IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(PUBLIC INTEREST LITIGATION)

APPELLATE SIDE

RESERVED ON: 20.06.2023
DELIVERED ON:28.06.2023

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE AJAY KUMAR GUPTA

WPA (P)/272/2023

DR SANAT KUMAR GHOSH

VERSUS

THE CHANCELLOR, UNIVERSITY OF KALYANI AND OTHERS

Appearance:-
Mr. Abhratosh Majumder, Ld. Sr. Adv.
Mr. Suman Sengupta, Adv.
Ms. Amrita Panja Moulick, Adv.

.....For the Petitioner.

Mr. Kalyan Kumar Bandopadhyay, Ld. Sr. Adv.
Mr. Arka Kumar Nag, Adv.
Mr. Rahul Kumar Singh, Adv.

.....For the State.

Mr. Surajit Nath Mitra, Adv.
Mr. Soumya Majumder, Adv.
Mr. Amitabrata Roy, Adv.
Mr. Puspal Chakraborty, Adv.
Mr. Arkadipta Sengupta, Adv.
Mr. Pradip Kumar Ghosh, Adv.

....For the Respondent Nos. 2, 5, 11, 16,

19, 25, 29, 32 and 38

Mr. Arunava Banerjee, Adv.
Sk. Qareeb, Adv.
Ms. Ritika Mondal, Adv.
Ms. Parvin Khatun, Adv.

...For the respondent Nos. 3 and 17

Mr. N.C. Bihani, Adv.
Ms. Papiya Banerjee Bihani, Adv.
Mr. Soumyajit Ghosh, Adv.

....For the Respondent Nos. 4 and 18

Mr. Jaydip Kar, Ld. Sr. Adv.
Mr. Pijush Biswas, Adv.
Mr. Debdeep Sinha, Adv.

....For the Respondent Nos. 6 and 33

Dr. Chapales Bandyopadhyay, Adv.
Ms. Anandamayee Dutta, Adv.

....For the Respondent Nos. 7, 10, 21 and 34

Mr. Sarbananda Sanyal, Adv.
Ms. Poulami Chakraborty, Adv.

....For the Respondent Nos. 12 and 26

Mr. Swapan Banerjee, Adv.
Mr. Sougata Mitra, Adv.

....For the Respondent Nos. 13 and 27

Mr. Amitava Chaudhuri, Adv.
Mr. N. Roy, Adv.

....For the Respondent No. 15

Mr. Nilotpal Chatterjee, Adv.
Mr. Sourabh Sengupta, Adv.

....For Calcutta University

Mr. Puspasish Gupta, Adv.
Mr. Abhisek Baran Das, Adv.

...For the Respondent No. 20

Ms. Nandini Mitra, Adv.
Mr. Sakya Maity, Adv.

....For the Respondent Nos. 22 and 35

Dr. Chapales Bandyopadhyay, Adv.
Ms. Gargy Basu, Adv.

....For the Respondent Nos. 24 and 37

Mr. Soumya Majumder

....For the Respondent No. 29

Mr. Kallol Basu, Adv.
Mr. Suman Banerjee, Adv.

....For the Respondent No. 30

Ms. Chama Mookherji, Adv.
Mr. Anujit Mookherjee, Adv.

....For the Respondent No. 36

Mr. Kushal Chatterjee, Adv.
Mr. Debrup Choudhury, Adv.
Ms. Oishik Chatterjee, Adv.

....For the Respondent Nos. 39 and 40

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, CJ.)

1. This writ petition filed as a Public Interest Litigation by a professor who has 41 years of teaching experience, seeks for issuance of a writ of quo-warranto to declare that the Respondent Nos. 28 to 40 do not have a right to hold office of Vice Chancellor and to quash their appointments. The Respondent No. 1 to 13 are the Chancellors in the different Universities in the State of West Bengal who is none other than his Excellency Hon'ble Governor of West Bengal. It is submitted that the various enactments under which the Universities were established provides the methodology by which the Vice Chancellors will be appointed to the University. The petitioner would state that in 2022, the State of West Bengal appointed 24 Vice Chancellors to the 24 Universities. The said appointments as well as the validity of the West Bengal University Laws Amendment (Act), 2012 and the West Bengal Laws Amendment (Act), 2014 were challenged in a Public Interest Litigation in WPA (P) 170 of 2022. The said writ petition was allowed

by judgment dated 14th March, 2023 holding that the Search Committee constituted by the Government of West Bengal did not have any Member nominated by the Chairman of the University Grants Commission (UGC), and that the Search Committees so constituted were in violation of the UGC Regulations of the year 2018. The Division Bench held that the UGC Regulations, 2018 will prevail over the provisions of the concerned State Universities Act relating to appointment of Vice Chancellors and consequently held that the appointments of the 24 Vice Chancellors were unsustainable in law. There were also other directions issued in the said writ petition as to how the Vice Chancellors have to be appointed in terms of the relevant provisions. The said order passed by the Division Bench was challenged before the Hon'ble Supreme Court and the appeal was dismissed. Thereafter the Government of West Bengal made several amendments bringing the State Universities Act in tune with the UGC Regulations, 2018, by passing the West Bengal Universities Laws (Amendment Ordinance), 2013. In the light of the judgment passed by the Division Bench, certain of the Vice Chancellors resigned and in respect of others the term of office came to an end and an order was passed appointing interim Vice Chancellors for a period of 3 months to exercise the powers and perform the duties of the Vice Chancellor as an interim measure and 28 professors were so appointed. The petitioner would state that he has come to know that the Minister-in-charge of the Department of the Higher Education, Government of West Bengal on 18th May, 2023 proposed the name of 27 persons for being appointed as Vice Chancellors for a tenure of 6 months. It is a further case of the petitioner that contrary to the proposal given by the Minister-in-

charge. The Chancellor of the respondent Universities without consultation with the Minister-in-charge had made series of appointments of Vice Chancellors. In this regard, the petitioner has referred to the various enactments under which the respondent Universities were constituted and by way of illustration we refer to the Kalyani University Act, 1981. In the said Act, reference has been made to Section 9 (5) (b) and it is submitted that the said provision expressly provides that when a vacancy occurs in the office of a Vice Chancellor by reason of death, resignation or expiry of the term of his office or otherwise, then pending the appointment of a Vice Chancellor, the Chancellor in consultation with the Minister may appoint any person to exercise the powers and perform the duties of the Vice Chancellor for any period not exceeding 6 months. It is submitted that the appointment made by the Chancellor appointing the private respondent as Vice Chancellors is in contravention of the mandate as contained in Section 9 (5) (b) of the Kalyani University Act, 1981. The petitioner would further state that the Respondent Nos. 32, 34, 35, 39 and 40 do not possess the requisite qualification to be appointed as Vice Chancellors of the Universities to which they have been appointed. Further, it is submitted that the impugned appointments were made by the Chancellor without even considering the names proposed by the Minister-in-charge. The provisions of the West Bengal Universities (Control of Expenditure) Act, 1976 has been referred to State that the Government of West Bengal has the authority to institute an enquiry over the affairs of the University in relation to financial matters and, therefore, the Government has a significant role to play in the management by the Universities and thus, the requirement of consultation

with the Minister-in-charge in the appointment of Vice Chancellors as laid down in all the University Acts provides for active deliberation on the names of the Vice Chancellors to be appointed between Minister-in-charge and the Hon'ble Chancellor. Thus, the petitioner would state that the impugned appointments are arbitrary, it lacks transparency.

