

State Of West Bengal vs Anindya Sundar Das on 11 October, 2022

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Bench: Hima Kohli, Dhananjaya Y Chandrachud

Repo

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 6706 of 2022

State of West Bengal

...Appellant

Vs.

Anindya Sundar Das & Ors.

...Respondents

And with

Civil Appeal No 6707 of 2022

JUDGMENT

Dr Dhananjaya Y Chandrachud, J

1. By its judgment dated 13 September 2022, a Division Bench of the High Court at Calcutta allowed a petition under Article 226 of the Constitution seeking a writ of quo warranto against the Vice-Chancellor¹ of Calcutta University. The High Court held that the State government had no authority to appoint or re-appoint the 1 VC VC under Section 8 of the Calcutta University Act 1979² or by taking recourse to the residuary provisions of Section 60 of the Act. As a consequence, the order issued by the Special Secretary to the Government of West Bengal on 27 August 2021 re-appointing the incumbent VC of Calcutta University was set aside. The High Court has held that the VC had no authority to hold that office on the basis of the order of appointment. Both the State of West Bengal and Dr Sonali Chakravarti Banerjee, the VC whose appointment has been set aside, are in appeal.

2. By a notification dated 28 August 2017, the Chancellor of Calcutta University appointed Professor Dr Sonali Chakravarti Banerjee as the VC of Calcutta University. The notification was in exercise of the powers conferred by Section 8(1)(a) read with Section 8(2)(a) of the Act. The term of appointment was for a period of four years with effect from the date on which she joined office or until she attained the age of sixty-five or until further orders, whichever is the earliest.

3. The term of office of the VC was to end on 27 August 2021. The State government in the Higher Education Department submitted proposals for the re- appointment of the VC for a period of four years to the Chancellor on 4 June 2021 and 17 June 2021 which were not accepted as the Chancellor sought certain clarifications.

4. On 17 August 2021, the Chancellor suo moto accorded an extension to the tenure of the VC for a period of three months under Section 8(2)(b) of the Act.

5. The State government issued a notification on 27 August 2021 stating that:

2 the Act

(i) While extending the tenure of the VC, the Chancellor had invoked Section 8(2)(b) without consultation with the Minister, which was mandatory;

(ii) The step taken by the Chancellor of the University was void ab initio, particularly in light of provisions of Rule 9 of the West Bengal State Universities (Terms and Conditions of Service of the Vice Chancellors and the Manner and Procedure of Official Communication) Rules 2019;

(iii) The Chancellor of the University had not agreed with the proposal of the State government and initiated a step without fulfilling the requisite legal pre-condition of consultation with the Minister;

(iv) The provisions of the Act are “silent to deal with the situation”;

(v) The State government “has no other option but to invoke the provisions of Section 60”; and

(vi) The incumbent VC was being re-appointed with effect from 28 August 2021 for a period of four years or until she attains the age of seventy, whichever is earlier, in terms of the provisions of Section 60 read with Section 8(2)(b) of the Act as amended in 2019.

6. The order of the State government re-appointing the VC was questioned in a public interest petition instituted by an alumnus of Calcutta University who is also a practicing advocate. The submissions before the High Court in support of the petition under Article 226 were that:

(i) The State government had no power to re-appoint the VC since both the power to appoint and re-appoint is vested with the Chancellor;

(ii) In terms of Section 8(6), the procedure which is prescribed in Section 8(1) for initial appointment has to be followed for the purpose of re-

appointment as well;

(iii) The amended provisions of Section 8(2) do not constitute a complete code and the entire section has to be interpreted;

(iv) The provisions of the Act could not have been by-passed by invoking Section 60;

(v) The re-appointment of the VC without following the procedure prescribed in Section 8(1) eliminates competition and was in contravention of Article 14 of the Constitution;

(vi) The appointment of the VC by the State was contrary to the UGC (Minimum qualifications for appointment of teachers and other academic staff in University and Colleges and measures for the maintenance of standards in Higher Education) Regulations 2018.³

7. The petition was opposed on behalf of the State government by submitting that:

(i) In terms of the unamended provisions of Section 8, the procedure prescribed in sub-Section (1) has to be followed for re-appointment;

(ii) This position was altered by the 2019 amendment to the Act;

(iii) The appointment and re-appointment of a VC stand on a different footing and the power of reappointment is vested with the State government and not the Chancellor;

3 UGC Regulations

(iv) Even if the Chancellor is the re-appointing authority, he has no discretion once a recommendation is made by the State government upon its satisfaction; and

(v) Since the Chancellor has not taken any action in terms of Section 8 (2)(a), the State government had no option but to re-appoint the incumbent VC by taking recourse to the provisions of Section 60.

