
(1964) 02 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 373 of 1963

Virendra Kapur

APPELLANT

Vs

University of Jodhpur and Others

RESPONDENT

Date of Decision : 13-02-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 245
General Clauses Act, 1897 — Section 21
Jai Narain Vyas University Jodhpur Act, 1962 — Section 12(5), 39, 39(2)
Jodhpur University (Removal of Difficulties) Order, 1963 — Section 3, 4
Jodhpur University Regulations — Regulation 38

Citation : AIR 1964 Raj 161 : (1964) RLW 328

Hon'ble Judges : P.N. Shinghal, J; I.N. Modi, J; D.M. Bhandari, J

Bench : Full Bench

Advocate : S.N. Prosad, for the Appellant; C.L. Agrawal and G.C. Kasliwal A.G., for the Respondent

Final Decision : Partly Allowed

Judgement

Modi, J.—This is a writ petition under Article 226 of the Constitution which originally came for hearing before a Division Bench and has been referred to this Full Bench as important questions of law, constitutional and otherwise, arise for decision therein.

2. The petitioner is Virendra Kapur, a student of the Bachelor of Engineering course in the Engineering College of the University of Jodhpur. Respondent 1 is the University of Jodhpur, while respondents 2, 3 and 4 are the Chancellor, the Vice-Chancellor and the Dean of the Faculty of Engineering of the Jodhpur University respectively. Respondent 5 is the State of Rajasthan. The petitioner's principal prayer is that the order of the University authorities reverting him to the II year B. E Class be held to be illegal and set aside and a writ of Mandamus or any other suitable writ, order or direction be issued to the respondents to permit him to continue in the Third Year B. E. Class under circumstances presently to be mentioned.

3. The petitioner's case is briefly this. He was admitted to the First Year B. E. Class of the Engineering College at Jodhpur in July, 1961, and was promoted to the Second Year Class in July, 1962. About the same time in 1962, the University of Jodhpur was established under the Jodhpur University Act, 1962 (Act No. 17 of 1962, hereinafter called the Act) and the Engineering College which was initially affiliated to the University of Rajasthan at Jaipur became part and parcel of the Jodhpur University. In April, 1963, the petitioner appeared at the Second Year B. E. Examination and secured over 55 per cent. marks in the aggregate but failed in one of the papers being Mathematics Second. According to the petitioner, the Regulations which were applicable to the Faculty of Technology and Engineering under the University of Rajasthan had been adopted by and for the University of Jodhpur. By Regulation No. 38 of these, Regulations, it was provided that if a candidate secures an aggregate of 55 per cent. marks but fails in one written paper only at an examination except the First Year B. E. Examination, he shall be permitted to keep terms in the next higher class and to appear and pass in the paper in which he has failed along with the next higher examination, and he would be given a pass class after he has passed the examination in which he had failed. As the petitioner fulfilled the conditions of the aforesaid regulation, he was permitted to keep term in the Third Year Engineering Class in 1963. At a supplementary examination held in August, 1963, he happened to fail again in Mathematics II Paper, the very subject in which he had failed earlier with the result that he was asked to revert to the Second Year B. E. Class and join as a regular student therein.

4. This supplementary examination and the consequent action taken against him were taken in pursuance of Ex. 1, a notification dated the 12th June, 1963, issued under the signature of the Special Officer of the University of the Jodhpur, which is the principal bone of contention in this case. We shall have occasion to deal at length with this notification and its true effect hereafter; but suffice it to say for the present that broadly speaking according to this notification in the case of students of I, II, III, or IV B. E. Examinations who had passed in all practicals but had failed in one or more theory papers regardless of their aggregate marks or those who had passed in all theory papers but had failed to secure the minimum pass marks of 45 per cent. in the aggregate, a supplementary examination was to be held in the month of August subject to certain conditions which were set forth in the notification and meanwhile they would be permitted to keep terms in the next higher class and entitled to study in that class and take the examination therefore if they pass in the supplementary examination. But, and that is important to note, it was also directed by this notification that such of the candidates who failed in the supplementary examination or did not appear at it must join as repeaters in the class in which they had failed and should attend all classes as regular students although they were to be exempted from attending the practical classes. It was in pursuance of this notification that the petitioner was asked to join as a repeater in the Second Year B. E. Class.

The grievance of the petitioner is that this order is bad and illegal and that his case cannot be properly and lawfully governed by this notification. It has also been urged in this connection that the new notification which was issued on the 12th June 1963, just one day before his result of the Second Year B. E. Examination was announced and whereat he had failed in one written paper namely Mathematics II and had secured more than 55 per cent. marks in the aggregate was avowedly intended to provide certain additional facilities to students studying for engineering at the University in view of the National Emergency which had overtaken the country on account of the Chinese aggression and could not lawfully be made applicable to him, and that the fact that he had sat at the supplementary examination thereafter and had failed in the same paper (Mathematics II) again did not make any difference to the correct legal position, and, therefore, an appropriate writ, direction or order be issued to the University authorities to permit him to continue in the Third Year B. E. Class.

The petitioner's case further is that he had made a demand of justice on the Chancellor and Vice Chancellor of the University of Jodhpur respondents Nos. 2 and 3 to this petition but without any success. Consequently, he filed this writ application which was later amended, to this Court in the first instance on the 7th October, 1963, wherein the State of Rajasthan, respondent No. 5 was not impleaded as a party. On the 15th October, 1963, an interim order was passed by the Division Bench to the effect that, having regard to all the circumstances of the case, the petitioner be permitted to keep his term for the Third Year B. E. and also allowed to take any mid-term examination which might be held during the pendency of the writ application subject to its final result. The case then came up for hearing before the Division Bench on the 24th October, 1963, when certain doubts arose in the mind of the Court whether the notification which was being assailed was within the competence of the Vice-Chancellor, having regard to the provisions of the Act. Learned counsel for the University conceded that the point was of far-reaching importance and may be fraught with grave consequences and therefore prayed that a short adjournment to study the same and then make his submissions be allowed to him. This was granted.

5. Certain important developments took place at this stage while the writ position was pending in this Court and these must now be referred to. On the 29th of October, 1963, the Governor of Rajasthan issued the Jodhpur University (Amendment) Ordinance, 1963, (Ordinance No. 3 of 1963, hereinafter referred to as the Ordinance) under Article 213 of the Constitution. By this Ordinance, Section 39 of the Act was amended so that it now reads as follows :

"39. Removal of difficulties-

(1) The State Government may for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the University of Rajasthan Act, to the provisions of this Act (in the area and in matters covered by this Act) by order published in the Official Gazette-

(a) direct that this Act, shall during such period as may be specified in the order, take effect subject to such adaptations whether by way of modification, addition or omission as it may deem fit to be necessary or expedient, or

(b) make such other temporary provisions for the purpose of removing any such difficulties as it may deem fit to be necessary or expedient :

Provided that no such order shall be made after two years from the date of the commencement of this Act.

(2) The provisions made by order under Sub-section (1) shall have effect as if enacted in this Act, and any such order may be made so as to be retrospective to any date not earlier than the twelfth day of June, 1962."