2. The learned Senior Advocate appearing for the writ petitioner after reiterating the factual position, referred to the orders of appointments of the private respondents as the Vice Chancellors dated 1st March, 2023 and 31st May, 2023. It is submitted that there is nothing on record to show that there was any consultation with the Minister-in-charge by the Chancellor. Reliance was placed on the decision of the Hon'ble Supreme Court in ***Ram Tawakya Singh Versus State of Bihar*** [1] to explain the meaning of the word "consultation". Reference was also made to several paragraphs of the judgment of the Division Bench in the case of ***Anupam Bera*** in WPA (P) 170 of 2022 dated 14.03.2022, for the proposition as to when and what circumstances a writ of quo-warranto can be issued. It is submitted that in the absence of any consultation with the Minister-in-charge, the appointment of the private respondents as Vice Chancellors is illegal and therefore, a writ of quo-warranto can be issued. Further, to support the argument that the statute must be read to avoid a construction which would make certain provisions or terms meaningless or redundant, reliance was placed on the decision of the Hon'ble Supreme Court in ***State of West Bengal Versus Anindya Sundar Das & Ors.***[2]

[1](2013) 16 SCC 206
[2](2022) SCC Online SC 1382

3. The learned Senior Advocate appearing for the State of West Bengal submitted that when the interim Vice Chancellors were appointed by orders dated 1st March, 2023, there was prior consultation with the Minister-in-charge which is evident from the order itself. In this regard, the learned Senior Advocate has referred to the various orders issued by the Chancellor and by way of illustration referred to the order appointing the interim Vice Chancellor from Kanyashree University, Nadia. The learned Senior Counsel referred to the averments made in the writ petition more particularly Paragraph No. 12 mentioning the names of 27 professors forwarded by the Minister-in-charge to the Hon'ble Chancellor for being appointed as interim Vice Chancellors. However, the same has been totally brushed aside and ignored by the Hon'ble Chancellor which clearly shows that fair procedure was not adopted. Further, by referring to the 2023 Amendment Ordinance, it is submitted that in terms of Section 9(1) the Vice Chancellor of the University shall be a person possessing the highest level of competence, integrity, morals and institutional commitment; he shall be a distinguished academician with a minimum of 10 years' experience as Professor in a University or 10 years' experience in a reputed research and/or academic administrative organization with proof of having demonstrated academic leadership. It is submitted that several candidates who have now been appointed, who are the private respondents, do not fulfill the eligibility criteria in terms of Section 9(1)(a) of the Amendment Ordinance. Further, it is not clear as to what is the source of knowledge of the Hon'ble Chancellor about the competence, integrity, moral and institutional commitment of candidates and a fair and transparent procedure having not been adopted,

the State Government does not approve of the appointments as they are all illegal appointments. The learned Senior Advocate referred to the "First Statues" of Kazi Nazrul University and referred to Statute No. 141 (9) and submitted that the said provision states that subject to the order of the State Government as may be made, an employee shall begin to draw the pay and allowances attached to a post to which he has been appointed with effect from the date he assumes the duties of that post and shall seize to draw the same when he seizes to discharge the duties. Thus, it is submitted that the satisfaction of the Government is necessary and the same cannot be dispensed with. Reference was also made to Section 5 and 6 of the West Bengal Universities (Control of Expenditure) Act, 1976 and it was submitted that the Government has supervisory power. It is submitted that the question of accountability would come into play and the Chancellor is not accountable in the instant case and this is a very important aspect which the Court should consider. Reference was also made to the West Bengal State Universities (Terms and Conditions of Services of Vice Chancellors) Rules, 2019 by referring to Rule 8. It is submitted that the Hon'ble Chancellor has to communicate through the department which has not been done. The mode of consultation by the Hon'ble Chancellor with the State Government has also been mentioned in Rule 9. It is submitted that though the said rule has been challenged, the same has not been set aside and the matter is pending before the Court. Therefore, it is submitted that the orders of appointment of the private respondents as Vice Chancellors by orders dated 31.05.2023 could not have been communicated by the Hon'ble Chancellor to the candidates and it is contrary to the Rules. Reliance was

placed on the decision of the Hon'ble Supreme Court in ***State of Gujarat Versus Hon'ble Mr. Justice R.A. Mehta (Retd.)***[3] to explain the meaning of the term "consultation". For the same proposition, reliance was placed on the decision of the Hon'ble Supreme Court in ***Dr. Jaishri Laxmanrao Patil Versus The Chief Minister and Ors.***[4] Thus, it is submitted that it is not clear as to what is the procedure adopted by the Hon'ble Chancellor, whether all the persons appointed as Vice Chancellors possessed the requisite qualification, whether the Hon'ble Chancellor had sent the names to the Minister-in-charge, was there any sitting/ discussion with the Minister-in-charge, in the absence of any of these, the entire selection stands vitiated as it lacks transparency and it is against the provisions of the various enactments under which the respondent Universities have been constituted.

4. The learned Senior Advocate appearing for the Respondents 6, 33 and 38 submitted that the writ petition is premature. It is further submitted that in paragraph 12 of the writ petition, the petitioner has given the names proposed by the Minister-in-charge and out of the names the Chancellor had accepted the names of the two of the persons and it is not as if the entire list has not been considered. In respect of the 25 other names in the absence of meetings of minds, the Hon'ble Chancellor did not accept the same. Further, the learned Senior Counsel would strenuously beseech the Court to examine the language used in the orders of appointment dated 31st May, 2023 which states that the concerned candidate is "authorised to exercise the powers

