HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D. B. Civil (PIL) Writ Petition No. 5789/2020

Professor K. B. Agarwal

----Petitioner

Versus

1. State of Rajasthan, through its Principal Secretary Higher Education, State Secretariat, Bhagwan Das Road, Jaipur.
2. Chancellor, Dr. Bhim Rao Ambedkar Law University, through its Secretary, Governor House, Civil Lines, Jaipur.
3. Dr. Bhim Rao Ambedkar Law University, through its Registrar, C/o Principal Secretary Higher Education, State Secretariat, Bhagwan Das Road, Jaipur.
4. Dr. Dev Swaroop, S/o. Non known Vice-Chancellor Dr. Bhim Rao Ambedkar Law University, C/o Principal Secretary Higher Education, State Secretariat, Bhagwan Das Road, Jaipur.
5. Bar Council of India through Its Secretary, 21, Rouse Ave Industrial Area Road, Near Bal Bhawan, Rouse Avenue, Mata Sundri Railway Colony, Mandi House, New Delhi-110 002.
6. Bar Council of Rajasthan through its Secretary, Rajasthan High Court Building, Dangiywaas, Jodhpur-342 005
7. University Grants Commission, through its Secretary, Bahdurshah Zafar Marg New Delhi-110 002.

----Respondents

For Petitioner	:	Mr. Sunil Samdaria Advocate with Mr. Ramesh Chand Bairwa Advocate.
For Respondents	:	Mr. M.S. Singhvi Advocate General with Mr. Siddhant Jain Advocate. Mr. Kamlakar Sharma, Senior Advocate with Ms. Alankrita Sharma Advocate. Mr. Madhusudan Rajpurohit Advocate and Mr. Molik Purohit Advocate. Mr. Bharat Vyas, Senior Advocate with Mr. Lokesh Jangid Advocate. Mr. Umashanker Pandey Advocate on behalf of Mr. Bhuwnesh Sharma

---

Advocate.
Mr. Mahesh Gupta Advocate.
Mr. Abhimanyu Singh Yaduvanshi
Advocate on behalf of Mr. N.K. Maloo
Senior Advocate.

HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI

Order

REPORTABLE

24/02/2023

By the Court:(Per Manindra Mohan Shrivastava,Acting C.J.)

1. By this writ petition filed under Article 226 of the Constitution of India, styled as Public Interest Litigation, the petitioner has challenged the validity of Section 11(2) of the Dr. Bhimrao Ambedkar Law University, Jaipur Act, 2019 (Act No. 6 of 2019) [hereinafter referred to as 'the Act of 2019'] and has prayed that the aforesaid provision be declared as ultra vires, non est and void ab initio insofar as it enables an academician from any discipline as Vice-Chancellor of Respondent No.3-Dr. Bhim Rao Ambedkar Law University as it correspondingly confers power upon the Chancellor to appoint an academician from any discipline as Vice-Chancellor of the Law University. In the alternative, it has been prayed that Section 11, sub-section (2) of the Act of 2019 be read down to mean that only distinguished academician/person belonging to the field of law are eligible to be appointed as Vice-Chancellor of Respondent No.3-Law University.

The petitioner has also prayed for relief declaring Section 11(17) of the Act of 2019 as violative of Article 14 and Article 254 of the Constitution of India being grossly arbitrary and irrational,

---

empowering the Chancellor to appoint first Vice-Chancellor of Respondent No.3-Law University at variance and in utter disregard of mandatory procedure prescribed under Section 11(3) to Section 11(6) of the Act of 2019 as also Regulation 7.3(ii) and (iii) of the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018 (hereinafter referred to as 'the Regulations of 2018') in vogue.

The petitioner has prayed for a consequential relief of issuance of writ, order or direction including writ of quo warranto quashing and setting aside order dated 27.02.2020 by which Respondent No. 4 has been appointed as Vice-Chancellor of Respondent No. 3-Law University.

2. Assailing the validity of the Act of 2019, particularly the provisions contained in Section 11(2) of the Act of 2019 prescribing eligibility criteria for appointment as Vice-Chancellor of Law University, learned counsel for the petitioner contended that the Act of 2019 was promulgated after having received assent of the Governor with an object to establish and incorporate a law university in the State of Rajasthan. Referring to the objectives of the University as enshrined in Section 5 of the Act of 2019, it has been highlighted that the Act of 2019 seeks to establish the University for the purpose of making provision for imparting legal education in different branches of learning and furthering the prosecution of research in all branches of legal education. The powers and duties of the University as incorporated in Section 7 of the Act of 2019 are

intended to provide for instruction in various branches of legal learning as the University may deem fit; to make provision for research and advancement of knowledge dissemination of the findings of research and knowledge as also to institute and confer grees, diplomas and other academic distinctions; to confer norary degrees and other distinctions. Other important functions the University include admission of colleges, institutions and institutes not maintained by the University, to the privileges of the University and also confer autonomous status on colleges, institutions or departments. The powers and functions of the University also include cooperation with other university and authorities, to institute teaching, research and other posts required by the University and to make appointments in addition to creation of administrative, ministerial and other necessary posts. The Vice-Chancellor of the University, under the scheme of the Act of 2019, has to be a whole time paid officer of the University. However, the eligibility criteria as contained in Section 11, sub-section (2) of the Act of 2019 though provides that no person shall be eligible to be appointed as Vice-Chancellor, unless he is a distinguished academician having a minimum ten years experience as Professor in a university or college or ten years experience in an equivalent position in a reputed research and/or academic administrative organisation and of highest level of competence, integrity, morals and institutional commitment, but nowhere takes care of ensuring that the person, who is to be appointed as Vice-Chancellor, has necessarily to be a person equipped with knowledge in the field of legal education. It is contended that the said provision, when read as

it is, frustrates the objective of establishment of a law university, a single disciplinary institution as it allows persons of any other discipline of however excellence and however distinguished and knowledgeable they may be, to be appointed as Vice-Chancellor. ıch a provision allows and has, in fact, allowed first Vice-Chancellor be appointed, who does not at all belong to the field of legal ucation, nor had the experience of teaching or research in the field of law and/or legal education. The Vice-Chancellor, as declared under Section 11, sub-section (18) of the Act of 2019, shall be the principal academic, administrative and executive officer of the University enjoined with powers, duties and functions to exercise overall supervision and control over the affairs of the University. Not only this, it is contended, the provisions contained in Section 13 of the Act of 2019 providing for powers and duties of the Vice-Chancellor declare that the Vice-Chancellor shall be ex-officio Chairman of the Board of Management and Academic Council also. He is responsible for presenting to the Board of Management for its deliberations and consideration matters of concern to the University. He is conferred powers to exercise general control over the affairs of the University. In addition, the Vice-Chancellor of Respondent No.3-Law University is responsible for close coordination and integration of teaching, research and other work. The scheme of the Act of 2019 requires that the Vice-Chancellor of the University, for efficient discharge of his duties and functions as such, has to be a person of distinguished personality in the field of legal education. According to learned counsel for the petitioner, the provisions contained in Section 11, sub-section (2) of the Act of 2019, as it reads and on its literal

meaning, do not require that the Vice-Chancellor should be a person having knowledge of legal education much less excellence in the field of legal education. Therefore, the eligibility criteria defeats the objective of establishment of a law university by allowing the head of e institution with vast powers and functions, having no background legal education which is subversive of the objective of the actment. It is, therefore, submitted that the provisions relating to eligibility criteria suffers from manifest arbitrariness and irrationality and, therefore, liable to be declared as ultra vires Article 14 of the Constitution of India and the statutory object enshrined under the Act of 2019. In the alternative, it is submitted, the aforesaid provision is required to be read down so as to ensure that "requirement of distinguished academician" is interpreted to mean "distinguished academician in the field of legal education".

2.1 Next submission of learned counsel for the petitioner is that the provision contained in Section 11, sub-section (17) of the Act of 2019 is also manifestly arbitrary because it completely obviates the fundamental requirement of procedure of assessment of suitability through a duly constituted Committee of Experts. It is his submission that even where first Vice-Chancellor of the university is to be appointed, it has to be preceded by an assessment of the suitability through the Committee of Experts in the field of legal education and non-adherence to the procedure of selection and process of assessment through the Committee of Experts has, in fact, resulted in pick and choose of a person having no background of legal education as first Vice-Chancellor of Respondent No.3-Law University.

2.2 Next submission of learned counsel for the petitioner is that whether it be the first Vice-Chancellor or Vice-Chancellor to be appointed thereafter, the mandatory requirement of the Regulations of 2018 as contained in Clause 7.3(ii) and 7.3(iii) are required to be lowed. Appointment of Respondent No. 4 as Vice-Chancellor is in atant violation of mandatory requirements of the Regulations of 018. Further submission of learned counsel for the petitioner is that even if it is assumed that the detailed procedure of selection as provided in Section 11(3) to 11(6) of the Act of 2019 is not applicable in the matter of appointment of first Vice-Chancellor, there is no escape from the mandate of Regulation 7.3(ii) and 7.3(iii) of the Regulations of 2018 as no such Committee was constituted, nor the mandatory process of public notification or nomination or talent search process or a combination thereof was followed before appointing Respondent No. 4 as the Vice-Chancellor.

2.3 Next submission of learned counsel for the petitioner is that in any case, Section 11(17) of the Act of 2019 providing for appointment of first Vice-Chancellor requires that first Vice-Chancellor of the university shall be appointed by the Chancellor after consultation with the Government, however, the said mandatory requirement has not been complied with inasmuch as there is no meaningful consultation with the Government. According to learned counsel for the petitioner, the power vests with the Chancellor though, after consultation with the Government, but the appointment, it is alleged, has been made at the dictates of the Government ignoring that Respondent No. 4 has no background of legal knowledge much less research or any academic excellence

and/or experience in the field of legal education. Therefore, in any case, appointment of Respondent No. 4 is liable to be quashed by issuance of appropriate writ, order or direction including writ in the nature of quo warranto. In support of his contentions, learned unsel for the petitioner relied upon the decisions of the Hon'ble upreme Court in the cases of **Bar Council of India Vs. Board of anagement, Dayanand College of Law & Others (2007) 2 SCC 202; Gambhirdan K Gadhvi Vs. The State of Gujarat & Others (Writ Petition (Civil) No. 1525 of 2019 decided on 03.03.2022)**; and **Supreme Court Advocates-On-Record Association & Others Vs. Union of India (1993) 4 SCC 441;** decision of Madras High Court in the case of **M.Lionel Antony Raj Vs. Dr. P.P. Chellathurai & Others. (W.P. (MD) No. 12788 of 2017 and other connected cases decided on 14.06.2018)**; decision of Uttarakhand High Court at Nainital in the case of **Shri Ravindra Jugran Vs. State of Uttarakhand & Others (Writ Petition (PIL) No. 190 of 2020 decided on 10.11.2021)**.