6. It may be pointed out before proceeding further that the original period that was prescribed in the proviso to Section 39 was only twelve months from the commencement of the Act which was brought into force on the 12th June, 1962, and which period had already elapsed before the Ordinance came to be enacted and this was by the Ordinance raised to two years with retrospective effect from the commencement of the Act. On the same day, that is, the 29th October, 1963, the State Government issued the Jodhpur University (Removal of Difficulties) Order, 1963 (hereinafter called the Order of 1963). By Sub-section (2) of Section 1 of this Order, it was provided that it shall be deemed to have come into force on the 16th day of July, 1962, and that it shall remain in force for a period of two years. We may point out in passing that in so far as this Order is intended to remain in force for a period of two years from the 16th day of July, 1962, onwards, it obviously travels beyond the due bounds set for it by Section 39 of the Act as amended according to which any such order can remain in force for two years of the commencement of the Act, that is, upto the 12th June, 1964, but no more.

7. Be that as it may, by Section 3 of the Order of 1963, notwithstanding anything contained in the provisions of the Act, the Vice-Chancellor was, while this Order remains in force and until the statutes or Ordinances, as the case may be, are duly made and brought into force, authorised, inter alia, to exercise the powers of the University in certain matters subject to such restrictions as were made therein, with which we are not directly concerned, and to provide for all or any of the matters specified in Section 23 of the Act. Now, Section 23 of the Act enables the University to make Ordinances to provide for certain matters mentioned in the 13 clauses thereof, which are concerned with the admission of students to the University and their enrolment as such; the courses of study to be laid down for all degrees, diplomas and certificates of the University and the qualifications for the same and the conduct of examination etc. Furthermore, by Section 4 of the Order, it was provided that all orders or directions made by the Vice-Chancellor under this Order shall be deemed to have been validly made, and all actions taken in pursuance of such directions or orders shall be deemed to have been lawfully taken, notwithstanding anything inconsistent therewith in the

Statutes and Ordinances finally made under the Act. When this new material was brought to the notice of the Court the petitioner sought for an opportunity to meet it which was granted.

8. The petitioner then filed a reply in which he, among other matters, attacked the validity of Section 39 of the Act and the Ordinance whereupon a notice was ordered to issue to the Advocate General of the State by an order of the Court dated the 4th December, 1903. The learned Advocate General appeared and raised certain preliminary objections as a result of which the Division Bench directed that the petitioner should file an amended writ application to which the State of Rajasthan must be made a party and in which the various reliefs sought by him must be clearly particularised, and further observed that having regard to the serious contentions which were sought to be raised on behalf of the petitioner about the validity of certain provisions of the Act, the Ordinance and the Order of 1963, it was a fit case to be laid before a Full Bench for an authoritative decision. It was in pursuance of these directions that the petitioner filed his amended writ application on the 7th December, 1963, to which the University filed its reply in due course. This is how the case has been placed for decision before the Full Bench.

9. The petitioner's application has been opposed by the State as well as the University of Jodhpur, but the latter alone has filed a detailed reply in writing,

10. The following are the main points of attack which have been raised before us on behalf of the petitioner, and we propose to summarise them under three main heads :

I. (a) Section 39 of the Act is unconstitutional and void inasmuch as it permits unrestricted and unguided delegation of legislative power to the State Government.

(b) The Ordinance amending Section 39 of the Act with retrospective effect is ultra vires of the State Legislature.

(c) Even if the answer to the two above questions be against the petitioner, the Order of 1903 is bad, because (1) it is in excess of: the authority properly confer[^]ble on and permissible to the State Government u/s 39 of the Act, and (2) on account of the vice of excessive delegation in favour of the Vice-chancellor.

II. (a) Section 12 (5) of the Act under which the Vice-Chancellor purported to act in framing the new regulation Ex. 1 does not give him legislative authority to enact the same. This would raise the further question namely if it did not, whether the Vice-Chancellor had authority under any other provisions of the Act to do so.

(b) Assuming that Section 12 (3) does furnish such authority, it is unconstitutional and bad on account of excessive delegation.

(c) The new Regulation Ex. 1 is not validly passed and has, therefore, no lawful

authority because it has been issued by the Special Officer and not by the Vice-Chancellor himself, who alone is authorised under the section to exercise the emergency powers thereunder.

III. The new Regulation Ex. 1 did not repeal its old counter-part and both can stand together and the petitioner's case is properly governable by it and in any event it cannot be given retrospective effect so as to adversely affect the rights of the petitioner who had already taken his Second Year B. E. Examination when the old Regulation was in force.

11. As a result of the contentions raised by the University, two more points would fall to be considered and decided, which are these :

(1) Whether the petitioner's writ petition deserves to be dismissed on the short ground that he had appeared at the Supplementary Examination held in August, 1903, as a result of the notification Ex. 1 and thereby he is estopped from resiling from the consequence of his own conduct, and

(2) Whether it would be at all proper for this Court to interfere with what is after all a matter relating to the internal administration of the University?

12. We shall now deal with these points in the order in which we have set them out above.

Re. I (a) : As to the invalidity of Section 39 of the Act on account of the vice of excessive delegation.

13. We have already set out Section 39 in extenso as amended and need not reproduce it here. It is well established by the decisions of this Court as well as of our Supreme Court that the power of delegation is a constituent element of the legislative power as a whole, and in modern times when the legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by their enactments. It is further well settled that though subsidiary legislative authority may thus be delegated, nay many a time it becomes inevitable to do so in modern legislative mechanism, the legislature cannot delegate its essential legislative function in any ease, and it must lay down the legislative policy and principle and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf. See *In re, Article 143, Constitution of India*, and *Delhi Laws Act (1912) etc.* AIR 1951 S C 332 , *Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others*, and *Mohan Lal v. Mahboob* ILR (1958) Raj 248.

14. Thus in dealing with the challenge to the vires of this section, on the ground of excessive delegation, it is necessary to see whether the impugned delegation involves the delegation of any essential legislative function or power and whether the legislature has not enunciated its policy in principle and given guidance to the delegate or not, for if these requirements are substantially fulfilled in the

present case, the charge of excessive delegation cannot succeed.

15. Now, let us look closely at the several important provisions of the Act. Section 1 deals with its short title and commencement, and Section 2 with definitions of certain expressions used in the Act. Section 3 lays down that the University of Jodhpur shall be a corporate body having perpetual succession and a common seal and shall sue and be sued by the said name. Section 4 sets forth the powers of the University, namely, to provide for instruction in such branches of learning as the University may think fit, to make provision for research and for the advancement and dissemination of knowledge, to hold examinations to grant to and confer degrees and other academic distinctions on, persons who have pursued a course of study in the University or in any college or institution, to institute professorships, readerships, lecturerships and any other teaching posts required by the University and to appoint or recognise persons as professors, readers or lecturers or otherwise as teachers of the University and so on and so forth. Section 7 then lays down that the University shall be open to all persons of either sex and of whatsoever race, creed, caste of class and that no consideration whatsoever shall be paid to such distinctions in respect of any privileges, awards, appointments for promotions made by the University.

Section 9 specifies the various officers of the University, namely, the Chancellor, the Vice-Chancellor, the Registrar and the Deans of the various (Faculties and such other persons in the service of the University as may be declared by the Statutes to be officers of the University. Section 10 then provides that the Governor of Rajasthan shall be the Chancellor and shall be the Ex officio Head of the University, and defines his powers. Section 11 deals with the appointment of the Vice-Chancellor who shall be a whole-time paid servant of the University appointed by the Chancellor upon the recommendation of a selection committee, and Section 12 deals with his powers and authority and lays down that the Vice-Chancellor shall be the principal executive and academic officer of the University. Section 12 prescribes the various authorities of the University, namely, the Senate, the Syndicate, the Academic Council, the Finance Committee, the Faculties, the Committees of Courses and Studies and such other authorities as may be declared by the Statutes to be the authorities of the University. It also lays down, that the first Senate, the first Syndicate and the first Academic Council shall consist of such members as the State Government may, by notification in the Official Gazette, appoint, and their term of office shall be two years with effect from the date of such notification.