8. The incumbent VC who had been re-appointed by the State government was impleaded as a party to the proceeding and urged that:

(i) There is a distinction in law between appointment and re-appointment because in the case of the latter, the zone of consideration is restricted to persons already holding the post and in such cases the suitability of the incumbent which was assessed at the time of initial appointment need not be reassessed;

(ii) In the case of a re-appointment, Section 8(2)(a) prescribes that academic excellence and administrative success are the only factors which are to be taken into consideration for re-appointment and the procedure which is prescribed by Section 8(1) is not attracted; and

(iii) No writ of quo warranto can be issued where the suitability of the VC for re-appointment is sought to be questioned.

9. The Division Bench of the High Court relied upon the judgments of this court in *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo*⁴ and *Bharati*⁴ (2014) 1 SCC 161 *Reddy v. State of Karnataka*⁵ and noted that a writ of quo warranto can be issued when:

(i) A person holding public office lacks eligibility criteria prescribed for such appointment; and

(ii) The appointment is made contrary to the statutory provisions or rules.

10. The reasons adduced by the High Court in support of its judgment were:

(i) Under Section 7(1), the Governor of the State of West Bengal is the Chancellor of the University;

(ii) Section 8(1)(b) confers the powers of appointment on the Chancellor;

(iii) Under Section 8(2)(b), the Chancellor has the power to continue the VC after the expiration of the term of his office up to a period of two years or until the attainment of the age of 70 years whichever is earlier;

(iv) In terms of Section 8(5), a temporary appointment of the VC may be made by the Chancellor; and

(v) Section 8(7) empowers the Chancellor to remove the VC on satisfaction of prescribed conditions.

On the above premises, the Division Bench held that the scheme of Section 8 empowers only the Chancellor to appoint, re-appoint, temporarily appoint or remove the VC. In other words, the State government has no power to appoint or re-appoint the VC. The High Court held that Section 60 to which recourse was taken by the State government provides only for the removal of difficulties arising in giving effect to the provisions of the statute.

⁵ (2018) 6 SCC 162

11. Apart from the reasoning based on the provisions of the Act, the Division Bench held that the UGC Regulations envisage that the appointment of a VC can be made only by a Visitor / Chancellor.

This in the view of the High Court came in the way of the State government making the appointment and, in this context, it relied upon a judgment of this Court in Ghambirdan K Gadhvi v. State of Gujarat.⁶

12. On behalf of the petitioners before the High Court, it was urged during the course of those proceedings that the same procedure which was provided for appointment of a VC under Section 8(1) was required to be followed at the time of re-appointment. On the other hand, the State government relied on the amended provisions of Section 8(2)(a). On this point, the High Court disagreed with the petitioner and noted that amended Section 8(2)(a) which provides for the re-appointment of a VC for another term does not require that the procedure prescribed in Section 8(1) should be followed for re-appointment. In the amendment of 2019, the expression “following the provisions of sub-Section (1)” were deleted from Section 8(2)(a). The High Court did not therefore subscribe to the submission of the petitioner before it that the same procedure was required to be followed for the re-appointment of a VC as prescribed for the purpose of appointment in Section 8(1).

13. However, ultimately, on the basis of its analysis, the High Court held that the State government had no authority to re-appoint the VC either under Section 8 or by taking recourse to the provisions of Section 60 and consequently held that the 6 (2022) 5 SCC 179 notification of 27 August 2021 was contrary to law. It is on that basis, that the re-appointment of the VC has been set aside.

14. Before we summarize the rival submissions and proceed to analyse them, it is necessary to advert to the salient provisions of the Act bearing upon the controversy.

15. Section 7(1) stipulates that the Governor shall by virtue of his office be the Chancellor of the University and shall be the head of the University and the President of the Senate.

