15th December, nor the fact that the petitioner chose to file an objection to that election subsequent thereto, can screen the fact that the petitioner's objection was only to the steps taken by the Vice-Chancellor for the balloting in July, 1951. While, therefore, in form, the present application is one in relation to an election dispute, it is, in substance, an application to this Court for obtaining its pronouncement as to the validity of the balloting which was conducted about six months earlier. If the petitioner felt that that balloting was invalid he, as a member of the Senate interested in the affairs of the University, should have taken prompt steps to get that mistake corrected and not slept over the matter for such a length of time and allowed various other steps relating to the consequential elections to have been taken by the University authority.

It is not suggested, and it cannot possibly be said that the petitioner was not aware at the time, of the impugned balloting or of the subsequent steps taken for the consequential elections, because the various relevant notifications would show that copies of each one of these notifications are invariably sent to the Fellows of the Senate as a matter of regular practice. The Chancellor rejected even the earlier petition of opposite party No. 10, Dr. Banabihari Patnaik, filed on 6th October, 1951, on the ground of inordinate delay; and, with respect I entirely agree with the Chancellor's observations in dismissing the Petitioner's application dated 16-12-51 as follows :

"In this case, the delay is inexcusable, for, no reason is stated by the applicant for sleeping over the first act of cancelling the first balloting out by the Vice-Chancellor which was notified on the 17th July, 1951. Had it been out before further proceedings of the University were completed, I might have taken another view, had it been proved to be in the interest of the University. There is no justification of any kind now for reagitating a dead issue."

It must be remembered that in this very case it was another Fellow of the Senate, Sri P. S. Sundaram, who called the attention of the Vice-Chancellor to the mistake he committed, in balloting out only two in the first instance. If the petitioner thought that the act of cancellation by the Vice-Chancellor of the balloting on the 17th July, 1951, and the further act of the second balloting on the 25th July, 1951, were all irregular, it was equally his duty, if he took any interest at all in the University affairs, to have brought it at once to the notice of the Vice-Chancellor or the Chancellor. The petitioner's interest in maintaining this application as a Fellow of the Senate, is to see that a democratic body like the Senate, is properly constituted. If that is his interest in sustaining this application, vigilance was equally his duty. If this application had been made by a person who was actually affected by the balloting out, different considerations might possibly have prevailed since he gets a substantive personal right to challenge the validity of the elections after the elections.

33. In this context, it may also be noticed that the balloting in the very first year, viz., in 1949, was admittedly done on the footing that the correct number to be adopted for balloting was 1/5 of 43 as was finally done for the balloting of 1951. This petitioner who has been stated to be a Fellow from that date has taken no exception to it. Nor has he taken any exception to the balloting of the second year in 1950, which, as now transpires, was conducted on the same erroneous assumption on which the first mistaken balloting of the year 1951, was conducted, i.e., that the one-fifth was to be calculated with reference to the remainder of the first elected fellows -- an assumption which was obviously and admittedly untenable. The petitioner has not even chosen to bring that mistake to the notice of the authorities and has indeed acquiesced in that very obvious mistake, right upto the present day. In these circumstances, the laches of the petitioner in coming forward to this Court with this application challenging the correctness of the balloting and his acquiescence in similar mistakes as to

balloting committed in previous years virtually puts him out of the Court as regards his interest in maintaining the present application. See Halsbury (Hailsham) Vol. IX, pp. 810, 811 and 813, -- "King v. Trevenen (1819) 106 E. R. 391 and also "High on Extraordinary Remedies", p. 620.

34. The next objection raised on behalf of the University is also a substantial one. The irregularity, if any, committed by the Vice-Chancellor in cancelling the first mistaken balloting of 11th July and in balloting out on the 25th July, seven instead of six persons, has not so far, as the larger interests of the University are concerned, produced any material harm or injury. It is not a case where, as a result of this mistake, persons without right qualifications, have been returned to the Senate or any constituency which ought to have been represented remained unrepresented or vice versa. Nothing which is essential to the securing of the democratic functioning of the Senate has been in any way impaired by the alleged irregularities. All that the alleged mistaken balloting has brought about is, if the petitioner's contention is correct, that one more than the required number has been sent out from the Senate earlier and another has come in his place. That, as an individual grievance to the person sent out, is of some consequence to him; but he does not come forward to complain and such a result has no tangible repercussion on the proper functioning of the University as a democratic body. As has been pointed out by the Chancellor, the process of balloting is entirely one of chance. I am, therefore, clearly of opinion that the objections raised by the petitioner are not such as have produced any material consequence to the interests of the University, as a body, which alone this petitioner has the right to ask this court to safeguard on this application.

On the other hand, the granting of the application itself, will put back the hands of the clock in the University affairs, so far as the constitution of the Senate is concerned, to the point where it was in July, 1951. If this Court issues the writ asked for by the applicant, all the steps taken in this behalf from that date have to be repeated with no conceivable benefit, excepting to the persons balloted out who have not come forward to complain. This, again, would be a sufficient ground for rejection of the petition. See the case in -- "Reg v. Ward" (1873) 8 Q. B. 210 and also -- "Queen v. Cousins" (1873) 8 QB 216.

35. The objection that the University statutes provide a separate remedy for dealing with objections to the elections, by way of an application to the Chancellor who is the authority finally to decide such disputes, and that therefore an application for a writ to this Court challenging the elections is incompetent or at any rate, ought not to be granted has next to be considered. I do not think that this position on behalf of the University is maintainable. The jurisdiction of the High Court cannot be said to have been taken away except to the extent that a competent legislative authority takes it away or limits it by a statute. In the present case, the relevant statutes can have no such effect, and do not in terms, exclude the power of the High Court. Merely, because, it has been prescribed that the Chancellor is to decide finally all such disputes it cannot be maintained

that the power of the High Court is impliedly excluded. See -- "King v. Beer (1903) 2 K. B. 693 contrast with --- "Queen v. Morton (1892) 1 Q. B. 39. Further it has been pointed out already that the present objection is really not one that falls within the scope of the Chancellor's decision, because, it is not covered by statute No. 6 of Chapt. XV of the University statutes, which relates only to objections as to the conduct of elections or the manner of counting votes. Therefore, the question really does not arise in this case. It must, however, be made clear that whether or not, the court has the power, in an appropriate case, to issue a writ regarding an election dispute of the University, there can be no doubt that the Court will not ordinarily assume to itself the function which has been adequately provided for by the statutes of the University, except for grave and compelling reasons.