Section 15 deals with the powers of the Senate and lays down that it shall be the supreme authority of the University and shall exercise all the powers or the University not otherwise provided for by this Act or the Statutes. Section 16 provides that the Syndicate shall be the executive body of the University, and that its constitution and the terms of office of its members, other than ex-officio members, shall be prescribed by the Statutes. Section 17 lays down the functions of the Academic Council being the chief academic body of the

University, and that it shall, subject to the provisions of the Act, the Statutes and the Ordinances, have the control and general supervision of and be responsible for the maintenance of standards of instruction, education and examination within the University and that it shall have the right to advise the Syndicate on all academic matters.

Section 21 specifies the matters for regulating which statutes would be necessary and Section 22 lays down the machinery for making them. It also makes a provision that the first Statutes shall be made by the State Government and a copy thereof be laid before the House of the State Legislature for a certain period specified in the section being subject to such modifications as it might choose to make. Section 23 to which we have already referred provides for the making of Ordinances and the matters which shall have to be regulated by them, and Section 24 lays down that Ordinances shall be made by the Syndicate but no such Ordinance shall take effect until it has been approved by the Chancellor after considering the views of the Senate. It also contains an important proviso to the effect that no Ordinance concerning admission to the University or its examinations, courses of study, schemes of examination, attendance and appointment of examiners shall be considered unless a draft of such Ordinance has been proposed by the Academic Council. It is further important to note that the Syndicate has not been given the power to amend any draft proposed by the Academic Council but can only reject it or return it to the latter body for reconsideration either in whole or in part together with any amendments which the Syndicate may think fit to propose. Section 25 provides for the making of Regulations. Section 29 then lays down that an annual report of the University shall be prepared under the direction of the Syndicate and shall be submitted to the Senate and the latter may pass a resolution thereon as may be deemed fit.

Then comes Section 39, the validity of which is impugned before us. It invests the State Government with authority to make certain orders or provisions as may be necessary within the limits prescribed therein. These limits are three in number. The first is that the power given to the delegate namely the State Government is for the purpose of removing any difficulties in the working of the University. A particular head of difficulties has been visualised and specified as being in relation to the transition from the provisions of the University of Rajasthan Act to the provisions of this Act. But it is clear from the plain language of the section that the difficulties for which provision may have to be made may arise from other causes in the sense of not being connected with the transitional stage only. The second limitation is that the delegate is authorised to act under this section only for a period of two years from the date of the commencement of this Act. The third is that any such order made by the Government to be valid must be published in the Official Gazette, the obvious object being that such an order should have as wide a publicity as possible.

16. Now, two fundamental things have to be remembered on this aspect of the case. The first is that the Jodhpur University was and is in a state of infancy

having been established as late as the middle of 1902. The second is that the machinery provided in the Act for the making of its Ordinances, is, if we may say so with all respect, cumbersome and long drawn-out one, and that being so, some such provision as Section 39, in our opinion, was almost inevitable in the initial stages of the working of the University if it was at all to function in a proper and orderly manner. In these circumstances, we are unable to agree that the power delegated to the State Government u/s 39 was either excessive or uncanalised having regard to the fact that the legislative policy in the establishment of the Jodhpur University and its working thereof have been clearly laid down in the Act itself, the provisions of which we have analysed above, and further having regard to the limitations subject to which this power was to be exercised by the State Government; and that being so, we hold that Section 39 cannot be struck down on the score of excessive delegation.

As to I (b):

17. The objection is that the Ordinance amending Section 39 of the Act is ultra vires of the State Legislature because the Act has been amended thereby with retrospective effect. That the Ordinance amends Section 39 of the Act with retrospective effect admits of no doubt whatsoever. But that can furnish no legitimate justification to the Courts to strike it down on that ground alone. The simple reason is that it is an indisputable proposition of law that it is open to the Legislature to make laws with retrospective effect if in its wisdom it thinks fit to do so. See *The Iron Sides*, (1862) 31 L J 129 and *Smith v. Callender* 1901 A C 297. There is no force therefore in this objection whatever and we hereby overrule it.

18. The resultant position is that the State Government was and would be perfectly competent to issue a Removal of Difficulties Order within the ambit of Section 39 of the Act so as to be retrospective with effect from the 12th June, 1962, which was the date of the commencement of the Act.

As to I (c) :

19. The ground of attack under this head, put succinctly, is that the Order of 1963 is beyond the ambit of Section 39 of the Act and could not have been issued thereunder. It is necessary in this connection to recollect the background against which this Order came to be issued on the 29th October, 1963. As already stated, the University of Jodhpur was established as a corporate body under the Act which was brought in force from the 12th June 1962. The first Statutes were made by the State Government u/s 22 of the Act on the 30th November, 1962, The Ordinances and Regulations had still to be and have not yet been made, The University had started functioning in July, 1962. A long process was required to be gone through before the Ordinances could be enacted, and yet the functioning of the University could not possibly be held up on that account. Consequently, the State Government acting u/s 39 enacted a Removal of Difficulties Order about July 1962, soon after the University started

functioning in 1962, by which, until the Statutes and the Ordinances were framed, the Vice-Chancellor was invested with the powers to provide for all or any of the matters specified in Section 23 of the Act.

20. It must be pointed out here that it was in pursuance of this Order that in September 1962, the Vice-Chancellor directed the adoption of Regulation, No. 38 and the connected regulations of the University of Rajasthan for the students of the Jodhpur University studying in the Faculty of Engineering and Technology. By an unfortunate albeit regrettable inadvertence, however, the State Government forgot to publish the Order of 1962 in the State Gazette, and this grievous mistake appears to have come to its notice for the first time during the course of the initial arguments in this case before the Division Bench when, be it remembered, the period of twelvemonths from the commencement of the Act for which a Removal of Difficulties Order u/s 39 could be issued had already elapsed. In order to regularise all that had been done or left undone in the way of the lawful working of the University, it, therefore, became necessary, nay inevitable, for the Governor to issue the Ordinance under Article 213 of the Constitution by which Section 39 of the Act was amended so as to be operative for a period of two years from the commencement of the Act, and immediately thereafter on the same day, the Order of 1963, thereunder was enacted and published in the State Gazette. This Order has been made operative from, the 16th July, 1962, and though it has been provided that it shall remain in force for a period of two years, obviously from that date, we should like to point out that u/s 39 it cannot remain in force for more than two years from the time of commencement provided u/s 39 of the Act. In other words, it must come to an end on the 12th June, 1964.

21. The relevant provisions of this Order in so far as they are material for our purpose may now be reproduced below:

Section 3. Temporary powers of Vice-Chancellor.-

Notwithstanding anything contained in Sections 4, 8, 13, 22, 24, 27, 28 and 35 (1) or any other provisions of the Act, the Vice-Chancellor may, by art order in writing while this order is in force and until" the Statutes or Ordinances, as the case may be, are duly made and brought into force,--

(a) exercise the powers of the University-

(i) to institute, subject to the approval of the State Government professorships, readerships, lectureships and other teaching posts required by the University;

(ii) to appoint or recognise persons as professors, readers or lecturers or otherwise as teachers of the University; and

(iii) to appoint officers of the University.