16. Section 8 provides for the VC. Section 8(1)(a) stipulates the conditions of eligibility for appointment as a VC in the following terms:

“8(1)(a) The Vice-chancellor shall be a distinguished academic with proven competence and integrity, and having a minimum of ten years of experience in a University system of which at least five years shall be as a professor or ten years of experience in a reputed research or academic administrative organization of which at least five years shall be in an equivalent position of professor.” Section 8(1)(b) provides for the procedure for the appointment of a VC:

“8(1)(b). The Vice Chancellor shall be appointed by the Chancellor out of the panel of three names recommended in order of preference by the Search Committee constituted by the State Government. While preparing the panel, the Search Committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad and adequate experience in academic and administrative governance and reflect the same in writing while submitting the panel to the Chancellor.” Clause (c) of Section 8(1) provides for the

constitution of a search committee. In 2019, the State legislature enacted the West Bengal University Laws (Amendment) Act 2019. The amended Act was assented to by the Governor of West Bengal and was published in the official Gazette on 27 August 2019. As a result of the amending enactment, amendments were made to the seven state enactments governing state universities. Section 8(2)(a) as it stood prior to the amendment which was brought about in 2019, was in the following terms:

“(2)(a) The Vice-chancellor shall hold office for a term of four years or till he attains the age of sixty-five years, whichever is earlier, and shall be eligible for re-appointment for another term of four years or till he attains the age of sixty-five years, whichever is earlier, following the provisions of sub-section (1).” Sub-Section (2) of Section 8 as amended reads as follows:

“(2)(a) The Vice-Chancellor shall hold office for a period of four years appointed as such in terms of the provisions of sub-section (1), and shall be eligible for reappointment for another term of four years subject to the satisfaction of the State Government and on the basis of his past academic excellence and administrative success established during his term of office in the capacity of Vice-Chancellor, or till he attains the age of seventy years, whichever is earlier.” Section 8(2)(b) as amended is in the following terms:

“8(2)(b) The Chancellor may, notwithstanding the expiration of the term of the office of the Vice-Chancellor, allow him to continue in office for a period not more than two years at a time in consultation with the Minister, which shall under no circumstances be extended beyond the age of seventy years, subject to the satisfaction of the State Government and on the basis of his past academic excellence and administrative success established during his term of office in the capacity of Vice-Chancellor.” Sub-Sections (5) and (6) of the Section 8 as amended read thus:

“8(2)(5) If –

(a) the Vice-Chancellor is, by reasons of leave, illness or other cause, temporarily unable to exercise the powers and perform the duties of his office, or

(b) a vacancy occurs in the office of the Vice-Chancellor by reason of death, resignation, removal, expiry of term of his office or otherwise, then, during the period of such temporary inability or pending the appointment of a Vice-Chancellor, as the case may be, the Chancellor in consultation with the Minister may appoint a person to exercise the powers and perform the duties of the Vice-Chancellor.

(6) The vacancy in the office of the Vice-Chancellor occurring by reason of death, resignation or expiry of the term of his office, removal or otherwise shall be filled up by appointment of 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 consultation with the Minister to exercise the powers and perform the duties of the Vice-Chancellor under sub-section (5).”

17. In the present case, the notification issued by the State government reappointing the VC specifically notes that the proposal submitted by it for reappointment of the VC was not accepted by the Chancellor:

“Whereas, the State Government in the Higher Education Department, considering the above, had submitted the proposal of reappointment of Prof. (Dr) Chakravarti Banerjee before the Hon’ble Chancellor of the University for a period of four years, on two occasions firstly on 04.06.2021 and secondly on 17.06.2021. However, Hon’ble Chancellor of the University did not accept the proposal given by the Higher Education Department and sought certain clarifications on some issues not related directly with the subject matter...”

18. In its counter affidavit filed before the High Court, the State government submitted that in accordance with the amended provisions of the Act, the State government considering “the past academic excellence and the administrative success” of the incumbent VC recommended her re-appointment for a further term of four years or until she attains the age of 70 years, whichever is earlier. The State government submitted that since the VC had already been appointed for an earlier term there was no requirement of a fresh search committee for the purpose of a reappointment. However, according to the State government, the Chancellor was not in agreement with the interpretation of the amended provisions since the State government opined that when a reappointment was proposed under amended Section 8(2)(a) there was no necessity of undergoing a further selection process.