36. The next objection that has been raised is that a writ of this nature which disturbs the quiet and peace of a statutory public corporation like the University and its Senate, will not be issued except on the ground of illegalities of a very clear nature. I am inclined to agree with this contention. While no doubt, it is correct to say that the fact that the issue of the writ may upset the quiet and peace of a corporation, or may even bring about the dissolution thereof for the time being, is not by itself, a reason for refusing the writ, where the illegalities brought to the notice of the Court are grave and manifest. See -- "The King v. (1837) 112 E. R. 311 there is equally good authority as appears from the report in that case itself for saying that where the alleged illegalities are of a doubtful nature, the Court will decline to issue the writ. See also Ferris, pp. 132, 162. In the present case, even if the view taken by me on the merits of the case, viz., as to the proper number to be balloted out at the second balloting and as to the validity of the cancellation by the Vice-Chancellor of the results of the first balloting be considered open to further controversy, it cannot possibly be said that the opposite view is so clear that the alleged illegalities complained of, can be pronounced to be patent and gross. On this ground also this court will be justified in declining to issue the writ.

37. For all the above reasons, this application must be rejected, not only on the merits but also in view of all the circumstances relating to this motion.

38. In the circumstances however, and since it does not appear that the application was made by the applicant, on personal considerations I do not think it necessary to order him to pay costs.

39. The application is accordingly dismissed without costs.

Narasimham J.

40. I have carefully read the judgment of my Lord the Chief Justice. But with great respect I find myself unable to agree with him both on the question of law involved in this case and as regards the order proposed to be passed by him.

41. The nominated Senate of the Utkal University ceased to exist after 29-2-48

and thereafter elections were held in the various constituencies described in class (I) under Sub-section (3) of Section 8 of the Utkal University Act (hereinafter referred to as the Act) for the purpose of constituting the first elected Senate. Those elections (which may be termed the first elections) were spread over several months and by 7-9-48 forty-one Fellows were declared elected from most of the constituencies. Two constituencies however, namely, the Balasore College and the Training and Secondary Colleges, elected their representatives only on 25-11-49 and 25-1-50 respectively. Till then those constituencies remained unrepresented.

The first annual meeting of the elected Senate took place on the 30th March, 1949. The first ballot for implementing Sub-section (1), Section 12 of the Act was held by the Vice-Chancellor on 19-4-49. Thus the admitted position was that on the date of the holding of the first ballot (19-4-49) there were only 41 first elected Fellows though u/s 8(3) of the Act the total number of elected Fellows of the Senate is 43. The main point in controversy between the parties is whether in estimating the number of persons to be balloted out annually the number of first elected Fellows elected on or before the date of the first ballot (that is 41) should be taken as the correct number or else whether the total number of elected Fellows as prescribed in the Act (that is 43) should be taken as the correct number irrespective of whether some constituencies remained unrepresented on that date or not. If the former view be taken the number to be balloted out is 43/5 : 9.

42. Under Sub-section (4) of Section 8 of the Act, the period of office of elected Fellows of the Senate shall be as prescribed by the statutes. But Sub-section 1) of Section 12 slightly modifies the power given in Sub-section (4) of Section 8 by saying that :

"As near as may be one fifth of the elected Fellows of the Senate shall retire in rotation at the end of each year in accordance with the provisions of the statutes and an equal number shall be elected to fill the vacancies so caused in accordance with the provisions of Section 8 of this Act and of the statutes."

43. Thus the framers of the statutes, while prescribing the period of office of the elected Fellows, in exercise of the powers conferred on them by Sub-section (4) of Section 8, were also bound to provide for retirement in rotation at the end of each year of, as nearly as possible, one-fifth of the elected Fellows of the Senate. But Sub-section (1) of Section 12 is vague in many respects and by itself, is quite unworkable. It does not say what class of "elected Fellows" are subject to the disability of retirement in rotation every year. The elected Fellows may consist of the following classes :

(I) First elected Fellows, that is to say, those Fellows elected from each constituency for the first time.

(II) Fellows elected to fill casual vacancies amongst the first elected Fellows.

The first elected Fellows, mentioned above, may be further subdivided into three classes :

(i) First elected Fellows who were actually elected prior to the date on which the ballot for retirement in rotation, as contemplated in Section 12(1) of the Act, took place.

(ii) First elected Fellows who were elected by the constituencies after the aforesaid date though the constituencies were in actual existence at the time of holding the first elections.

(iii) First elected Fellows elected after the said date from new constituencies which came into existence after that date.

44. It is true that till now no new constituency has sprung up after the first elections, but the Act clearly contemplates the coming into existence of such constituencies. In class (1) under Sub-section (3) of Section 8, it is stated that every degree college in, the State Of Orissa, excluding Cuttack Training College, is entitled to send one elected Fellow to the Senate. The number of degree colleges may vary from year to year according as recognition is given to new colleges or recognition is withdrawn from other colleges. Thus it is theoretically possible that though in 1948 there were only nine degree colleges in the State (including Balasore College but excluding Ravenshaw College which had special representation in the Senate), in the next year the number of degree colleges might have "increased to 12 with the consequent increase in the number of elected Fellows. Thus the total number of first elected Fellows may be a variable number.

In construing Sub-section (1) of Section 12 of the Act the cardinal point to be borne in mind is that the Legislature was aware that the expression "elected Fellows" occurring in that sub-section required further clarification inasmuch as that expression may include the various classes of first elected Fellows mentioned above whose number may vary from year to year and also Fellows elected to fill casual vacancies whose existence was clearly recognised in Section 13 of the Act. It was for this reason that the Legislature stated in Sub-section (1) of Section 12 itself that the retirement in rotation of the elected Fellows shall be "thereby conferring on the framers of the Statutes full power to supplement the main provisions of that subsection so as to make it workable". In exercise of this power they could restrict the scope of the expression "elected Fellows" to a certain Class of first elected Fellows only and also exclude from the operation of that section Fellows elected to fill casual vacancies.

45. It was, however, urged that the words "in accordance with the provisions of the Statutes", given in Sub-section (1) of Section 12, must be construed along with Clause (f) of Section 19 which says that the Statutes shall provide for "the procedure to be followed for retirement of the elected Fellows of the Senate" and that if the two provisions are construed together it would necessarily follow that Statutes made u/s 12 (1). should be limited to procedural matters only. With

great respect I am unable to accept this argument. Doubtless Section 19 gives a list of various matters which may be provided by Statutes. But the very opening words of subsection (1) of Section 19 are "subject to the provisions of this Act." That is to say, if there are other independent provisions in the Act authorising the framing of Statutes in respect of other matters, the ambit of the power, given by those provisions, cannot be curtailed by the words found in Section 19. Section 12(1) is such an independent provision. It does not say that the Statutes made under that section shall be limited to procedural matters only. On the other hand, as already pointed out, the words "in accordance with the provisions of the Statutes", when properly construed against the background of the ambiguity of the expression "elected Fellows" occurring in that sub-section, must lead to the inference that statutes on the subject were meant to be supplementary and they might cover matters which are not strictly procedural.

46. In the last four paragraphs of law I of chapter VIII of the Statutes, under the heading "Class-I Elected Fellows", are found the provisions for implementation Section 12 (1) of the Act. Those provisions may be quoted in full.

