

CMJ Foundation and Others
v.
State of Meghalaya and Others

(Civil Appeal No. 9694 of 2024)

13 February 2025

[Pamidighantam Sri Narasimha and Sandeep Mehta,* JJ.]

Issue for Consideration

Whether the appointment of the Chancellor of the CMJ University was made with due adherence to the procedure, as mandated by law; whether the dissolution order dated 31st March, 2014 was passed with due adherence to the procedure provided under Section 48 of the CMJ University Act, 2009 and in compliance of the directions issued by this Court vide order dated 13th September, 2013 in SLP(C) No. 19617 of 2013 titled as “*CMJ Foundation & Ors. v. State of Meghalaya and Ors.*”; whether the Division Bench of the High Court of Meghalaya was justified in remanding the matter to the learned Single Judge for reconsideration on merit, while allowing the Writ Appeal No. 14 of 2017.

Headnotes[†]

Chandra Mohan Jha University Act, 2009 – s.14(1) – Non-compliance with – Appointment of the Chancellor of the CMJ University, if was non-est and void ab initio:

Held: Yes – Under s.14(1), the Sponsor must appoint a person suitable to be appointed as the Chancellor of the University, however, such appointment is ‘subject to the approval’ of the Visitor – Thus, the appointment of the Chancellor, made by the University, shall require mandatory approval by the Visitor failing which, such appointment would be *non est* in the eyes of law – The phrase ‘subject to’ means ‘conditional upon’ in law – Therefore, the appointment of Chancellor was conditional upon the approval of the Visitor – The Visitor is not merely a titular head and the appointment of any person as Chancellor by the Sponsor would attain validity only upon the approval of the Visitor – However, in the present case, the Visitor’s approval was never granted for the appointment of the Chancellor of the University – Thus, the procedure prescribed u/s.14(1) for the appointment of the

^{*} Author

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Chancellor was not duly followed by the CMJ University – Division Bench of the High Court rightly declared the appointment of the Chancellor of the CMJ University as invalid and *non-est* in the eyes of law – To this extent, the impugned judgment does not suffer from any infirmity. [Paras 36, 39, 44, 46]

Chandra Mohan Jha University Act, 2009 – s.48(2) – State Government dissolved the CMJ University vide order dated 31.03.2014 – Aforesaid dissolution order, if was passed adhering to the procedure provided u/s.48 and in compliance of the directions issued by this Court vide order dated 13.09.2013 in SLP(C) No.19617 of 2013 wherein it took cognizance of the recommendations issued by the Visitor indicating the irregularities committed by the CMJ University and directed the State Government to take appropriate action and pass a speaking order u/s.48, after giving due notice and opportunity of hearing to the appellants:

Held: Yes – On facts, proper opportunity to show cause and take necessary measures for rectification was extended to the appellants against the proposed action of dissolution – State Government examined the replies to the show cause notices and passed the well-reasoned order dated 31.03.2014, by taking recourse to the powers conferred by s.48(2), dissolving the CMJ University with immediate effect on the grounds that the appellants neither satisfactorily explained the allegations set out in the show cause notices, nor could they provide adequate justification for the evident anomalies and irregularities – Also, the reminder letter dated 03.06.2013 issued by the State Government was in compliance with s.48(2) – Decision of the State Government dated 31.03.2014 dissolving the CMJ University, affirmed – Educational Institution – Dissolution. [Paras 55, 56, 58, 59]

Practice and Procedure – Remand of the matter, when not proper – Whether the Division Bench of the High Court was justified in remanding the matter to the Single Judge for reconsideration on merit, while allowing the Writ Appeal:

Held: By way of the impugned judgment, the Division Bench had quashed and set aside the judgment dated 16.07.2015 passed by the Single Judge and upheld the procedure followed by the State Government in ordering the dissolution of the University u/s.48 – Division Bench was fully justified in quashing and setting aside the

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order dated 16.07.2015 passed by the Single Judge which had set aside the dissolution order dated 31.03.2014 and the show cause notices issued to the University by the State Government – However, it remanded the matter to the Single Judge for taking appropriate decision regarding the validity of order dissolving the University on merit, observing that the Single Judge only examined the dissolution order on procedural framework and did not enter into the merits of the said decision – The remand to the Single Judge was entirely unjustified and unwarranted as the controversy in the present case was exhaustively examined and conclusively determined on merits by the Division Bench, leaving no substantive questions or unresolved issues for re-determination on merits by the Single Judge – Thus, once the Division Bench had approved the procedure adopted by the State, in passing the dissolution order, the exercise of remand was an empty formality – Order of remand legally flawed and untenable – Wednesbury Principle. [Paras 60-65]

Interpretation of Statutes – Chandra Mohan Jha University Act, 2009 – Absence of a deeming provision creating a legal fiction – Legal fiction can only be created by a statute and not by judicial interpretation – Plea of the appellants that repeated requests were made to the Visitor of the CMJ University seeking approval for the appointment of the Chancellor and a letter was also sent stating that if the Visitor did not provide approval within the specified date, it would be deemed as approval – However, there was no response – Thus, the appellants acting in a bona fide manner assumed that such inaction/omission on part of the Visitor amounted to a ‘deemed approval’ for the appointment of the Chancellor:

Held: Such contention is misplaced and unsubstantiated by law – There is no deeming provision in the Act creating such legal fiction as was assumed by the appellants – In the absence of any statutory flavour, a provision cannot be interpreted to create a legal fiction – Creating a fiction through judicial interpretation will amount to legislation, which is exclusively the domain of legislature. [Paras 42, 43]

Case Law Cited

V. Balasubramaniam & Others v. Tamilnadu Housing Board & Others
[1988] 1 SCR 228 : (1987) 4 SCC 738; *Trilochan Mishra etc. v.*

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State of Orissa & Ors., AIR 1971 SC 733; *Union of India & Ors. v. M/s Bhimsen Walaiti Ram* [1970] 2 SCR 594 : AIR 1971 SC 2295; *State of Orissa & Ors. v. Harinarayan Jaiswal & Ors.* [1972] 3 SCR 784 : AIR 1972 SC 1816; *State of U.P. & Ors. v. Vijay Bahadur Singh & Ors.*, AIR 1982 SC 1234; *Laxmikant & Ors. v. Satyawar & Ors.* [1996] 3 SCR 532 : AIR 1996 SC 2052; *K.R.C.S. Balakrishna Chetty & Sons & Co. v. State of Madras* [1961] 2 SCR 736 : 1960 SCC OnLine SC 179; *Vijay S. Sathaye v. Indian Airlines Ltd.* [2013] 10 SCR 73 : (2013) 10 SCC 253; *Sant Lal Gupta & Ors. v. Modern Cooperative Group Housing Society Ltd. and Ors.* [2010] 13 SCR 621 : 2010 SCC OnLine SC 1169; *Union of India v. G. Ganayutham* [1997] Supp. 3 SCR 549 : 1997 SCC OnLine SC 135; *Gohil Vishvaraj Hanubhai and Ors. v. State of Gujarat and Ors.* [2017] 3 SCR 401 : (2017) 13 SCC 621; *Nadekerappa since Deceased by LRs. and Ors. v. Pillamma since Deceased by LRs. and Ors.* [2022] 14 SCR 1046 : 2022 SCC OnLine SC 387 – relied on.

U.P. Avas Evam Vikas Parishad & Anr. v. Friends Coop. Housing Society Ltd. & Anr. [1995] 3 SCR 729 : (1995) Supp. 3 SCC 456; *High Court of Judicature for Rajasthan v. P.P. Singh & Anr.* [2003] 1 SCR 593 : (2003) 4 SCC 239; *Ashok Kumar Das & Ors. v. University of Burdwan & Ors.* [2010] 3 SCR 429 : (2010) 3 SCC 616; *Chet Ram Vashist v. MCD and Another* [1981] 1 SCR 1073 : (1980) 4 SCC 647; *CMJ Foundation & Ors. v. State of Meghalaya and Ors.*, Order dated 13.09.2013 of Supreme Court in SLP(C) No. 19617 of 2013 – referred to.

List of Acts

Chandra Mohan Jha University Act, 2009; University Grants Act, 1956; Meghalaya Private Universities (Regulation of Establishment and Maintenance of Standards) Act, 2012.