The State government urged that Section 8(2)(a) only postulates satisfaction of the State government and does not require the concurrence of the Chancellor. In other words, according to the State government, it has unfettered rights in the matter of reappointment to the post of VC. This submission has been rejected by the High Court.

19. Dr Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the State of West Bengal urged that:

- (i) The power conferred by Section 8(5) on the Chancellor to appoint a person to exercise the powers and perform the duties of the VC during the period of the temporary inability of an incumbent VC or pending the appointment of a VC applies only when the power of reappointment has not been exercised under Section 8(2)(a);
- (ii) Likewise, Section 8(6) applies only when the power to reappoint under Section 8(2)(a) has not been exercised;

(iii) Section 8(2)(a) clearly specifies that a VC shall be eligible for reappointment for another term of four years subject to the satisfaction of the State government and on the basis of their past academic excellence and administrative success during the term of office as a VC;

(iv) Unamended Section 8(2)(a) stipulated that a VC would be eligible for reappointment for a period not exceeding four years “following the provisions of sub-section (1)”; and

(v) In the amended provisions of Section 8(2)(a), the expression ““following the provisions of sub-section (1)” was conspicuously deleted as a result of which the procedure prescribed in Section 8(1) for the appointment of a VC does not apply to a reappointment.

20. On the other hand, the petitioner before the High Court, submitted that:

(i) Section 8(2)(a) does not take away the power of the Chancellor to appoint a VC under Section 8(1)(b);

(ii) In effecting the reappointment of a VC, the procedure which is prescribed by sub-Section (1) of Section 8 of constituting a Search Committee needs to be followed;

(iii) The UGC Regulations clearly stipulate that the appointment of a VC has to be made by the Chancellor;

(iv) In terms of Section 7, the Chancellor is the head of the University;

(v) Section 8(2)(a) provides for the satisfaction of the State government coupled with the eligibility of a VC for reappointment. But this does not take away the power of the Chancellor to make the appointment; and

(vi) As a matter of fact, it was on the premise that the power to reappoint vests with the Chancellor that the file pertaining to the reappointment of the VC was forwarded to the Chancellor by the State government.

21. Mr Jaideep Gupta, learned Senior Counsel appearing on behalf of the VC submitted that:

(i) Section 8(6) does not stand with Section 8(2) because in terms of Section 8(6) the appointment of a VC is to be made in accordance with the provisions of sub-Section (1) in terms of which the three-member search committee has to be constituted;

(ii) The judgment of the High Court in the present case specifically holds that the procedure which is prescribed by Section 8(1)(b) of constituting the search committee does not apply to a reappointment; and

(iii) Section 8 envisages distinct situations namely:

- a. Appointment of a VC by the Chancellor out of a panel of three names recommended by the Search Committee constituted by the State government;
- b. Reappointment in respect of which the power is vested in the State government under Section 8(2)(a);
- c. Extension of the term of a VC beyond the expiration of the term of office under Section 8(2)(b) by the Chancellor in consultation with the Minister;
- d. A temporary appointment of the VC which is made by the Chancellor in consultation with the Minister under Section 8(5).

22. These rival submissions would need to be analyzed. However, before we enter into a substantive analysis of the submissions, it would be appropriate to deal with the procedural objection regarding the limits of the writ of quo warranto.

23. Through a line of cases, this Court has laid out the terms on which the writ of quo warranto may be exercised. In *University of Mysore v C.D. Govindra Rao*, a Constitution Bench of this Court, speaking through Justice Gajendragadkar (as he then was), held that:⁷

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

(emphasis supplied)

24. In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat*,⁸ in his concurring opinion in a three judge Bench, Justice SB Sinha, held that:

22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the 7 (1964) 4 SCR 575 8 (2003) 4 SCC 712 outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto.

The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact on the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India, SCC para

74.)

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. to Govt. of Haryana.)

25. In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.,⁹ the limitations of the writ of quo warranto were elaborated upon by a two judge Bench of this Court. The court observed:

“49. [...] The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules.