"The term of office of the elected Fellows shall be for a period of five years subject to the proviso that after the first annual meeting following the first elections the Vice-Chancellor shall, in accordance with Sub-section (1) of Section 23 of the Act ballot out, as near as possible, one-fifth of such Fellows;

Provided that the number balloted out together with the existing vacancies among the first elected Fellows arising from any cause whatsoever shall not exceed one-fifth of the number of such Fellows.

Every year, in three subsequent years, the-same procedure shall be followed for the balloting out of the elected Fellows from among the remainder of the first elected Fellows of the Senate.

If a Fellow elected at an annual elections, dies or resigns or otherwise ceases to hold the office before the expiry of his term, a person shall be elected to fill the vacancy so caused and shall hold office for the remaining portion of the period of office of the Fellow whose vacancy he fills."

47. The most effective answer to the argument that the statutes should deal with procedural matters only is found in the last of the aforesaid four paragraphs of Law I of Chapter VIII which, by fixing a special period of office for Fellows elected to fill casual vacancies, excludes them from liability to ballot. This provision cannot, by any stretch of imagination, be said to be procedural. It practically confers immunity of one class of elected Fellows from the disability of retirement in rotation. If Sub-section (1) of Section 12 of the Act is interpreted strictly, the words "elected Fellows" in that sub-section must include this class of elected Fellows also and it may well be urged that a provision in the Statutes which confers immunity from retirement in rotation to this class of elected Fellows is ultra vires as relating to a matter which is not procedural. Even the learned Advocate for the University shows that in calculating the number of Fellows to be

balloted out the number of casual vacancies was invariably excluded. I can find no difference between (i) Fellows elected to fill casual vacancies and (ii) Fellows elected for the first time after the first annual ballot, in so far as the construction of the aforesaid four paragraphs of the Statutes is concerned. In respect of both these classes the Act confers full discretion on the framers of the Statutes to make such provisions as they think fit. If in exercise of those powers, both the aforesaid classes are granted immunity from ballot, it is difficult to hold that the provisions of the Statutes are ultra vires. What provisions are necessary for making Section 12(1) of the Act workable is essentially a question of policy which was entrusted with the framers of the Statutes. They had to lay down some working solution because the Parent Act (Section 12(1)) left many matters to be clarified.

48. The next question is, what is the true construction of the four paragraphs of Law 1, Chapter VIII of the Statutes. The first para gives full discretion to the Vice-Chancellor to hold the ballot in any manner he thinks fit. But it says that the first ballot shall be held after the first annual meeting (referred to in Law 4 of that chapter) following the first elections. As regards the number to be balloted out it says that it shall be "as near as possible, one-fifth of such Fellows". The expression "such Fellows" may mean either "elected Fellows" as stated in the opening words of that para or else, in the context, it may mean such Fellows as were in existence on the date of the first ballot. That it cannot mean "elected Fellows" in general follows as a reasonable inference from the fourth para which, in substance, excludes one class of elected Fellows (i.e. those elected to fill casual vacancies) from liability to ballot. The second and third paragraphs indicate that the words "such Fellows" in the first para mean "first elected Fellows" only. The latter expression may, at first sight, seem to include all the three classes for first elected Fellows described in paragraph 3 (paragraph 42 of this report) of this judgment. But if the provisions of the second and third paras are closely scrutinised, it seems clear that the said expression refers only to those first elected Fellows who were elected prior to the date of the first ballot. The third para says that every year, in three subsequent years, the same procedure shall be followed in balloting out from the remainder of the first elected Fellows. The words "same procedure" in the context must imply that the number to be balloted out in three succeeding years shall be the same, subject of course to variations caused by the casual vacancies for which special provision is made in para 2. Again, the third para subjects the "remainder of the first elected Fellows" alone to the liability for ballot every year. The use of the word "remainder" is, I think, decisive. It shows that the expression "first elected Fellows" refers to persons actually elected before the date of the first ballot; because it is from that category alone, that one can visualise "remainders" every year. This will be clear from the illustration furnished in the present case itself. The elected Fellow from Balaspre College and the elected Fellows from Training and Secondary Colleges were not available for the first ballot held in 19-4-49, for the simple reason that they were not in existence then. The second ballot took

place on 20-4-50. If the aforesaid two Fellows are subjected to the second ballot they cannot be said to form part of "the remainder of the first elected Fellows".

The same reasoning would apply in respect of the ballot held on 25-7-51. The University authorities themselves seem to have taken the view that the said two elected Fellows would not come in the category of "first elected Fellows" and they do not appear to have subjected either of those two Fellows to the process of balloting either in 1950 or 1951. The Vice-Chancellor's reply dated 9-2-52 to Sri. B. M. Patnaik, learned counsel for the petitioner. (which is part of the record) is to the effect that the total number of "first elected Fellows" in terms of Law I of Chapter VIII of the Statutes was only 41. In view of this admission, it is difficult to understand the stand taken by the learned counsel for the University to the effect that the number to be balloted out every year (which must be one-fifth of that number) is nine and not eight.

49. As I understand the provisions of Law I of Chapter VIII of the Statutes, the process of balloting should be done in the following manner. On the date of the first ballot, the Vice-Chancellor should ascertain the number of Fellows elected from the various constituencies for the first time. That number should be divided by five and the result rounded off to the nearest integer. From the resultant number (which may be termed the gross number) should be deducted the number of casual vacancies that might have arisen till that date. The net figure gives the number of casual vacancies that might have arisen till that date. The net figure gives the number to be balloted out that year from amongst the first elected Fellows actually in existence on that date. For the next year also the gross number to be balloted out will be the same as in the first year, though the net number may vary with the increase or decrease in the number of casual vacancies amongst those first elected Fellows. In the second year's ballot, the remainder out of the first elected Fellows, after excluding those who were balloted out in the first year, alone should be subject to the process of balloting. This process should be repeated for the next two years also. My Lord has pointed out certain anomalies which might arise from this construction of the Statutes. With great respect, I may observe that even adopting his construction (which *prima facie* goes against the literal meaning of the words) greater anomalies would arise due to the variable number to be balloted out every year and the increase in the number of first elected Fellows from year to year.

Moreover, any working method for implementing Section 12 (1) of the Act must produce anomalies of same kind or other, and it is not the function of the Court to examine why the framers of the Statute chose one method for making Section 12 (1) workable instead of another.

50. Clause (a) of Law 12, Chapter XV of the Statutes prescribes the term of membership of the Senate as follows :

"12. (a) Save as provided for in Sub-section (2) of Section 8 and in Sub-sections (1) and (2) of Section 12 of the Act, subject to the provision in Law I of Chapter

VIII of the Statutes, the period of Office of the Fellows of the Senate other than ex-office Fellows and Fellows for life, shall be for a period of five years.

Provided that in balloting out the first elected fellows at the end of each year, Fellows who are elected to fill the vacancies so caused, shall not be made to retire within a period of five years."