3. Per contra, learned Advocate General representing the respondent No. 1 and 2-State of Rajasthan and Chancellor of the Law University would submit that present PIL at the instance of the petitioner seeks to challenge the appointment of Respondent No. 4 as Vice-Chancellor which is a service matter and in view of settled legal position, in service matters, PIL is not maintainable. He would next submit that the prayer for issuance of writ of quo warranto is not maintainable as Respondent No. 4 was eligible to be appointed as Vice-Chancellor as he fulfills the statutorily prescribed eligibility criteria as contained in Section 11(2) of the Act of 2019. He would

further argue that Respondent No. 4 is a distinguished academician with high credentials which would be clear from the averments made in the petition and the details highlighting his academic excellence and experience in various fields including administration of university as contained in Annexure-5 appended with the petition. Learned Advocate General further contends that the writ petition has been filed without proper research and the entire case has been built up with reference to regulations of the Bar Council of India which stood amended before the writ petition was filed. The petitioner has not come out with material details, particulars much less grounds to assail the process of appointment while alleging that there has been no effective consultation with the Government. The affidavits in support of averments so filed do not disclose the source of information, nor claim to be based on personal knowledge. Such half baked petition without proper research is liable to be dismissed at the threshold.

3.1 Next submission of learned Advocate General is that the provision laying down the eligibility criteria for appointment of Vice-Chancellor is essentially a matter which lies in the wisdom of the Legislature and the same is beyond challenge as it is not for anybody except the Legislature to lay down the eligibility criteria for appointment to the post of Vice-Chancellor in a law university. Learned Advocate General has highlighted that the petition proceeds on erroneous assumption that for being Vice-Chancellor of law university, a person is necessarily required to have background of legal education. Citing various examples of other universities, it has been stated that in multi disciplinary universities, appointments on

the post of Vice-Chancellor from amongst persons of high credentials and academic excellence are being made irrespective of the branch of education the selected person belongs to. If the arguments of learned counsel for the petitioner were to be accepted, it would be actically impossible to appoint a person having knowledge of all anches of learning be it Law, Science, Arts or other fields of owledge as Vice-Chancellor. Merely because the Act of 2019 seeks to establish Law University, it cannot be, therefore, said that for efficient discharge of duties and functions as the Vice-Chancellor of the University, a person has to be necessarily from the background of legal education. Learned Advocate General would submit that Vice-Chancellor is not directly involved in teaching law, but he is principal and executive officer of the University enjoined with powers and duties to have overall control over the functions of the University. Therefore, a comprehensive eligibility criteria has been laid down by the Legislature as provided under Section 11(2) of the Act of 2019 which ensures that person to be appointed as Vice-Chancellor is a distinguished academician having more than ten years experience as Professor in a university or college or 10 years experience in an equivalent position in a reputed research and/or academic, administrative organisation and of highest level of competence, integrity, morals and institutional commitment. Credentials of Respondent No. 4, on the face of it, revealed that Respondent No. 4 fulfills the aforesaid criteria on each of such requirements of eligibility.

3.2 Next submission of learned Advocate General is that the provision relating to appointment of first Vice-Chancellor, in its very

nature, is intended to first bring about incorporation of the University as required under Section 3 of the Act of 2019. The detailed procedure for appointment of Vice-Chancellor as contained in Sections 11(3) to 11(6) of the Act of 2019, at the stage of corporation, cannot be followed because of practical impossibility even the Board of Management has not been constituted at that age of incorporation of the University. The Vice-Chancellor is the Chairman of the Board of Management as provided under Section 20 of the Act of 2019 relating to constitution or composition of the Board of Management. Unless, the Board of Management is constituted, compliance of Section 11(3) is a practical impossibility. Therefore, the Legislature provided for appointment of first Vice-Chancellor under Section 11(17) of the Act of 2019 that notwithstanding anything contained in the other provisions of Section 11 of the Act of 2019, the first Vice-Chancellor of the University shall be appointed by the Chancellor after consultation with the Government which is for a period not exceeding three years. Therefore, challenge to the appointment of Respondent No. 4 on the ground that the procedure mandated under Section 11(3) to Section 11(6) of the Act of 2019 has not been followed is misconceived in law.

3.3 Next submission of learned Advocate General is that the provisions contained in Regulation 7.3 (ii) and (iii) of the Regulations of 2018 provide for appointment of Vice-Chancellor, but do not deal with the appointment of first Vice-Chancellor. Moreover, it is contended, there is no provision contained in the Regulations of 2018 specifically dealing with appointment of Vice-Chancellor of a

law university mandating that even in the matter of appointment of first Vice-Chancellor of law university, the procedure prescribed therein has to be followed. The Regulations of 2018 are silent both with regard to appointment of first Vice-Chancellor of a law university. Therefore, present is not a case of violation of any statutorily prescribed procedure for appointment of first Vice-Chancellor. Learned Advocate General also highlighted in his arguments that there are provisions with regard to appointment of first Vice-Chancellor in the universities across the country and the provisions contained in Section 11(17) of the Act of 2019 are not unusual but have been invoked under various laws establishing university not only in the State of Rajasthan, but in other States also. In support of his submissions as aforesaid, learned Advocate General relied upon the decisions of the Hon'ble Supreme Court in the cases of **Gurpal Singh Vs. State of Punjab & Others (2005) 5 SCC 136; Neetu Vs. State of Punjab & Others (2007) 10 SCC 614; Hari Bansh Lal Vs. Sahodar Prasad Mahto & Others (2010) 9 SCC 655; Maharashtra Public Service Commission through its Secretary Vs. Sandeep Shriram Warade & Others (2019) 6 SCC 362; decision of this Court in the case of Bharat Sharma Vs. State of Rajasthan & Others (D.B. Civil Writ Petition No. 595/2021 decided on 08.04.2022); decision of Bombay High Court in the case of Dr. Ravindra T. Deoghare & Others Vs. The State of Maharashtra & Others (Public Interest Litigation No. 217 of 2014 decided on 24.12.2014).**

4. Learned Senior Counsel appearing on behalf of Respondent No. 3-Law University has reiterated those very submissions which have

been made by learned Advocate General and submits that the legislative wisdom in prescribing eligibility criteria for the post of Vice-Chancellor in a law university is beyond any challenge as there is no ground based on lack of legislative competence. He would further submit that scope of judicial review in the matter of challenge to the constitutional validity of an enactment is limited and the Court would not substitute its own opinion or view in place of that of the Legislature in the matter of laying down eligibility criteria. He would argue that in the absence of there being any ground of lack of legislative competence and the petitioner failing to make out a case of any manifest arbitrariness or violation of provisions of the Constitution of India, writ petition seeking to challenge validity of various provisions of the Act of 2019 is liable to be dismissed. He would also add that there is no element of public interest as such involved in the present matter. In view of settled legal position that PIL in service matters is not maintainable, except on very limited ground when a case of issuance of writ of quo warranto is made out, interference would not be permissible under the law. According to him, as in the present case, Respondent No. 4 fulfills the eligibility criteria as statutorily prescribed, no writ of quo warranto can be issued. Further, in the absence of any case made out that in the matter of appointment of Respondent No. 4 as Vice-Chancellor of Law University, legal mandate under the Regulations of 2018 is violated, the petition deserves to be dismissed. Learned Senior Counsel, in support of his arguments, relied upon the decisions of the Hon'ble Supreme Court in the cases of **Lalit Kumar Modi Vs. Board of Control for Cricket in India & Others (2011) 10 SCC**

106; Saurashtra Oil Mills Assn., Gujarat Vs. State of Gujarat & Another (2002) 3 SCC 202; Rajiv Sarin & Another Vs. State of Uttarakhand & Others (2011) 8 SCC 708; M. Karunanidhi Vs. Union of India & Another (1979) 3 SCC 431; Deep Chand & :hers Vs. The State of Uttar Pradesh & Others, AIR 1959 SC 48 and Kanaka Gruha Nirmana Sahakara Sangha Vs. arayanamma (Smt) (Since Deceased) By LRS. & Others (2003) 1 SCC 228.

5. Learned Senior Counsel appearing on behalf of Respondent No. 4, more or less, has also made his submissions on all the principal issues on which learned Advocate General has advanced his submissions. Adding to the submissions which have already been advanced, his contention is that no statute can be declared ultra vires in a PIL. Respondent No. 4, it is contended, is a distinguished academician which is an admitted position on record in view of petitioner's own averments in the petition and the details of credentials of Respondent No. 4 filed by the petitioner himself. He would submit that the argument that Vice-Chancellor of a law university must necessarily have background of legal education, suffers from inherent fallacy. He would submit that it is an aspect for consideration of the Legislature and not for the Courts. Learned Senior Counsel further advanced his arguments by submitting that there are many multi disciplinary universities which not only have constituent law faculties but also affiliated law colleges. Vice-Chancellors of those universities do not necessarily come from the legal background, nor are they persons having academic experience in the field of legal education because in the capacity of Vice-

Chancellor, the principal work is more of administrative nature. The object of the Act of 2019 would not be subverted merely because a person of high academic excellence, not belonging to the field of legal education, has been appointed as its Vice-Chancellor. The powers, duties and functions of the Vice-Chancellor are varied and not necessarily confine to the aspect of legal education.

11 Next submission of learned Senior Counsel is that issuance of writ of quo warranto is not warranted in a case where the legality and validity of eligibility criteria prescribed under the law is itself put to challenge. Referring to several decisions, learned Senior Counsel would contend that only in limited cases where the person appointed to a public office is not found to be possessed of the qualifications prescribed under the law, writ of quo warranto can be issued. Present is not a case where Respondent No. 4 does not possess the qualifications and does not fulfill the eligibility criteria as prescribed under Section 11, sub-section(2) of the Act of 2019. He would further submit that no other law including the Bar Council of India Rules or the Bar Council of India has laid down any qualification/eligibility criteria in the matter of appointment to the post of Vice-Chancellor. Even, the University Grants Commission has not prescribed any qualification/eligibility criteria as contended by the petitioner. There is no other statutory enactment of the State having overreaching effect which provides for a Vice-Chancellor of law university to be necessarily a person equipped with expertise and knowledge of legal education and research in connection therewith. The provision with regard to appointment of first Vice-Chancellor is exception to the general provision with regard to

appointment of Vice-Chancellor which is necessitated to first get the university incorporated in terms of provisions contained in Section 23 of the Act of 2019. It is in the nature of transitory provision or can even be treated as a proviso to the main section. As the escription of eligibility criteria by the Legislature does not lack gislative competence, nor does it violate any constitutional ovision, there is no warrant to read down the provisions contained in Section 11(2) of the Act of 2019 as that would mean to legislate a law, which power the Courts do not possess. Learned Senior Counsel would submit that the present petition is, in fact, an attempt to invoke jurisdiction of this Court to substitute its own view on the legislative policy reflected in eligibility criteria for appointment to the post of Vice-Chancellor.