List of Keywords

Sections 14 (1), 48 of the Chandra Mohan Jha University Act, 2009; Chandra Mohan Jha Foundation; Chandra Mohan Jha University; CMJ University; Chancellor of the University; Appointment of Chancellor; Due adherence to the procedure; Visitor; Ex-Officio; Governor ex-officio Visitor; Visitor's approval; Mandatory approval; Sponsor; 'subject to'; Subject to the Approval; 'Conditional upon'; Deeming provision; Deemed Approval; Legal fiction; Dissolution; Dissolution Order; Irregularities; Anomalies; Deficiencies; Management

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of the CMJ University; Reconsideration on merit; Remand Order; *Non Est*; *Void ab initio*; Wednesbury Principles; Compliance; Directions; Adjudication on Merits.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9694 of 2024
From the Judgment and Order dated 06.05.2021 of the High Court of Meghalaya at Shillong in WA No. 14 of 2017

Appearances for Parties

Advs. for the Appellants:
Anupam Lal Das, Suryanarayana Singh, Sr. Advs., Philemon Nongbri, Ahanthem Henry, A. Rohen Singh, Ms. Anne Mathew, Ms. Pragati Neekhra, Aditya Bhanu Neekhra, Atul Dong, Aniket Patel.

Advs. for the Respondents:
Anupam Lal Das, Sr. Adv., Philemon Nongbri, Ahanthem Henry, A. Rohen Singh, Ms. Anne Mathew, Ms. Pragati Neekhra, Dr. Vinod Kumar Tewari.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

For the convenience of exposition, this judgment is divided into the following parts: -

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* Ed. Note: Pagination as per the original Judgment.

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1. Application for impleadment is allowed.
2. These appeals are filed challenging the judgment and order dated 6th May, 2021 passed by the Division Bench of the High Court of Meghalaya at Shillong¹ in Writ Appeal No. 14 of 2017, whereby the judgment and order dated 16th July, 2015 passed by the learned Single Judge of the High Court in Writ Petition(C) No. 177 of 2014 was quashed and set aside and the matter was remanded to the learned Single Judge to take appropriate decision regarding the validity of the order, dissolving the Chander Mohan Jha University,² on merit preferably within a period of six months.
3. *Vide* judgment and order dated 16th July, 2015, the learned Single Judge of the High Court quashed and set aside the order dated 31st

1 Hereinafter, being referred to as ‘High Court’.

2 Hereinafter, being referred to as the ‘CMJ University’.

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March, 2014, passed by the Government of Meghalaya³ dissolving the University and also quashed the show cause notices dated 12th November, 2013 and 24th January, 2014, issued to the University by the State Government.

4. This case has a chequered history. To properly appreciate the controversy involved in this case, it would be essential to set out the detailed facts, giving rise to these appeals.

A. FACTUAL MATRIX

5. A trust namely Chandra Mohan Jha Foundation⁴ was registered at Shillong, Meghalaya in the year 2004. The Meghalaya Legislative Assembly enacted the Chandra Mohan Jha University Act, 2009⁵ on 20th July, 2009 to establish and incorporate the CMJ University in the State with an emphasis on providing high-quality and industry-relevant education in various subjects.⁶
6. The Board of Trustees of the CMJ Foundation appointed Shri Chander Mohan Jha as the Chancellor of the CMJ University on 29th July, 2009, in terms of Section 14(1) of the Act.⁷ Thereafter, on 3rd August, 2009, the appellants sent a letter to the Commissioner and Secretary, Education Department, Government of Meghalaya, seeking approval of the Visitor for the appointment of Chancellor. It is pertinent to note that as per Section 13(1) of the Act, the Governor of Meghalaya was holding the *ex-officio* position of Visitor of the CMJ University.⁸
7. A reminder was sent to the Visitor *vide* letter dated 17th November, 2009 and a second reminder dated 09th December, 2009 was sent to the Officer on Special Duty, Education Department, Government of Meghalaya, seeking approval of the appointment of the Chancellor.

3 Hereinafter, being referred to as 'State Government'.

4 Hereinafter, being referred to as 'CMJ Foundation'.

5 The Chandra Mohan Jha University Act, 2009 (Act No. 4 of 2009). For short 'the Act'.

6 The subjects *inter alia* include, Physical Sciences, Life Sciences, Technology, Medical Science and Paramedical, Management, Finance & Accounting, Commerce, Humanities, Language & Communication, Applied and Performing Arts, Education, Law, Social Sciences and related areas and to provide matters connected therewith or incidental thereto.

7 **S. 14: The Chancellor: (1)** The Sponsor shall appoint a person suitable to be appointed as the Chancellor of the University subject to the approval of the Visitor.

8 The 'Governor of Meghalaya', hereinafter referred to as 'Visitor.'

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8. Since approval for the appointment of the Chancellor was not forthcoming despite several reminders, a letter dated 1st April, 2010 was sent by the appellants to the State Government asserting that “In case the approval is not granted by the Visitor by 25th April, 2010, it would be deemed that the approval of Chancellor has been granted by the Visitor”. However, no response was received to the letter dated 1st April, 2010 from the Visitor, either approving or refusing the appointment of Chancellor.
9. Notwithstanding all this, the State Government accorded sanction for the establishment of the CMJ University in accordance with the guidelines issued by the University Grants Commission⁹ *vide* notification dated 17th June, 2010. The UGC *vide* its letter dated 25th November, 2010, intimated that the CMJ University had been established by an Act of the State Legislature as a ‘State Private University’ and was empowered to award degrees under Section 22 of the University Grants Act, 1956¹⁰ through its main campus, after approval is accorded by Statutory Bodies and Councils, if so required.
10. The Visitor sent letters dated 4th April, 2013 and 11th April, 2013, to the appellants, seeking some information and highlighting that the appointment of the Chancellor of the CMJ University was irregular since the same was never approved by the Visitor. In response thereto, the appellants submitted their reply, providing the requested information to the Visitor *vide* letters dated 9th April, 2013 and 29th April, 2013.
11. On perusal of the records/information submitted by the appellants, the Visitor noticed certain serious anomalies and non-conformity with the State Act, Regulations and Rules. Upon noticing these anomalies, the Visitor through the Principal Secretary issued a letter dated 30th April, 2013 under Section 13(3)(b)¹¹ of the Act and issued the following directions to the CMJ University: -

9 Hereinafter, being referred to as “UGC”.

10 For short, ‘UGC Act’.

11 **13. The Visitor: (3)**

(a)

b) On the basis of the information received by the Visitor, if he is satisfied that any order, proceeding or decision taken by any authority of the University is not in conformity with the Act, Regulations or Rules, he may issue such directions as he may deem fit in the interest of the University which will be binding to all concerned.

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“1. The CMJ University shall recall/withdraw all the degrees awarded so far and publish this fact in national and local newspapers at their own cost.

2. The CMJ Foundation shall submit a fresh proposal for the appointment of the Chancellor along with the correct Biodata of the candidate recommended and supporting documents.

3. The CMJ University shall frame rules and procedures for admission into the M. Phil and Ph. D degree programmes, allocation of supervisors, course work, evaluation, assessment and other related matters. in accordance with the UGC (Minimum Standards and Procedure for Awards of M.Phil/Ph. D degree) Regulation, 2009.

4. No fresh admission of students shall be undertaken by the CMJ University till compliance of the above instructions and till the appointment of the Chancellor in accordance with Section 14(1) of the CMJ University Act 2009. ”

12. The CMJ University was mandated to comply with the aforesaid directions and submit a compliance report to the Visitor by 21st May, 2013. Being aggrieved by the letter dated 30th April, 2013, the appellants filed Writ Petition(C) No. 106 of 2013 before the learned Single Judge of the High Court.