The proviso expressly declares that Fellows elected to fill vacancies caused by the balloting out of the first elected Fellows shall not be made to retire within a period of five years. There is doubtless no express provision, either in this clause or in Law I, Chapter VIII under the heading "Class I-Elected Fellows" describing the term of office of those Fellows who are elected for the first time after the first ballot, The absence of any such provision has been used to support the argument that that class of elected Fellows also should be subjected to ballot and that consequently the expression "first elected Fellows" should be given a wide meaning so as to include all those Fellows elected from any constituency for the first time irrespective of whether they were elected after the date of the first ballot or not.

With great respect, I am unable to appreciate this argument. The main portion of Clause (a) of Law 12 of Chapter XV expressly says that the term of office of the Fellows of the Senate shall be for a period of five years. This provision would apply, therefore, to all classes of Fellows of the Senate except those expressly mentioned either in the proviso to that clause or in the provisions of Law I, Chapter VIII and the provisions of the present Act. Therefore, if, as a matter of construction, it be held that the first elected Fellows should include only those Fellows who are elected before the date of the first ballot the term of office of the Fellows elected for the first time after that date would be governed by the main portion of Clause (a) of Law 12 of Chapter XV and they would continue to hold office for a period of five years, subject of course to their continuing to be members of the body by virtue of which they are elected to the Senate. There is no need to make any express provision, determining their period of office. Consequently, the mere absence of any such express provision will not justify straining the meaning of the words "first elected Fellows".

51. It cannot also be urged that the framers of the Statutes did not anticipate that some constituencies may not elect their representatives before the date of the first ballot.. Law 9 of Chapter XV contains elaborate provisions for the holding of elections to the Senate and one of the paragraphs in that Law is as follows :

"If the number of candidates validly nominated is less than the number of vacancies to be filled the candidates so nominated shall be declared elected and the electorate shall be called upon to fill up the vacancy or vacancies, as the case may be."

This paragraph indicates that the framers of the Statutes were fully aware that a contingency may arise in which during the course of the first elections there may not be sufficient number of validly nominated candidates for some

constituencies and there may be a necessity for holding fresh elections. The exact date when such fresh elections would be completed would depend on other factors and it is not unlikely, as has happened in the present case, that a few constituencies might not send their elected fellows before the date of the first annual meeting. I am inclined to think that this knowledge on the part of the framers of the Statutes of the likelihood of some constituencies remaining unrepresented on the date of the first ballot was one of the reasons for them to provide in Law 1 of Chapter VIII that only that class of first elected Fellows who are elected from constituencies on or before that date shall be subject to retirement in rotation.

52. The existence of a permanent indissoluble body subject to the liability of a certain proportion of its members to vacate their office in turn is not an unusual feature of the electoral law of India. In the Government of India Act, 1935, the Council of States was such a body and Sub-section (4) of Section 18 of that Act stated that, as near as may be, one-third of the members of the Council of State shall retire in every third year in "accordance with the provisions in that behalf contained in the first Schedule. In para 13 of the First Schedule to that Act, detailed provisions were made in that behalf. In the constitution also Article 83(1) is as follows :

"The Council of states shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year "in accordance with the provisions made in that behalf by parliament by law."

The Representation of the People Act, 1951 (Act XLIII of 1951) was made by the parliament and it is useful to see Sub-section (2) of Section 154 of that Act which is as follows :

"Subject as aforesaid, the term of office of a member of the council of States, other than a member chosen to fill a casual vacancy, shall be six years, but upon the first constitution of the Council of States the president shall, after consultation with the Election commission, make by order such provision as he thinks fit for curtailing the term of office of some of the members "then chosen" in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter."

The phrase "in accordance with the provisions made in that behalf by parliament" occurring in Article 83(1) of the Constitution is almost identical with the phrase "in accordance with the provisions of the Statutes" occurring in Sub-sec. (1) of Section 12 of the Utkal University Act. Section 154(2) of the Representation of the People Act is the law made by parliament as contemplated in Article 83(1). It will be noticed that that sub-section is not limited to procedural matters only. It goes further and says that (i) members chosen to fill casual vacancies shall not be liable to curtailment of their period of office and (ii) on the first constitution of the Council of States some of the members "then chosen" shall be liable to have

their period curtailed in accordance with the provisions made by the President in that behalf. The words "then chosen" I think have special significance and they indicate that only those members who are actually chosen on or before the first constitution of the Council of States are liable to curtailment of their period of office. Some constituencies may remain unfilled at the time of the first constitution of the Council. This is clearly contemplated in Section 53(3) of that Act. The provisions of the last four paragraphs under heading "Class I -- elected Fellows" of Law 1 of Chapter VIII have great similarity with the provisions of Sub-section (2) of s. 154 of the Representation of the People Act, Here also casual vacancies are excluded from the scope of the ballot. Similarly the liability to be balloted out is limited to the first elected Fellows only, namely, the Fellows who were in actual existence on the date of the first ballot. I am, therefore, unable to see any anomaly in the interpretation given to the aforesaid provisions of the Statutes.

53. For the aforesaid reasons on the admitted facts of this case, I would hold that the total number of first elected Fellows liable to be balloted out was only 41 and that only one-fifth of them, i.e. 8 members, were subject to annual ballot in accordance with the provisions of the Statutes. The Vice-Chancellor's assumption that nine members were subject to ballot was wrong. This would necessarily invalidate the second ballot held on the 25th July, 1951 and all subsequent proceedings taken for filling up the vacancies caused by that ballot.

54. There is another equally weighty reason for holding that the second ballot held on the 25th July, 1951 is invalid. The first ballot was held on the 11th July 1951. On that date, due to some misconception in the mind of the Vice-Chancellor, he thought that only two elected Fellows were liable to be balloted out. He then followed the usual procedure for ballot and declared that Sri H. Mohapatra and Sri Raj-kumar Lakshminarayan Bhanj Deo were balloted out. He then published this fact in the Orissa Gazette. But on 17th July, he cancelled the ballot on the ground that he made a mistake in calculating the number of Fellows to balloted out and held a fresh ballot on the July, 1951. A question arises whether the Chancellor has the power to cancel the ballot. Doubtless the Chancellor could annul the first ballot in exercise of his powers under Sub-section (6) of Section 5 of the (sic) University Act. There is, however, no provision, either in the Act, or in the Statutes, conferring on the Vice-Chancellor the power to annul the ballot held by him. But it was argued that as the process of balloting, is mere executive act he has the inherent right to correct his mistake. Three possible views may be taken about the first ballot held on the 11th July

- (i) It is void ab initio;
- (ii) It is irregular but not void;
- (iii) It is incomplete.