5.2 Learned Senior Counsel would next submit that there is no repugnancy in the provisions contained in Section 11(17) and the provisions contained in Regulation 7.3(ii) and 7.3(iii) of the Regulations of 2018. The Regulations of 2018 have no application unless the university is incorporated and newly incorporated university applies for recognition. The incorporation of the Law University under the Act of 2019 is not complete unless first Vice-Chancellor is appointed. Such a situation is not contemplated in the Regulations of 2018, much less regulated by any other provision in the matter of appointment of first Vice-Chancellor. Therefore, it is contended that insofar as appointment of first Vice-Chancellor is concerned, the Regulations of 2018 are silent and, therefore, the provisions contained in Section 11(17) of the Act of 2019 and those contained in Regulation 7.3(ii) and 7.3(iii) of the Regulations of 2018

cannot be said to be irreconcilable and both may co-exist though with some overlapping which has to be held to be permissible under the law. It is contended that such transitory provision is additional/supplemental provision with no element of repugnancy. ome overlapping by itself, without anything more, would not render e provisions contained in Section 11, sub-section (17) of the Act of 19 void. In support of his arguments, learned Senior Counsel appearing on behalf of Respondent No. 4 relied upon the decisions of the Hon'ble Supreme Court in the cases of **Premium Granites & Another Vs. State of T.N. & Others (1994) 2 SCC 691; Minerva Mills Ltd. & Others Vs. Union of India & Others (1980) 3 SCC 625; J.P. Bansal Vs. State of Rajasthan & Another (2003) 5 SCC 134; Sangeeta Singh Vs. Union of India & Others (2005) 7 SCC 484; Unique Butyle Tube Industries (P) Ltd. Vs. U.P. Financial Corporation & Others (2003) 2 SCC 455; National Engineering Industries Ltd. Vs. Shri Kishan Bhageria & Others AIR 1988 SC 329; Krishi Utpadan Mandi Samiti & Others Vs. Pilibhit Pantnagar Beej Ltd. & Another (2004) 1 SCC 391; Sir Fazalbhoy Currimbhoy etc. Vs. The Official Trustee of Maharashtra & Others, AIR 1979 SC 687** and **Yogendra Kumar Jaiswal & Others Vs. State of Bihar & Others (2016) 3 SCC 183;** decision of Mysore High Court in the case of **D. Rudriah & Another Vs. The Chancellor, University of Agricultural Sciences, Bangalore & Others, AIR 1971 Mys 84;** decision of Calcutta High Court in the case of **In Re, Sm. Ranu Sengupta & Others, AIR 1982 Cal 420.**

6. Learned counsel appearing on behalf of Respondent No. 5-Bar Council of India has supported the case of the petitioner and raised similar submissions as made by learned counsel for the petitioner.

7. Learned counsel appearing on behalf of Respondent No. 6-Bar Council of Rajasthan referring to its stand taken in the reply has stated that the procedure for appointment of Vice-Chancellor has been obviated under the provisions of Section 11(17) of the Act of 2019. He would submit that the procedure has been avoided and Section 11(17) of the Act of 2019 does not give power for appointment of the Vice-Chancellor without consultation and de hors the eligibility as contained in Section 11(2) of the Act of 2019. It is also submitted that the power given under Section 11(17) cannot be exercised arbitrarily. It is also stated that the standard of law university has to be maintained and it cannot be allowed to be degraded in any manner. It has also been contended that the Vice-Chancellor is Chairman of the Board of Management, Head of Academic Council and Head of Selection Committee also. As per the provisions contained in Section 29 of the Act of 2019 read with the provisions of the Rajasthan Universities' Teachers and Officers (Selection for Appointment) Act, 1974, the Vice-Chancellor is required to be well versed in the subject of law so that he can guide and lead the university in proper direction.

8. Learned Senior Counsel appearing on behalf of Respondent No. 7-University Grants Commission would submit that the UGC Act and Regulations of 2018 are silent so far as appointment of first Vice-Chancellor is concerned. His submission is that the State Act is not repugnant to the UGC Act or the regulations framed thereunder.

Learned counsel adopted the arguments of other counsel and opposed the relief sought in the writ petition. Referring to reply filed by Respondent No. 7, it is contended that it is only after incorporation of the University that steps for recognition are required be taken.

We have bestowed out anxious considerations to various ctual and legal submissions made by learned counsels for respective parties, records of the case as also statutory scheme of the Act of 2019 and various authorities cited before us at the bar.

10. Serious objection to the maintainability of the present public interest litigation petition at the instance of the petitioner has been raised, therefore, that issue is required to be considered before adverting to other submissions.

It is well settled legal position that a PIL in service matter is not maintainable. In the case of **Gurpal Singh Vs. State of Punjab & Others (supra)**, legal position in this regard was reiterated by Their Lordships in the Hon'ble Supreme Court as below:

> "**5.** The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this Court in various cases. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the

legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

6. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of Maharashtra v. Prabhu (1994) 2 SCC 481 and A.P. State Financial Corpn. v. GAR Re-Rolling Mills (1994) 2 SCC 647.) No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See Buddhi Kota Subbarao (Dr.) v. K. Parasaran (1996) 5 SCC 530.) Today people rush to courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in courts and among the public.

7. As noted supra, the time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where only a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, High Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra (1998) 7 SCC 273, this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as

aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.

8. The aforesaid position was highlighted in Ashok Kumar Pandey v. State of WB (2004) 3 SCC 349.

9. It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing the gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters-government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders, etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to lose but trying to gain for nothing and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants.

10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine

public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

11. The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its Report of Public Interest Law, USA, 1976 as follows:

> "Public interest law is the name that has recently been given to efforts which provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others." [See B. Singh (Dr.) v. Union of India (2004) 3 SCC 363, SCC p.373, para 13.]

12. When a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object. Since in service matters public interest litigation cannot be filed there is no scope for taking action for contempt, particularly, when the petition is itself not maintainable. In any event, by order dated 15-4-2002 this Court had stayed operation of the High Court's order."

11. While laying down the rule of caution against public mischief and allowing mischievous petitions seeking to assail, for oblique motives, justifiable executive actions and the Courts' approach while dealing with imposters and busybodies or meddlesome interlopers having no interest in the public and weed out petitions which though

titled as public interest litigations are in essence something else, it has been reiterated at more than one place in the aforesaid observations, particularly in Para 12, as referred to above, that in service matters, public interest litigation cannot be filed. Therefore, is legal position is crystal clear that PIL would not be maintainable service matters.

. Equally settled, however, is the law that writ of quo warranto lies when appointment is made contrary to statutory provisions. In the case of **Rajesh Awasthi Vs. Nand Lal Jaiswal & Others (2013) 1 SCC 501**, the Hon'ble Supreme Court with regard to scope and ambit of a challenge to an appointment laid down the following proposition of law:

> "**29.** In B.R. Kapur v. State of T.N. (2001) 7 SCC 231, in the concurring opinion Brijesh Kumar, J., while dealing with the concept of writ of quo warranto, has referred to a passage from Words and Phrases, Permanent Edn., Vol. 35, at p. 647, which is reproduced below: (SCC p.316, para 80)
>
> > "80. … 'The writ of "quo warranto" is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. State ex inf McKittrick v. Murphy 347 Mo 484, SW 2d pp. 529-30.
> >
> > Information in the nature of "quo warranto" does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed. State ex Inf Walsh v. Thactcher, 340 Mo 865, SW 2d p.938'"
> >
> > (emphasis in original)
>
> **30.** In University of Mysore v. C.D. Govinda Rao AIR 1965 SC 491, while dealing with the nature of the writ of quo warranto, Gajendragadkar, J. has stated thus: (AIR p.494, para 7)

> "7. … 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 recognised 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."

31. From the aforesaid pronouncements it is graphically clear that a citizen can claim a writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorised to hold the same as per law. Delay and laches do not constitute any impediment to deal with the lis on merits and it has been so stated in Kashinath G. Jalmi v. Speaker (1993) 2 SCC 703.

32. In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat (2003) 4 SCC 712, it has been laid down by this Court that a writ of quo warranto can be issued when there is violation of statutory provisions/rules. The said principle has been reiterated in Retd. Armed Forces Medical Assn. v. Union of India (2006) 11 SCC 731 (1).

33. In Centre for PIL v. Union of India (2011) 4 SCC 1 a three-Judge Bench, after referring to the decision in R.K.

> Jain v. Union of India (1993) 4 SCC 119, has opined thus: (Centre for PIL case, SCC p. 29, para 64)
>
> > "64. Even in R.K. Jain case, this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction."
> >
> > (emphasis in original)
>
> It is also worth noting that in the said case a view has been expressed that the judicial determination can be confined to the integrity of the decision-making process in terms of the statutory provisions."

13. In view of the aforesaid judicial pronouncements, the settled legal position which emerges is that though PIL in service matters would not be maintainable, a writ of quo warranto could well be maintained by a citizen. Thus, a citizen can claim issuance of writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the public office is authorised to hold the same as per law and in such matters, delay and laches doe not constitute any impediment to deal with the lis on the merits. It has also been held that the judicial determination can be confined to the integrity of the decision making process in terms of statutory provisions.

14. An objection has also been taken that the petition does not appear to be bona fide and has been filed without proper research and based on a decision of the Hon'ble Supreme Court in the case of **Bar Council of India Vs. Board of Management, Dayanand College of Law & Others (supra)** whereas the Bar Council of India

Rules have undergone amendment. Contention of the respondents, therefore, is that such a petition is liable to be dismissed at the threshold.

So far as bona fides of the petitioner is concerned, keeping in ew the rule of caution laid down by the Hon'ble Supreme Court in e case of **Gurpal Singh Vs. State of Punjab & Others (supra)**, e find that the petitioner served the Government of Rajasthan as Joint Director, College Education. He was Dean in Faculty of Law, University of Rajasthan. At the time of filing o the petition, the petitioner was Director of Indian Institute of Comparative Law. He is also Editor of Indian Social Legal Journal. He has been in service of legal education for about 50 years. The petitioner has clearly stated that he has no personal interest in the matter and being Professor in Law, he is concerned with the standards of legal education and he has filed this petition challenging appointment of Respondent No. 4 as the Vice-Chancellor of Respondent No.3-Law University though Respondent No. 4 is not equipped with any knowledge and experience in the field of legal education. In the return of the respondents also, it has come that the petitioner, in view of the provisions contained in the Act of 2019, cannot be an aspirant to apply for Vice-Chancellor of Respondent No.3-Law University. There is no other material placed on record by the respondents, nor emerging from the records which would lead us to draw an inference that the petitioner does not have the credentials and standing to challenge appointment of Respondent No. 4. Moreover, it is not in dispute that the petitioner himself served in the field of legal education for 50 years in various capacities as Joint Director, College

Education; Dean, Faculty of Law, University of Rajasthan; Director of Indian Institute of Comparative Law. He is Editor of Indian Social Legal Journal. He does not appear to have any personal much less any vested interest. Moreover, we find that the issue which has en raised by way of present PIL cannot be said to be a frivolous e intended only to misuse the judicial forum in the garb of PIL. e petitioner seeks to raise concern regarding appointment of a person with no background of legal education as Head of the Law University.

Irrespective of the merits of the petitioner's submissions and the law laid down as also the observations made by the Hon'ble Supreme Court in the case of **Bar Council of India Vs. Board of Management, Dayanand College of Law & Others (supra)**, we do not think that the petitioner has misled the Court in any way. The decision of the Hon'ble Supreme Court in the case of **Bar Council of India Vs. Board of Management, Dayanand College of Law & Others (supra)** was based on the provisions contained in the Bar Council of India Rules as it existed then. The pleadings made in the petition do not reveal that the petitioner has rested his challenge on the appointment of Respondent No. 4 on unamended rules, suppressing that the very basis of challenge has been removed by subsequent amendments made in the rules. Therefore, on this count alone, we are not inclined to dismiss this PIL at the threshold without examining the merits of the petition.

It has also been contended on behalf of the respondents that the petition is vague insofar as challenge to appointment of Respondent No. 4 on the ground of alleged violation of the provision

with regard to consultation with the Government, as contained in Section 11(17) of the Act of 2019, is concerned. This would be a matter of examination on merits. Whether or not the petitioner has been able to make out a case of statutory violation of the provision ntained in Section 11(17) of the Act of 2019, is a matter of nsideration on merits and not a ground for outright dismissal of e PIL without examining merits of the case.