[...]

51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. This Court in R.K. Jain v. Union of India [(1993) 4 SCC 119] was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no locus standi to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-

spirited person coming before the court as a petitioner...” 9 (2006) 11 SCC 731 (emphasis supplied)

26. In Central Electricity Supply Utility of Odisha v. Dhobei Sahoo¹⁰, another two judge Bench of this Court reiterated that:

21. [...] the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks

the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.

(emphasis supplied)

27. More recently, in *Bharati Reddy v. State of Karnataka*¹¹, a three judge Bench of this Court, of which one of us (Justice DY Chandrachud) was a part, noted the line of precedent clarifying the remit of the writ of quo warranto.

28. Through these decisions, the Court has settled the position that the writ of quo warranto can be issued where an appointment has not been made in accordance with the law. Accordingly, the rival contentions must be analyzed by dealing with the scheme of the statutory provisions governing the appointment and reappointment of the VC.

29. Section 8 of the Act envisages several situations:

10 Supra 11 Supra

(i) Appointment of a VC (Section 8(1)(b));

(ii) Reappointment of a VC (Section 8(2)(a));

(iii) Continuation of the term of a VC upon the expiry of the term of office (Section 8(2)(b)); and

(iv) Appointment of a person to exercise the powers and perform the duties of the VC, occasioned by

a. The temporary inability of the VC to exercise the powers and perform the duties of the office by reasons of leave, illness or other causes;

and b. A vacancy occurring in the office of VC upon the death, resignation, removal, expiry of term of office or otherwise. (Section 8(5)).

30. Section 8 makes provisions for firstly, the conditions of eligibility for holding the office of a VC; secondly, the term for which the office would be held; thirdly, the procedure for appointment; and fourthly, who has the power to make the appointment.

31. The conditions of eligibility for holding the post of VC are stipulated in Section 8(1)(a) namely (i) a distinguished academic with proven competency and integrity; (ii) (a) minimum of ten years of experience in a University system of which at least five years shall be as a professor; or (b) ten years of experience in a reputed research or academic administrative organization of which at least five years shall be in a position equivalent to a professor.

32. The term of office of a VC, including in the case of a reappointment, is four years or until the attainment of the age of 70 years, whichever is earlier. Where the term of office of a VC has expired, Section 8(2)(b) postulates that, notwithstanding the expiration of the term, the VC may be allowed to continue in office for a period not exceeding two years at a time but such an extension shall not be granted beyond the age of 70. In case of a temporary inability of an incumbent VC due to leave, illness or other cause, Section 8(5)(a) contemplates the appointment of a person to exercise the powers and perform the duties of that office during the period of such temporary inability. Where a vacancy occurs by reason of death, resignation, removal, expiry of the term of office or otherwise, a person may likewise be appointed to exercise the powers and perform the duties of a VC pending the appointment.

33. The procedure for appointing a VC is prescribed in clauses (b) and (c) of Section 8(1). Clause (b) postulates that (i) a search committee has to be constituted by the state government; (ii) the search committee has to prepare a panel of three names in order of preference; (iii) in preparing the panel, the search committee has to give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, adequate experience in academic and administrative governance; (iv) the search committee has to reflect its consideration of the above in writing while submitting the panel to the Chancellor; and (v) the search committee has to consist of three persons as stipulated in Section 8(1)(c).

34. In the case of a reappointment, the unamended provisions of Section 8(2)(a) provided earlier that a VC would be eligible for reappointment for a period not exceeding four years, “subject to the provisions of this section”. The provisions of Section 8(2)(a) were substituted by the Amending Act of 2019. Section 8(2)(a) as amended stipulates that a VC shall be eligible for reappointment for another term of four years “subject to the satisfaction of the State government and on the basis of his past academic excellence and administrative success established during his term of office in the capacity of VC”.

35. In other words, Section 8(2)(a) establishes, firstly, the eligibility of a VC for reappointment for another term of four years; the expression “another term” signifying that the new term will be in addition to the earlier term of four years; and, secondly, the requirement that the eligibility for reappointment would be subject to the satisfaction of the State government on the basis of academic excellence and administrative success during the period when the individual held office of VC. Significantly, Section 8(2)(a) is a provision which prescribes the term, namely, the initial term of four years and if an incumbent is reappointed, a further period of four years. Moreover, Section 8(2)(a) stipulates the conditions subject to which the VC would be eligible for reappointment for another term of four years.