If the first ballot is void ab initio, the Vice-Chancellor may ignore it altogether and hold a fresh ballot. If it is irregular, he had no jurisdiction to set it aside,

though the Chancellor could have cancelled it. If it is incomplete all that the Vice-Chancellor is entitled to do is to complete the process of balloting without cancelling what is already done. I am unable to see how the first ballot can be held to be void ab initio. It was conducted by the proper [authority, namely, the Vice-Chancellor. Only the elected Fellows were subject to the process of balloting and nominated Fellows or Fellows for life were not included in it. The only mistake made by the Vice-Chancellor was in calculating the number of Fellows to be balloted out. If there was any provision in the Statutes and the Act to the effect that the process of balloting shall take place on one occasion or else that it shall consist of a series of acts connected together by the same community of purpose as to form one transaction (to borrow the familiar language of the Criminal Procedure Code) there may be something to be said in favour of the argument that if two persons are balloted out when the law requires six to be balloted out such a ballot is invalid. But the Act and the Statutes are entirely silent on this question. They do not say that the process of balloting shall form part of one transaction. The Vice-Chancellor was given full discretion to conduct the process of balloting in any manner he thought fit. Consequently with great respect, I am unable to accept the view that the process of balloting must be either one act or a series of acts so connected together as to form part of one transaction or else that there should be continuity of purpose connecting those series of acts. On the other hand, the affidavit filed by the Vice-Chancellor describing the process of balloting supports the contrary view. In para 11 of his objection petition, he has described the procedure adopted as follows :

"A list of the elected Fellows likely to be affected by the balloting out is made out giving serial number of each of the names. Slips of thick paper, each, are mixed up & put in a bag. The Vice-Chancellor then draws out one slip out of the bag and finds out the name of the Fellow with reference to the serial number appearing on that slip and makes that Fellow to have been balloted out. He repeats this procedure till the required number of Fellows are balloted out."

55. The word "Ballot*" is undoubtedly an ambiguous expression and may mean either "drawing by lot" or "Secret vote". See -- "Eyre v. Milton Proprietary Ltd. (1936) 1 Ch. D 244. The latter meaning is clearly inapposite in the present context and the Vice-Chancellor's affidavit shows that the whole process consists in drawing lots. The result is necessarily a matter of chance; but it is always inherent in such drawing by lot that a chance once lost cannot be given again, unless the draw itself is cancelled as invalid due to an unauthorised person performing it, or else due to the failure to put in the bag the slips representing all the first elected Fellows who are subject to ballot, or else due to the inclusion in the bag of other slips which might affect the results of the draw. The process of draw is almost mechanical and what was passing in the mind of the Vice-Chancellor is immaterial, so long as the draw is otherwise regular. The process of balloting consists of a succession of completed acts of drawing out slips representing the serial number of the Fellows. It may be that ordinarily those acts take place in quick succession so that the whole of the process is completed

within, say, half an hour. But there is no legal objection if the process is left incomplete on one day and taken up on the next day. The learned counsel for the petitioner cited an apt illustration in this connexion. Suppose six people are to be balloted out and the Vice-Chancellor has drawn out the first two slips and declared the names of the Fellows indicated by those slips. Just then an urgent telephonic call is received by him requiring his presence elsewhere. He may close the whole operation, attend to the urgent business and resume the process of balloting on the next day or on any other day convenient to him and draw out the remaining number of slips. I can see no possible legal objection to such a course being taken. As soon as one Fellow is balloted out by the picking out his slip by the Vice-Chancellor and the results are announced he loses his chance of surviving the ballot that year, and that chance cannot be given to him for a second time. His right to continue as a Fellow of the Senate is thus extinguished and in my opinion it is not dependent on what the Vice-Chancellor may do subsequently in respect of other Fellows to be balloted out.

56. Applying this principle to the ballot held on the 11th July, 1951, I must hold that the process of balloting was valid so far as Sri. H. Mohapatra and Sri. Rajkumar Lakshminara-yan Bhanj Deo were concerned. It is true that the Vice-Chancellor was then under the impression that only two Fellows were liable to be balloted out. But the impression under which he worked while drawing out the slips from the bag is, I think, immaterial so long as the process of balloting is otherwise in strict compliance with the provisions of the Statutes and the Act. When he subsequently found that the number of Fellows to be balloted out was six and not two, the only course left open to him was to complete the process by balloting out four more Fellows. He has no jurisdiction to cancel the previous ballot and thus give a fresh chance to the aforesaid two gentlemen to escape ballot. As soon as the slips containing the names of Sri. H. Mohapatra and Sri. Rajkumar Lakshminarayan Bhanj Deo were drawn out by the Vice-Chancellor on the 11th July, their period of office as Fellows of the Senate became limited to the end of that year by virtue of Section 12 (1) of the Act read with the Statutes and the Vice-Chancellor's action in cancelling that ballot would be tantamount to extending their period of office which obviously he has no jurisdiction to do. The question about bona fide or mala fide of the Vice-Chancellor is, I think, wholly immaterial. I would, therefore, hold that the first ballot held on the 11th July was, neither invalid nor irregular, that it was complete so far as the disability of the two Fellows balloted out on that day was concerned and what remained to be done was to complete the whole process of ballot by balloting out the remaining number of Fellows when the Vice-Chancellor discovered his mistake. His action in cancelling the ballot of the 11th July and holding a fresh ballot on the 25th July is without jurisdiction.

57. I have anxiously considered the question whether it is worthwhile issuing a writ, as prayed for, which may have the effect of disturbing the peace and quiet of the University and putting back the hands of the clock in respect of the University affairs to what it was in July 1951. I am fully aware of the

inconvenience to all concerned that may be caused by setting aside the elections that took place in December last in consequence of the holding of the second ballot on the 25th July, 1951. I am also equally conscious that the newly elected Fellows have taken part in the annual meeting held in March last. If there were mere irregularities in the holding of ballot on the 25th July, I would have been inclined to concur in the order proposed by my lord. But my view regarding the invalidity of the second ballot held on the 25th July 1951, leaves no other alternative course open except to direct the holding of a fresh ballot so as to complete the process of balloting commenced on the 11th July, and to hold fresh elections.

Moreover, unless this question about the actual number of Fellows liable to be annually balloted out is finally decided by this Court by reference to a third Judge in view of the difference of opinion between myself and my Lord the Chief Justice the same problem will arise when the next ballot is held this year and the University authorities may have to face greater inconvenience if the Vice-Chancellor's action is challenged by another application for writ. It is in the interests of the University itself that future litigation on the same subject should not arise and thereby cause greater harassment to all concerned. Moreover, I am unable to agree that there was undue delay in the petitioner's application to this Court for the issue of a writ.

58. There is another important point of law on which, though I think it unnecessary to give a final decision at this stage, the petitioner should get an opportunity for pressing his point of view while this case goes to a third Judge. It was stated by the petitioner, though at a belated stage, that when the ballot was held, on the 25th July, 1951, and in April, 1950, the Fellows who were subject to the process of balloting were the remainder of the original 41 first elected Fellows and not the two Fellows elected on 25-11-49 and 5-1-50 from Balasore College and the Training and Secondary Colleges. The statement, if true, would render the ballot the 25th July, 1951, invalid for another reason. On the view taken by my Lord the Chief Justice, the Fellows elected on 25th November, 1949 and 5-1-1950 would come within the category of "first elected Fellows" and they also be subject to the liability of being balloted out. If, therefore, the slips containing serial numbers of either of them were not in the bag at the time of ballot of the July 1951, it can be reasonably urged that ballot held on that date is invalid for this reason. The learned counsel for the petitioner wanted to raise this question of law. But as hearing of the case had far advanced when this new fact was brought to light, we thought it inadvisable to prolong the matter further. Even now that the case has to go to a third Judge, think the learned counsel should be permitted to establish this fact and argue about the invalidity of the ballot of the 25th July on this ground even if the view taken by my Lord the Chief Justice regarding the number to be balloted out prevails. This is an important question of law which goes to the root of the whole question.