15. In this PIL, the petitioner has not only sought issuance of writ of quo warranto on the ground of violation of statutory provisions in the matter of appointment of Respondent No. 4, but at the same time, has challenged some of the provisions contained in the Act of 2019. Before proceeding to deal with the submissions on validity of the provisions contained in Section 11(2) and Section 11(17) of the Act of 2019, we consider it apposite to first deal with maintainability of the writ petition for issuance of writ of quo warranto on the face of the provisions, as it is, contained in the Act of 2019, particularly when the validity of the provisions itself is under challenge.

16. In Halsburys Laws of England III Edition, Vol II Page 148, dealing with legality of charters, it is stated thus:

> "**280. Legality of charters.** An information in the nature of a quo warranto would not have been permitted for the purpose of attacking the legality of a charter of incorporation granted to a town through an officer appointed thereunder. Accordingly, an information calling upon the defendant to show by what authority he claimed to be coroner of a borough, on the ground that the borough charter had not been properly granted, was refused (l)."

The aforesaid proposition also finds place in Seervai Constitution IV Edition Vol-2 at Page 1482 which reads as below:

"**16.63.** An applicant for a writ of quo warranto can ask the Court to examine whether a person holding public office has been validly appointed under charter, but the applicant will not be permitted to challenge the validity of the charter.

> "An information in the nature of a quo warranto would not have been permitted for the purpose of attacking the legality of a charter of incorporation granted to a town through an officer appointed thereunder. Accordingly, an information calling upon the defendant to show by what authority he claimed to be coroner of a borough on the ground that the borough charter had not been properly granted, was refused."

In D. Rudraiah v. Chancellor, V.A.S. Bangalore, the Court cited the above passage with approval, and two cases mentioned in f.n. 8 herein and said that the reasoning in the passage and the two cases applied equally when the validity of the statutory provisions under which an appointment or election to a public office had been made. Consequently, such validity will not be permitted to be questioned on an application for a quo warranto."

17. The Division Bench of Mysore High Court in **D. Rudriah & Another Vs. The Chancellor, University of Agricultural Sciences, Bangalore & Others (supra)** examined similar issue where legality and validity of appointment of the Vice-Chancellor of the University and constitutionality of some of the provisions of the relevant Act were under challenge on the ground of violation of Articles 14 and 16 of the Constitution of India. The said challenge was repelled on following submissions:

> "**98.** The learned Advocate-General raised an objection that a person who is not an aspirant and eligible, for the office of the Vice-Chancellor but comes before Court only as a relator asking for issue of a writ in the nature of quo warranto, can only ask the court to examine whether the statutory provisions under which the holder of a public office is appointed or elected, have been complied with and that he (such petitioner) cannot question the validity of the law under which such appointment is made or such election is held.
> **99.** In support of his contention, the learned Advocate General relied on the decision in Queen v. Taylor, (1840) 9 LJQB 219. There, a Charter of incorporation had been granted to a borough under an Act of Parliament and a

Coroner had been elected for the borough, under that Charter. A private party had asked for a rule for an information in the nature of quo warranto, questioning the validity of the Charter under which such election had taken place. While discharging the rule, this is what Lord Denman, C. J., said:

> "The points discussed in this case, in fact involve the constitution of this borough; and the election of the Coroner is made the means of examining that question. This gentleman is in the possession of an office to which he has been appointed by virtue of a charter granted by the Crown, and his right to the office must be questioned in some other manner".

100. Littledale, J., who concurred with the learned Chief Justice, said:

> "The effect of this application is to call in question the validity of the charter under which Mr. Taylor had been appointed. I am of opinion that that should not be done in this way....."

101. The learned Advocate-General next referred to the decision in Reg. v. Jones, (1863) 8 LT 503. There, one Mr. Jones was elected as Mayor of the Borough of Aberavon. A Charter of incorporation had been granted to that town by the Crown under the provisions of an Act of Parliament. A private citizen moved for a rule calling upon Mr. Jones to show cause why a quo warranto information should not be filed against him for exercising the office of Mayor in Aberavon. In that petition, the legality of the Charter of Incorporation of Aberavon was questioned. Discharging the rules, Cockburn, C. J. said:

> "You are seeking to repeal a charter not in question directed to the charter, but in a proceeding, against an individual....."

102. The legal position has been summed up thus in Halsbury's Laws of England, (3rd Edition), Vol. 11, page 48, para 280:

> "An information in the nature of a quo warranto would not have been permitted for the purpose of attacking the legality of a charter of incorporation granted to a town through an officer appointed thereunder. Accordingly, an information calling upon the defendant to show by what authority he claimed to be coroner of a borough on the ground that the borough charter had not been properly granted, was refused."

103. The learned Advocate General argued that the same reasoning as in the above cases, should be applied when the validity of the statutory provisions under which a person is appointed or elected to a public office, has been challenged in a petition for a writ in the nature of quo warranto, and that such petitioner should not be permitted to question the validity of such statutory provisions."

Examining the rival contentions, the Court held thus:

> "**104.** We think the contention of the learned Advocate General is well founded : The reasoning adopted by the English Courts in the aforesaid two decisions, has equal application when the validity of the statutory provisions under which an appointment or election to a public office, has been made, is questioned in proceedings for quo warranto."

. In an another decision, in the case of **In Re, Sm. Ranu engupta & Others (supra)**, it was propounded thus:

> "**8.** …… I am also inclined to accept the contention raised by Mr. Banerjee appearing for the respondents Nos. 3 to 32 that the provision of S. 56A is an answer to the assumption of power by the respondents Nos. 3 to 32 and a prayer for writ of quo warranto must fail if the statutory authority for assumption of office under S. 56A is established. For the purpose of a writ of quo warranto, it is not necessary to investigate the legality or validity of the provisions of the Statute under which the assumption of office is made and such investigation may be made for the purpose of issuing writs in the nature of mandamus or certiorari. ….."

19. In view of the aforesaid decisions and the observations made therein, it has to be held that a person who is not an aspirant and eligible, for the office, appointment on which is under challenge, but comes before the Court only as a relater asking for issuance of writ in the nature of quo warranto, can only ask the Court to examine whether the statutory provisions under which the holder of a public office is appointed or elected, have been complied with and that he (such petitioner) cannot question the validity of law under which such appointment is made or such election is held. In view of what has been held by the Hon'ble Supreme Court in the case of **Rajesh Awasthi Vs. Nand Lal Jaiswal & Others (supra)**, the real test would be to see whether the person holding the office is authorised to hold the same as per law and judicial determine can be confined

to the integrity of the decision making process in terms of the statutory provisions.

20. Therefore, we shall first examine that whether the petitioner as a relater has made out a case for issuance of writ of quo warranto.

Apparently, the provision contained in Section 11(2) of the Act 2019, when read as it is, does not show that the petitioner was eligible in terms of the said provision for being appointed as Vice-Chancellor. The provision contained in Section 11(2) of the Act of 2019, laying down the eligibility criteria, reads as under:

> "**11. Vice-Chancellor.**- (1) xxxxxxx.
> (2) No person shall be eligible to be appointed as Vice-Chancellor unless he is, a distinguished academician having a minimum of ten years experience as Professor in a University or college or ten years experience in an equivalent position in a reputed research and/or academic administrative organization and, of highest level of competence, integrity, morals and institutional commitment."

As the aforesaid provision does not include the requirement that person necessarily has to be distinguished academician in the field of legal education, the credentials of Respondent No. 4 undisputedly fulfill the aforesaid statutorily prescribed eligibility criteria. The pleadings of the parties, the details relating to the qualifications, experience and standing of Respondent No. 4 and what has been stated in Annexure-5 of the writ petition do not show that Respondent No. 4 did not possess/fulfill the statutorily prescribed eligibility criteria for appointment as Vice-Chancellor of Respondent No.3-Law University.

As to whether such provision laying down the eligibility criteria is ultra vires the objectives enshrined in Section 5 of the Act of 2019

or otherwise unconstitutional suffering from manifest arbitrariness would be another matter for consideration.

21. One of the arguments of learned counsel for the petitioner is that the procedure as envisaged under Section 11(17) of the Act of)19 for appointment of first Vice-Chancellor is in violation of the ovisions contained in Section 11(3) to Section 11(6) of the Act of)19. It is the argument of learned counsel for the petitioner that even in the matter of appointment of first Vice-Chancellor, the procedure prescribed under Section 11(3) to Section 11(6) of the Act of 2019 was required to be followed and that having not been done, the appointment is in violation of the statutory provisions warranting issuance of writ of quo warranto. To appreciate this submission, it would be useful to refer to the provision contained in Section 11(17) of the Act of 2019 which is extracted hereinbelow:

> "**11. Vice-Chancellor.-** (1) xxxxxxx
> (2) xxxxxxx
> (3) xxxxxxx
> (17) Notwithstanding anything contained in the foregoing provisions of this section, the first Vice-Chancellor of the University shall be appointed by the Chancellor after consultation with the Government for a period not exceeding three years on such terms and conditions as the Chancellor may determine."

Sub-section (17) of Section 11 of the Act of 2019 as quoted above cannot be read in isolation and out of context, but has to be read as part of the statutory scheme in the matter of appointment of Vice-Chancellor as provided in Section 11 of the Act of 2019. Section 11(3) to Section 11(6) of the Act of 2019 lay down a detailed procedure which is required to be followed in the matter of appointment of the Vice-Chancellor. The aforesaid provisions are reproduced as below:

"**11. Vice-Chancellor.**- (1) xxxxxxxx.
(2) xxxxxxxxxx.
(3) The Vice-Chancellor shall be appointed by the Chancellor in consultation with the State Government from amongst the persons included in the panel recommended by the Search Committee consisting of –
(a) one person nominated by the Board;
(b) one person nominated by the Chairman, University Grants Commission;
(c) one person nominated by the Chancellor; and
(d) one person nominated by the State Government,
and the Chancellor shall appoint one of these persons to be the Chairman of the Committee.
(4) An eminent person in the sphere of higher education not connected with the University and its colleges shall only be eligible to be nominated as the member of the Search Committee.
(5) The Search Committee shall prepare and recommend a panel of not less than three persons and not more than five persons to be appointed as Vice-Chancellor.
(6) For the purpose of selection of the Vice-Chancellor, the Search Committee shall invite applications from eligible persons through a public notice and while considering the names of persons to be appointed as Vice-Chancellor, the Search Committee shall give proper weightage to academic excellence, exposure to the higher education system in the country and adequate experience in academic and administrative governance and record its findings in writing and enclose the same with the panel to be submitted to the Chancellor."

22. The aforesaid provisions provide that the Vice-Chancellor shall be appointed by the Chancellor in consultation with the State Government from amongst the persons included in the penal recommended by the Search Committee. Search Committee has to consist of persons as stated in clause (a), (b), (c) and (d) of Section 11(3) of the Act of 2019. Person as stated in clause (a) of Section 11(3) of the Act of 2019 has to be nominated by the Board. Sub-section (6) of Section 11 of the Act of 2019 also provides that the Search Committee shall invite applications from eligible persons through public notice. Thus, the provisions prescribed in Section 11(3) to Section 11(6) of the Act of 2019 requires a detailed

procedure to be followed in the matter of appointment of Vice-Chancellor.

Sub-Section (17) of Section 11 of the Act of 2019, however, begins with a non-obstante clause that notwithstanding anything ntained in the foregoing provisions of that Section, the first Vice-hancellor of the University shall be appointed by the Chancellor ter consultation with the Government for a period of not exceeding three years on such terms and conditions as the Chancellor may determine.