Provided that no person shall be permanently appointed or recognised under parts (ii) and (iii) above until his appointment has been confirmed by the

Syndicate;

Provided further

(iv) to acquire, hold and manage property, movable and immovable including trusts and endowments for the purpose of the University;

(b) Specify the authorities responsible for organising the teaching recognised by the University ;

(c) provide for all or any matters specified in Clauses (c), (g) and (h) of Section 21 and associate with or admit any college or institution within the municipal limits of the city of Jodhpur to the privilege of the University u/s 5;

(d) provide for all or any matters specified in Section 23.

(e)

(f)

Section 4. Validity of Orders made.-

All orders or directions made by the Vice-Chancellor under this Order shall be deemed to have been validly made and all actions taken in pursuance of such directions or orders shall be deemed to have been lawfully taken, notwithstanding anything inconsistent therewith in the Statutes and Ordinances finally made under the Act."

22. The important thing to remember is that this Order was given retrospective effect from the 16th July, 1962. In our opinion, the State Government was competent to do so by virtue of Sub-section (2) of Section 39 as amended.

23. The only further question which arises under these circumstances is whether it can be lawfully premised that this Order over-steps the bounds set for it u/s 39 as amended. Apart from the error as to the precise duration of its effectiveness to which we have already referred, we are unable to hold that it suffers from any such infirmity. Difficulties had already arisen in the working of the University although the first Statutes had been framed by the State. The Statutes only provide for the constitution, powers and duties of the various authorities of the University and certain other matters but they were not concerned with laying down rules for a matter like the one with which we are concerned and which could only be provided by Ordinances provided for u/s 23 of the Act. These Ordinances had not been made and we are informed that they are still in the process of being made. Under these circumstances, ad hoc arrangements were obviously required to be made by the State Government for the removal of difficulties which had arisen and if in resolving these difficulties it thought fit to invest the Vice-Chancellor who is the principal executive and academic officer of the University under the Act with certain powers for a temporary purpose and subject to certain safeguards in so far as they were mentioned therein, we are unable to hold that the order of 1983 is ultra vires and bad because of any of the

alleged grounds, namely, first, that it exceeds the bounds set for it by the Act itself, or, because it gives unrestricted powers to the Vice Chancellor. As we look at the matter, the powers asigned to him particularly in relation to the matters with which we are concerned, are matters not so much of legislative policy as of academic detail for meeting a temporary situation. It may perhaps be permissible to point out that these difficulties would not have arisen if the power of making Ordinances had not been hedged round by a rather over elaborate and complex procedure like the one adopted under the Act. But that is a matter with which we are not primarily concerned. This objection, therefore, also fails.

Re. Objections under head II.

24. At the very outset, we may point out that from the discussion that we have made above, it seems to us to clearly follow that Regulation No. 38 and the connected regulations of the Rajasthan University must be held to have been validly adopted by the Vice-Chancellor on the 3rd September, 1962 in accordance with the powers delegated to him under the Order of 1963 read with Section 39 of the Act as amended by the Ordinance. We may also point out that once it is held that the Ordinance and the Order of 1963 are validly made, the same power taken together with Section 21 of the General Clauses Act would enable him to issue the new regulation contained in Ex. 1. Section 21 of the General Clauses Act, broadly speaking, provides that the power to issue notifications orders, rules or bye-laws includes a power exercisable in the like manner and subject to like conditions to add to, amend, vary or rescind any one of them.

25. In this view of the matter, perhaps it is unnecessary for us to make any definite pronouncement on the true scope and content of Section 12(5) of the Act under which the Vice-Chancellor purported to act while framing the new Regulation Ex. 1. At the same time, as this matter was argued before us at some length, we should like to point out that it seems to us to be a rather doubtful proposition that this section can be properly resorted to for legislative purposes inasmuch as from the setting and the context in which this section finds its place in the Act, it appears to us to provide for the taking of executive or administrative action by the Vice-Chancellor to meet an emergency such as a strike or a riot or similar other unexpected situation which action he is required to report under the next following subsection to the competent authority at the earliest opportunity. This section, therefore, not being designed to enable the Vice-Chancellor to act as a substitute for the various statutory authorities of the University in academic matters, there can be no question of its being unconstitutional on the ground of excessive delegation. But accepting that the Vice-Chancellor could not have acted u/s 12 (5) in making the regulation, the validity of that regulation is not adversely affected if it could be passed under any alternative valid authority, and, on the view we have held above, such authority was and would be available to the Vice-Chancellor in the present case.

26. In the course of the discussion made above, we have assumed that the new

Regulation was made by the Vice-Chancellor. But even this is contested on the ground that it was issued under the signature of the Special Officer of the University only and not by the Vice-Chancellor or with his authority, and therefore, it is submitted that this Regulation should be held to be bad for want of authority on this ground alone. It is correct that the notification in question was issued, under the signature of the Special Officer of the University Shri R. S. Kapoor on the 12th June, 1963, but we have looked into the original record of the University which was placed before us for perusal by its learned counsel and we find that the notification had, as a matter of fact, been approved by the Vice-Chancellor under his order dated the 3rd September, 1962. See Ex. R-3. In these circumstances, we are satisfied that the real authority to make this notification was the Vice-Chancellor and not the Special Officer, and the former, for reasons we have already indicated was competent to issue it.

27. This disposes of all the objections under head 2 (a), (b) and (c) and we see no force in them.

Re : the grounds of attack raised under the Third head.

28. This constitutes the crux of the case and has been made the subject-matter of strenuous arguments at the bar. On the one hand the contention on the side of the petitioner was that the new Regulation did not expressly repeal the old nor did it do so even by necessary implication, that they could both stand together and further that, lawfully construed, the former cannot be allowed to adversely affect the case of the petitioner as he had acquired valuable rights under the old regulation. On the other hand, it was equally strenuously argued on the side of the respondent University that the new notification completely repealed and replaced the old Regulation 38 and the connected ones from the moment of its enactment, that both of them could not stand together and that there were no rights much less vested ones that the petitioner could have acquired in the old regulation, and, therefore, there was no question of his being entitled to the benefit thereof after the new Regulation had been framed.

29. Now, before we address ourselves to a consideration of these rival contentions, we think it proper to reproduce below the two regulations in parallel columns for facility of comparison.

Old Regulation as adopted by the
Vice-Chancellor on 3-9-1962

New Regulation as enacted by the
Vice-Chancellor on 12-6-63.

R. 88. If a candidate fails in one written paper only in an examination, and if he gets an aggregate of 55% he shall be permitted to keep terms in the next higher class. He shall appear and pass in the paper in which he has failed along with the next higher examination.

He shall be given a pass class only after he has passed the examination in which he had failed.

Note : This will not be applicable to the First Year B. E. Examination.

There will be a supplementary Examination in August 1963 for the candidates of I, II, III, IV and Final B. E. Examinations. The following rules have been framed in this connection : -

(i) There shall be a supplementary examination, in the month of August for the candidates of I, II, III or IV B. E. examinations who have passed in all Practicals but have failed in one or more theory papers irrespective of their aggregate marks or who have passed in all theory papers but have not secured the minimum of 45% marks in the aggregate, subject to the following conditions : -

(a) Candidates who do not get the minimum aggregate will have to appear in all the theory papers. Such candidates will have to secure 45% marks in the aggregate taking the marks secured at the practicals and sessionals at the main examination. into consideration besides 35% marks in each paper to pass at the examination.