36. Section 8(2)(a) is sought to be interpreted by the appellants as indicating that the power of reappointment is taken away from the Chancellor and is entrusted to the State government. This would be an incorrect reading of the statutory provision. Section 8(2)(a) provides for (i) the term of office of a VC; (ii) eligibility for reappointment; (iii) the term of office upon reappointment; (iv) the conditions subject to which a person shall be eligible for reappointment; and (v) the outer age limit of 70 years. The expression “subject to the satisfaction of the State government” cannot by a process of inferential reasoning be construed to vest the power of reappointment in the State government.

37. The provisions of Section 8 envisage diverse situations. While the eligibility for appointment is indeed determined by the State government’s satisfaction, the power of making the appointment continues to vest in the Chancellor in terms of the provisions detailed below.

38. The Chancellor has been described in Section 7(1) as the head of the University. The power of appointing a VC is vested by Section 8(1)(b) in the Chancellor. That provision stipulates that “the VC shall be appointed by the Chancellor”. Section 8(2)(b) empowers the Chancellor to allow a VC to continue, notwithstanding the expiration of its term, for a period of not more than two years at a time in consultation with the Minister. Here again, the continuation is “subject to the satisfaction of the State government and on the basis of his past academic excellence and administrative success” established during the term of office in the capacity of VC. These words are in terms identical to those contained in Section 8(2)(a). Section 8(5) entrusts to the Chancellor the power to appoint the VC as a result of the temporary inability of the VC to perform the duties of the office or pending the appointment of the VC when a vacancy has arisen in the office.

39. The issue is whether the deletion of the expression “subject to the provisions of this section” in the amended provisions of Section 8(2)(a) would lead to the inference that the power of reappointment has been taken away from the Chancellor and entrusted to the State government. The submission to that effect which has been urged on behalf of the appellants cannot be accepted.

40. The effect of the words “subject to the provisions of this section” in Section 8(2)(a) in its unamended form was that the reappointment would have to be in a manner provided in Section 8, which obviously included Section 8(1). Deletion of those words in Section 8(2)(a), as amended, would mean that the procedure which has been prescribed for making the appointment of a VC, namely the appointment of a search committee and the preparation of a panel, would not be attracted in the case of a reappointment. In the case of a reappointment, a VC who has completed a term of four years would be eligible subject to the satisfaction of the State government and on the basis of their past academic excellence and administrative record during the term of office held as a VC. Significantly, Section 8(2)(a) speaks of the satisfaction of the State government and past academic excellence and administrative success during the term of office. Fulfilment of those conditions makes a person eligible for being reappointed as a VC.

41. It is a settled principle of law that a statute must be read to avoid a construction which would make certain provisions or terms meaningless or redundant. In *Union of India v Hansoli Devi*,¹² a Constitution Bench of this Court reiterated the dictum in the decision of the Constitution Bench in *Aswini Kumar Ghose v. Arabinda Bose*,¹³ that “it is not a sound principle of construction to brush

aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute.” The Court in *Hansoli Devi*¹⁴ reiterated the decision of the Privy Council in *Quebec Railway, Light Heat & Power Co. Ltd. v. Vandry*¹⁵ observing that the “legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted 12 (2002) 7 SCC 273 13 1953 SCR 1 14 Supra 15 AIR 1920 PC 181 except for compelling reasons.” An effort must be made to read the provisions of the statute in a holistic manner so as to imbue it with meaning and content.

42. There is neither an express provision nor a necessary intendment by which it could be inferred that the power which is entrusted to the Chancellor to appoint a VC is taken away in the case of a reappointment. There is no intrinsic reason or rationale to accept the interpretation which has been urged on behalf of the State of West Bengal. A reappointment is the appointment of an existing incumbent who fulfils the conditions of eligibility. The fulfilment of the conditions makes a person eligible for reappointment. The power of appointment including of reappointment is entrusted to the Chancellor and not to the State government. The amended provisions of Section 8(2)(a) cannot therefore be construed to mean that the power of reappointment has been taken away from the Chancellor and entrusted to the State government. Reading the provisions in such a manner, would make the provisions entrusting the power of appointment of the VC with the Chancellor redundant.