[3](2013) 3 SCC 1
[4](2021) 8 SCC 1

and perform the duties of the Vice Chancellor", which is quite distinct from the earlier order dated 1st March, 2023 which appoints the candidates as interim Vice Chancellors for a period of 3 months or till the appointment of regular Vice Chancellor, whichever is earlier. Therefore, it is submitted that the authorisation given is to cover the exigency; it is in the nature of a stopgap arrangement so that the work of the University is not stalled and the order is in public interest. The 37th respondent is a continuing Vice Chancellor and he has also been authorised in the same manner. There are various contingencies which are faced by the Universities such as restructuring of the term of the course, introduction of new courses, statutory compliances and other compliances to the regulatory bodies etc. all cannot take place without the presence of a Vice Chancellor. Therefore, it is submitted that the prayer for issuance of a writ of quo-warranto would not lie against the person who has been authorised to officiate as a Vice Chancellor. In support of his contention, reliance was placed on the decision of the High Court of Kerala in ***The State of Kerala Versus The Chancellor A.P.J. Abdul Kalam Technological University*** [5] dated 16th February, 2023. Further, it is submitted that after the filing of the writ petition on 12.06.2023, the Special Commissioner, Department of Higher Education has passed an order and communicated to the Universities stating that the appointment of Vice Chancellors cannot be accepted as valid appointment and therefore, the State Government does not accord financial sanction with regard to the pay and allowances etc. for the position of Vice Chancellor of the appointed incumbent. Further, they were directed not to draw the pay

[5]WA 1847 of 2022

and allowances etc. applicable to the Vice Chancellor of the State aided University and any non-compliance will be viewed seriously. It is submitted that the Court should clarify these aspects and issue appropriate directions so that the salary of the respondent Vice Chancellors should not be stopped.

5. The learned Counsel appearing for Respondent Nos. 7, 10, 21, 24, 34 and 37 submitted that the writ of quo-warranto is not maintainable. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in ***B. Srinivasa Reddy Versus Karnataka Urban Water Supply & Drainage Board Employees' Assn.***[6] and referred to paragraph 43 of the said judgment to explain under what circumstances a writ of quo-warranto will lie to challenge an appointment of this nature. In this regard, paragraphs 51, 52 and 53 of the judgment were also referred to. It is further submitted that the orders were issued by His Excellency, the Chancellor on 31.05.2023 and till date the State Government has not raised any objection and curiously enough when the writ petition is being moved, the State Government is taking a stand supporting the writ petitioner and attempting to challenge the appointments of the private respondents. Further, it is submitted that the petitioner has prayed for issuance of a writ of quo-warranto as well as a writ of certiorari which cannot go together. Further, the writ petition is devoid of any particulars, all averments are absolutely vague, all the private respondents cannot be clubbed together and there is no documents annexed to the writ petition.

6. The learned Advocate appearing for the Respondents 11, 19 and 32 submitted that the basis of the writ petition itself is that no consultation

[6](2006) 11 SCC 731

had taken place between the Minister-in-charge and the Chancellor of the University. It is submitted that no letter has been sent by the Government to the Chancellor and no complaint/objection has been made by the Government till date and surprisingly the Government is now supporting the writ petition. Further, by referring to Paragraph 22 of the writ petition, it is submitted that the allegations are absolutely vague. Reference was also made to Section 9(1)(a) and Section 9(5)(b) of the Kalyani University Act and submitted that these provisions are not applicable to a person who has been authorised to discharge the functions of a Vice Chancellor. Further, it is submitted that absence of a Vice Chancellor will cause chaotic situation in the University and it will affect the cause of education. With regard to the decision in ***Ram Tawakya Singh*** relied on by the learned Advocate for the petitioner, it is submitted that the said judgment is clearly distinguishable on facts and referred to paragraphs 2, 3 and 11 of the judgment to support such contention.

7. The learned Counsel appearing for the 30th Respondent submitted that the credentials of the persons whose names find place in Paragraph 12 of the writ petition have not been disclosed. The 30th Respondent has been functioning as professor from 1988 and was appointed as an interim Vice Chancellor and had subsequently resigned. Therefore, it is submitted that based on personal perception, the writ petitioner cannot seek for issuance of a writ of quo-warranto, by way of Public Interest Litigation. To support such

contention, reliance was placed on the decision of the Hon'ble Supreme Court in ***State of Uttaranchal Versus Balwant Singh Chaufal*** [7].

8. The Counsel for the 36th Respondent submitted that in Paragraph 12 of the writ petition names have been given by the petitioner and there is no proposal for the Calcutta University. Further, it is submitted that there has been no Pro-Vice Chancellor for the University from November, 2020 onwards and in the absence of any allegation against the 36th Respondent, the writ petition is liable to be dismissed as not maintainable.

9. The learned Advocate appearing for the 39th Respondent would submit that the Pro-Vice Chancellor of the University appointed by the State Government has now been permitted to discharge the duties and functions of the Vice Chancellor and therefore, there is no illegality in the said order.

10. The learned Advocate for the 22nd Respondent referred to the West Bengal Ordinance No. 1 of 2023 and submitted that the name of Moulana Abdul Kalam University is not there in the list covered by the Ordinance. Further, in Paragraph 12 of the writ petition, the name of the Vice Chancellor has not been given. It is submitted on 15.03.2023 the then Vice Chancellor resigned and for nearly 46 days there was no Vice Chancellor until the officiating order was passed on 26.04.2023. Further, in terms of the West Bengal University of Technology Act, read with the Schedule 5(B), there is no Pro-Vice Chancellor for the said University. Further it is submitted that the counselling has to be conducted as the University is a technical University and without the presence of the Vice Chancellor great prejudice would be caused.

[7](2010) 3 SCC 402

11. The learned Advocate for the Respondent Nos. 39 and 40 submitted that there is no challenge to the power of the Chancellor to appoint Vice Chancellors even assuming it is a procedural flaw, it will not vitiate the appointment. In this regard, reference was made to the decision of the Hon'ble Supreme Court in the case of ***Anindya Sundar Das (Supra).*** Further, it is submitted that the petitioner has no locus standi to comment upon the qualification of the Respondent Nos. 39 and 40. It is submitted that consultation is not concurrent and ego should not be put forward.

12. The learned Advocate appearing for the Respondents 4, 18, 27 adopted the submissions of the other learned Advocates.

13. The learned Senior Advocate appearing on behalf of the petitioner by way of reply submitted that in all cases consultation is mandatory. The decision of the Kerala High Court is clearly distinguishable on facts and not applicable to the cases on hand, similarly the decision of the Hon'ble Supreme Court in ***B. Srinivasa Reddy*** is also distinguishable on facts. However, the learned Senior Advocates conceded that it is the Hon'ble Chancellor who has got the power to appoint the Vice Chancellors.