(b) Candidates who have failed in more than two papers or remained absent shall appear in all papers and secure 45% marks in the aggregate taking the marks secured at the practicals and sessionals. at the main examination into consideration besides 35% marks in each paper to pass at the examination.

(c) Candidates who have failed in not more than two papers or remained absent but also got the minimum of 45% shall have to appear in the supplementary Examination in the one or two papers only in which they have failed or remained absent. Such candidates will be awarded division on the basis of marks secured at the main examination after adding the marks secured at the Supplementary Examination. and subtracting the marks of the subjects concerned obtained at the main examination.

(ii) Candidate under the above category shall be permitted to keep terms in the next higher class from the commencement of the new session. They will continue to study in that class if they pass in the Supplementary Examination.

38A. A candidate failing in one paper in Fourth B. E. and also in one or more papers in Final B. E. shall have to appear again and pass in the Fourth B. E. paper in which he has failed. Further he shall have to pass in the papers in which he has failed in the Final B. E. Examination as per regulations and shall be entitled to the benefit of Regulation 40. His final results will be declared only after he has passed in both the examinations.

See paragraph (v) below.

R. 38B. A candidate who fails in one paper in Fourth B. E. but who passed in the Final B. E. Examination shall have to appear again in the paper in which he has failed. His results will be declared after he has passed the Fourth B. E. Paper. He

need not to appear again in Final B. E. Examination.

See paragraph (v) below.

R. 38C. A candidate who has failed in one paper in Second B. E. or Third B. E. and who has passed the Third B. E. or Fourth B. E. Examination shall have to appear again and pass the Second B. E. or Third B. E. paper in which he has failed before he is declared to have pass the Third B. E. or Fourth B. E. Examination.

(iii) Candidates who fail in the Supplementary Examination or do not appear at it will join as repeaters in the class in which they have failed. They should attend all classes as regular students and they will be exempted from attending the practical classes.

No candidate will thus be allowed to appear as an ex-student.

(iv) If a First B. E. candidate fails again in the next April Examination, he will not be allowed to continue in the course.

R. 38D. A candidate who has failed in one paper in Second B. E. or Third B. E. and who has passed the "Practicals" but has failed in theory Papers in Third B. E. or Fourth B. E. shall have to appear again in Second B. E. or, Third B. E. paper, and his results will be declared only after passing in the Second B. E. or Third B. E. paper and in all the Third B. E. or Fourth B. E. papers. He will be entitled to benefit under Regulation 41.

(v) A candidate who has appeared in one paper of II, III, or IV B. E. Examination along with the examination of the higher class will be eligible to-appear at the Supplementary Examination at both, the examinations if he failed at both or in the examination in which he failed. He will, of course, not be allowed to keep term in the next higher class provided for in rule (ii) above unless he passed in one-subject in which he appeared along with his examination in the higher class.

R. 39. There shall be a September Final B. E. Examination for candidates who tailed at the April B. E. Examination of the same year in theory only. Candidates who fail or are unable to appear at this examination in September may appear in any other subsequent examination.

R. 40. Candidates who have failed in the Final B. E. examination but who have passed in all practi-cals and obtained 55% in the aggregate shall ba exempted from re-examination in the papers in which they have passed and shall be required to pass the examination in the rest of the papers only. They should be declared to have secured a pass class only.

(vi) There shall be a Final Examination in August" for the candidates who fail at the April Final B. E. Examination of the same year in theory only. They shall be exempted from re examination in the papers in which they have passed provided they have obtained 45% marks in the aggregate ; and shall be-required to pass the examination in the rest of the papers only. Candidates who fail or are unable

to appear at this examination in August, may appear in any subsequent examination. Such candidates will be awarded division on the basis of the marks secured at the main examination after adding the marks secured at the supplementary examination and subtracting the marks of the subjects concerned obtained at the main examination.

R. 41. Candidates who have passed in all practicals and who fail in written papers only shall be permitted to appear as private candidates at the next examination without putting in terms at college. Such candidates as appear and pass in all written papers at the next examination will be awarded a class as per Regulation 37. The marks obtained by them in sessionals and practicals in the previous examination will be taken into consideration.

Note: - Regulation 37 lays down the classification of marks for First, Second and the pass classes with reference to a prescribed aggregate at the various examinations for the ordinary degree and the "Honours" courses and stands in tact as it was.

30. Now so far as the introduction of the new Regulation is concerned, it has been admitted by the respondent University itself in its reply that a directive was issued by the Government of India, Ministry of Scientific Research and Cultural Affairs, New Delhi, to the Vice Chancellors of all the Universities, that having regard to the national emergency that has arisen on account of the Chinese attack on the Indian border and the consequent necessity of increasing the output of Engineering graduates throughout the country, they should take such measures in their respective Universities as might be helpful in increasing the output of Engineering graduates and reducing the wastage of human power. As a result of this, the matter was considered by the authorities of the University of Rajasthan at Jaipur and the old Regulation 38 and the connected regulations were amended vide Ex. R 9, which is a letter from the Registrar, University of Rajasthan to the Special Officer, University of Jodhpur. It is further explained that it was on this account that the Vice-Chancellor of the Jodhpur University also thought fit to adopt the new notification Ex. 1, although it is maintained on behalf of the said respondent that the regulations adopted therein have been framed on a somewhat more liberal pattern than those of the Rajasthan University.

31. It is, broadly speaking, undeniable that while the old Regulation gave certain concessions to only those students who failed in one written paper and secured 55% marks in the aggregate, the new notification extended the facility of a supplementary examination to candidates who failed in more than one written paper and also to those who secured 45 per cent marks in the aggregate only or who had even remained absent at the examination. Yet another broad feature of the new regulation is that it permitted the award of a division to the students who pass the supplementary examination while under the old regulations, they could only be given pass class. It is also clear that whereas the old regulation did not allow the concession embodied in Regulation 38 or the allied ones to the First

Year B.E. students, the new regulation extended the facility to him also And to achieve these results, it was thought proper to hold a supplementary examination in August 1963, itself, that is, shortly after the commencement of the new session and meanwhile all such students were to be permitted to keep terms in the next higher class and to stay there in case they should pass in the supplementary examination.