It is, thus, noticed that insofar as appointment of first Vice-Chancellor is concerned, for a period not exceeding three years, the provisions contained in Section 11(3) to Section 11(6) of the Act of 2019 are not applicable. All that is required under the law is that first Vice-Chancellor of the University shall be appointed by the Chancellor after consultation with the Government. Such a provision of appointment of first Vice-Chancellor is not unusual. It is relevant to note that the provision relating to incorporation of University contained in Section 3 of the Act of 2019 clearly provides that the Chancellor, the first Vice-Chancellor, the first members of the Board of Management and the Academic Council of the University and all persons who may hereafter become such officers or members so long as they continue to hold such office or membership shall constitute a body corporate by the name of "the Dr. Bhimrao Ambedkar Law University, Jaipur". Section 3 of the Act of 2019 is extracted hereinbelow:

> "**3. Incorporation of the University.**- (1) The Chancellor, the first Vice-Chancellor, the first members of the Board of Management and the Academic Council

of the University and all persons who may hereafter become such officers or members so long as they continue to hold such office or membership shall constitute a body corporate by the name of *"the Dr. Bhimrao Ambedkar Law University, Jaipur*" and shall have perpetual succession and a Common Seal and may by that name sue and be sued.

(2) The University shall be competent to acquire and hold property, both movable and immovable, to lease, sell or otherwise transfer or dispose of any movable or immovable property, which may vest in or be acquired by it for the purposes of the University, and to contract and do all other things necessary for the purposes of this Act:

Provided that no such lease, sale, transfer or disposal of such property shall be made without the prior approval of the State Government.

(3) The headquarters of the University shall be at Jaipur which shall be the headquarters of the Vice-Chancellor.

(4) In all suits and other legal proceedings by or against the University, the pleadings shall be signed and verified by the Registrar and all processes in such suits and proceedings shall be issued to and served on the Registrar."

23. Therefore, the provisions contained in Section 11(17) of the Act of 2019 providing for appointment of first Vice-Chancellor is towards incorporation of the University as envisaged in Section 3 of the Act of 2019. It is in this context that first Vice-Chancellor is required to be appointed without adherence to the procedure envisaged in Section 11(3) to Section 11(6) of the Act of 2019. Thus, the object of the Legislature in incorporating Section 11(17) of the Act of 2019 is in the nature of exception to the general provisions with regard to appointment of Vice-Chancellor of the University through a detailed process of selection after inviting applications by public notice from amongst eligible persons followed by screening by Search Committee and recommendation of a panel of not less than three persons but not more than five persons to the Chancellor for appointment of Vice-Chancellor of the Law University.

24. It is also relevant to note that Search Committee has to comprise of one person nominated by the Board as provided in clause (a) of sub-section (3) of Section 11 of the Act of 2019. The constitution of the Board of Management is provided under Section , which has to consist of various members including the Vice-hancellor of the university as Chairman of the Board. Therefore, lless there is a Vice-Chancellor, no question of there being a person nominated by the Board to fulfill the requirement of sub-section(3) of Section 11 of the Act of 2019 can arise. Thus, Section 11(17) of the Act of 2019 is in the nature of transitory provision intended to complete the process of incorporation of the University in terms of requirement of Section 3 of the Act of 2019 which necessarily includes the appointment of first Vice-Chancellor. The provision, in other words, is an exception to the general rule laying down a detailed procedure for appointment of Vice-Chancellor. Therefore, the argument that even in the matter of first Vice-Chancellor, the procedure prescribed under Section 11(3) to Section 11(6) of the Act of 2019 is required to be followed, does not merit acceptance.

25. Another submission of learned counsel for the petitioner is that even if it is assumed that in the matter of appointment of first Vice-Chancellor, as provided under Section 11(17) of the Act of 2019, the procedure prescribed under Section 11(3) to Section 11(6) is not required to be followed, it was incumbent on the Chancellor to fulfill the procedural requirement as embodied in Regulation 7.3(ii) and 7.3(iii) of the Regulations of 2018. To appreciate this submission, it

is considered apposite to refer the relevant provisions of the Regulations of 2018:

> "**7.3. VICE CHANCELLOR:**
> i. A person possessing the highest level of competence, integrity, morals and institutional commitment is to be appointed as Vice-Chancellor. The person to be appointed as a Vice-Chancellor should be a distinguished academician, with a minimum of ten years' of experience as Professor in a University or ten years' of experience in a reputed research and / or academic administrative organisation with proof of having demonstrated academic leadership.
> ii. The selection for the post of Vice-Chancellor should be through proper identification by a Panel of 3-5 persons by a Search-cum-Selection-Committee, through a public notification or nomination or a talent search process or a combination thereof. The members of such Search-cum-Selection Committee shall be persons' of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the Search cum-Selection Committee shall give proper weightage to the academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance, to be given in writing along with the panel to be submitted to the Visitor/Chancellor. One member of the Search cum-Selection Committee shall be nominated by the Chairman, University Grants Commission, for selection of Vice Chancellors of State, Private and Deemed to be Universities.
> iii. The Visitor/Chancellor shall appoint the Vice Chancellor out of the Panel of names recommended by the Search-cum-Selection Committee.
> iv. The term of office of the Vice-Chancellor shall form part of the service period of the incumbent making him/her eligible for all service related benefits."

26. The aforesaid provisions, which have been prescribed, relate to appointment of Vice-Chancellor and in fact, under the Act of 2019, said detailed procedure consistent with the provisions contained in Regulations 7.3(ii) and 7.3(iii) of the Regulations of 2018 have been contained in Section 11(3) to Section 11(6) of the Act of 2019. However, the provision which provides for application of the

Regulations of 2018 as contained in Regulation 1.2 of the Regulations of 2018, clearly provides that the regulations shall apply to every University established or incorporated by or under a Central Act, Provincial Act or a State Act. Therefore, unless a university is tablished or incorporated, by or under State Act, the procedure th regard to appointment of Vice-Chancellor as contained in gulation 7.3 of the Regulations of 2018 may not be applicable. The appointment of first Vice-Chancellor under Section 11(17) of the Act of 2019 is a step towards incorporation of the university as required under Section 3 of the Act of 2019. Neither in the UGC Act, nor in any of the regulations much less the Regulations of 2018, there exists any provision dealing with appointment of first Vice-Chancellor when such appointment is towards incorporation of the University itself. Therefore, it cannot be said that the appointment of Respondent No. 4 is in violation of the provisions contained in Regulation 7.3 of the Regulations of 2018. At this stage, it is worthwhile to mention that the petitioner, on above two grounds, has also challenged the validity of the provision of Section 11(17) of the Act of 2019 on the ground that it is repugnant to the provisions contained in Regulation 7.3 of the Regulations of 2018. But then, it cannot be held that the procedure followed by the Chancellor in the matter of appointment of first Vice-Chancellor as envisaged under Section 11(17) of the Act of 2019 violates the provisions contained in the Regulations of 2018.

27. The petitioner has assailed the validity of appointment of Respondent No. 4 on yet another ground that the mandatory requirement of consultation as required under Section 11(17) of the

Act of 2019 has not been substantially complied with. In this regard, referring to averments made in Ground 8(xiii) stated in the petition, it has been argued that the provision with regard to consultation has not been followed in its letter and spirit. In para 4 of the petition aling with the facts of the case, it has nowhere been stated that nsultation/effective consultation has not taken place. In para 5 it s been stated thus:

> "**5. Source of information:**
> Petitioner has downloaded the impugned legislation and impugned orders from internet and has collected the other information from reliable resources."

According to the petitioner, he has collected other information from reliable sources. In para 8(xiii) what has been stated is as below:

> "**(xiii)** ……. There appears to have been no meaningful consultation with the Government qua appointment of Respondent No. 4 as Vice-Chancellor of Respondent Law University because had any meaningful consultation would have taken place, then a person of Sociology subject would not have been appointed as Vice-Chancellor of Law University contrary to the object and purpose of the Act statutorily prescribed under Section 5 of the Act of 2019 and other provisions of Act. It appears that in the present case, instead of having meaningful consultation with the Government, Chancellor has acted at the blind dictates of the Government in appointing Respondent No. 4 as Vice-Chancellor of Respondent Law University, which vitiates the appointment of former……"

28. On the issue regarding alleged non-consultation, averment is more in the nature of guess work rather than a clear and emphatic pleading. In para 3 of the affidavit sworn in support of writ petition, it has been stated by the petitioner that para 8 contains the grounds which are believed to be true on the basis of legal knowledge. It would, thus, be seen that as far as the allegation of there being no

effective consultation is concerned, the same is merely outcome of a guess work and nothing more. The order impugned by which Respondent No. 4 was appointed clearly states that the Chancellor appointed Respondent No. 4 in consultation with the State Government. In the return filed by Respondents No. 1 and 2, it has been emphatically denied with regard to contents of Ground (xiii) that the same are baseless. There is clear denial of the allegation that there has been no meaningful consultation by the Chancellor with the Government while appointing first Vice-Chancellor of the University. It has also been stated therein that the contentions are bereft of any material and are reckless, therefore, denied.

Therefore on this ground also no case is made out that there has been violation of the procedure prescribed under Section 11(17) of the Act of 2019 in the matter of appointment of first Vice-Chancellor.

29. This Court in the case of **Bharat Sharma Vs. State of Rajasthan & Others (supra)**, on facts, found that the pleadings made by the petitioner therein do not satisfy even on the prima facie basis that Respondent No. 5 therein did not possess minimum eligibility criteria prescribed under the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 (for short 'the Regulations of 2010'). The entire basis of the petitioner's case that the respondent therein had not acquired teaching experience in the post graduate college, was not found as legal requirement either in the Regulations of 2010 or in the

Ordinance and, therefore, this Court did not find any ground to hold that the appointment was contrary to the provisions of law and prayer for issuance of writ of quo warranto was turned down.

Learned Advocate General also relied upon the judgment of the ombay High Court in the case of **Dr. Ravindra T. Deoghare & thers Vs. The State of Maharashtra & Others (supra)**. On ct, it was found that the petition was not bona fide. Further, it was considered to be a case of a PIL in service matter as it was neither argued by the petitioner therein, nor the issue as to whether writ of quo warranto could be issued was specifically dealt with in that case. Having noted that the appointment of Vice-Chancellor was in accordance with law, the petition was dismissed.

30. Learned counsel for the petitioner relied upon the decision of Madras High Court in the case of **M.Lionel Antony Raj Vs. Dr. P.P. Chellathurai & Others. (supra)**. That was a case where petitions were filed as public interest litigation questioning the appointment of Vice-Chancellor of Madurai Kamaraj University, Madurai mainly on the ground that the proceedings of the Search Committee were flawed without expressing any opinion on the eligibility. Having thus concluded that there was statutory violation in the matter of appointment of Vice-Chancellor, prayer for issuance of writ of quo warranto was allowed and appointment was set aside. Thus, that case turned on its own facts.

Reliance has also been placed upon the decision of Uttarakhand High Court at Nainital in the case of **Shri Ravindra Jugran Vs. State of Uttarakhand & Others (supra)**. There also, on facts, the Court found that the person appointed as Vice-Chancellor did not

fulfill the eligibility criteria prescribed by Regulation 7.3.0 of the UGC Regulations, 2018 and the appointment was set aside. Present is not a case where Respondent No. 4 does not fulfill the eligibility criteria as laid down in Regulation 7.3 of the Regulations of 2018, for tailed reasons as set out hereinabove.