13. Learned Single Judge disposed of the Writ Petition(C) No. 106 of 2013 *vide* order dated 16th May, 2013, holding the letter dated 30th April, 2013 to be legally sound and directing that until the controversy is resolved, new students shall not be granted admission in the CMJ University. The learned Single Judge observed that in admitting students for the year commencing from 2010-2011 and onwards, the CMJ University had acted on its own volition without getting approval for the appointment of the ‘Chancellor’. The relevant observations from the order dated 16th May, 2013 are reproduced hereinbelow: -

“Section 14(1) of the CMJ University Act, 2009 makes it obligatory on the part of the University to appoint Chancellor subject to approval of the Visitor for a period of five years, which may be extended with prior approval of the Visitor. The Chancellor will be the head of the University. By the letter dated 01.04.2010 under Annexure

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9, issued by the Secretary, CMJ Foundation addressed to the Under Secretary to the Govt. of Meghalaya, Education Department, Shillong seeking for approval of the appointment of the Chancellor which may be communicated to them on or before 25th February, 2010 otherwise it may be assumed that the governor has accorded his approval for functioning of the University and also the appointment of the first Chancellor of the university. **The provisions of the CMJ University Act, 2009, does not support the contention of the learned counsel for the petitioner that there would be a “deemed approval” for appointment of the Chancellor if the Governor fails to communicate before 25th February 2010. The said provision also does not support such action of the University in complying (sic) with the principle “deemed approval” for the functioning of the University and also the appointment of the first Chancellor of the CMJ University. The correspondence would go to show that there is no approval accorded for the appointment of the Chancellor by the authority concerned. Moreover, there are no materials placed before this Court by the petitioner according to the approval of the appointment of the “Chancellor” by the “Governor” under the Statute. In absence of which, it may be assumed that there was no approval of the appointment of the “Chancellor” by the “Governor”.**

(emphasis supplied)

14. Aggrieved by the order dated 16th May, 2013 passed by the learned Single Judge, the appellants preferred a Writ Appeal (SH) No. 16 of 2013 before the Division Bench, which was dismissed *vide* order dated 31st May, 2013, while making pertinent observations reproduced below: -

“7. On plain perusal of Section 13(2) of the CMJ Act of 2009, It is clear that the Governor of Meghalaya (Visitor) shall have the power to call any paper or information relating to the affairs of the University and also on the basis of information received by the Visitor, he may issue such directions as he may deem fit in the interest of the

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University which will be binding to all concerned. Therefore, **it is very clear that the Visitor of the CMJ University (Governor of Meghalaya) can call informations from the University and after receiving the information, he can issue directions as he may deem fit.**

8. Section 14(1) of the CMJ Act of 2009, clearly provided that the sponsor shall appoint a person suitable to be appointed as the Chancellor of the University subject to the approval of the Visitor, It is the submission of the learned counsel for the appellants/writ petitioners that prior approval of the Visitor is not required for appointing the appellant/writ petitioner No. 3 as the Chancellor of the CMJ University. However, **it is also clear under Section 14(1) of the CMJ Act of 2009 that the approval of the Visitor will be required for the appointment of Chancellor.**

9. In the present case, it is an admitted fact that as of today, there is no approval of the Visitor to the appointment of appellant/writ petitioner No. 3 as Chancellor of CMJ University. As stated above it is the case of the appellants/writ petitioners in the writ petition that as there was a considerable delay on the part of the Visitor in conveying the approval of the appointment of appellant/writ petitioners No. 3 as Chancellor of CMJ University, there should be a deemed approval for considering the submission of Mr. Amit Kumar Learned counsel appearing for the appellants/writ petitioners, We have given our anxious considerable to the provisions of CMJ Act of 2009, **however, we find that there is no provision under which if there is a considerable delay in conveying the approval of the Visitor to the appointment of Chancellor by the Visitor, there should be a deemed approval.**”

(emphasis supplied)

15. In the meantime, on 3rd June, 2013, the State Government issued a letter to the appellants, seeking compliance with the directions issued by the Visitor *vide* letter dated 30th April, 2013, by 10th June, 2013.

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16. The appellants assailed the order dismissing the writ appeal by filing a Special Leave Petition¹² before this Court. During the pendency of the said special leave petition, the Visitor (Governor of Meghalaya) issued comprehensive recommendations to the State Government *vide* letter dated 12th June, 2013, to consider dissolution of the CMJ University on the grounds of mismanagement, maladministration, indiscipline and failure in enforcement of the objectives of the University, apart from criminal liability. The Visitor indicated in the aforesaid letter that the CMJ University had committed the following irregularities of grave nature: -

“(i) The University functioned from 17/10/2010 with the self-appointed Chancellor without the approval of the Visitor in terms of Section 14 (1) of the CMJ University Act, 2009 on the presumption of “deemed approval” of the Visitor. This is not legally valid, and the position has been affirmed by the order dated 16th May, 2013 of the Hon’ble High Court of Meghalaya which has further been upheld by the Division Bench of the Hon’ble High Court of Meghalaya in their order dated 31st May, 2013.

(ii) It awarded B. Ed degree through Distance Mode without the requisite approval of the regulatory bodies and without affiliation. The B. Ed degrees awarded by the CMJ University were held to be invalid in the eye of Law by the order dated 24th May, 2013 of the Hon’ble High Court of Gauhati.

(iii) The Shillong Engineering and Management College was de-affiliated by NEHU from academic session 2011-2012. This College, which was in existence prior to the sanction for establishment of the CMJ University, cannot be affiliated with the CMJ University. While the fate of the students of this College was already uncertain in view of the said de-affiliation, the College continued to make admissions by misleading the students that the degrees will be issued by the CMJ University.

(iv) The University had reported that during 2012-2013 it had awarded PhD degrees to 434 students and enrolled another

12 SLP (C) No. 19617 of 2013.

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490 students. These figures, though extraordinarily high, do not reflect the correct position. Information is available with us that another 29 students have also received PhD degrees from the University and more information is coming on a daily basis. So it is obvious that the actual number of award of and enrolment for, PhD and other programs will be much higher than was reported. The University awarded PhD even in subjects like the, Bodo and Punjabi languages where the guides/faculty are not easily available. These constitute gross abuse of the university's power and violation of the UGC (Minimum Standards and Procedure for Awards of M. Phil/ Ph. D Degree) Regulation, 2009.

(v) The University furnished a list of 10 faculty members with PhD which is inaccurate. One of the faculty members is only a research scholar at NEHU. The list includes the Vice-Chancellor, Registrar and other functionaries of the University as faculty which is quite misleading. In fact, the University does not have adequate teachers to introduce courses which it had been doing.

(vi) The University is running several off-campus centres outside Meghalaya which is not permissible under the UGC (Establishment of and Maintenance of Standards of Private University) Regulations, 2003 and the decision of the Hon'ble Supreme Court (2005) in the case of Prof. Yashpal & Anr. Versus State of Chhattisgarh & Ors.

(vii) It is offering a distance education programme outside the boundaries of Meghalaya and outside India. These actions are in gross violation of UGC Regulations and guidelines.

(viii) Total students enrolled by CMJ University as per information submitted by the University in 2010-11:176, 2011-12:469, 2012-13: 2734. All these admissions are illegal as all its actions are ab initio(sic) void in absence of a legally appointed Chancellor.

(ix) The University has violated Section 45(3) and Section 46(4) of the CMJ University Act, 2009 by not submitting the Annual Report and the Annual Accounts/Balance Sheet and the Audit Report to Visitor.

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(x) Even after the initiation of actions by the Visitor the University continued to mislead the students and the public by press statements. It issued a newspaper advertisement in the Shillong Times on 22nd April, 2013 claiming it has not yet awarded any PhD degree to any of the students enrolled from the State of Assam which is false. Again, it issued advertisements in newspapers on 2nd May and 16th May, 2013 in matters of holding Convocation and Award of PhD Degree knowing full well that there can be no Convocation without the legally appointed Chancellor and that the admissions of the courses and award of the degrees were illegal.

(xi) The University has violated Section 41(1) of the CMJ University Act relating to establishment of Endowment Fund and indulged in cheating by withdrawing the deposit of Rs.210 lakhs within days of making the deposit.

(xii) The University repeatedly acted in contravention of Section 52 of the CMJ University Act 2009 in respect of maintenance. of standards and other related matters applicable to private universities.”

17. This Court took cognizance of these comprehensive recommendations issued by the Visitor and disposed of the Special Leave Petition¹³ *vide* order dated 13th September, 2013, thereby, directing the State Government to take appropriate action and pass a speaking order under Section 48 of the Act, after giving due notice and opportunity of hearing to the appellants, within a period of three months from the date of the order.
18. In compliance with the order dated 13th September, 2013 passed by this Court, the State Government issued a show cause notice dated 12th November, 2013 and another supplementary show cause notice dated 24th January, 2014 to the appellants, who submitted their detailed replies to the aforesaid show cause notices on 25th November, 2013 and 4th February, 2014 respectively.
19. The State Government found the replies submitted by the appellants to be untenable with the conclusion that the allegations levelled in

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the show cause notices were not satisfactorily explained by the appellants and that there existed insurmountable evidence as to mismanagement, maladministration, indiscipline, fraudulent intent and failure in the accomplishment of the objectives of the University which was too overwhelming. Consequently, by exercising powers under Section 48(2) of the Act, the State Government issued an order on 31st March 2014, dissolving the CMJ University with immediate effect.