32. All that is perfectly correct in so far as it goes, and if this was all, there would have been no trouble. The question, however, is whether the new regulation does not impose any disadvantages or disabilities also as compared with the old ones, and it is submitted, not without some force, that it does. Thus, for example, under the old regulation a student who had obtained 55% of the aggregate marks and had failed in one written paper only, whether in the Second or in the Third B.E., was required to pass only in the paper in which he had failed along with his next higher examination and to that end permitted to keep terms in the next higher class, and thereafter he was in a position to be declared to have passed both for the next higher class and the class in which he had failed whenever he had passed both the examinations and the candidate who again failed in the written paper only was permitted to appear as a private candidate in that paper at the next examination without putting in term at the College and have the opportunity of so passing it. In other words, he was not liable even if he failed again in the paper in which he had failed to revert to his original class and study as a repeater and pass the examination in all the written papers. On the other hand, the new regulation makes it obligatory for a candidate who fails in the supplementary examination to revert to his old class as a regular student and he is required once again to take his examination in all the theory papers and pass them in the ordinary course. Yet another difference in the effect of the two regulations may be noted, though we are not directly concerned with this in the present case, and that is that if a first year B.E. candidate fails again in the main examination held in the next year after having failed in the Supplementary, he will have to be discharged from the course altogether though under the old regulation he was neither allowed the concession of what may be called a compartmental examination nor of keeping terms in the next higher class. It may also be noted that the facility of appearing as private candidates to those who had passed in all theory papers but had failed in practicals at the next higher examination was available under the old regulation whereas under the new regulation it seems to us that this facility would no longer be open to candidates except in the final B.E. year. Last but not least, we may point out that the new regulation having regard to the amplitude of its ambit not only covered the case of candidates whose cases fall under the first regulation but also covered a much larger number of candidates, that is, candidates who might have failed in more than one written paper irrespective of having secured a minimum number of aggregate marks or who had passed in individual papers but had secured less than 55 per cent. marks of the aggregate who were not entitled to the benefit of the old regulation.

33. Having regard to the analysis of the effect of the two regulations we have made, it seems to us rather difficult to hold that the two of them can satisfactorily operate on an identical field simultaneously without producing an almost irreconcilable conflict.

34. This, however, does not conclude the matter. For, the question still remains and will have to be answered whether the new regulation can be lawfully and reasonably held to be applicable to the case of a student like the one before us who was entitled to the benefit of the old regulation which had been brought into force as early as September 1982 and who had taken the annual examination while that regulation was in force in April 1963 or with the benefit of that regulation in prospect though it is correct that the new regulation had also come to be enacted by the Vice-Chancellor a day before his result was announced on the 13th June, 1963.

35. We have given this matter our most careful and anxious consideration and have, on the whole, felt disposed to come to the conclusion that that should not be so.

36. To dissuade us from coming to this conclusion we may point out at the very outset that it was strongly pressed upon us that the petitioner can have no right at all in a matter like this and that he should be bound by the rules and regulations of the University as may be framed from time to time and as they may be in operation at a given time when the controversy arises. We regret that we have not found it possible for us to accept this submission in the sweeping form in which it has been formulated before us. We shall illustrate what we mean by giving one or two examples.

37. Suppose according to the regulations of the University, a student was required to put in attendance equal to 75% of the lectures delivered in one academic session at the time he took his admission in it. Suppose again that the University some-how thinks it proper to change this percentage a little later before he happens to take his examination and raises it to 80 per cent. The question is, can the University ordain such a thing to his disadvantage? We are clearly of opinion that it cannot. Let us take another example. Suppose, according to the Regulations of the University, a student is required to pass a four year course in order to qualify in a particular course of studies. Suppose again that, while he is so studying at the University, this course is changed from a four year to five year one. Can the University effect such a change so as to affect him to his detriment? We have no hesitation in saying that it cannot. When we confronted learned counsel for the University as to the correct legal position in these instances, the only submission he made was that these were extreme examples. True enough, the examples we have chosen to give are perhaps of an extreme type; but it cannot be gainsaid that it is by such examples alone that we can many a time correctly adjudge the soundness of a certain legal position propounded before the Courts.

38. The correct position, therefore, is that whether we call a right like this a vested right of the student or not in the state of things which existed at the time he took his admission in the University or at any like juncture may be a matter of mere terminology; but the point of substance is that he had joined the University or taken an examination on the faith of a certain state of things and the University as a statutory body was and would be under a duty to act upto that faith, and if it commits a breach of that faith, then the aggrieved party would have a legitimate cause of grievance calling for redress.

39. Our attention was invited in this connection by learned counsel for the petitioner to a bench decision of the Assam High Court in *Himendra Chandra v. Gauhati University*, AIR 1954 Assam 65. The petitioner there was a student of an Agricultural College and appeared in the Bachelor of Science Examination in Agriculture in 1952. The petitioner secured 48 8 percent. marks in the aggregate and more than 30 per cent. marks in each subject. But in one of the papers namely "Genetics etc." in the subject of Agricultural Botany which consisted of two theoretical papers : "plant physiology" and "genetics etc." the petitioner secured only 28 marks out of 100, though counting the marks in both the papers together, he secured more than 30 per cent. marks in the said subject of "Agricultural Botany". The University did not announce him as a successful candidate because he had obtained less than 30 per cent. marks in each of the two papers on "Agriculture Botany". The contention of the petitioner was that, according to the rules and regulations of the University, he should have been declared to have passed the Examination of Bachelor of Science (Agri.) and placed in Class Second. He further contended that the conduct of the respondent University had deprived the petitioner of a valuable right. It was held that according to the rules and regulations of the University, "Agricultural Botany" was one subject and not two, and that as those regulations had not specifically said that a candidate must have secured 30 per cent. marks in each of these papers, it must be taken to have meant that he was required to have obtained 30 per cent. marks in the subject taken as a whole. It was further held that the University must obey the rules and regulations by which it professes to be bound, and, should it act in violation of those rules and thereby adversely affect the rights of others, a writ of Mandamus can be issued against it.

40. We might usefully refer to another case in this connection, namely, *S. K. Ghose v. Vice-Chancellor, Utkal University* A I R 1952 Orissa 1 to which our attention was not invited but which seems to us to have a useful bearing on the point we are discussing. The petitioners in this case were students of the Second Year M. B. B. S. class of a Medical College at Cuttack. They appeared at the first M. B. B. S. examination of the Utkal University in Anatomy and Phy. siology in 1931. The examinations were conducted by a Board of Examiners which submitted the results to the Syndicate in due course. The Syndicate instead of approving and publishing the results, resolved that having considered the information received from the Vice-Chancellor in connection with the examination in Anatomy and having examined certain witnesses in this connection, it was

satisfied that there had been a leakage of questions in Anatomy, and, therefore, the result in that subject be cancelled and another examination be held. The candidates petitioned the Syndicate for a re-consideration of the matter but without success. Thereafter they made an application to the High Court under Article 226 of the Constitution praying for the issue of a writ of Mandamus directing the Syndicate to publish the results of the First M. B. B. S. Examination as reported by the Board of Examiners. This prayer was opposed by the Vice-Chancellor who entered appearance for the Syndicate and it was urged that it had exercised its powers bona fide in conformity with the legal provisions relating to the control of examinations and that consequently the court had no jurisdiction to grant the prayer. One of the points which was strenuously pressed on behalf of the Syndicate was that the petitioners had no specific legal right which could be said to have been infringed by the Syndicate's refusal to publish the results of the examinations and at any rate there was no right which was capable of being enforced in law as the results had not been published and no right as such could be said to, have accrued to the examinees until the results were so published. One of the learned Judges who decided this case disposed of this objection by the following observations which we cannot do better than to reproduce in his own words:--

"To me, there seems to be some misconception behind this argument. It is said that until the results are published upon the approval by the Syndicate the examinees have no right to fellowship or the degree, as the case may be. But the right claimed by the petitioners in this case can be well understood with reference to the duties that the Syndicate have to perform in the circumstances of the instant case. Rights and duties are always co-related. One in whose interest or for whose benefit a public duty is enjoined by law has always the right to enforce the performance of the duty. Right should not be confused with status. Status may be the result of a perfected right ; but the facts that would constitute the status to be declared by the concerned public authority, when performed, create a title to the status. This title, if it is a recognisable one, creates a right, though the same, until recognised, falls short of the status -- Whosoever is interested in having a specific legal duty imposed upon a public functionary by law being performed has a right. An examinee who has achieved success in his examination by fair and lawful means has a right to see that his success matures into the status of a degree-holder or fellowship by the performance of the duty in a judicial manner by the public functionary. In a nut-shell, the position is where the action of a public functionary threatens to violate the plain and imperative duty cast upon them to the substantial prejudice of the rights of the parties, and where all other remedies are utterly inadequate, the speedy and the prompt relief of mandamus is undeniable. In this view of the matter, I have no hesitation in holding that this contention has no force."