. The petitioner also placed reliance on the decision of the n'ble Supreme Court in the case of **Gambhirdan K Gadhvi Vs. The State of Gujarat & Others (supra)**. In that case, the petitioner had prayed for issuance of a writ of quo warranto challenging the appointment of Vice-Chancellor of Sardar Patel University on the ground that ignoring the provisions contained in Regulation 7.3.0 of the Regulations of 2010, a Search Committee was constituted under the provisions of the Sardar Patel University Act, 1955, having no nominee of the Chairman of the UGC. Contention made before the Court was that at the relevant time when the first appointment was made as Vice-Chancellor, the person appointed as Vice-Chancellor was not fulfilling the eligibility criteria as per the UGC guidelines as well as the eligibility fixed by the Search Committee. The constitution of Search Committee was also questioned mainly on the ground that the constitution was not in accordance with the UGC Regulations. It was the case of the petitioner therein that the UGC Regulations of 2010/2018 are Central legislations and, therefore, the State and/or State Universities are bound by the Central legislation and the UGC Regulations of 2010/2018. Therefore, the appointment of a person as Vice-Chancellor was assailed as contrary to the statutory rules and regulations and prayer for issuance of a writ of quo warranto was

made. The issue, which arose for consideration was whether the appointment of the person as Vice-Chancellor of the University can be said to be contrary to any statutory provision and whether it could be said that the person appointed as Vice-Chancellor, fulfills e eligibility criteria for the post of Vice-Chancellor. Upon analysis the legal requirements with regard to eligibility and constitution of earch Committee as provided in the UGC Regulations and the provisions relating to appointment of Vice-Chancellor as contained in the State University Act, it was held that the provision contained in the State University Act does not provide for any qualification whatsoever for appointment to the post of Vice-Chancellor. Even the eligibility criteria was left to the Search Committee. It was also found that there were no guidelines on the eligibility criteria to be prescribed by the Search Committee whereas the UGC Regulations of 2010/2018 specifically prescribed the qualification/eligibility criteria for the post of Vice-Chancellor as also provided for constitution of Search Committee. On facts, it was found that the respondent therein appointed as Vice-Chancellor did not fulfill the eligibility criteria prescribed under the UGC Regulations of 2010/2018 as he was not having ten years teaching work experience as a Professor in the University system. It was also found that his name was not recommended by the legally constituted Search Committee as per the UGC Regulations of 2010/2018. It was also found that Search Committee prescribed eligibility criteria for the post of Vice-Chancellor by diluting the eligibility criteria laid down in the UGC Regulations of 2010/2018. Their Lordships in the Hon'ble Supreme Court ruled that the provisions of the State Act were

contrary to the UGC Regulations of 2010/2018 which were binding on the State and the universities thereunder. The State had not amended the State legislation to bring it at par with the UGC Regulations of 2010/2018 and appointments continued in the universities de hors the UGC Regulations. Finally, it was concluded that the appointment was contrary to the UGC Regulations of 2010/2018 and that appointment was made by Search Committee which was not constituted as per the UGC Regulations. On facts also, it was held that the person appointed did not fulfill the eligibility criteria as per the UGC Regulations of having ten years teaching work experience as a Professor in the university system. On such consideration, it was held that a case of issuance of writ of quo warranto was made out. In the present case, however, as we have examined hereinabove, it is not a case where Respondent No. 4 did not fulfill the eligibility criteria as laid down in the Regulations of 2018. We have also recorded a finding that present is not a case of violation of the provisions of the Regulations of 2018 in the matter of appointment of Respondent No. 4.

32. The petitioner has, however, challenged the validity of the provisions of eligibility criteria for appointment to the post of Vice-Chancellor as also validity of Section 11(17) of the Act of 2019 and we shall now examine the merits of the submissions made by learned counsel for the petitioner on that aspect. An objection to the very maintainability of the petition insofar as challenge to validity of the aforesaid provision is concerned, has been raised by the learned Senior Counsel appearing on behalf of Respondent No. 4 that validity and constitutionality of an Act or Statute cannot be

challenged in a public interest litigation. For this purpose, learned Senior Counsel relied upon the decision of **In Re, Sm. Ranu Sengupta & Others (supra)**. After going through the said decision, we do not find that any proposition has been laid down in e said judgment as has been canvassed before us. That was a se where prayer for issuance of writ of quo warranto to prevent e members of the committee appointed by the Government to administer the affairs of the Municipality was turned down as the statutory authority for constituting the Committee and the assumption of office by the members under relevant provisions was found established. The principle laid down in the aforesaid decision was that for the purpose of issuance of a writ of quo warranto, it is not necessary to investigate the legality or validity of the provisions of the statute under which assumption of office is made. It was further noted that such investigation may be made for the purpose of issuing writs in the nature of mandamus or certiorari.

Ordinarily the validity of a statute or law may not be examined in a petition filed by way of public interest litigation, yet it cannot be said that irrespective of the issue of public importance involved in the petition, under no circumstance, the High Court could examine the constitutionality or validity of the provision. In the present case, the petitioner has assailed the validity of the provisions of the Act of 2019 insofar as provisions with regard to eligibility criteria are concerned as also the provision with regard to appointment of first Vice-Chancellor of the Law University.

33. Before proceeding to examine various submissions raised at the bar to assail constitutional validity of eligibility criteria for

appointment as first Vice-Chancellor of the University, we shall first refer to the decisions of the Hon'ble Supreme Court with regard to scope of judicial review in the matter of challenge to constitutional validity of a law/statute.

. In the case of **Binoy Viswam Vs. Union of India & Others (017) 7 SCC 59**, scope of judicial review of legislative act was nsidered thus:

> "**76.** Under the Constitution, Supreme Court as well as High Courts are vested with the power of judicial review of not only administrative acts of the executive but legislative enactments passed by the legislature as well. This power is given to the High Courts under Article 226 of the Constitution and to the Supreme Court under Article 32 as well as Article 136 of the Constitution. At the same time, the parameters on which the power of judicial review of administrative act is to be undertaken are different from the parameters on which validity of legislative enactment is to be examined. No doubt, in exercises of its power of judicial review of legislative action, the Supreme Court, or for that matter, the High Courts can declare law passed by Parliament or the State Legislature as invalid. However, the power to strike down primary legislation enacted by the Union or the State Legislatures is on limited grounds. Courts can strike down legislation either on the basis that it falls foul of federal distribution of powers or that it contravenes fundamental rights or other constitutional rights/provisions of the Constitution of India. No doubt, since the Supreme Court and the High Courts are treated as the ultimate arbiter in all matters involving interpretation of the Constitution, it is the Courts which have the final say on questions relating to rights and whether such a right is violated or not. The basis of the aforesaid statement lies in Article 13(2) of the Constitution which proscribes the State from making "any law which takes away or abridges the right conferred by Part III", enshrining fundamental rights. It categorically states that any law made in contravention thereof, to the extent of the contravention, be void.
>
> **78.** With this, we advert to the discussion on the grounds of judicial review that are available to adjudge the validity of a piece of legislation passed by the legislature. We have already mentioned that a particular law or a provision contained in a statute can be invalidated on two grounds, namely: (i) it is not within the competence of the legislature which passed the law,

and/or (ii) it is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other right/provision of the Constitution. These contours of the judicial review are spelled out in the clear terms in State of M.P. v. Rakesh Kohli (2012) 6 SCC 312, and particularly in the following paragraphs: (SCC pp. 321-22 & 325-27, paras 16-17, 26-28 & 30)

> "16. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.
>
> 17. This Court has repeatedly stated that legislative enactment can be struck down by court only on two grounds, namely (i) that the appropriate legislature does not have the competence to make the law, and (ii) that it does not (sic) take away or abridge any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. In State of A.P. v. McDowell and Co. (1996) 3 SCC 709 while dealing with the challenge to an enactment based on Article 14, this Court stated in para 43 of the Report as follows: (SCC pp. 737-38)
>
> > '43. … A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. … if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people,

> are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom."

* * *

26. In Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731, the Constitution Bench further observed that there was always a presumption in favour of constitutionality of an enactment and the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. It stated in para 15 of the Report as under: (AIR pp. 740-41)

> '15. … The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

27. The above legal position has been reiterated by a Constitution Bench of this Court in Mahant Moti Das v. S.P. Sahi AIR 1959 SC 942.

28. In Hamdard Dawakhana v. Union of India AIR 1960 SC 554, inter alia, while referring to the earlier two decisions, namely, Bengal Immunity Co. Ltd. v. State of Bihar AIR 1955 SC 661 and Mahant Moti Das, it was observed in para 8 of the Report as follows: (Hamdard Dawakhana case, AIR p. 559)

> '8. Therefore, when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the ascertainment of its true nature and character becomes necessary i.e. its subject-matter, the area in which it is intended to operate, its purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy….'

In Hamdard Dawakhana, the Court also followed the statement of law in Mahant Moti Das and the two earlier decisions, namely, Charanjit Lal Chowdhury v. Union of

India AIR 1951 SC 41 and State of Bombay v. F.N. Balsara AIR 1951 SC 318 and reiterated the principle that presumption was always in favour of constitutionality of an enactment.

* * *

30. A well-known principle that in the field of taxation, the legislature enjoys a greater latitude for classification, has been noted by this Court in a long line of cases. Some of these decisions are Steelworth Ltd. v. State of Assam 1962 Supp (2) SCR 589; Gopal Narain v. State of U.P. AIR 1964 SC 370; Ganga Sugar Corpn. Ltd. v. State of U.P. (1980) 1 SCC 223; R.K. Garg v. Union of India (1981) 4 SCC 675 and State of W.B. v. E.I.T.A. India Ltd. (2003) 5 SCC 239."

(emphasis in original)

79. Again in Ashok Kumar Thakur v. Union of India (2008) 6 SCC 1, this Court made the following pertinent observations: (SCC p. 524, para 219)

> "219. A legislation passed by Parliament can be challenged only on constitutionally recognised grounds. Ordinarily, grounds of attack of a legislation is whether the legislature has legislative competence or whether the legislation is ultra vires the provisions of the Constitution. If any of the provisions of the legislation violates fundamental rights or any other provisions of the Constitution, it could certainly be a valid ground to set aside the legislation by invoking the power of judicial review. A legislation could also be challenged as unreasonable if it violates the principles of equality adumbrated in our Constitution or it unreasonably restricts the fundamental rights under Article 19 of the Constitution. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground. The validity of a constitutional amendment and the validity of plenary legislation have to be decided purely as questions of constitutional law. This Court in State of Rajasthan v. Union of India (1977) 3 SCC 592 said: (SCC p. 660, para 149)
>
> "149. … if a question brought before the court is purely a political question not involving determination of any legal or constitutional right or obligation, the court would not entertain it, since the court is concerned only with adjudication of legal rights and liabilities."

Therefore, the plea of the petitioner that the legislation itself was intended to please a section of the community as part of the vote catching mechanism is not a legally acceptable plea and it is only to be rejected."