59. For the aforesaid reasons, I would with great respect, differ from the order

proposed by my Lord and hold that the writ of quo warrantum as prayed for, should issue.

Panigrahi, J.

59A. This application comes up before me, under Rule 8 of the Orissa High Court Rules, on a reference made by a Division Bench consisting of My Lord the Chief Justice and Narasimham J., owing to a difference of opinion between them. The points debated before them, and repeated before me, are : --

(i) whether the number to be taken for purposes of balloting out is nine or eight, so as to represent one-fifth of the elected Fellows;

and

(ii) whether the Vice-Chancellor was right in cancelling the first ballot held on 11th July 1951 and holding a second ballot on 25th July 1951.

On both these points the learned Judges came to conflicting decisions. The answer to the first point would depend upon the correct interpretation of the University Statutes dealing with the balloting out of the "first elected Fellows" to the Senate. According to one view the ratio of one-fifth is to be determined with reference to the number of Fellows actually elected before the annual meeting of the Senate; while, according to the other view, the number is to be determined with reference to the strength of the elected element in the composition of the Senate.

60. The facts leading to the controversy between the parties have been set out in great detail in the judgment of My Lord the Chief Justice, and it will be an act of supererogation on my part to go over the ground already covered by him. I shall, therefore, content myself with giving my reasons for agreeing with the conclusions reached by my Lord the Chief Justice.

61. The admitted facts are that the nominated Senate came to an end on the 29th February 1948 and the first annual meeting of the elected Senate was held on the 30th March 1949. Under Sub-section (3) of Section 8 of the Utkal University Act 43 seats were reserved for elected Fellows, but at the elections held before the annual meeting only 41 Fellows were returned and two seats had been left vacant. These two seats were later filled up on the 25th November 1949 and 5th January 1950. The first ballot was held on the 19th April, 1949. The point in controversy is whether the one-fifth of elected Fellows to be balloted out u/s 12 of the Utkal University Act is to be calculated with reference to the 43 elected Fellows provided for in Sub-section (3) of Section 8 of the Act, or with reference to the 41 elected fellows who had actually been returned. Section (sic) of the Act says : --

be is near as may be one-fifth of the elected (sic) Fellows of the Senate shall retire in rotation at (sic) the end of each year in accordance with the provisions of the Statutes."

(sic) provisions made in the Statutes prescribing (sic) manner in which retirement in rotation shall (sic) brought about are laid down in Chapter VIII, (sic) law I, under the heading "Class I-Elected Fellows". (sic) provides that the Senate shall have power to (sic) notwithstanding any vacancy in its membership caused by the non-election of any of the (sic) persons specified in the preceding paragraphs. The provisions that have led to the rival interpretations are as follows :--

"The term of office of the elected Fellows shall be for a period of five years subject to the proviso that, after the first annual meeting following the first elections, the Vice-Chancellor shall, in accordance with Sub-section (1) of Section 12 of the Act ballot out, as near as possible, one-fifth of such Fellows :

provided that the number balloted out together with the existing vacancies among the first elected Fellows arising from any cause what- ever shall not exceed one-fifth of the number of such Fellows.

Every year, in three subsequent years, the same procedure shall be followed for the ballot- ing out of the elected Fellows from among the remainder of the first elected Fellows of the Senate."

The enacting provision declares that the term of office of the elected Fellows shall be a period of five years. There are two provisions to this rule fixing the term of office. The first proviso relates to the time when the first ballot will be held, and it says that

"after the first annual meeting following the first elections one-fifth of the elected Fellows shall be balloted out in accordance with subsection (1) of Section 12."

The second proviso prescribes how the number to be balloted out in any particular year is to be calculated and says that the existing vacancies at the time of the balloting out shall be taken into account so as not to exceed one-fifth of the number of elected Fellows. The succeeding paragraph then provides that the same procedure shall be followed in three subsequent years for balloting out of the elected Fellows from among the remainder of the first elected Fellows. In devising the machinery of retirement by rotation, the Statutes make a distinction between "elected Fellows" and "first elected Fellows", and lay down that the balloting out shall be restricted to the "first elected Fellows" although the number to be balloted out will be determined with reference to the total number of elected Fellows. As I read these paragraphs, the number to be balloted out every year is one-fifth of the elected Fellows, namely one-fifth of 43, while the number of persons who are subjected to the ballot is only 41 as that is the number of the "first elected Fellows". In fixing the number to be actually balloted out from among the "first elected Fellows" the then existing vacancies arising from any cause whatsoever shall be taken into account. The actual number to be balloted out every year would, therefore, be variable, depending upon the number of "existing vacancies" at the time of the ballot. What the provisions mean would be made clear if I express them in figures : --

Number of elected Fellows

43 (Sec. 8).

As near as one- fifth of the above

9 (Sec. 12).

Number liable to be balloted after the first annual meeting

9 (according to the last paragraph of the Statute).

Actual number to be balloted plus existing vacancies shall not exceed

9 (according to the second proviso).

The opening sentence lays down a general rule that the period of office of an elected Fellow shall be five years. A limitation is, however, placed on that period in the case of the elected Fellows of the first Senate, as one-fifth of such Fellows are liable to retire by rotation every year by the process of balloting. The second proviso brings in another qualification and provides that the ballot shall be confined to the first elected Fellows and the existing vacancies among the elected Fellows shall be included in the number to be balloted out so as not to exceed one-fifth of the elected Fellows. If the "existing vacancies" are not taken into account the result will be that there will be more vacancies than one-fifth of the number of the elected Fellows which will have to be filled by election. Therefore the proviso says that the number balloted out, together with the existing vacancies, shall not exceed one-fifth of the total elected strength. There shall be not more than 9 seats filled by election any year. This will ensure the retirement of the first elected Fellows in the course of five years by balloting out one-fifth every year. The Vice-Chancellor was right when in 1949 he took the number of elected Fellows as 43. The total number of Fellows to be balloted out was, therefore, one-fifth of 43, that is, 9. He was also right in taking into account the six vacancies then existing and in balloting out only 3 from the first elected Fellows. In 1950, the number of remaining numbers of the first elected Fellows was 29 and, as there were no "existing vacancies" 9 should have been balloted out, but the Vice-chancellor acted under the impression that one-fifth of 29 had to be balloted out & actually balloted out 6. He repeated the same error at the ballot held on the 11th July 1951. The number of the remaining first elected rFellows on that date was 18. The number of existing vacancies then was 2. He should, therefore, have balloted out 7 (9 minus 2) Fellows. What he actually did was that he took one-fifth of 18, that is to say 4, as the number to be balloted out, and in view of the two existing vacancies he balloted out two Fellows only. He realised his mistake when a Fellow of the Senate drew his attention to the wrong calculation, and accordingly held a second ballot on the 27th July 1951, and 7 Fellows were balloted out on that occasion as there were already two existing vacancies.