14. We have heard the Mr. Abhratosh Majumder, Learned Senior Advocate assisted by Mr. Suman Sengupta and Ms. Amrita Panja Moulick, learned Advocates for the Petitioner; Mr. Kalyan Kumar Bandopadhyay, Learned Senior Advocate assisted by Mr. Arka Kumar Nag and Mr. Rahul Kumar Singh, learned Advocates for the State; Mr. Surajit Nath Mitra, Mr. Soumya Majumder, Mr. Amitabrata Roy, Mr. Puspal Chakraborty, Mr. Arkadipta Sengupta and Mr. Pradip Kumar Ghosh, learned Advocates for the Respondent Nos. 2, 5, 11, 16, 19, 25, 29, 32 and 38; Mr. Arunava Banerjee,

Sk. Qareeb, Ms. Ritika Mondal and Ms. Parvin Khatun, learned Advocates for the respondent Nos. 3 and 17; Mr. N.C. Bihani, Ms. Papiya Banerjee Bihani and Mr. Soumyajit Ghosh, learned Advocates for the Respondent Nos. 4 and 18; Mr. Jaydip Kar, learned Senior Advocate assisted by Mr. Pijush Biswas and Mr. Debdeep Sinha, learned Advocates for the Respondent Nos. 6 and 33; Dr. Chapales Bandyopadhyay, and Ms. Anandamayee Dutta, learned Advocates for the Respondent Nos. 7, 10, 21 and 34; Mr. Sarbananda Sanyal, and Ms. Poulami Chakraborty, learned Advocates for the Respondent Nos. 12 and 26; Mr. Swapan Banerjee, and Mr. Sougata Mitra, learned Advocates for the Respondent Nos. 13 and 27; Mr. Amitava Chaudhuri, and Mr. N. Roy, learned Advocates for the Respondent No. 15; Mr. Nilotpal Chatterjee, and Mr. Sourabh Sengupta, learned Advocates for Calcutta University; Mr. Puspasish Gupta, and Mr. Abhisek Baran Das, learned Advocates for the Respondent No. 20; Ms. Nandini Mitra, and Mr. Sakya Maity, learned Advocates for the Respondent Nos. 22 and 35; Dr. Chapales Bandyopadhyay, and Ms. Gargy Basu, learned Advocates for the Respondent Nos. 24 and 37; Mr. Soumya Majumder, learned Advocate for the Respondent No. 29; Mr. Kallol Basu, and Mr. Suman Banerjee, learned Advocates for the Respondent No. 30; Ms. Chama Mookherji, and Mr. Anujit Mookherjee, learned Advocates for the Respondent No. 36; Mr. Kushal Chatterjee, Mr. Debrup Choudhury, Ms. Oishik Chatterjee, learned Advocates for the Respondent Nos. 39 and 40.

15. The main plank of challenge in this writ petition praying for issuance of writ of quo-warranto to declare the appointments of the Respondent Nos. 28 to 40 as illegal is on the ground that the Minister-in-charge of the

Department of Higher Education, Government of West Bengal has not been consulted by the Hon'ble Chancellor before such appointments were made. In an earlier public interest litigation filed by the very same petitioner, the challenge was to the validity of the West Bengal University Laws (Amendment) Act, 2012 and West Bengal Laws (Amendment) Act, 2014 and for issuance of a writ of quo-warranto questioning the appointment of the Respondents 5 to 35 therein as Vice Chancellors of different Universities within the State of West Bengal. The Division Bench by judgment dated 14.03.2023 in WPA (P) 170 of 2022 allowed the writ petition holding that the respondent Vice Chancellors therein have been appointed in violation of the provisions of law and a case has been made out for issuance of a writ of quo-warranto. The Division Bench held that the provisions of UGC Regulations, 2018 will prevail over the conflicting provisions of the concerned State Universities Act relating to appointment of Vice Chancellors. The Court further held that the appointment of those respondent Vice Chancellors who were appointed, re-appointed, whose tenure got extended or who were given additional charge by the State Government or who do not possess minimum eligibility condition or appointed without following the due process were held to be unsustainable and without authority of law and therefore, have no right to continue as Vice Chancellor by virtue of such unsustainable order. In the light of the said decision the Excellency of Governor of West Bengal promulgated the West Bengal University Laws (Amendment Ordinance), 2023 amending the act by which the respondent Universities were governed. By way of illustration we have taken up for consideration the Amendment Ordinance, amending the

Sidho Kano Birsha University Act, 2010. Section 9 of the said Act reads as follows:

Section 9,-

(a) for sub-section (1), the following sub-section shall be substituted:-

"(1) (a) The Vice-Chancellor of the University shall be a person possessing the highest level of competence, integrity, morals and institutional commitment. He shall be a distinguished academician with a minimum of ten years' experience as Professor in a University or ten years' experience in a reputed research and/ or academic administrative organisation with proof of having demonstrated academic leadership.

(b) The selection for the post of Vice-Chancellor shall be through proper identification by a panel of three to five names recommended by the Search-cum-Selection Committee constituted by the State Government, through a public notification or nomination or talent search process or combination thereof. While preparing the panel, the Search Committee must give proper weightage to the academic excellence, exposure to the higher education system in the country and abroad and adequate experience in academic and administrative governance, to be given in writing while submitting the panel to the Chancellor.

(c) The Search-cum-Selection Committee shall be constituted in the following manner:-

(i) a nominee of the Chancellor, who shall be the Chairperson of the Committee;

(ii) a nominee of the Chief Minister;

(iii) a nominee of the Chairman, University Grants Commission;

(iv) a nominee of the State Government; and

(v) a nominee of the Chairman, West Bengal State Council of Higher Education:

Provided that all such nominees shall be persons of eminence in the sphere of Higher Education and shall not be connected in any manner with the University concerned or its colleges.

16. In terms of Sub Section (1)(a) of Section 9, the Vice Chancellor of the University shall be a person possessing the highest level of competence, integrity, moral and institutional commitment; he shall be a distinguished academician with a minimum 10 years of experience as a professor in a university or 10 year experience in a reputed Research and/or Academic Administrative Organisation with proof of having demonstrated academic leadership. Clause (b) of Section 9 states that the selection for the post of Vice Chancellor shall be through proper identification by a panel of 3 to 5 names recommended by the Search-cum-Selection Committee constituted by the State Government. The provision further states that while preparing the panel the Search Committee must give proper weightage to the academic excellence, exposure to higher education system in the country etc. Clause (c) of Section 9 speaks about the constitution of the Search-cum-Selection Committee. As could be seen from the above provision, there are totally 5 nominees one being the nominee of the Hon'ble Chancellor, the other being the nominee of the Hon'ble Chief Minister, nominee of the Chairman, UGC, nominee of the State Government and nominee of the Chairman, West Bengal State Council of Higher Education. The said amendment ordinance has been challenged in a public interest litigation and the matter is pending. Admittedly as on date, the Search-cum-Selection Committee has not been constituted for any of the universities.