43. Moreover, in the present case, the State government itself made a reference to the Chancellor when the issue as regards the reappointment of the VC came up. Evidently as the State government stated before the High Court, the Chancellor was in disagreement with the State government. Therefore, it is clear that the State government was in agreement with the interpretation of the Act as laid out above.

44. The High Court has in the course of its judgment also extracted the communication of the Chancellor dated 17 August 2021 which indicated that he was not agreeable to such an appointment. While turning down the proposal to reappoint the VC, the Chancellor had observed that:

“The proposal dated 4.6.2021 emanating from the State Government seeking reappointment of Prof. Sonali Chakravarti Banerjee, Vice Chancellor of Calcutta University for second term of four years, is not in consonance with the applicable statutory prescriptions as is amply reflected in the note dated 2.8.2021. I need to indicate here that without being a participant in selection, and consequent selection, as incumbent Vice Chancellor cannot get another term in view of section 8(2)(a) of the Calcutta University Act 1979.”

45. It would be appropriate to also analyse whether the re-appointment of the VC has to follow the same process as a fresh appointment, by setting up a selection committee under Section 8(1) of the Act, as indicated by the Chancellor.

46. Section 8(6) stipulates the manner in which a vacancy in the office of the VC which occurs by reason of death, resignation, expiration of the term of office, removal or otherwise shall be filled up.

The provision indicates that such vacancy shall be filled up in accordance with the provisions of sub-Section (1) of Section 8. Section 8(6) has to be read in conjunction with Section 8(1) since the former expressly refers to the latter. The reference to the provisions of sub-Section (1) for filling up a vacancy on the expiration of the term of office will not obviously apply to a case of reappointment because the procedure contemplated by Section 8(1)(b) of a search committee would not attach to a reappointment. On this aspect, the High Court has correctly disagreed with the petitioner before it and noted that amended Section 8(2)(a) which provides for the re-appointment of a VC for another term does not require that the procedure prescribed in Section 8(1) has to be followed for re-appointment.

47. Faced with the view of the Chancellor, the State government attempted to get around the situation by purporting to exercise its powers under Section 60. Section 60 provides as follows:

“If on account of any lacuna or omission in the provisions of this Act, or for any other reason whatsoever, any difficulty arises as to the first constitution of any authority of the University under this Act, or otherwise in giving effect to the provisions of this Act, the State Government, as occasion may require, may by order do anything which appears to it to be necessary for the purpose of removing the difficulty notwithstanding anything to the contrary contained elsewhere in this Act or in any other law.”

48. Section 60 contemplates a situation where inter alia any difficulty arises in giving effect to the provisions of the Act “on account of any lacunae or omission” in its provisions or for any other reason whatsoever. In such cases, the State government is empowered, as the occasion may require, to do anything which appears to it to be necessary for removing the difficulty notwithstanding anything to the contrary contained elsewhere in the Act or any other law. Where there is a specific provision, as in the present case Section 8(2)(a), it was not open to the State government to conjure up a lacunae or omission and purportedly exercise the power to remove difficulties. A “removal of difficulty clause” has been construed in *Madeva Upendra Sinai v. Union of India*¹⁶, which reads as follows:

“39. To keep pace with the rapidly increasing responsibilities of a welfare democratic State, the Legislature has to turn out a plethora of hurried legislation, the volume of which is often matched with its complexity. Under conditions of extreme pressure, with heavy demands on the time of the Legislature and the endurance and skill of the draftsman, it is well nigh impossible to foresee all the circumstances to deal with which a statute is enacted or to anticipate all the difficulties that 16 (1975) 3 SCC 765 might arise in its working due to peculiar local conditions or even a local law. This is particularly true when Parliament undertakes legislation which gives a new dimension to socio-

economic activities of the State or extends the existing Indian laws to new territories or areas freshly merged in the Union of India. In order to obviate the necessity of approaching the Legislature for removal of every difficulty, howsoever trivial, encountered in the enforcement of a statute, by going

through the time-consuming amendatory process, the Legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adaptations and peripheral adjustments in the statute, for making its implementation effective, without touching its substance. That is why the “removal of difficulty clause”, once frowned upon and nick-named as “Henry VIII clause” in scornful commemoration of the absolutist ways in which that English King got the “difficulties” in enforcing his autocratic will removed through the instrumentality of a servile Parliament, now finds acceptance as a practical necessity, in several Indian statutes of post-independence era.”