62. Learned counsel for the petitioner urged that the expression "such Fellows"

occurring at the end of the second proviso to the Statute refers to the "first elected Fellows," and as that proviso says that the number to be balloted out shall not exceed one-fifth of the number of such (namely, first elected) Fellows, the number should be taken as 8. The object of a proviso is to qualify the general provision and should be so, construed as not to be inconsistent with it. When the parent Section 12 says in Sub-section (1) that one-fifth of the elected Fellows shall retire and law 1 of the Statutes, Ch. VIII, also repeats that in the first paragraph, it does not stand to reason that the proviso was intended to override the preceding paragraph of the Statute or the parent Section 12. There can be no doubt that the expression "one-fifth of such Fellows" used in the paragraph preceding the proviso refers to the "elected Fellows" and is not restricted only to "the first elected Fellows". My reading of the statute, with the provisos, would accordingly be as follows :--

"The term of office of the elected Fellows (Class I) shall be for a period of five years subject to the proviso that, after the first annual meeting following the first elections (in 1942) the Vice-Chancellor shall, in accordance with subsection (1) of Section 12, ballot out as near as possible one-fifth of such (Class I) elected Fellows;

Provided that the number balloted out of the first elected Fellows (41) together with the existing vacancies arising from any cause whatsoever, shall not exceed one-fifth of the number of such (43) Fellows.

Every year in three subsequent years the same procedure shall be followed for the balloting out of the elected Fellows from among the remainder of the first elected (41) Fellows of the Senate".

In my judgment "one-fifth of such Fellows" in the opening paragraph must necessarily mean more than one-fifth of the Fellows actually elected as Section 12 of the Act speaks of all the elected Fellows and not only of some of them actually elected before a particular time. The expression "shall not exceed one-fifth of the number of such Fellows" occurring in the proviso emphasises this and fixes the maximum limit. If the intention was to ballot out only one-fifth of the "first elected Fellows" the Statutes could have said so less clumsily and more simply by enacting that "one-fifth of the first elected Fellows shall be balloted out". Mr. Patnaik's interpretation would reduce the words "together with the existing vacancies" to silence and would conflict with the preceding paragraph as well (sic) with the principle enunciated in Section 12 of the (sic) Act. Mr. Patnaik suggested that "existing vacancies" might refer to vacancies caused by death, transfer, or resignation of some members among the first elected Fellows. I cannot comprehend why such a narrow interpretation should be put on the phrase so as to exclude the vacancies caused by no election. It has to be noted that there is no other provision anywhere in the Statutes dealing with the election period of office of those who could not be elected at the first elections. The expression "existing vacancies among the first elected Fellows" is, in my view, comprehensive enough to include the two vacancies arising out of non-

election. On this point, therefore, I entertain no doubt that the argument of learned counsel, though ingenious, is opposed to the plain meaning and intendment of the Statutes and, if accepted, would result in great violation of sense and grammar. The proper reading would be to regard the proviso as qualifying the number to be balloted out as enacted in the paragraph preceded by it, which, but for the proviso, would be within it. I am not impressed by the play upon the word "such" occurring in the proviso and would not construe it so as to enlarge the scope of the rule embodied in the paragraph. It would be dangerous to import legislation, from a proviso, into the body of a statute or a section. I would, accordingly, reject the contention of the petitioner on this point.

63. The other point that has been strenuously argued is whether the Vice-chancellor could hold a second ballot "suo motu" when he discovered his error in holding the first ballot. The petitioner's counsel does not seriously contend that the Vice-chancellor became "functus officio" as soon as he held the wrong ballot on the 11th July 1951. His contention is that the Vice-Chancellor should have continued the process and drawn out as many slips as would be required to complete the (sic) to be balloted out. If the Vice-Chancellor's powers had not been exhausted it equally stands to reason that the matter was in his absolute discretion to decide whether he should continue the first ballot or hold a second ballot anew. So far as the Vice-Chancellor himself is concerned the stand taken by him was that when he had realised his mistake he could correct it himself by holding a second ballot, after giving due publicity to the same, and that there is nothing in the statutes which would fetter his discretion in any way. He was anxious to discharge his functions correctly as enjoined by law and the court is not called upon to compel the Vice-Chancellor who is willing to discharge the law to contravene it. The Vice-Chancellor is empowered to draw the ballot for the purpose of enabling the provisions of the Statutes relating to it to be carried out. The provision is directory and the statute can be said to have been complied with if that duty is performed substantially. The composition of the Senate depends upon the valid election of its members following a correct ballot, and not upon how their balloting out. There is no provision dealing with the nullification of the ballot for any irregularity in the manner of its being held. It is the duty of the Court to get at the intention of the Statutes by attending to the whole scope of the provisions relating to the composition of the Senate. Balloting out is the machinery by which the principle of retirement by rotation of one-fifth of the elected Fellows is to be worked out.

Having regard to the purpose, the subject-matter, the machinery devised for the purpose, the importance of the machinery in relation to election of members, and the general object of the Act, I feel disinclined to view the act of the Vice-Chancellor as a judicial or a quasi-judicial act and then dissect it to see whether it is "void ab initio", irregular, or incomplete. Speaking generally, it is useful to bear in mind that the principles applicable to Courts of Justice are not applicable to domestic tribunals. The jurisdiction of Courts in regard to tribunals is of an extremely limited nature. The only grounds on which the Court may interfere

are; (1) lack of jurisdiction (2) absence of good faith; and (3) disregard of principles of natural justice. As I read the Statutes, the power given to the Vice-chancellor in the instant case is exercisable "virtue officii and is not limited to a particular occasion, or a particular time. No limitation or restriction is annexed to his power. That power exists as long as he holds office and may be exercised from time to time as and when occasion requires. The presumption that it is exhausted by a single exercise, or partially exhausted "pro tanto", is contrary to well recognised canons of law. It is axiomatic that a power vested in a person for the benefit of a class of persons should be properly exercised, that is, bona fide, with judgment & discretion, & without negligence. It is equally incontrovertible that an action will lie for doing an act authorised by law if the act be done negligently. The first act of balloting out was due to want of reasonable care on the part of the Vice-Chancellor in determining the requisite number of persons to be balloted out. The persons affected by the negligence of the Vice-Chancellor could have successfully challenged his act at that stage had he not subsequently corrected himself. What is there in the statutes that would prevent a wrong being righted by the wrong-doer himself? If, as has been argued, the Vice-Chancellor had the power of continuing the balloting which he had started and closed after drawing out two slips, why should he not go over the whole process afresh, after due notice and publicity?