80. Furthermore, it also needs to be specifically noted that this Court emphasised that apart from the aforesaid two grounds no third ground is available to invalidate any

piece of legislation. In this behalf it would be apposite to reproduce the following observations from State of A.P. v. McDowell & Co., which is a judgment rendered by a three-Judge Bench of this Court: (SCC pp.737-38, para 43)

> "43. … A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness—concepts inspired by the decisions of United States Supreme Court. Even in USA, these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds viz. (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality, and (iii) procedural impropriety (see Council of Civil Service

> Unions v. Minister for the Civil Service 1985 AC 374 which decision has been accepted by this Court as well). The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. (See the opinions of Lords Lowry and Ackner in R.v. Secy. of State for the Home Deptt., ex p Brind (1991) 1 AC 696, AC at pp. 766-67 and 762.) It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled."

35. In a Larger Bench judgment of the Hon'ble Supreme in the case of **Shayara Bano Vs. Union of India & Others (2017) 9 SCC 1**, several earlier judgments read as being an absolute bar to the use of "arbitrariness" as a tool to strike down legislation under Article 14 of the Constitution of India were held no longer good law as below:

> "**99.** However, in State of Bihar v. Bihar Distillery Ltd. (1997) 2 SCC 453, SCC at para 22, in State of M.P. v. Rakesh Kohli (2012) 6 SCC 312, SCC at paras 17 to 19, in Rajbala v. State of Haryana (2016) 2 SCC 445, SCC at paras 53 to 65 and in Binoy Viswam v. Union of India (2017) 7 SCC 59, SCC at paras 80 to 82, State of A.P. v. McDowell and Co. (1996) 3 SCC 709 was read as being an absolute bar to the use of "arbitrariness" as a tool to strike down legislation under Article 14. As has been noted by us earlier in this judgment, Mcdowell itself is per incuriam, not having noticed several judgments of Benches of equal or higher strength, its reasoning even otherwise being flawed. The judgments, following McDowell are, therefore, no longer good law."

36. The test of manifest arbitrariness as explained in the case of **Cellular Operators Association of India Vs. TRAI (2016) 7 SCC 703**, was noted as below:

> "**100.** To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution. In Cellular Operators Assn. of India v.

TRAI (2016) 7 SCC 703, this Court referred to earlier precedents, and held:(SCC pp. 736-37, paras 42-44)

"Violation of fundamental rights

42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. [See Indian Express Newspapers (Bombay)(P) Ltd. v. Union of India (1985) 1 SCC 641, SCC at p. 689, para 75.]

43. The test of "manifest arbitrariness" is well explained in two judgments of this Court. In Khoday Distilleries Ltd. v. State of Karnataka (1996) 10 SCC 304, this Court held: (SCC p. 314, para 13)

'13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary". Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, "Parliament never intended the authority to make such rules; they are unreasonable and ultra vires". In India,

> arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.'

44. Also, in Sharma Transport v. State of A.P. (2002) 2 SCC 188, this Court held: (SCC pp. 203-04, para 25)

> '25. … The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.'"
>
> (emphasis in original)"

37. It was further held that there is no rational distinction between plenary legislation and subordinate legislation when it comes to the ground of challenge under Article 14 of the Constitution of India. It was held thus:

> "**101.** It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of

manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

38. In the celebrated Constitution Bench judgment in the case of **K.S. Puttaswamy (AADHAAR) (Retired) & Another Vs. Union India & Another (2019) 1 SCC 1**; the scope of judicial review was explained as below:

"**101.** Judicial review means the Supremacy of law. It is the power of the court to review the actions of the Legislature, the Executive and the Judiciary itself and to scrutinise the validity of any law or action. It has emerged as one of the most effective instruments of protecting and preserving the cherished freedoms in a constitutional democracy and upholding principles such as separation of powers and rule of law. The Judiciary, through judicial review, prevents the decisions of other branches from impinging on the constitutional values. The fundamental nature of the Constitution is that of a limiting document, it curtails the powers of majoritarianism from hijacking the State. The power of review is the shield which is placed in the hands of the most judiciaries of constitutional democracies to enable the protection of the supreme document."

39. As to whether a legislative act could be invalidated and declared unconstitutional on the ground of arbitrariness, the observations made in the case of **State of A.P. Vs. Mcdowell & Co. (1996) 3 SCC 709** were noted wherein it was held that a legislation cannot be declared unconstitutional on the ground that it is arbitrary. The legal position in this regard was examined with reference to several earlier decisions of the Hon'ble Supreme Court as below:

"**104.** The issue whether law can be declared unconstitutional on the ground of arbitrariness has received the attention of this Court in a Constitution Bench judgment in Shayara Bano v. Union of India (2017) 9 SCC 1. R.F. Nariman and U.U. Lalit, JJ. discredited the ratio of the aforesaid

judgments wherein the Court had held that a law cannot be declared unconstitutional on the ground that it is arbitrary. The Judges pointed out the larger Bench judgment in K.R. Lakshmanan v. State of T.N. (1996) 2 SCC 226 and Maneka Gandhi v. Union of India (1978) 1 SCC 248 where "manifest arbitrariness" is recognised as the third ground on which the legislative Act can be invalidated. Following discussion in this behalf is worthy of note: (Shayara Bano case, SCC pp.91-92 & 97, paras 87-88 & 99)

> "87. The thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three-Judge Bench decision in State of A.P. v. McDowell and Co. (1996) 3 SCC 709 when it is said that a constitutional challenge can succeed on the ground that a law is "disproportionate, excessive or unreasonable", yet such challenge would fail on the very ground of the law being "unreasonable, unnecessary or unwarranted". The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution.
>
> 88. We only need to point out that even after McDowell, this Court has in fact negated statutory law on the ground of it being arbitrary and therefore violative of Article 14 of the Constitution of India. In Malpe Vishwanath Acharya v. State of Maharashtra (1998) 2 SCC 1, this Court held that after passage of time, a law can become arbitrary, and, therefore, the freezing of rents at a 1940 market value under the Bombay Rent Act would be arbitrary and violative of Article 14 of the Constitution of India (see paras 8 to 15 and 31).
>
> * * *
>
> 99. However, in State of Bihar v. Bihar Distillery Ltd. (1997) 2 SCC 453, SCC at para 22; in State of M.P. v. Rakesh Kohli (2012) 6

> SCC 312, SCC at paras 17 to 19; in Rajbala v. State of Haryana (2016) 2 SCC 445, SCC at paras 53 to 65 and in Binoy Viswam v. Union of India (2017) 7 SCC 59, SCC at paras 80 to 82, McDowell was read as being an absolute bar to the use of "arbitrariness" as a tool to strike down legislation under Article 14. As has been noted by us earlier in this judgment, McDowell itself is per incuriam, not having noticed several judgments of Benches of equal or higher strength, its reasoning even otherwise being flawed. The judgments, following McDowell are, therefore, no longer good law."

It was then observed as below:

> "**106.** We would like to record that we have proceeded on the premise that manifest arbitrariness also furnishes a ground on the basis on which a legislative enactment can be judicially reviewed. In the process, even the constitutional validity of Section 139-AA of the Income Tax Act, 1961 is given a fresh look on the touchstone of this norm."

40. In the case of **Madras Bar Association Vs. Union of India & Another, Writ Petition (Civil) No. 502 of 2021 decided on 14.07.2021**, it was held as below:

> "**39.** ……. The Courts can strike down legislation either on the basis that it falls foul of federal distribution of powers or that it contravenes fundamental rights or other constitutional rights/provisions of the Constitution of India. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment and a clear transgression of constitutional principles must be shown. In **State of Madhya Pradesh v. Rakesh Kohli & Anr. (2012) 6 SCC 312**, this Court held that sans flagrant violation of the constitutional provisions, the law made by Parliament or a State legislature is not declared bad and legislative enactment can be struck down only on two grounds: (i) that the appropriate legislature does not have the competence to make the law, and (ii) that it takes away or abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional

provisions. Subsequently, the Court has also recognised "manifest arbitrariness" as a ground under Article 14 on the basis of which a legislative enactment can be judicially reviewed."

41. In one of the recent decisions in the case of **Union of India (UOI) & Others Vs. Ganpati Dealcom Pvt. Ltd., Civil Appeal No. 5783/2022 decided on 23.08.2022**, the law with respect to testing the unconstitutionality of a statutory instrument was summarised as under:

"15.7 The law with respect to testing the unconstitutionality of a statutory instrument can be summarized as under:
a. Constitutional Courts can test constitutionality of legislative instruments (statute and delegated legislations);
b. The Courts are empowered to test both on procedure as well as substantive nature of these instruments.
c. The test should be based on a combined reading of Articles 14, 19 and 21 of the Constitution."

The development of doctrine of manifest arbitrariness was also noticed as below:

"15.8 One of the offshoots of this test under Part III of the Constitution is the development of the doctrine of manifest arbitrariness. A doctrinal study of the development of this area may not be warranted herein. It is well traced in **Shayara Bano v. Union of India,** (2017) 9 SCC 1. We may only state that the development of jurisprudence has come full circle from an overly formalistic test of classification to include the test of manifest arbitrariness. A broad formulation of the test was noted in the aforesaid case as under:

"**95.** On a reading of this judgment in Natural Resources Allocation case [Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1], it is clear that this Court did not read McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] as being an authority for the proposition that legislation can never be struck down as being arbitrary. Indeed the Court, after referring to all the earlier judgments, and

> Ajay Hasai [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722] in particular, which stated that legislation can be struck down on the ground that it is "arbitrary" under Article 14, went on to conclude that "arbitrariness" when applied to legislation cannot be used loosely. Instead, it broad based the test, stating that if a constitutional infirmity is found, Article 14 will interdict such infirmity. And a constitutional infirmity is found in Article 14 itself whenever legislation is "manifestly arbitrary" i.e. **when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favouritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment.** Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc."
>
> **(emphasis supplied)**

15.9 In **Joseph Shine v. Union of India**, (2019) 3 SCC 39, this Court was concerned with the constitutionality of Section 497 of the IPC relating to the provision of adultery. While declaring the aforesaid provision as unconstitutional on the aspect of it being manifestly arbitrary, this Court reiterated the test as under:

> "...The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation Under Article 14. **Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary.** We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well Under Article 14."
>
> **(emphasis supplied)**

15.10 In **Hindustan Construction Co. Ltd. v. Union of India**, (2020) 17 SCC 324, this Court struck down Section 87 of The Arbitration Act on the ground of manifest arbitrariness as the Parliament chose to ignore the judgment of this Court, without removing the basis of the same or

> identifying a principle for militating against the same."

42. In the aforesaid authoritative pronouncement of the Hon'ble Supreme Court, it has been clearly held that legislation can be struck down on the ground that it is arbitrary under Article 14 of the Constitution of India whenever legislation is "manifestly arbitrary". In the aforesaid decision, the test of manifest arbitrariness, stated in the case of **Joseph Shine v. Union of India (2019) 3 SCC 39** was also relied upon.

It has been held that manifest arbitrariness must be something done by legislature capriciously, irrationally and/or without adequate determination of the principles. The view taken was, therefore, that the arbitrariness in the sense of manifest arbitrariness would apply to negate the legislation as well under Article 14 of the Constitution of India.

Keeping in forefront the aforesaid principles governing the scope of judicial review of legislative action, we shall now proceed to examine the merits of the submissions of learned counsel for the petitioner.