20. Being aggrieved with the dissolution of the CMJ University, the appellants herein filed a Writ Petition(C) No. 177 of 2014 before the High Court, which was allowed by the learned Single Judge *vide* order dated 16th July, 2015, and the order of dissolution dated 31st March, 2014 along with the show cause notices dated 12th November, 2013 and 24th January, 2014 were quashed and set aside. The learned Single Judge observed that the State failed to comply with the fundamental procedural requirements as provided under Section 48 of the Act, i.e., the principles of natural justice and the obligation of the administrative authorities to act fairly.
21. The learned Single Judge, further, directed the State Government to take steps strictly compliant with the provisions of the CMJ University Act, 2009, the Meghalaya Private Universities (Regulation of Establishment and Maintenance of Standards) Act, 2012, principles of natural justice and the obligation of the administrative authorities to act fairly in the interest of justice in compliance of the judgment and order dated 13th September, 2013, *vide* which this Court directed the State authorities to pass a speaking order under Section 48 of the Act.
22. Aggrieved, the State Government filed intra-court Writ Appeal No. 14 of 2017 before the Division Bench of the High Court assailing the order dated 16th July, 2015. The Division Bench *vide* an interim order dated 12th June, 2017, stayed the operation of the order dated 16th July, 2015 passed by the Single Bench and directed that the admission and award of degrees by the CMJ University shall remain subject to the final judgment to be passed in appeal.
23. Being aggrieved of this interim order dated 12th June, 2017, the CMJ University approached this Court by filing Special Leave Petition,¹⁴

14 SLP (C) No. 21890 of 2017.

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wherein this Court *vide* order dated 4th September, 2017 granted interim stay on the effect and operation of the interim order passed by the Division Bench of the High Court. This Court *vide* another order dated 13th August, 2018 passed in the aforesaid special leave petition, extended the stay, and the writ appeal pending before the High Court of Meghalaya was transferred to the Gauhati High Court with the consent of both the parties for the reason that Meghalaya High Court had only two Judges at that time, one of whom had recused from hearing the case.

24. Pursuant to this Court's order dated 13th August, 2018, the Writ Appeal No. 14 of 2017 (in the High Court of Meghalaya) was renumbered as Writ Appeal No. 266 of 2018 (in the High Court of Gauhati) and was taken up for consideration by the Division Bench of the Gauhati High Court, which disposed of the same *vide* order dated 5th November, 2019, quashing the order dated 16th July, 2015 passed in Writ Petition(C) No. 177 of 2014 on the ground that the learned Single Judge of the High Court of Meghalaya had not recorded the contentions of the appellants herein. The Division Bench of the Gauhati High Court remanded the matter to the learned Single Judge of the High Court of Meghalaya for fresh adjudication on merits, observing that the interim order passed by this Court would continue.
25. Aggrieved by the remand order, the appellants filed Civil Appeal No. 3310 of 2020¹⁵ before this Court. This Court *vide* order dated 28th September, 2020, allowed the appeal and set aside the remand order, while transferring the writ appeal from the Division Bench of the Gauhati High Court back to the Division Bench of the High Court of Meghalaya for fresh consideration and disposal on merits.
26. Writ Appeal No. 14 of 2017 was allowed by the Division Bench of the High Court of Meghalaya *vide* judgment and order dated 6th May, 2021 and the matter was remanded back to the learned Single Judge to take appropriate decision regarding the validity of the order dissolving the CMJ University on merits preferably within a period of six months. The said judgment dated 6th May, 2021 is assailed in the present appeal i.e., Civil Appeal No. 9694 of 2024, filed by the appellants.

15 Arising out of SLP(C) No. 10941 of 2020.

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27. Subsequently, the State Government also filed an appeal i.e., Civil Appeal No. 9695 of 2024, challenging the Division Bench judgment dated 6th May, 2021, only to the limited extent of the matter being remanded to the learned Single Judge for fresh adjudication.
28. *Vide* order dated 1st June, 2021, this Court directed the parties to maintain *status quo*, as it existed on that date. Leave was granted on 20th August, 2024.

B. SUBMISSIONS ON BEHALF OF THE APPELLANTS

29. Learned senior counsel appearing on behalf of the appellants advanced the following pertinent submissions for assailing the impugned order: -
- (a) That the University came into existence pursuant to the enactment of the CMJ University Act, 2009 by the Meghalaya Legislative Assembly, with an emphasis on providing high-quality and industry-relevant education in various fields. A huge amount of money has been invested in creating infrastructure spanning more than 1.5 lakh square feet built-up area, state-of-the-art laboratory, a library and modern classrooms at the main campus of the University for imparting quality education to the students.
- (b) That the CMJ University was granted UGC recognition *vide* letter dated 25th November, 2010 as a State Private University and was empowered to award degrees as specified by the UGC under Section 22 of the UGC Act, through its main campus.
- (c) That under Section 14(1) of the Act, the Sponsor is entitled to appoint a suitable person as the Chancellor of the University subject to the approval of the Visitor. Therefore, on a bare reading of this sub-section, it is clear that prior approval is not required for the appointment of a Chancellor. He further urged that an appointment subject to approval is valid so long it is not disapproved. In this regard, he placed reliance upon the decisions of this Court in (i) ***U.P. Avas Evam Vikas Parishad & Anr v. Friends Coop. Housing Society Ltd. & Anr***¹⁶; (ii) ***High Court of Judicature for Rajasthan v. P.P. Singh & Anr***¹⁷,

¹⁶ 1995 Supp (3) SCC 456.

¹⁷ (2003) 4 SCC 239.

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and (iii) ***Ashok Kumar Das & Ors v. University of Burdwan & Ors***¹⁸.

- (d) The trustees of CMJ Foundation as early as on 29th July, 2009 had adopted a valid resolution appointing Shri Chander Mohan Jha as the Chancellor of the CMJ University in terms of Section 14(1) of the Act. Various representations dated 29th July, 2009, 3rd August, 2009 and 6th October, 2009 were addressed to the Visitor, seeking approval of the appointment of the Chancellor of the CMJ University. Thereafter, two reminders dated 17th November, 2009 and 9th December, 2009 were also sent to the Visitor seeking approval. However, none of these communications received any response whatsoever from the Visitor.
- (e) That the appellants sent a letter dated 1st April, 2010, to the State Government which clearly specified that 'if the Visitor (Governor of Meghalaya) failed to accord his approval, it would be assumed as a 'deemed approval' for the functioning of the University and the appointment of the Chancellor of the University.' He submitted that in view of this letter and other correspondences shared with the State Government, the CMJ University rightfully assumed 'deemed approval' to the appointment of the Chancellor. Consequently, admissions were given to the students, and the courses concerned commenced. Students who had completed their respective courses commencing from the academic year 2010-2011 and other students who continued to study in the CMJ University were granted degrees in accordance with the mandate of the Act and the UGC recommendations.
- (f) That Section 26 of the Act clearly stipulates that no act or proceeding of any authority of the University shall be deemed invalid merely on the reason of the existence of any vacancy of post or defect in the constitution of the authority.
- (g) That the respondents did not comply with the directions given by this Court *vide* order dated 13th September, 2013 passed in Special Leave Petition,¹⁹ whereby, the State Government was

¹⁸ (2010) 3 SCC 616.

¹⁹ SLP(C) No. 19617 of 2013.

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required to proceed strictly in accordance with the Act, after complying with the mandate of Section 48 of the Act and not mere paper compliance. To buttress this submission, learned senior counsel drew our attention to the following observations made by this Court in the order dated 13th September, 2013:-

“In view of the above, we feel that ends of justice will be served by directing the State Government to take appropriate action under Section 48 of the 2009 Act after giving notice and reasonable opportunity of hearing to the petitioners.

The special leave petitions are accordingly disposed of with direction that within three months from today the State Government shall, after giving an opportunity to the petitioners to show cause against the action proposed to be taken, pass a speaking order under Section 48 of the 2009 Act.”