49. The State government chose the incorrect path under Section 60 by misusing the “removal of difficulty clause” to usurp the power of the Chancellor to make the appointment. A government cannot misuse the “removal of difficulty clause” to remove all obstacles in its path which arise due to statutory restrictions. Allowing such actions would be antithetical to the rule of law. Misusing the limited power granted to make minor adaptations and peripheral adjustments in a statute for making its implementation effective, to side-step the provisions of the statute altogether would defeat the purpose of the legislation.

50. Accordingly, the High Court in our view was justified in coming to the conclusion that “in the guise of removing the difficulties, the State cannot change the scheme and essential provisions of the Act”.

51. In the view taken above on the construction of the provision of the Calcutta University Act 1979, while it is not necessary to advert to the provisions of the UGC Regulations which were also relied upon by the High Court in support of its conclusion, for the purposes of completeness, they are dealt with as well.

52. The University Grants Commission (Minimum Qualifications for appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations 2018 have been issued to prescribe, inter alia. the minimum qualifications for appointment and other service conditions of University and College teachers.

53. Regulation 1.2 of the UGC Regulations provides that they are applicable to:

“every University established or incorporated by or under a Central Act, Provincial Act or a State Act, every Institution including a Constituent or an affiliated College recognized by the Commission, in consultation with the University concerned under Clause (i) of Section 2 of the University Grants Commission Act, 1956 and every Institution deemed to be a University under Section 3 of the said Act.”

54. Regulation 7.3 provides for the minimum qualifications of a VC, selection procedure and the appointment procedure. Regarding the appointment of the VC, Regulation 7.3 states that:

7.3 Vice Chancellor:

[...]

(iii) The Visitor/Chancellor shall appoint the Vice Chancellor out of the Panel of names recommended by the Search-cum-Selection Committee.

55. In *Gambhirdan K Gadhvi v State of Gujarat*,¹⁷ the Sardar Patel University Act 1955, expressly vested the power of appointment of the Vice Chancellor in the State government (instead of the Chancellor). Despite the appointment being in terms of the statutory provisions of the Sardar Patel University Act 1955, the Court issued a writ of quo warranto setting aside the appointment of the Vice Chancellor 17 (2022) 5 SCC 179 by relying upon the UGC Regulations 2018. This Court, holding that the UGC Regulations were binding, held that:

49. Therefore, when the appointment of Respondent 4 is found to be contrary to the UGC Regulations, 2018 and the UGC Regulations are having the statutory force, we are of the opinion that this is a fit case to issue a writ of quo warranto and to quash and set aside the appointment of Respondent 4 as the Vice-Chancellor of the SP University.

50. It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Sections 26(1)(e) and 26(1)(g) of the UGC Act, 1956.

Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before each House of Parliament. Therefore, being a subordinate legislation, UGC Regulations becomes part of the Act. In case of any conflict between the State legislation and the Central legislation, Central legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the Constitution as the subject “education” is in the Concurrent List (List III) of the Seventh Schedule to the Constitution. Therefore, any appointment as a Vice-Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions, warranting a writ of quo warranto.

(emphasis supplied)

56. In view of the decision in *Gambhirdan K Gadhvi*,¹⁸ even if the provisions of the Act allowed the appointment of the Vice Chancellor by the State government, it would be in violation of the UGC Regulations. The Regulations become part of the statute framed by Parliament and will prevail.

57. For the above reasons, we hold that the judgment of the High Court is correct in law and on fact and does not warrant interference in appeal. The State government could not have issued the order re-appointing the VC. 18 Supra

58. The appeals are dismissed. No order as to costs.

59. Pending application(s), if any, stand disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [Hima Kohli] New Delhi;

October 11, 2022