17. The respondent universities having been created under separate enactments which have spelt out the manner in which the Vice Chancellor should be appointed. By way of illustration, we have taken up the Kalyani

University Act, 1981. Section 9 of the said Act deals with the Vice Chancellor which is as follows:-

> *9. The Vice-Chancellor.-(1) The Vice-Chancellor shall be appointed by the Chancellor on the unanimous recommendation of the Court. If the Court fails to make any such recommendation, the Vice-Chancellor shall be appointed by the Chancellor in consultation with the Minister from a panel of three persons to be elected by the Court in accordance with the system or proportional representation by means of the single transferable vote.*
>
> *(2)(a) The Vice-Chancellor shall hold office for a term of four years or till he attains the age of 65 years, whichever is earlier, and shall be eligible for reappointment for another term of four years or till he attains the age of 65 years, whichever is earlier.*
>
> *(b) The Chancellor may, notwithstanding the expiration of the term of the office of the Vice-Chancellor or his attaining the age of 65 years, allow him to continue in office till a successor assumes office, provided that he shall not continue as such for any period exceeding six months.*
>
> *(3) The Vice-Chancellor shall be a whole-lime officer of the University and shall be paid from the University Fund such salary and allowances as the Chancellor may decide in consultation with the State Government.*
>
> *(4) The Vice-Chancellor may resign his office by writing under his hand addressed to the Chancellor.*
>
> *(5)(a) If the Vice-Chancellor is, by reason of leave, illness or other cause, temporarily unable to exercise the powers and perform the duties of his office, then, during the period of such temporary inability the Chancellor in consultation with the Minister may appoint any person to exercise the powers and perform the duties of the Vice-chancellor.*
>
> *(b) When a vacancy occurs in the office of the Vice-Chancellor by reason of death, resignation or expiry of the term of his office or otherwise, then, pending the appointment of a Vice-*

Chancellor, the Chancellor in consultation with the Minister may appoint any person to exercise the powers and perform the duties or the Vice- Chancellor for any period not exceeding six months.

(6) The vacancy in the office or the Vice-Chancellor occurring by reason of death, resignation or expiry or the term or his office or otherwise shall be filled up by appointment or a Vice-Chancellor in accordance with the provisions of sub-section (1) within a period of six months from the date of occurrence of the vacancy and such period shall be held to include any period for which a Vice-Chancellor is allowed to continue in office under clause (b) of sub-section (2) or a person is appointed to exercise the powers and perform the duties of the Vice-Chancellor under Clause (b) of Sub-section (5).

18. In terms of Sub Section (1) of Section 9, the Vice Chancellor shall be appointed by the Chancellor in the instant case His Excellency, the Governor of the State of West Bengal. Sub Section (5) of Section 9 would be relevant in the instant case. In terms of clause (a) of Sub-Section (5) of Section 9, if the Vice Chancellor is by reason of leave, illness or other cause, temporarily unable to exercise the powers and perform the duties of his office, then, during the period of such temporary inability, the Hon'ble Chancellor in consultation with the Minister-in-charge may appoint any person to exercise the powers and perform the duties of the Vice Chancellor. Clause (b) of Sub Section (5) of Section 9 states that when a vacancy occurs in the office of the Vice Chancellor by reason of death, resignation or expiry the term of his office or otherwise, then, pending appointment of a Vice Chancellor, the Hon'ble Chancellor in consultation with the Minister-in-charge may appoint any person to exercise the powers and perform the duties of the Vice Chancellor for any period not exceeding 6 months. It was submitted by the learned senior counsel for the petitioner that similar

provision finds place in the enactments governing 13 of the respondent universities. Therefore it is a contention that consultation with the Minister-in-charge for appointment of a person to exercise the powers and perform the duties of the Vice Chancellor is sine qua non and the impugned appointments having been made without any such consultation and in utter violation of the statutory mandate a writ of quo-warranto has to be issued.

19. Though the Government of West Bengal had not raised any objection on and after the respondent Vice Chancellors were appointed on 31st May, 2023 surprisingly in this writ petition in which they are impleaded as respondents have out rightly supported the case of the petitioner and the learned senior advocate appearing for the State of West Bengal vehemently contended that all appointments of the respondents are illegal and the State of West Bengal does not accept such appointments. Earlier by orders dated 1st March, 2023 the Hon'ble Chancellor had appointed interim Vice Chancellors. The order states that in exercise of the powers conferred under the specified enactment, the Hon'ble Chancellor in consultation with the Minister-in-charge appoints for a period of 3 months or till the appointment of a regular Vice Chancellor whichever is earlier two exercise the powers and perform the duties of the Vice Chancellor of the concerned University. It is submitted that the words "in consultation with the Minister" is conspicuously missing in the appointment orders of the private respondent dated 31st May, 2023, as it merely states that upon the authority vested in the Chancellor and in due defence to the orders passed by this court and the Hon'ble Supreme Court in related matter the concerned person who is working in a University is authorised to exercise the powers and perform

duties of the Vice Chancellor of that particular University. Therefore, it is submitted that appointments are outrightly illegal.

20. The learned senior advocate appearing for the State of West Bengal submitted that the satisfaction of the State Government is necessary, in this regard referred to the "First Statute" of Kazi Nazrul University. Referring to the other enactments, it was submitted that the supervisory power is with the government, the orders are to be communicated through Government and the Vice Chancellor should be accountable and the procedure adopted by the Hon'ble Chancellor in appointing the respondents as Vice Chancellors is wholly illegal. Further it is reiterated that consultation is mandatory and in the absence of such consultation, the appointment is vitiated. This submission was rebutted and denied by the learned advocates for the respondents, their submissions have been noted by us in the preceding paragraphs.

21. To examine as to whether the orders issued to the private respondents is valid or not, we shall look into the language adopted in the order and by way of illustration, we have taken up the order issued by the Hon'ble Chancellor of the University of Kalyani, West Bengal dated 31st May, 2023 which reads as follows:-

Governor of West Bengal
রাজ্যপাল, পশ্চিমবঙ্গ
&

Chancellor
University of Kalyani, West Bengal

No: *Date: 31 May 2023*

ORDER

Upon the authority vested in the Chancellor by the statute and in deference to the orders issued by the Hon'ble Calcutta High Court (WPA (P) 170/2022 with CAN 1/2022) and the apex court (Civil Appeal No. 6706/202) in the related matters, Prof. Amalendu Bhunia, Department of Commerce. Univerity of Kalyani, is authorized to exercise the powers and perform the duties of the Vice Chancellor for University of Kalyani, West Bengal, under the The Kalyani University Act. 1981, till further orders.

This order will take effect from the date on which the joining report is accepted by the appointing authority.