- (h) As per learned senior counsel, the State Government failed to comply with the mandatory requirements as provided under Sub-sections (2) and (3) of Section 48 of the Act, which deal with the procedure of dissolution of the University. He urged that as per Section 48(2) of the Act, it was mandatory that the State Government on identification of mismanagement, maladministration, indiscipline, failure in accomplishment of the objectives of the CMJ University and economic hardships in the management systems of the CMJ University, should have issued directions to the management system of the University for rectification thereof. Only in the event that the directions were not complied with within such time as may be prescribed, could the power to wind up the University have been exercised by the State Government.
- (i) That the show cause notices dated 12th November, 2013 and 24th January, 2014 issued to the appellants neither referred to any particular instance of mismanagement or maladministration on the part of the CMJ University authorities nor did they highlight the so-called deficiencies in running and management of the CMJ University. The appellants submitted detailed replies to the show cause notices within time, with the assurance that if any directions were issued in future for rectification

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of any alleged shortcoming, the management of the CMJ University would follow them accordingly. However, the State Government of Meghalaya *vide* order dated 31st March, 2014 dissolved the CMJ University with an immediate effect, without giving reasonable opportunity and liberty to the management of the CMJ University to rectify the alleged mismanagement and maladministration as provided under Sub-sections (2) and (3) of Section 48 of the Act, and therefore, the process as adopted by the State Government is arbitrary and invalid in the eyes of law.

- (j) That the learned Single Judge, after perusing the material placed on record including the response of the appellants to the queries and notices sent by the State Government had rightly concluded that the principles of natural justice and mandate of Section 48 of the Act had not been followed before passing the dissolution order dated 31st March, 2014.

On these grounds, learned counsel for the appellants implored the Court to allow Civil Appeal No. 9694 of 2024 and set aside the impugned order.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENT-STATE

- 30. *Per contra*, learned senior counsel for the respondent-State vehemently and fervently opposed the contentions made on behalf of the learned senior counsel for the appellants, while advancing the following submissions:-

- (a) That the learned Division Bench *vide* the impugned judgment has granted full *imprimatur* to the procedure adopted by the State Government in passing the order dated 31st March, 2014, whereby, it dissolved the CMJ University under Section 48(2) of the Act. However, despite holding so, the matter has been remanded to the learned Single Judge to take an appropriate decision regarding the validity of the dissolution order on merits. He contended that once the decision-making process has been upheld by the learned Division Bench, no live issue remains for the learned Single Judge to consider and decide on merit and thus, the remand order is bad in the eyes of law.

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- (b) Learned counsel drew this Court's attention to the order dated 13th September, 2013²⁰ passed by this Court, directing the State Government to pass a speaking order under Section 48 of the Act, after giving notice and providing an opportunity of hearing to the appellants. He submitted that this order has been complied with by the State Government in letter and spirit and the dissolution order dated 31st March, 2014 has been passed only after giving a fair opportunity of showing cause to the appellants and for the reason that several aspects relating to mismanagement and maladministration as indicated in the directions issued by the Visitor *vide* letter dated 30th April, 2013, remained unrectified.
- (c) That under Section 14(1) of the Act, it is obligatory on the part of the University to appoint a Chancellor 'subject to the approval' of the Visitor for a period of five years, which may be extended with the prior approval of the Visitor. He submitted that Section 14(1) of the Act clearly stipulates that the appointment of Chancellor would be conditional upon the approval of the Visitor.
- (d) That the appellants do not dispute that the Visitor had never accorded approval for the appointment of Chancellor under the Act, and thus, it must be assumed that the appointment of Chancellor of the University was in gross violation of Section 14(1) of the Act.²¹
- (e) That it is the case of the appellants that the considerable delay on the part of the Visitor in conveying the approval of the appointment of Chancellor of the CMJ University, would lead to a 'deemed approval'. However, the provisions of the Act do not countenance 'deemed approval' for the appointment of the Chancellor, and thus, the act of the appellants in assuming a deemed approval to such unilateral appointment is not tenable in the eyes of law.
- (f) That it is settled law that '*deeming provision is a legal fiction and such legal fiction can only be created by a statute*'; and therefore, the presumed approval of the Chancellor's appointment by the CMJ University authorities is misplaced. In this regard, he

20 Passed in SLP (C) No. 19617 of 2013.

21 Supra Note 14.

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placed reliance upon the decisions of this Court in **Chet Ram Vashist v. MCD and Another**²² and **Balasubramaniam & Others v. Tamilnadu Housing Board & Others**.²³

- (g) That the CMJ University has acted unilaterally since its establishment without getting approval for the appointment of Chancellor and is illegally admitting students and awarding degrees for years commencing from 2010-11 and onwards. It is trite that a university cannot confer degrees to students without there being a Chancellor of the University. Consequently, all actions of the CMJ University taken without a duly appointed Chancellor are illegal and void *ab initio*.
- (h) Section 26 of the Act is only intended to be applied in a contingency when any post falls vacant for some reason after it has been initially filled in accordance with the provisions of the Act. Therefore, the reliance placed by the appellants on Section 26 of the Act to buttress that the proceedings of the CMJ University authorities are not invalid, even if the post of Chancellor is vacant, is misplaced.
- (i) That by virtue of the provisions contained in Section 13(3)(a) of the Act, the Visitor was empowered to call for any paper or information relating to the affairs of the University and based on such information, to issue such directions as deemed fit under Section 13(3)(b) of the Act, which would be binding to all concerned. In the instant case, the CMJ University failed to comply with the directions issued by the Visitor *vide* letter dated 30th April, 2013.

Concluding his submissions, learned counsel for the respondent-State implored the Court to dismiss the appeal filed by the appellants and, at the same time, allow the appeal filed by the State against the remand order.

- 31. We have given our thoughtful consideration to the submissions advanced at a bar and have perused the impugned judgment. With the assistance of the learned counsel for the parties, we have thoroughly examined the documents available on record.

22 (1980) 4 SCC 647.

23 (1987) 4 SCC 738.

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D. ISSUES FOR DETERMINATION

32. The following key issues are posed for consideration of this Court in the instant appeals: -
- I. “Whether the appointment of the Chancellor of the CMJ University was made with due adherence to the procedure, as mandated by law”?
 - II. “Whether the dissolution order dated 31st March, 2014 was passed with due adherence to the procedure provided under Section 48 of the CMJ University Act, 2009 and in compliance of the directions issued by this Court *vide* order dated 13th September, 2013 in SLP(C) No. 19617 of 2013 titled as “**CMJ Foundation & Ors. v. State of Meghalaya and Ors.**”?
 - III. “Whether the Division Bench of the High Court of Meghalaya was justified in remanding the matter to the learned Single Judge for reconsideration on merit, while allowing the Writ Appeal No. 14 of 2017”?

E. ANALYSIS AND DISCUSSION

ISSUE No. I: *“Whether the appointment of the Chancellor of the CMJ University was made with due adherence to the procedure, as mandated by law”?*

33. There is no dispute that the CMJ University has been established and incorporated under the CMJ University Act, 2009 enacted by the Meghalaya Legislative Assembly. It is an admitted position that the appointment of Chancellor of this University was never approved by the Visitor i.e. the Governor of Meghalaya.
34. Section 2(x) of the Act defines ‘Chancellor’ as Chancellor of the University appointed under Section 14 of the Act. Section 14 of the Act reads as under:-

“Section 14: The Chancellor

(1) The Sponsor shall appoint a person suitable to be appointed as the Chancellor of the University subject to the approval of the Visitor.

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(2) The Chancellor so appointed shall hold the office for a period of five years, which may be extended with a prior approval of the Visitors.

(3) The Chancellor shall be the head of the University

(4) The Chancellor shall preside at the meeting of the Board of Governors and shall, when the Visitor is not present, preside at the convocation of the University for conferring Degrees, Diplomas, Designations or Certificates.

(5) The Chancellor shall have the following powers, namely:

(a) To call for any information or record;

(b) To appoint the Vice-Chancellor;

(c) To remove the Vice-Chancellor;

(d) Such other powers as may be conferred on him by this Act made thereunder.”

35. Section 14(1) deals with the appointment of the Chancellor prescribing that the Sponsor shall appoint a person suitable to be appointed as the Chancellor of the University ‘subject to the approval of the Visitor’. Section 14(2) provides that the Chancellor shall hold the office for a period of five years, which may further be extended with the prior approval of the Visitor. Section 14(3) declares the Chancellor to be the head of the University. Section 14(4) gives authority to the Chancellor to preside at the meetings of the Board of Governors and to preside at the convocation of the University for conferring Degrees, Diplomas, Designations or Certificates, if the Visitor is not present. The powers of the Chancellor are enumerated under Section 14(5) of the Act.