We respectfully agree with these observations and hold that the petitioner having had the benefit of the old Regulation 38, which is indeed undeniable, had acquired a valuable right or what we may call a privilege to be governed by the

same, and that right or privilege was certainly not without value and therefore could not be interfered with by a subsequent notification to his disadvantage, which disadvantage certainly consists in his being asked to revert to the Second Year B. E. and take the entire written examination over again which he would not be required to do under the old regulation.

41. It also seems to us that accepting that the old Regulation 38 stands by necessary implication repealed and replaced by the new regulation Ex. 1, the latter should be given a prospective effect only. For, it is a fundamental principle of Indian no less than English law relating to the interpretation of statutes that a statute should have a prospective and not a retrospective effect and that it shall not be construed so as to have a retrospective operation unless its language is such as plainly and necessarily to require such a construction. It has been further laid down that a statute should not be construed so as to have a greater retrospective operation than its language renders necessary. See *Mst. Mohari Vs. Mst. Chukli and Another*,

42. We have closely examined the new regulation enacted by the Vice-Chancellor and are unable to hold from its language that it is expressly or by necessary intendment retrospective in its operation in the sense that it deprives a candidate of the benefit of the old Regulation 38 which he had doubtless acquired, it being already in force in the case of the petitioner when he had taken his annual examination for the Second Year B. E. in April 1963. Besides, a sub-delegate like the Vice-Chancellor was hardly competent in law to give a retrospective operation to any regulation made by him within the scope of his legitimate authority. In our opinion, therefore, the proper way to give effect to both the regulations properly and harmoniously would be to see, first, whether a candidate is entitled to the benefit of old regulation No. 38 and the cognate ones, and, if so, such benefit must be given to him; but where he is not so entitled, then effect should certainly be given to the new regulation. We hold accordingly.

43. Looking at the matter from yet another angle also, we are disposed to think that this should, be the proper view to take. The regulation passed by the Vice Chancellor is in the nature of a bye-law passed by a delegate. Now, it is well settled that a delegated authority in making bye-laws or regulations must fulfil the following conditions :

- (1) That they are made, sanctioned and published in the manner prescribed by the statute which authorises the making of them.
- (2) That they are not repugnant to the general law of the land.
- (3) That they are not repugnant to the statute-under which they are made.
- (4) That they are not uncertain.
- (5) That they are not unreasonable.

We are here concerned with the last requirement set out above. Reference may

be made in this connection to a discussion of these requirements in Craies on Statute Law at pages 324 to 329 (Sixth, Edition.) It clearly appears from the discussion made in the book that the power to quash bye-laws made by memorial bodies or statutory corporations. on any of the grounds mentioned above including that of unreasonableness is well established and has been exercised by the High Courts from ancient times. It must follow, therefore, that if a particular regulation should operate unreasonably on a certain class of persons to whom it need not and should not apply, we would be perfectly justified in law in holding that it shall not so apply.

44. Our conclusion on this "aspect of the case, therefore, is that the petitioner, having regard to the Circumstances which we have discussed at length above, is entitled to be governed by the old Regulation 38 and not the new one and we hold accordingly.

45. The next question is whether the conclusion at which we have arrived above is adversely affected by the two submissions made by the University namely, (1) that the petitioner himself had taken advantage of the supplementary examination held in August, 1963, as a result of the new notification, and, therefore, stands estopped from questioning its applicability to him and (2) whether under no circumstances we would be justified in interfering with a matter which it is said, falls within the internal administration of the University. We shall briefly dispose of both these points now.

46. As for the first question, we are of opinion that once we come to the conclusion that, as a matter of law, the petitioner was entitled or reasonably entitled to be governed by the old regulation and to have the benefit of it, the mere factor that he had taken the supplementary examination as the result of a new regulation cannot be legitimately held to disentitle him to the benefit of the former. The reason is that the principle is much too well established to admit of any doubt or dispute that there cannot be any estoppel against the statute. We are all familiar with disputes relating to the invalidity of elections raised before the High Courts by candidates who have participated in them wherein a breach of any mandatory provision of the law relating to election has been alleged and proved and relief almost always has been granted by this Court and other courts to such candidates in spite of the fact that such candidates have themselves participated in the elections. See *Qurab Ali v. Government of Rajasthan*, ILR (1959) Raj 1084 : (A I R 1960 Raj 152). The nearest case, however, to the one before us in this connection is the one reported as AIR 1954 Gau 65 (*Supra*) to which we have already referred above. In that case, the petitioner after he had been declared unsuccessful at his main examination by the University appeared at a compartmental examination (to which he was declared entitled by the University) in the subject of Agricultural Botany at which he obtained the requisite marks in the subject concerned and therefore was even declared to have passed the said examination. Consequently it was urged that he had been already declared qualified and therefore could not further ask the court for a

Mandamus especially as he had submitted to the procedure adopted by the University. The counter submission of the petitioner was that he was compelled by the force of circumstances to sit at the compartmental examination and had no choice in the matter. In these circumstances, it was held that the fact that the petitioner appeared at the compartmental examination and was declared to have passed it could not deprive him of the rights which had accrued to him by virtue of the marks obtained by him at the original examination in 1952. In the case before us also, we have no manner of hesitation in saying that the petitioner had no real choice left to himself, except to appear at the supplementary examination which had been held in pursuance of the new regulation, inasmuch as the new regulation covered the case of even a candidate who did not appear at the supplementary examination and remained absent thereat and we can well understand his plight in a situation like that. That being so, we are far from convinced that we should deprive the petitioner of the remedy, to which he would be otherwise entitled merely because of the circumstance that he had submitted to the new regulation of the University and had appeared at the supplementary examination.

47. As for the next contention, namely, that we should not interfere with a matter relating to the internal administration of a University, we think that the answer thereto stands partly covered by the foregoing part of our judgment. But our attention has been particularly invited in this connection to two cases (1) a Bench decision of our own Court in Hanwantchand Vs. Principal, Maharaj Kumar College, Jodhpur, and (2) Jaswant Rao Vs. Kashi Nath Rao and Others, decided by the Allahabad High Court.

48. In the first case, Wanshoo C. J. as he then was observed as follows :--

"It is not for us to sit in judgment over the educational policy of the University though we may say that the rule of the University which prohibits persons from appearing privately in the Intermediate examination, except two limited classes, is on the whole a salutary rule."

What was attacked in that case was the instructions of the Rajputana University that persons who had passed their Intermediate examination as private candidates from other Universities or Boards should not be admitted to the degree classes of colleges affiliated to the University of Rajputana except teachers and women candidates. The main ground of attack was that these instructions which were based on a resolution of the Academic Council and the Syndicate of the University of Rajputana were hit by Article 14 of the Constitution. There was a further attack that such a restriction could not be placed under the provisions of the University of Rajputana Act. As for the second ground, the contention does not appear to have been seriously pressed before the learned Judges, and so far as the first ground is concerned, they were of opinion that there was a reasonable basis for the classification made on an intelligible differentia which had a reasonable connection with the objective to be achieved behind the instructions issued by the University. This case is therefore,

entirely distinguishable on facts and can afford no help to the respondents.