22. As could be seen from the above order, the decision of the Division Bench of this court has been referred to namely in WPA (P) 170 of 2022 and the decision of the Hon'ble Supreme Court reported in ***2022 SSC Online SC 138***. The order states that the said professor who is working in the Department of Commerce, University of Kalyani is authorised to exercise the powers and perform the duties of the Vice Chancellor of the University of Kalyani till further orders. The question would be as to whether the order is in the nature of an appointment of an interim Vice Chancellor or otherwise. The order appointing the interim Vice Chancellor which was passed earlier specifically uses the word "interim Vice Chancellor" and in those cases the order states that it was issued in consultation with the Minister in accordance with the relevant provision of the statute governing the University. However, the marked distinction in the orders dated 31st May, 2023 issued to the private respondent herein does not used the word "interim Vice Chancellor" rather it authorises the concerned professor to exercise the powers and perform the duties of Vice Chancellor till further

orders. Therefore, the phraseology clearly shows that the order is an interim arrangement, that is, until further orders the concerned professor has been authorised to exercise powers and perform the duties of the Vice Chancellor. The relevant provision of the act namely Section 9(5)(b) of the Kalyani University Act deals with the contingency and vacancy which occurs in the office of the Vice Chancellor on anyone of the contingency mentioned therein and pending appointment of a Vice Chancellor, the Chancellor in consultation with the Minister may appoint "any person to exercise the powers and perform the duties of the Vice Chancellor for any period not exceeding six months. Therefore, the crucial word in Section 9(5)(b) is the word "appoint" which is conspicuously missing and not used in the order dated 31st May, 2023 issued to the private respondent herein. As noted the order merely authorizes, the concerned professor to exercise the powers and perform the duties of the Vice Chancellor. Therefore, it is clear that there is a marked distinction between the word "appoint" and the word "authorise". The person who is authorised to do a particular duty cannot claim that he has been appointed to the post, in other words, the person can and shall perform the duties attached to the post though not appointed to the post, whereas Section 9(5)(b) of the Act deals with appointment of persons as an interim Vice Chancellor thereby for all practical purposes he is a Vice Chancellor and he or she is termed as an Interim Vice Chancellor because such appointment cannot exceed 6 months. One more important fact which we have to take note is that Section 9(5)(b) does not use the expression "interim" whereas in the orders which was issued on 1st March, 2023, the word "interim Vice Chancellor" has been specifically mentioned. Therefore,

we accept the submissions made on behalf of the Hon'ble Chancellor that the Chancellor has exercised his powers by way of an interim arrangement to cover the exigency or in other words it is a stop gap arrangement.

23. Let us visualise the consequences that may flow if a university remains without a Vice Chancellor, in other words the university will remain without its "head". Considering the importance of establishing the university, such institutions cannot be left without a "head" as several duties and responsibilities much of which are onerous are cast upon the "head" of the Institution. Therefore, we find there is no error of law committed by the Hon'ble Chancellor in making an interim arrangement by authorising certain professors of the very same university or for some other universities to exercise the powers and perform the duties of the Vice Chancellor of a particular university till further orders. In such circumstances, a writ of quo-warranto cannot lie as the orders issued in favour of the private respondent are not orders of appointment rather they are orders authorising the concerned person to do certain acts and perform certain duties.

24. The Hon'ble Supreme Court in ***B. Srinivasa Reddy*** while answering the question whether a writ of quo-warranto lies to challenge the appointment made "until further orders" on the ground it is not a regular appointment held that the terms and conditions of appointment made it clear that the appointment is temporary and is until further orders and in such a situation, the High Court erred in law in issuing a writ of quo-warranto, the rights under Article 226 which can be enforced only by an aggrieved person except in the case where the writ is prayed for is Habeas

Corpus. Further it was held that an appointment which is temporary remains temporary and does not become permanent with passage of time. Further it was held that the third party has no local standi to canvas the legality or correctness of the action of selecting a person and in the said case it was held that the High Court could not have gone beyond the limits of quo-warranto so very well delineated by a catena of decision of the Hon'ble Supreme Court and apply the test which could not have been applied even in a certiorari proceedings brought before the court by an aggrieved party who was a candidate for the post.

25. The learned senior advocate for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in ***Ram Tawakya Singh*** for the proposition that consultation is mandatory, it requires the meeting of minds between parties involved in the process of consultation on the material facts and points to evolve the correct or at least satisfactory solution. However when we look into the facts of the said case, as could be seen from the paragraph 2 of the said judgement, it was the case where Chancellor appointed a Vice Chancellor of a particular University and this was challenged by another professor on the ground that the Chancellor has not consulted the State Government as required under the Bihar State University Act, 1976. Admittedly in the instant case, no such appointment as the Vice Chancellor has been done nor the petitioner is the contender to the said post. Therefore, this decision is distinguishable on facts and can have no application to the case on hand.

26. The learned senior advocate appearing for the State of West Bengal had referred to the UGC Regulations dated 18th July, 2018 and relied on

Regulation 7.3 which deals with Vice Chancellor and submitted that in terms of Clause (i) of Regulation 7.3, the qualification required to be possessed by a candidate to be appointed as a Vice Chancellor has been mentioned and it is submitted that it is not clear as to how the Hon'ble Chancellor had any information about anyone of the respondents who were appointed as the Vice Chancellor. We reiterate that the orders which were issued to the private respondent are not orders appointing them as Vice Chancellor or Interim Vice Chancellors but they are only authorised to perform duties of the Vice Chancellor. Therefore, at this juncture, the question of applying the provision UGC Regulation does not arise.

27. The learned senior counsel also referred to the provision of the West Bengal Universities (Control and Expenditure) Act, 1976 and the West Bengal State University Terms and Conditions of Service of Vice Chancellors and the manner and procedure of official communication Rules, 2019. The said enactment or the rules can have no application to the facts of the case onhand and are irrelevant.

28. The learned senior advocate appearing for the 6th, 33rd and 38th had referred to the decision of the High Court of Kerala in the case of ***A.P.J. Abdul Kalam Technological University***. It has been held that writ of quo-warranto cannot be issued for mere procedural lapse or the error but can be issued only when the usurper is found to have no of right to remain in public office. In this regard, the court had referred to the decision of the Hon'ble Supreme Court in ***B.R Kapur Versus State of Tamil Nadu and***

Another [8]**.** In the said decision, it has also been held that the Chancellor holding an office of high integrity, there is always a presumption that any act done by such office is done bona fide.

29. The learned senior advocate appearing for the petitioner sought to distinguish the decision by referring to Section 13(7) of APJ Abdul Kalam Technology University Act and submitted that the statutory provision is different. Though there may be a slight difference in the language between the statute and the statutes governing responding universities, the ratio which can be culled out from the decision is that a writ of quo-warranto cannot be issued for mere procedural lapse as quo-warranto is related to the public interest and it is only when such an appointment is adverse to the larger public interest that the court needs to issue quo-warranto.