36. On perusal of the sub-section (1) of Section 14 of the Act, it becomes crystal clear that the Sponsor must appoint a person suitable to be appointed as the Chancellor of the University, however, such appointment is ‘subject to the approval’ of the Visitor. It is evident from the aforesaid provision that the legislative intent behind the provision was that the appointment of the Chancellor, made by the University, shall require mandatory approval by the Visitor failing which, such appointment would be *non est* in the eyes of law.

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37. In the case of *K.R.C.S. Balakrishna Chetty & Sons & Co. v. State of Madras*,²⁴ this Court has interpreted the term ‘**subject to**’ as ‘**conditional upon**’ in the following terms: -

“Under section 13 an important condition imposed under the Act is the keeping by the dealer and every person licensed of true and correct accounts showing the value of the goods sold and paid by him. Next there is rule 5 of the General Sales Tax Rules which provided that if any person desired to avail himself of the exemption provided in section 5, he had to submit an application in Form I for a licence and the Form of the licence shows that the licence was **subject to the provisions of the Act and the rules** made thereunder which required the licensee to submit returns as required and also to keep true accounts under section 13. **This shows that the giving of the licence was subject to certain conditions being observed by the licensee and the licence itself was issued subject to the Act and the rules. But it was contended that the words “subject to” do not mean “conditional upon” but “liable to the rules and the provisions” of the Act. So construed section 5 will become not only inelegant but wholly meaningless.** On a proper interpretation of the section it only means that the exemption under the licence is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by and under the Act whether in the rules or in the licence itself; that is, a licensee is exempt from assessment as long as he conforms to the conditions of the licence and not that he is entitled to exemption whether the conditions upon which the licence is given are fulfilled or not. **The use of the words “subject to” has reference to effectuating the intention of the law and the correct meaning, in our opinion, is “conditional upon”.**

(emphasis supplied)

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38. Further, in the case of ***V. Balasubramaniam v. T.N. Housing Board***,²⁵ this Court observed that:-

“17.In the context in which the words “subject to approval of the Government appear in Regulation 28(d) of the Regulations they have to be interpreted as meaning “conditional upon the approval of the Government”, that is, that unless that approval is given by the Government the relaxation “would not be valid because the regulations themselves had been put into effect after obtaining the approval of the State Government earlier. The words “subject to” have been understood by this Court as meaning “conditional upon” in *K.R.C.S. Balakrishna Chetty & Sons & Co. v. State of Madras*. Even if those words are understood as meaning that it was possible to obtain ex post facto sanction of a decision already taken by the Board, even then such an approval should have been given by the State Government within a reasonable time from the date on which the decision is taken by the Board.....”

(emphasis supplied)

39. It is clearly discernible from the above precedents that ‘subject to’ means ‘conditional upon’ in law. Therefore, it can safely be inferred that the appointment of Chancellor was conditional upon the approval of the Visitor.
40. The term ‘approval’ has been interpreted by this Court in the case of ***Vijay S. Sathaye v. Indian Airlines Ltd.***,²⁶ in the following manner:-

“10. Approval means confirming, ratifying, assenting, sanctioning or consenting to some act or thing done by another. The very act of approval means, the act of passing judgment, the use of discretion, and determining as an adjudication therefrom unless limited by the context of the Statute.....”

²⁵ (1987) 4 SCC 738.

²⁶ (2013) 10 SCC 253.

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41. It is the case of the appellants that despite repeated requests made to the Visitor of the CMJ University seeking approval for the appointment of the Chancellor, no action was forthcoming. Therefore, a letter was sent to the State on 1st April, 2010 stating that *'if the Visitor did not provide approval by 25th April 2010, it would be deemed as approval'*. Since no response was received from the Visitor, the appellants acting in a *bona fide* manner assumed that such inaction/omission on part of the Visitor would tantamount to 'deemed approval' for the appointment of the Chancellor. This contention, in our opinion, lacks merit, has no substance and is thus untenable on the face of the record.
42. It is trite that in the absence of any statutory flavour, a provision cannot be interpreted to create a legal fiction in such eventuality, and creating a fiction through judicial interpretation may amount to legislation, which is exclusively the domain of legislature. In this regard, we are benefited by the judgment of this Court in the case of ***Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. and Ors.***,²⁷ wherein while interpreting Rule 36(3) of the Delhi Co-operative Societies Rules, 1973, it was held that:-

“8. Rule 36(3) of the Rules, reads as under:

“36. Procedure for expulsion of members- (1)-(2)

(3) When a resolution passed in accordance with sub-rule (1) or (2) is sent to the Registrar or otherwise brought to his notice, the Registrar may consider the resolution and after making such enquiry as to whether full and final opportunity has been given under sub-rule (1) or (2) give his approval and communicate the same to the society and the member concerned **within a period of 6 months**. The resolution shall be **effective from the date of approval.**”

9. It is evident from the aforesaid provision that the **legislature desired that every such resolution sent to the Registrar by the Society be considered and decided within a period of 6 months and that the resolution shall be effective from the date of approval.** If approval

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is required, the order which is required to be approved by the statutory authority cannot become effective unless the approval is accorded.

13. Therefore, it is evident from the aforesaid settled legal proposition that **the resolution passed by the Society cannot be given effect to unless approval is accorded by the Registrar as mandatorily required 1972 Act and the Rules.**

14. **The Legislature in its wisdom has not enacted any deeming provision providing that in case the resolution is not considered and finally decided by the Registrar within a period of six months, the resolution shall become effective and operative. It is the exclusive prerogative of the Legislature to create a legal fiction meaning thereby to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist.** Even if a legal fiction is created by the Legislature, the court has to ascertain for what purpose the fiction is created, and it must be limited to the purpose indicated by the context and cannot be given a larger effect. More so, what can be deemed to exist under legal fiction are merely facts and no legal consequences which do not flow from the law as it stands. **It is a settled legal proposition that in absence of any statutory provision, the provision cannot be construed as to provide for fiction in such an eventuality. More so, creating fiction by judicial interpretation may amount to legislation, a field exclusively within the domain of the legislature.** (Vide: *Ajaib Singh v. Sirhind Coop. Marketing-cum-processing Service Society Ltd.*)

(emphasis supplied)

43. After minutely going through the scheme of the Act, we do not find any deeming provision creating such legal fiction as was assumed by the appellants. Therefore, the contention of the learned counsel for the appellants that the failure of the Visitor to grant approval for appointment of the Chancellor would lead to a 'deemed approval' is totally misplaced and unsubstantiated by law.

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44. Under the framework of the Act, it is clear that for the appointment of the Chancellor of the CMJ University, the Sponsor is not the sole authority, and the Visitor also plays a pivotal role. The Visitor is not merely a titular head and the appointment of any person as Chancellor by the Sponsor would attain validity only upon the approval of the Visitor. In the present case, it is an undisputed fact that the Visitor's approval was never granted for the appointment of the Chancellor of the University.
45. It is a settled legal proposition that if a statute provides for the approval of the higher Authority, the order cannot be given effect to unless it is approved and the same remains inconsequential and a dead letter in the eyes of law.²⁸
46. In view of the factual and legal discussion made above, we hold that the procedure prescribed under Section 14(1) of the Act for the appointment of the Chancellor was not duly followed. Consequently, the appointment of the Chancellor of the CMJ University was rightly declared to be invalid and *non-est* in the eyes of law by the Division Bench of the High Court and the impugned judgment to this extent, does not suffer from any infirmity.

ISSUE No. II: *“Whether the dissolution order dated 31st March, 2014 was passed with due adherence to the procedure provided under Section 48 of the CMJ University Act, 2009 and in compliance of the directions issued by this Court vide order dated 13th September, 2013 in SLP(C) No. 19617 of 2013 titled as “CMJ Foundation & Ors. v. State of Meghalaya and Ors.”?”*

47. Before advertng to answer this issue, it is relevant to outline the material facts that formed the basis for the filing of SLP(C) No. 19617 of 2013 before this Court.
48. The approval of the Visitor was not granted for the appointment of the Chancellor of the University, even though the CMJ University was established in 2009. The Governor of Meghalaya, in his capacity as a Visitor of the University, *vide* letter dated 30th April, 2013, while

²⁸ Trilochan Mishra etc. v. State of Orissa & Ors., AIR 1971 SC 733; Union of India & Ors. v. M/s Bhimsen Walaiti Ram, AIR 1971 SC 2295; State of Orissa & Ors. v. Harinarayan Jaiswal & Ors., AIR 1972 SC 1816; State of U.P. & Ors. v. Vijay Bahadur Singh & Ors., AIR 1982 SC 1234; and Laxmikant & Ors. v. Satyawani & Ors., AIR 1996 SC 2052.