49. In the Allahabad case, the plaintiff being a graduate of the Benares Hindu University appeared at the previous LL. B. examination of that University in 1924. His name did not appear in the list of candidates declared successful at the examination for that year. The plaintiff's case was that in accordance with the regulations of the University in force at the time when he sat for the examination, he had in fact passed the examination in the third class and therefore he should have been and be promoted to the final LL. B. class. The plaintiff based his case on the foundation that, according to rules of the University, candidates passing any University examination would be placed in three classes, namely, the first, second and third, and the Syndicate shall from time to time prescribe conditions under which candidates will be placed in each of these classes. By a certain resolution, the Syndicate resolved that in order to pass the examination in question, a candidate must fulfil two conditions, namely, that in each of the papers set for the examination, he was to obtain at least 30 per cent. of the aggregate marks; but over and above this, he must obtain 50 per cent. of the total marks in all the papers added together, and the Syndicate divided the successful candidates into two classes only instead of three. The suit was thrown out on the ground that the plaintiff had no cause of action and therefore he was not entitled to the reliefs of declaration and injunction prayed for by him. With all respect, if we may say so, this conclusion was perfectly sound because the plaintiff had failed to obtain the aggregate of 50 per cent marks although he had obtained 30 per cent. marks in each of the subjects scheduled for the examination. But what learned counsel for the respondent specifically stressed for our consideration is the following extract from the judgment : --

"When a student enters any University as an under graduate, and a fortiori when a graduate of such University presents himself for a course of postgraduate study, he is a member of the "Universitas" or Corporation and as such he is subject to the authority and discipline of those persons who have been duly placed in authority in this corporation. If he considers himself to be oppressed by some misuse of authority on the part of a person, or body of persons, set over him, it is open to him to consider whether he cannot obtain redress from higher authorities within the same corporation. The question whether he has or has not passed a certain examination is one in respect of which by the very act of presenting himself for such examination, he submits himself to the decision of the authorities appointed by the University for the conduct of the same. No Court of law can possibly entertain a claim on his part that he has passed a certain examination when the authorities of the University conducting the examination, and lawfully empowered to adjudicate upon its results, declare him to have failed."

With all respect, we agree with these observations in the context in which they happen to have been made; but if they are intended to lay down an absolute rule of law that a High Court or for that matter any other Court of law is powerless to

compel a corporate body like the University to perform such duties as have been laid on it by its very charter of existence or the Act under which it has been established, and of which duty it has committed a manifest breach, then we cannot help pointing out that such a proposition cannot be accepted as supportable either on principle or authority. We should certainly like to make it clear that Courts of law should not too readily interfere with the internal working of a University which is an autonomous body or to interfere with its decisions in a spirit of light-heartedness and without adequate care and caution. But at the same time, we feel bound to point out that where valuable rights or privileges of the students studying at a University are established to have been seriously and adversely affected for no lawful justification or altogether unreasonably, or where the University may be found to be acting clearly in breach of its own rules and regulations, or in excess of its lawful authority, or contrary to the principles of natural justice or mala fide, and where all efforts on the part of the aggrieved party to obtain redress from the internal authorities of the University prove fruitless, then this Court cannot abdicate its duty of stepping in and calling it to perform its lawful duty under the obligation which has been imposed upon this Court by the very Constitution of the country as enshrined in Article 226 thereof.

As instances of cases where our own Court has interfered with the decisions of a University, we may invite attention to *Sucha Singh v. University of Rajasthan* ILR (1961) Raj 768 and *Banshidhar Vs. University of Rajasthan* and Another, Reference might also be made in this connection to cases of other High Courts in India namely, to *Dipa Pal Vs. University of Calcutta*, and in the matter of *G. A. Natesan* ILR 40 Mad 125 : AIR 1918 Mad 763. We need hardly multiply authorities and would like to sum up by saying that while interference with the decisions of an autonomous body like a University should be made sparingly and with due caution no absolute rule can be laid down in this regard and each case will have to be decided on its own facts and circumstances; but when a case for interference is clearly made out as in the present case where valuable rights of a student are adversely affected without lawful reason and there is a plain miscarriage of justice and there is no other adequate means of redress available, there would be sound justification for the Court to interfere to safeguard the just rights of the party aggrieved, and as we look at the matter, with all respect, we would be failing in discharging a duty which has been laid upon us by the very Constitution of our country if we declined to set things right even in cases of this type merely on the consideration that our doing so is likely to interfere with its domestic policy or internal affairs. The result is that there is no force in both these objections and we hereby reject them.

50. The net result of our findings for the reasons stated above, is that this writ application is partly allowed and the order of reversion of the petitioner to the II Year B. E. Class is set aside, and the respondent University and such of the respondents as may be concerned in the matter are hereby directed to permit the petitioner to continue his term in the Third B. E. Class and to deal with him in accordance with the old Regulation 38 and the connected regulations. Having

regard to all the circumstances however, we leave the parties to bear their own costs in this Court.

Bhandari, J.

51. I am in agreement with my learned brother Modi J. on all the points except that I am not prepared to hold that the notification (Ex. 1) repealed by implication the old Regulation 38, In my opinion both of them can stand together. There is no express repeal by the notification (Ex. 1) of the old Regulation 38. I admit that there is some apparent conflict between Clause 3 (i) of the Notification (Ex. 1) and Regulation 38.

52. The cardinal principle of interpretation is that a Court of law should struggle against repugnancy, and in doing so, it may treat one provision as a qualification on the other provision or even go to the extent of holding that some words are implied in one place or the other. Reference in this connection may be made to AIR 1950 81 (Privy Council)

53. Clause 3 of the Notification (Ex. 1) runs as follows .

"(iii) Candidates who fail in the Supplementary Examination or do not appear at it will join as repeaters in the class in which they have failed. They should attend all classes as regular students and they will be exempted from attending the practical classes. No candidate will thus be allowed to appear as an ex-student."

This paragraph may be read subject to the old Regulation 38 which is not expressly repealed, or we may treat Clause 3 as if the words "subject to Regulation 38" were there at the beginning of this clause. As pointed out by their Lordships of the Privy Council in the aforesaid case, the omission to make a cross reference as may be required to reconcile two textual inconsistent provisions is a common defect of draftsmanship. In this case, we are dealing with a notification issued by a University and if it is lacking in precise draftsmanship, there is no surprise. The spirit of notification (Ex. 1) was to grant certain further facilities to the failed students and not to take away any facility enjoyed by them under the old Regulation 38. I agree with my learned brother Modi J. that if it was intended to take away such facilities, the new notification was unreasonable, and why should we hold that while issuing the notification (Ex. 1), the Vice Chancellor had taken up an unreasonable attitude. It will be better to construe the Notification (Ex. I) liberally and the spirit in which it was intended to be issued. In the ultimate analysis, my learned brother has also come to the same conclusion but by a different process of reasoning.

54. I entirely agree with the order passed by him in this case.

Shinghal, J.

55. I agree with the judgment proposed to be delivered by my learned brother Modi J. and have nothing to add.