30. The writ petitioner has miserably failed to point out as to what is the public interest which has been affected and curiously enough the State of West Bengal which did not raise any objection to the orders passed by the Hon'ble Chancellor has now toed the line of the writ petitioner and outrightly supporting the case of the writ petitioner and virtually stepped into the shoes of the writ petitioner. Therefore, are well justified in forming an opinion that the writ petitioner has been used as a tool with a view to indirectly challenge the orders issued by the Hon'ble Chancellor. However, we do not wish to go deep into this matter and we leave it as such as we are satisfied that there is no illegality in the orders issued by the Chancellor in favour of the private respondent herein and a writ of quo-warranto would not lie. Having held so, it would be well open to us to dismiss the writ

[8] (2001) 7 SCC 231

petition however since elaborate arguments were made by the learned counsel for the petitioner and more particularly the learned senior counsel appearing for the State of West Bengal with regard to the consultation process and the orders issued in favour of the respondents are illegal because the Minister-in-charge has not been consulted, we examine this aspect.

31. In paragraph 12 of the writ petition, the petitioner states that he has come to learn that the Minister in-charge of the Department of Higher Education, Government of West Bengal on or about 18th May, 2023 proposed that as an interim measure the tenure of 27 Vice Chancellors should be extended for a period of 6 months. In pages 22 to 24, the names of the 27 professors have been enumerated. The writ petitioner has not disclosed as to how he came to know about the said information and the source of information has not been disclosed. The petitioner in paragraph 13 would state that he recently learnt that contrary to the proposals of the Minister in-charge of the Department of Higher Education, Government of West Bengal, a series of appointments have been made by the Hon'ble Chancellor in several universities without any consultation with the Minister in-charge and in contravention to the relevant provision of the University Act. Even in this paragraph the writ petitioner does not disclose as to how he recently learnt that the Hon'ble Chancellor has acted contrary to the proposal of the Minister in-charge. Once again, the source of such information has not been disclosed. In such circumstances, it can be safely concluded that the averments are absolutely vague. Nevertheless, the factual position being that the Minister in-charge forwarded 27 names. Out of the 27 names two names

have been accepted by the Hon'ble Chancellor and they have now been authorised to perform the duties of the Vice Chancellor of their respective universities. In such circumstances, can it be said that the Chancellor acted unilaterally without taking note of the views of the Minister in-charge.

32. The Hon'ble Supreme Court in ***Ram Singh*** held that the consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points two evolve a correct or at least satisfactory solution. It was further held that consultation may be between an informed person and expert or between two experts and in either case the final decision is with the consultor, but he will not be generally ignoring the advice of the consultee except for good reasons. It is equally well settled that consultation does not mean concurrence, that apart, the final decision is always with the consultor.

33. ***In Union of India Versus. V. Sriharan,*** [9] in para 32 the Hon'ble Supreme Court referred to paragraph 30 of the *First Judges' case* viz. *S.P. Gupta* v. *Union of India* [1981 Supp SCC 87] wherein it was held:

> *"30. … But, while giving the fullest meaning and effect to 'consultation', it must be borne in mind that it is only consultation which is provided by way of fetter upon the power of appointment vested in the Central Government and consultation cannot be equated with concurrence. We agree with what Krishna Iyer, J. said in Union of India v. Sankalchand Himatlal Sheth (1977) 4 SCC 193 that 'consultation is different from consentaneity'."*

34. ***In State of J&K Versus A.R. Zakki,*** [10] in paragraph 17 it was held**:**

> ***"****While construing the expression "consultation" this Court has laid down that though consultation does not mean*

[9] (2014) 11 SCC 1
[10] 1992 Supp (1) SCC 548

> *"concurrence", it postulates an effective consultation which involves exchange of mutual viewpoints of each other and examination of the relative merits of the other point of view. Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. [Chandramouleshwar Prasad v. Patna High Court (1969) 3 SCC 56 and M.M. Gupta v. State of J & K (1982) 3 SCC 412] [This was held in the context of Article 233 of the Constitution of India which requires that appointments of persons to be, and the posting and promotion of, District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State]*

35. ***In L&T McNeil Ltd. Versus Govt. of T.N.*** [11] it was held:-

> ***"****Consultation does not mean concurrence and the views of the State Board (Contract Labour) are ascertained for the purpose of assisting the Government in reaching its conclusion on the matter one way or the other".*

36. ***In Gambhirdan K. Gadhvi Versus State of Gujarat*** [12] in paragraph 54.2 it was held:-

> ***"****Regulation 7.3.0 deals with the post of Vice-Chancellor which reads as under:*
>
> > *The powers of proper maintenance of discipline and a healthy environment for both teachers and students in the university is vested with the Vice-Chancellor along with all the other powers vested in him/her by various Statutes, Ordinances or Regulations."*

37. The writ petitioner does not dispute the fact that the Hon'ble Chancellor is the appointing authority who has powers to appoint the Vice Chancellor. There is no challenge to the power of the Hon'ble Chancellor in this regard nor can there be any challenge to such a power as it has been

[11] (2001) 3 SCC 170
[12] (2022) 5 SCC 179

clearly laid down in the relevant enactments. Therefore, when the final decision is with the consultor, the manner, method and mode of consultation has to be left with the consultor and the consultee cannot dictate terms to the consultor that the consultation has to be in a particular mode or methodology. As mentioned, consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points to evolve a correct or at least satisfactory solution. Therefore, for a consultor and a consultee to hold consultation, there should be exchange of views. If one of the parties is rigid the question of commencing a dialogue or consultation does not arise as one of the parties has already made up its mind. Therefore, when the consultee takes a definite stand and communicates the same to the consultor, all that the consultor can do is to take the said opinion as the final opinion of the consultee and then proceed to take a final decision in the matter. This is precisely what has happened in the case on hand.

38. The Minister in-charge states that 27 persons have to be appointed as Interim Vice Chancellors of the respondent universities, has not given a panel of names to the Hon'ble Chancellor so as to initiate a dialogue or in other words to commence the consultation process and the consultee namely the Minister in-charge has taken a final decision in so far as he is concerned and has forwarded 27 names. The Government of West Bengal does not state that the panel of 27 names was a tentative panel nor they have addressed the Hon'ble Chancellor that they are willing to discuss the names, and matters to enable the Hon'ble Chancellor to arrive at an informed decision in accordance with the procedure laid down under the

relevant Act read with the UGC guidelines. Therefore, when the Minister-in-charge takes such a rigid view, the question of the consultor namely the Hon'ble Chancellor inviting the Minister in-charge for a dialogue or consultation is a fait-accompli and a wasted effort as no results will emanate thereby. That apart, we find from the 27 names, the Chancellor has selected two names and those professors have been now authorised to exercise the powers of the Vice Chancellor of the respective universities. This decision/action of the Hon'ble Chancellor pre-supposes a consultation. In other words, Minister-in-charge has already conveyed his view which according to him was final as only 27 names were furnished along with the names of the universities to which they have to be appointed as Interim Vice Chancellor. This pool of names was considered by the Chancellor and a decision has been taken by the Hon'ble Chancellor to authorise two out of those 27 to perform the duties of the Vice Chancellors of two Universities and in respect of others the Hon'ble Chancellor has taken a decision which as an appointing authority is entitled to deal with the matter. Therefore, even on this count the petitioner has to necessarily fail.