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exercising powers under Section 13(3)(b) of the Act, issued certain directions²⁹ to the appellants. These directions were given pursuant to the observance of the following irregularities by the Visitor:-

“1. The Chancellor of the University appointed by the sponsor does not have the approval of the Visitor. This is in violation of Section 14(1) of the CMJ University Act, 2009. Consequently, all further (sic) actions of the CMJ University resulting from the appointment of the Chancellor are illegal and void ab initio.

2. In the proposal submitted for the appointment of the Chancellor, by CMJ Foundation in 2009, the Bio-data of the recommended candidate Shri Chander Mohan Jha was enclosed stating that's he is the Director of a number of colleges within and outside Meghalaya without clearly indicating their university affiliation. One of these Colleges viz. The Shillong Engineering and Management College was de-affiliated by NEHU w.e.f. academic session 2011-2012.

3. The CMJ University has enrolled the following number of students in various courses.

2010-2011 - 176

2011-2012 - 469

2012-2013 - 2734

All the above admissions are illegal.

4. CMJ University has awarded Ph.D degrees to 434 students during 2012-2013 and has enrolled 490 students for the Ph.D programme during 2012-2013. On the other hand the faculty strength of the CMJ University is only 10 teachers with Ph.D qualification. These enrolments and awards. of Ph.D degrees are in contravention of the UGC (Minimum Standards and Procedure for Awards of M. Phil/ Ph.D Degree) Regulation, 2009.

5. The CMJ University issued a false and misleading newspaper advertisement in Shillong Times on April

29 Refer, Para 10 of this judgment.

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22nd,2013 claiming that the University has not yet been awarded any Ph. D degree to any of the students enrolled from the State of Assam. On the other hand this office has reliable information about the CMJ University has been awarded a Ph. D degree to candidates from Assam.

6. The CMJ University has not submitted the Annual Reports to the Visitor in violation of Section 45(3) of the CMJ University Act 2009.

7. CMJ University has also acted in contravention of Section 52 of the CMJ University Act,2009 in respect of maintenance of standards and other related matters applicable to Private Universities.”

49. The said letter, dated 30th April, 2013, was challenged by the appellants by filing Writ Petition(C) No. 106 of 2013 before the High Court of Meghalaya, which was dismissed *vide* order dated 16th May, 2013. The appellants filed Writ Appeal (SH) No. 16 of 2013, which was also dismissed *vide* order dated 31st May, 2013. Aggrieved by these decisions, the appellants filed SLP (C) No. 19617 of 2013 before this Court.
50. This Court disposed of the aforesaid special leave petition *vide* order dated 13th September, 2013, after taking into consideration comprehensive recommendations³⁰ made by the Visitor *vide* letter dated 12th June, 2013, regarding the dissolution of the University. The relevant extracts from the order dated 13th September, 2013, passed by this Court are reproduced below for reference:-

“In terms of the recommendations made by the Visitor-cum- Governor, the State Government is required to take action under Section 48 of the 2009 Act. Shri Ranjan Mukherjee learned counsel appearing for the Government of Meghalaya says that he is not in a position to make a statement whether the State Government has taken action in furtherance of the recommendations made by the Visitor-cum-Governor.

30 Refer, Para 14 of this Judgment.

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In view of the above, we feel that ends of justice will be served by directing the State Government to take all appropriate action under Section 48 of the 2009 Act after giving notice and reasonable opportunity of hearing to the petitioners.

The special leave petitions are accordingly disposed of with a direction that within three months from today the State Government shall, after giving an opportunity to the petitioners to show cause against the action proposed to be taken, pass a speaking order under Section 48 of the 2009 Act.”

51. A bare perusal of the order passed in SLP(C) No. 19617 of 2013 unequivocally demonstrates that this Court meticulously considered the entire factual matrix of events till 13th September, 2013, including the comprehensive recommendations issued by the Visitor *vide* letter dated 12th June, 2013 and thereafter, issued a direction to the State Government to pass a speaking order under Section 48 of the Act, after giving due notice and reasonable opportunity to the appellants herein to show cause against the proposed action.
52. At this stage, Section 48 of the Act, which deals with the ‘**Dissolution of the University**’, needs to be referred to, and is reproduced below:-

“Section 48: Dissolution of University:

(1) If the Sponsor proposes dissolution of the University in accordance with the law governing its constitution (*sic*) or incorporation, it shall give at least 3 months notice in writing to the State Government.

(2) On identification of mismanagement, mal-administration, in-discipline, failure in the accomplishment of the objectives of (*sic*) University and economic hardships in the management systems of University, the State Government will issue directions to the management system of the University. If the directions are not followed within such time as may be prescribed, the right to take the decision for winding up of the University would vest in the State Government.

(3) The manner of winding up of the University would be such as may be prescribed by the State Government in

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this behalf. Provided that no such action will be initiated without affording a reasonable opportunity to show cause to the Sponsor.

(4) On Receipt of the notice referred to in Sub-section (1), the State Government shall, in consultation with the AICTE, UGC or other regulatory bodies make such arrangements for administration of the University from the proposed date of dissolution of the University by the Sponsor and until the last batch of students in regular courses of studies of the University complete their courses of studies in such manner as may be prescribed by the Statutes.”

53. Sub-section (1) of Section 48 of the Act deals with the action on the part of the Sponsor and provides that, if the Sponsor proposes the dissolution of the University in accordance with the law governing its constitution or incorporation, it shall give at least 3 months’ notice in writing to the State Government. Section 48(2) empowers the State Government to issue directions to the management of the University on identification of mismanagement, maladministration, indiscipline, failure in the accomplishment of the objectives of the University. This sub-section further vests in the State, the power to take a decision for winding up of the University, if the directions issued are not complied with within such time as may be prescribed. Further, Section 48(3) states that the manner of winding up of the University would be such as may be prescribed by the State Government, provided that a reasonable opportunity to show cause has been afforded to the Sponsor before initiating the action of winding up.
54. The appellants have set up a case that the State Government did not follow the mandatory procedural requirements under Section 48(2) of the Act. The appellants submitted their replies to the show cause notices assuring that if any directions were issued in future for rectification of any of the alleged shortcomings, the management of the CMJ University would follow them accordingly. However, the State Government, without issuing directions to the management to correct the alleged mismanagement and maladministration and without affording any reasonable opportunity as provided under Sub-sections (2) and (3) of Section 48 of the Act, issued the order dated 31st March, 2014, for dissolution of the CMJ University.

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55. A perusal of the material on record makes it clear that two show cause notices, the first dated 12th November, 2013, and a supplementary notice dated 24th January, 2014, were issued by the State to the appellants pursuant to the direction issued by this Court in SLP (C) No.19617 of 2013. In response, the appellants submitted their reply to the show cause notice on 25th November, 2013 and to the supplementary show cause notice on 4th February, 2014. Thus, evidently, the proper opportunity to show cause and take necessary measures for rectification was extended to the appellants against the proposed action of dissolution.
56. Upon receiving the replies to the aforesaid show cause notices, the State Government examined the same, and passed a well-reasoned order dated 31st March, 2014, by taking recourse to the powers conferred by Section 48(2) of the Act, dissolving the CMJ University with immediate effect on the grounds that the appellants neither satisfactorily explained the allegations set out in the show cause notices, nor could they provide adequate justification for the evident anomalies and irregularities. The relevant excerpts from the dissolution order dated 31st March, 2014 are reproduced below: -

“1....

2....

3. The reply of the CMJU regarding the Endowment Fund is evasive, fabricated and false. It is stated by CMJU that double the amount of Endowment fund is invested in fixed deposits. It is noted that 20 FDRs (4 with Axis Bank and 16 with PNB) amounting to Rs. 4.25 Crore deposited by the University are not for the purpose of the Endowment Fund but Term Deposits made by CMJU for its own benefit. The University has not denied the fact that it has withdrawn the Endowment Fund prematurely from Bank of Baroda, which is a clear violation of Section 41(1) of the CMJU Act 2009.

4. The University's reply regarding off campus centres/ study centres etc., cannot be accepted. It is a fact that CMJ University has at least five campuses in Meghalaya namely at Laitumkhrah & Upper Nongthymmai, Shillong, Jowai, Tura and Jorabat. As per CMJ University Act 2009

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and approval of UGC, the University campus is approved for Shillong, East Khasi Hills District. Opening of off-campus centres at Jorabat etc. is a clear violation of Regulation 3.3 of the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003....