The object of the ballot being the drawing out of the correct number and that object having failed the ballot also failed. The Vice-Chancellor was the sole judge to decide whether he should continue the abortive ballot or hold a new one. what he should or could have done may appeal to different minds in different ways, and what he should have done is capable of a number of suggestions. I do not think it would have been right -- I am sure it would not have been wise -- for the Vice-Chancellor to have kept quiet and done nothing immediately, and let matters drift until the Chancellor chose to annul it. The narrow point, however, before the Court is whether what the Vice-Chancellor did offends any of the provisions of the Act. The principle of law that should be applied is that if the law enables something to be done it gives the power at the same time to do everything that is indispensable for the purpose of carrying out the object in view. That power subsists until the purpose is accomplished. *Ubi aliquid consceditur, conceditur et id sine quo res ipsa esse non potest*--when anything is granted, that also is granted without which the thing granted cannot exist. In the absence of any specific provision to the contrary I am not disposed to pronounce the act of the Vice-Chancellor as either void or illegal and would hold that the Court is not concerned with the manner in which he should perform the act so long as it has been done bona fide. Even if it be considered to have been an error it was an excusable error which could be rectified by the wrong-doer himself and not a culpa gravis justifying the interference of the Court. I am satisfied that the Vice-chancellor has expounded the Statutes aright and has acted in conformity with them. Mr. Patnaik's argument has the charm of novelty but appears to be devoid, of authority. No case was cited, nor am I aware of any

instance, where a Court interfered to correct an error already corrected. On the contrary, reported cases show that if the execution of a power is partly invalid, and the valid and invalid parts are severable, the Court will give effect to that which is valid. The invalidity of an attempted exercise of power does not prevent a valid : re-exercise of the power in conformity with the law.

64. It was then argued that the mistake of the Vice-Chancellor could only be corrected by the Chancellor. The power of the Chancellor to annul any proceeding of the University which is not in conformity with the Act or the Statutes is provided for in the Act itself. The question, however, is whether the Vice-Chancellor's action in cancelling the first and holding the second ballot was a "proceeding of the University". The University is a body corporate consisting of the Chancellor, the Pro-Chancellor, the Vice-Chancellor and the Fellows of the Senate. The Vice-Chancellor is an officer of the University appointed by the Chancellor, chapter VIII of the Statutes vests the power to ballot out on the Vice-chancellor as a *persona designata*. By virtue of his office as Vice-Chancellor he is directed to perform an executive act in holding the ballot. I am not prepared to say, as at present advised, that it was a "proceeding" of the University, Even assuming it to be so, I am not prepared to say that¹ it was not in conformity with the Act or the Statutes, as neither the Act nor the Statutes lay down how he is to perform the act. The power to annul is no doubt lodged in the Chancellor but there is no authority for the view that the University can not annul its own proceeding. The further argument by learned counsel for the petitioner that the Chancellor had no power to condone the act of the Vice-Chancellor does not, therefore, arise.

65. The petitioner prayed for the issue of an order in the nature of a writ of *quo warranto* calling upon opposite parties Nos. 1 to 8 "to show by what authority they held the office of the Fellowship of the Utkal University" and by a subsequent affidavit he added another prayer to his original petition praying for "a declaration that the offices of Fellows at present occupied by opposite parties 1 to 8 are vacant". Their election, as such, is not challenged as irregular or as vitiated by any illegality in the conduct of the election. It is admitted in paragraph 6 of the petition that an election was held to fill up the vacancy caused by the balloting out of opposite parties Nos. 10 to 16 and opposite parties 1 to 7 were declared elected : vide Notification No. A. A/C 9157/S. E/51 dated 15th December 1951, app. No. 3A. They were qualified to stand and were duly returned by the concordant choice of a majority of the electors. In point of form there is no reason to deem their elections invalid. It is, however, contended that the balloting held on the 25th July 1951, being *ultra vires*, the elections held to fill up the vacancies caused thereby are also *ultra vires* and that opposite parties Nos. 1 to 7 have no authority to hold office.

Any dispute with regard to the election of any person to be a Fellow of the Senate has to be decided by the Chancellor and that power is vested in him by Section 5 of the Act Chapter XV, law 3 of the Statutes, says that the Chancellor

shall finally decide any dispute with regard to the election of any person to be a Fellow of the Senate. And Law 6 provides that any objection to the conduct of the elections or to the manner of counting votes shall be made in writing and not later than seven days from the date of declaration of the results. Any dispute regarding the election has, therefore, to be referred to the Chancellor and his decision in the matter is final. I am accordingly constrained to hold that in so far as the election of opposite parties 1 to 7 is concerned, the petitioner cannot raise any objection, after the order of the Chancellor dated the 23rd March 1952, dismissing his petition was passed. The point that a larger number of seats were thrown open for election than were warranted by the Act was taken by the petitioner before the Chancellor and the Chancellor's decision that nine vacancies were available for election may or may not be final. It is not the function of this Court to say whether that decision of the Chancellor is correct unless that order is attacked on the ground of vices or bona fides. I would, therefore, refuse to entertain the objection relating to the propriety of the election of opposite parties Nos. 1 to 7.

66. The case for the petitioner, however, is put on a slightly different ground. It is said that if his first contention were to be upheld then the number of seats that had to be balloted out would be six and the number of vacancies to be filled up by election would be eight. As a matter of fact, seven were balloted out and nine vacancies were filled up by election. It is, therefore, urged that the entire process of election is void as more than the number actually enjoined by the Statutes was balloted out. It is, however, unnecessary to discuss what the effect of an antecedent mistake in declaring the number of vacancies to be filled up by election would be on the elections actually held, as I am of opinion that the petitioner's contention on the first point cannot be accepted. It is also unnecessary for me to discuss the various questions of law that were raised as to whether the Court should interfere by way of a writ of (sic) *warranto*, specially after the lapse of such (sic) time. Whether the petitioner is guilty of (sic) or not need not be considered here as the (sic) Chancellor's action, in my opinion, is neither (sic) correct nor *ultra vires*.

67. There is one other point which may be posed of in a few words. The Advocate for the petitioner filed a memo on 25th March 1952, (sic) ing that the two elected Fellows who were returned after the first annual meeting were not put in the ballot box. As this memo was filed during (sic) closing stages of the arguments, the Division Bench refused to admit it in evidence as it might lead to further arguments and possibly (sic) butting evidence on the side of the opposite party. I have taken the view that the first elected Fellow numbering 41 were liable to be balloted out, and not those who were elected after the first annual meeting. It would therefore make no difference to the petitioner's case whether the memo filed by his Advocate on 25th March 1952 is admitted evidence or not. The allegation made in the memo has, in fact, been admitted to be correct (sic) learned counsel appearing for the opposite (sic)

68. I would therefore direct that this petition should be dismissed, but without costs.

The result is that, in accordance with the majority opinion, the petition shall be dismissed without costs.