39. During the course of argument, the learned senior advocate appearing for the sixth respondent/Chancellor placed before this court a letter written by the Special Commissioner, Department of Higher Education dated 12th June, 2023to the Registrar, Kalyani University. The letter reads as follows:-

Government of West Bengal

Department of Higher Education

University Branch

Bikash Bhavan, Salt Lake, Kolkata - 700091

No. 546-Edn(U)-HED-23011/1612/2023-ILC SEC-Dept. of HE *Date:12.06.2023*

From: Special Commissioner to the Government of West Bengal

To: Registrar,

Kalyani University

Sir/Madam,

It has come to the knowledge of the Department that Professor Amalendu Bhunia. Department of Commerce, Kalyani University has been appointed as Vice Chancellor in terms of an order no. Nil dated 31.05.2023 issued by the Hon'ble Chancellor of the Kalyani University. We would like to inform you that as per the legal views obtained, such temporary appointment has been made by the Hon'ble Chancellor without consultation with the Hon'ble Minister-in-Charge of the Higher Education Department which is required to be done in terms of section 9(5)(b) of the Kalyani University Act, 1981, as amended from time to time. In view of same, the competent authority in the Higher Education Department has decided that the said appointment is contrary to the statutory provisions of the Constituting Act of the Kalyani University and not valid in the eye of law. Besides, under Rule 8(5) of the West Bengal State Universities (Terms and Conditions of Service of the Vice-Chancellor & the Manner and Procedure of Official Communication) Rules 2019, any communication proposed to be made by the Hon'ble Chancellor to any State-aided University, shall be routed through the Higher Education Department. Hon'ble Chancellor has not made the communication regarding the appointment of Vice-Chancellor through the Higher Education Department and hence the same is not legally tenable, as per the legal views.

I am accordingly directed to inform you that the appointment of Vice-Chancellor cannot be accepted as valid appointment and therefore the State Government in the Higher Education Department does not accord financial sanction with regard to the pay &allowances etc. for the position of Vice-Chancellor of the appointed incumbent I am further directed to communicate you not to draw the pay & allowances etc. applicable to the Vice-Chancellor of the State aided University. Any non-compliance will be viewed seriously.

Yours faithfully

Special Commissioner

No.546/1(2)-Edn(U)-HED-23011/1612/2023-ILCSEC-Dept. of HE

Date:12.06.2023

Copy forwarded for information to:

1. Private Secretary to the Hon'ble Minister-in-Charge, Department of Higher Education

2. Sr. Personal Secretary to the Principal Secretary, Department of Higher Education.

Special Commissioner

40. The Special Commissioner informs the Registrar of the university that legal view has been obtained and the appointment by the Hon'ble Chancellor is contrary to the statutory provision, apart from other procedural issues and ultimately stating that the appointments are not legally tenable. It is not clear as to whether the Special Commissioner, Government of West Bengal, Department of Higher Education has jurisdiction to issue such a communication to the Registrar, Kalyani University. The Special Commissioner is not empowered to nullify an order passed by the Hon'ble Chancellor and the order 12th June, 2023 passed by the Special Commissioner is a clear inroad and interference with the exercise of the powers of the Hon'ble Chancellor which needs to be deprecated. Not stopping with that the Special Commissioner states that the State Government in the Higher Education Department does not accord financial sanction with regard to the pay and allowance etc. for the position of the Vice Chancellor of the appointed incumbent. The letter further states not to draw the pay and allowance etc. applicable to the Vice Chancellor of the state aided university and there is also a mild threat stating that any non-compliance will be viewed seriously. In our view, this direction also is

absolutely without jurisdiction. It is not for the Special Commissioner to state that the appointment of Vice Chancellor cannot be accepted as valid appointment. Unfortunately, the Special Commissioner has not appreciated the tone, tenor and purpose for which the order dated 31st March, 2023 were issued in favour of the private respondents authorising them to exercise the powers and perform the duties of the Vice Chancellor of the respective universities. Therefore, the proceedings of the Special Commissioner dated 12th June, 2023 is wholly devoid of jurisdiction and cannot be enforced.

41. The learned advocate appearing for the 22nd respondent has produced a copy of a letter sent by the Registrar of Maulana Abdul Kalam Azad, University of Technology, West Bengal dated 13th June, 2023 addressed to the Special Commissioner, Government of West Bengal, Department of Higher Education clearly stating that the professor has discharged the responsibility of the office of the Vice Chancellor in terms of the order passed by the Hon'ble Chancellor and since he is carrying out the duties of the office of the Vice Chancellor he will not accept the pay and allowance of the position of the Vice Chancellor and drawing only the pay which he is entitled in the position as professor which post he has been holding prior to his discharging the functions and duties of the Vice Chancellor. Further the Special Commissioner has been informed that university authority is of clear understanding that the letter of the Hon'ble Chancellor only gives the right to the incumbent to perform the duties of the office of the Vice Chancellor and therefore is not an appointment of the Vice Chancellor of the university.

42. In our considered view, the State University has rightly understood the scope of the order issued by the Hon'ble Chancellor and rightly said the professor of the University of Technology has not accepted the pay and allowances of the position of the Vice Chancellor. The court is at a loss to understand as to why the Special Commissioner has lost sight of this interpretation which has been rightly made by the University of Technology as communicated by the Registrar. Thus, by holding that the communication of the Special Commissioner dated 12th June, 2023 and a similar communication to the other universities are without jurisdiction, we hold that the incumbent professors who have been authorised to perform the duties of the Vice Chancellor of the respondent universities shall be entitled to draw the pay and allowances as applicable to the post held by them prior to issuance of the orders but would be entitled to draw the allowance, if any, applicable to the Vice Chancellor authorised to perform as a Vice Chancellor of the respective universities.

43. In the result, the writ petition fails and it is dismissed with the above clarification/directions. No costs.

(T.S. SIVAGNANAM, CJ.)

I Agree.

(AJAY KUMAR GUPTA, J.)

(P.A- PRAMITA/SACHIN)