5.....

6. The reply of CMJU to the question of conducting B. Ed, course without requisite approval is ambiguous and misleading. CMJ University could have inducted students and conducted B. Ed courses, only after securing prior approval and recognition from the National Council for Teacher Education (NCTE). In the absence of such statutory approval, the B. Ed degrees awarded by CMJU are invalid and cannot be recognized by the government agencies. This has jeopardized the career of B. Ed students and is also contrary to the requirement under Section 7 (1) of CMJ University Act.

7. CMJ University in its reply has claimed that the Shillong Engineering and Management College (SEMC) became one of the departments of CMJ University in the form of Faculty of Technology. Such a vital decision relating to “Creation, abolition or restructuring of departments and faculties” can be taken only in accordance with the statute as provided for, in Section 27 (d) & (h) and by Rules as provided for in Section 30(a) of the CMJ University Act 2009. Further, the University has failed to prove that a formal decision of the Academic Council duly approved by the Board of Governors has been taken regarding the conversion of SEMC into one of the CMJU Faculties.

8. The reply to the Show Cause Notice, has failed to explain the issue raised in it regarding misleading newspaper advertisements by making a mere denial. CMJ University had denied the award of Ph. D degrees to students from the State of Assam. On the contrary, several classified advertisements issued by students in the Assam Tribune dt. 25.4.2013 gave the names of 15 candidates from Assam, falsifying the statement in the reply. In fact,

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some of the PhD students have also appeared before the Hearing Committee constituted for examining the validity of their degrees.

9. CMJ University has failed to comply with the directions of the Visitor issued vide No. GSMG/CMJU/82/2009/143, dated 30th April 2013 and No. GSMG/CMJV/82/2009/311 dated 24th May, 2013. The State Government vide its letter No. EON. 96/2013/132, dtd. 03/06/2013 asked CMJ University to comply with the directives of the Visitor cum-Governor, but no action was taken by CMJ University.

Whereas, the replies by CMJ University to Show Cause Notices are found to be not tenable. The insurmountable evidence as to its mismanagement, maladministration, indiscipline, fraudulent intent and failure in the accomplishment of the objectives of the University is too overwhelming. In spite of the sufficient time and opportunity given to the CMJU For rectification and redemption, the issues raised went unheeded and were rather contemptuously ignored.”

(emphasis supplied)

57. As is evident from the extracted portion above, the State Government gave full consideration to the reply submitted by the appellants and the documents available on record. Before passing the dissolution order dated 31st March, 2014, the State Government analyzed the explanation provided by the appellants, and evaluated the supporting evidence. While recording the final determination, it thoroughly and minutely adverted to the manifest irregularities and discrepancies portrayed in the running and the management of the CMJ University and discarded the same with exhaustive reasons.
58. It is apposite to note that the Visitor, *vide* letter dated 30th April, 2013, had issued specific directions³¹ to the appellants, mandating compliance and the submission of a compliance report by 21st May, 2013. However, rather than adhering to these directives and curing

31 Refer, Para 10 of this judgment.

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the defects/shortcomings, the appellants chose to challenge the said letter in the Court of law and lost in this attempt. Since the appellants did not comply with the directions and failed to submit the compliance report within the specified timeframe, a reminder letter dated 3rd June, 2013 was issued by the State Government, asking for compliance by 10th June, 2013. It is undisputed that the appellants did not comply with these directions. In our view, the letter dated 3rd June, 2013 issued by the State Government evidences wholesome compliance with the provisions of Section 48(2) of the Act.

59. In light of the above discussion, we hold that the dissolution order dated 31st March, 2014 has been passed with strict adherence to the procedural requirements outlined under Section 48 of the Act, and in compliance with the directions issued by this Court *vide* order dated 13th September, 2013 passed in SLP(C) No. 19617 of 2013. Hence, we affirm the decision of the State Government in dissolving the CMJ University *vide* order dated 31st March, 2014.

ISSUE No. III: *“Whether the Division Bench of the High Court of Meghalaya was justified in remanding the matter to the learned Single Judge for reconsideration on merit, while allowing the Writ Appeal No. 14 of 2017”?*

60. The Division Bench of the High Court in the impugned judgment, had quashed and set aside the judgment and order dated 16th July, 2015 passed by the learned Single Judge, while upholding the procedure followed by the State Government in ordering the dissolution of the University, and affirming that the said procedure was in sync with the requirements laid down under Section 48 of the Act.
61. However, the Division Bench, while observing that the learned Single Judge has only examined the dissolution order on procedural framework and did not enter into the merits of the said decision, remanded the matter to the learned Single Judge for taking appropriate decision regarding the validity of order dissolving the University on merit.
62. In the case of ***Nadekerappa since Deceased by LRs. And Ors. v. Pillamma since Deceased by LRs. And Ors.***,³² this Court held that:-

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“25. It is settled law that the order of remand cannot be passed as a matter of course. An order of remand cannot also be passed for the mere purpose of remanding a proceeding to the lower court or the Tribunal. An endeavour has to be made by the Appellate Court to dispose of the case on merits. Where both sides have led oral and documentary evidence, the Appellate Court has to decide the appeal on merits instead of remanding the case to the lower court or the Tribunal. ...”

63. Based on the discussion made above, we hold that the Division Bench of the High Court was fully justified in quashing and setting aside the order dated 16th July, 2015 passed by the learned Single Judge, which had invalidated the dissolution order dated 31st March, 2014 and the show cause notices dated 12th November, 2013 and 24th January, 2014. We fully concur with the view taken by the Division Bench of the High Court in upholding the validity of the procedure followed by the State Government and the dissolution order itself.
64. This Court is of the considered view that the remand to the learned Single Judge was entirely unjustified and unwarranted. The controversy in the present case had been exhaustively examined and conclusively determined on merits by the Division Bench, leaving no substantive questions or unresolved issues for redetermination by the learned Single Judge. As such, there was no requirement for fresh consideration of the case on merits by the learned Single Judge.
65. Applying the “**wednesbury principles**”, this Court in the case of **Union of India v. G. Ganayutham**,³³ held that:-

“27.(T)o test the validity of executive action or of administrative action taken in exercise of statutory powers, the Courts and tribunals in our country can only go into the matter, as a secondary reviewing Court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of Wednesbury and CCSU tests. The choice of the options available is for the authority; the court/tribunal cannot substitute its view as to what is reasonable.....”

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66. Further in the case of **Gohil Vishvaraj Hanubhai and Ors v. State of Gujarat and Ors**,³⁴ it was held that judicial review lies against a decision-making process and not against the decision itself.
67. On the touchstone of the precedents discussed above, once the Division Bench had approved the procedure adopted by the State, in passing the dissolution order, the exercise of remand would be nothing short of an empty formality. Therefore, the order of remand is legally flawed and untenable.
68. We, therefore, hold that the Division Bench of the High Court was not justified in remanding the matter to the learned Single Judge for reconsideration on merits.

F. CONCLUSION

69. The issues raised for the consideration of this Court are answered as follows: -
- i. The procedure prescribed under Section 14(1) of the Act for the appointment of the Chancellor was not duly followed by the CMJ University and consequently, the appointment of the Chancellor of the CMJ University was *non est* and void *ab initio*.
 - ii. The dissolution order dated 31st March, 2014 has been passed with strict adherence to the procedural requirements outlined under Section 48 of the CMJ University Act, 2009, and in compliance of the directions issued by this Court in its order dated 13th September, 2013 passed in SLP(C) No. 19617 of 2013.
 - iii. The Division Bench of the High Court was not justified in remanding the matter to the learned Single Judge for reconsideration on merits.
 - iv. The decision of the State Government dated 31st March, 2014 in dissolving the CMJ University is affirmed. It would be open for the State Government to take appropriate measures pursuant to the affirmation of the decision to dissolve the CMJ University.

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70. In view of the aforesaid discussion and for the reasons stated above, Civil Appeal No. 9694 of 2024 filed by the appellants is found to be without merit and deserves to be and is hereby dismissed.
71. Conversely, the Civil Appeal No. 9695 of 2024, filed by the State, is allowed and the direction given by the Division Bench to remand the matter to the Single Bench is set aside. The impugned judgment is modified to this extent only.
72. However, in the facts and circumstances of the case, there shall be no order as to costs.
73. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals disposed of.

[†]Headnotes prepared by: Divya Pandey