43. In order to support the argument that the provisions contained in Section 11(2) of the Act of 2019 are ultra vires the objectives of the enactment and also suffers from manifest arbitrariness, reliance has been placed on the decision of the Hon'ble Supreme Court in the case of **Bar Council of India Vs. Board of Management, Dayanand College of Law & Others (supra)**. On facts, that was a case where a person who was appointed as the Principal of Dayanand College of Law. On an inspection, the Bar Council of India

found that the person was not possessing the qualification of Law and hence, it withdrew its recognition to the College. The bone of contention in the writ petition before the High Court was whether a person who did not possess the degree or post graduate degree in w and was not qualified to practise law, could be appointed as the incipal of law college and whether it was not essential to have a gree in Law before one could be appointed as Principal of law college. Though prior to 13.01.1995, as per the prescribed eligibility criteria provided under the Statute framed by the University providing for qualification to be possessed for the post of Principal in the colleges affiliated to the Kanpur University, a person could be appointed as Principal of law college only if he possesses a doctorate degree in law or one of the branches of law taught in that college but after 13.01.1995, the requirement that the appointee must have a doctorate degree in law or one of the branches of law taught in the college was done away with. The result was that a person who had no degree or qualification in law, but had a doctorate degree in Philosophy was appointed as Principal. In that background, the Hon'ble Supreme Court noted the provisions made by the Bar Council of India in exercise of its rule making power providing for qualification of full time teachers of law including the Principal of the college. Relevant rule provided that full time teachers of law including the Principal of the college shall ordinarily be holders of a Master's degree in law and where the holders of Master's degree of law are not available, the persons with teaching experience for a minimum period of ten years in law may be considered. An apparent conflict between the Statute framed by the University and the rules

framed by the Bar Council of India was noted. In such a background it was observed as below:

> "**12.** …… But obviously, it does not appeal to common sense to say that an engineer could be appointed the Principal of a medical college or a great physician could be appointed as the Principal of an engineering college. Same is the position regarding the appointment of a doctorate in Science or a doctorate in Philosophy as the Principal of a law college."

Taking into consideration the provisions of the Advocates Act, 1961 and the Rules framed by the Bar Council of India as also the provisions of the Statute framed under the State Act, it was held as below:

> "**13.** The aim of most of the students who enter the law college, is to get enrolled as advocates and practise law in the country. To do that, they necessarily have to have a degree from a university that is recognised by the Bar Council of India. Therefore, the court, in a situation like the present one, has to ask itself whether it could not harmoniously construe the relevant provisions and reach a conclusion consistent with the main aim of seeking or imparting legal education. So approached, nothing stands in the way of the court coming to the conclusion that though under the relevant statute of the University as amended, theoretically it may be possible to appoint a Doctor of Philosophy or a Doctor of Science as the Principal of a law college, taking into account the requirements of the Advocates Act, the Rules of the Bar Council of India and the main purpose of legal education, the court would be justified in holding that as regards the post of the Principal of a law college, it would be necessary for the proposed incumbent also to satisfy the requirements of the Rules of the Bar Council of India. Such a harmonious understanding of the position recognising the realities of the situation, would justify the conclusion that a doctorate-holder in any of the law subjects could alone be appointed as the Principal of a law college. The High Court, in our view, made an error in not trying to reconcile the relevant provisions and in not making an attempt to harmoniously construe the relevant provisions so as to give efficacy to all of them. A

> harmonious understanding could lead to the position that the Principal of a law college has to be appointed after a process of selection by the body constituted in that behalf, under the University Act, but while nominating from the list prepared, and while appointing him, it must be borne in mind that he should fulfill the requirements of the Rules of the Bar Council of India framed under the Advocates Act and it be ensured that he holds doctorate in any one of the branches of law taught in the law college. We do not see anything in the University Act or the Statutes framed thereunder, which stand in the way of the adopting of such a course. Therefore, when a request is made for selection of a Principal of a law college, the university and the Selection Committee has to ensure that applications are invited from those who are qualified to be Principals of a law college in terms of the Rules of the Bar Council and from the list prepared, a person possessing the requisite qualification, is nominated and appointed as the Principal of a law college."

Noting that the Statute framed by the University was amended dropping the requirement that the Principal should hold a doctorate degree in one of the subjects taught in the college, it was observed as below:

> "**16.** ….. Does the State and the University want a square peg in a round hole? Is it consistent with good educational policy to appoint a scientist as the Principal of an exclusive Art or commerce college or a Doctor of Literature or History, as the Principal of an exclusive Science College? It is, therefore, necessary for the authorities concerned to look into this aspect and consider whether clause (b), as it stood prior to 13-1-1995, should not be restored in the interests of education in general."

44. Though the aforesaid was a case relating to appointment to the post of Principal of law college and the Hon'ble Supreme Court examined the legality of the action in the light of the statutory scheme of the Advocates Act, 1961 and the rules framed by the Bar Council of India, the observations made in Para Nos. 12 and 16 of

the aforesaid judgment are pertinent while examining the merits of the contentions in the present case where the eligibility clause in the matter of appointment of Vice-Chancellor of Respondent No. 3-Law University does not refer to the academic distinction and work perience in the field of legal education, present being a case of law iversity. We take note of the submissions of learned counsel for e respondents that the Rules of the Bar Council of India underwent amendment subsequently and qualification of Vice-Chancellor has not been included in the rules and there is no provision in the Bar Council of India Rules providing for eligibility criteria/minimum qualification for appointment on the post of Vice-Chancellor of a law university.

45. Vide Act No. 6 of 2019, the Legislature enacted the Dr. Bhimrao Ambedkar Law University, Jaipur Act, 2019. It is an Act to establish and incorporate Dr. Bhimrao Ambedkar Law University at Jaipur. At this stage, it is relevant to mention here that though legal education is being provided in various law colleges in the State which are affiliated to the privileges of State University, yet the Legislature in its wisdom enacted the Act of 2019 to establish Respondent No. 3-Law University, i.e., a single discipline university and not a multi disciplinary university. The object of the university as enshrined in Section 5 of the Act of 2019 is as below:

> "**5. Objects of the University.**- The University shall be deemed to have been established and incorporated for the purpose, among others, of -
> (i) making provision for imparting legal education in different branches of learning;
> (ii) furthering the prosecution of research in all branches of legal education."

Therefore, the object behind the establishment of a dedicated law university is to make provision for imparting legal education in different branches of learning and also furthering the prosecution of research in all branches of legal education. Quite apparently, the actment reflects the legislative wisdom of establishing an stitution of excellence in the field of legal education.

. It is pertinent to mention here that the jurisdiction of Respondent No.3-Law University as provided under Section 4 of the Act of 2019 extend to whole of the State of Rajasthan and all law colleges, except constituent colleges of other Universities, shall be affiliated to Respondent No.3-Law University in accordance with the Statutes, Ordinances and Regulations made under the Act of 2019. The aforesaid Section 4 of the Act of 2019 also provide that the State Government may, by order in writing, require any institute, institution or college within the territorial limits of the University to terminate, with effect from such date as may be specified in the order, its association with, or its admission to the privileges of any other University incorporated by law to such extent as may be considered necessary and proper. Therefore, conjoint reading of Sections 4 and 5 of the Act of 2019 reveals that Respondent No. 3-Law University has been established not only to develop it as an institution of the high excellence in the field of legal education by making provision for imparting legal education in different branches of learning and furthering the prosecution of research in all branches of legal education but also that all law colleges, except constituent colleges of other Universities, shall be affiliated to Respondent No. 3-Law University.

47. The establishment of a dedicated law university as an institution of high excellence in the field of legal education acknowledges need for quality education and research in present day challenges in the field of legal education. Amongst other things, Respondent No. 3-Law University has to play vital role in preparing well educated law graduates through comprehensive study course who will work as lawyers, judges, legal professionals, academicians well versed in imparting laws, expanding areas of specialised knowledge in various branches of legal field in view of increasing challenges in the society, new enactments dealing with technology as cyber crime, development of alternative dispute resolution, to name a few as illustrative though not exhaustive. Many scholars in the field of law, lawyers and jurists are of the view that there is need for transformation of legal education to cope up with present day challenges in the society.

48. Though under the scheme of the Act of 2019, the post of Vice-Chancellor is not a teaching post as such, the powers, duties and functions of the Vice-Chancellor in the context of the powers and functions of Respondent No. 3-Law University as provided under Section 7 of the Act of 2019 assume great significance. Sub-sections (18), (19) and (20) of Section 11 of the Act of 2019 provide thus:

> "**11. Vice-Chancellor.**- (1) xxxxxxxx.
> (2) xxxxxxxx.
> (18) The Vice-Chancellor shall be the principal academic, administrative and executive officer of the University and shall exercise overall supervision and control over the affairs of the University. He shall have all such powers as may be necessary for true observance of the provisions of this Act and Statutes.

(19) The Vice-Chancellor shall, where immediate action is called for, have power to make an order so as to exercise any power or perform any function which is exercised or performed by any Authority under this Act or the Statutes:

Provided that such action shall be reported to the Authority as would have in the ordinary course dealt with the matter for approval:

Provided further that if the action so reported is not approved by such Authority not being the Board, the matter shall be referred to the Board, whose decision shall be final and in case of the Authority being the Board, the matter shall be referred to the Chancellor whose decision shall be final.

(20) The Vice-Chancellor may, on being satisfied that any action taken or order made by any Authority is not in the interest of the University or beyond the powers of such Authority, require the Authority to review its action or order. In case the Authority refuses or fails to review its action or order within sixty days of the date on which the Vice-Chancellor has so required, the matter may be referred to the Board or to the Chancellor, as the case may be, for final decision."

49. It is, thus, clear that the Vice-Chancellor has not only been assigned administrative and executive functions of Respondent No.3-Law University, but he is also the academic officer of the University. He exercises overall supervision and control over the affairs of Respondent No. 3-Law University. Not only that, the Vice-Chancellor has been conferred with wide amplitude of power by providing that he shall have all such powers as may be necessary for true observance of the provisions of the Act of 2019 and Statutes.

Not only that, when immediate action is called for, the Vice-Chancellor has been conferred with the power to make an order so as to exercise any power or perform any function which is exercised or performed by any authority under the Act of 2019 and Statutes. The Vice-Chancellor, on being satisfied that any action taken or order made by any authority is not in the interest of the University or

beyond the powers of such authority, may require the authority to review its action or order. In case the authority refuses or fails to review its action or order, the Vice-Chancellor may refer the matter to the Board or to the Chancellor, as the case may be, for final cision. Such powers of the Vice-Chancellor are not merely nfined to administrative and executive functions, but such powers d functions may relate to academic matters which other bodies of the University are enjoined to perform under the Act of 2019.

50. As provided under Section 13 of the Act of 2019, the Vice-Chancellor heads the Board of Management as its Chairman as also he is the Chairman of Academic Council. Following are the powers and duties of the Vice-Chancellor:

> "**13. Powers and duties of the Vice-Chancellor.** - (1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall, in the absence of the Chancellor, preside at the convocations of the University.
> (2) The Vice-Chancellor shall be ex-officio Chairman of the Board and Academic Council.
> (3) The Vice-Chancellor shall be responsible for presenting to the Board for its deliberations and consideration matters of concern to the University. He shall have power to convene the meetings of the Board and the Academic Council and such other authorities and bodies as may be prescribed.
> (4) The Vice-Chancellor shall exercise general control over the affairs of the University and shall be responsible for the due maintenance of discipline in the University.
> (5) The Vice-Chancellor shall ensure the faithful observance of the provisions of this Act and the Statutes, Ordinances and Regulations and shall possess all such powers as may be necessary for the purpose.
> (6) In an emergency, which in the opinion of the Vice-Chancellor requires immediate action to be taken, he shall take such action as he deems necessary and shall at the earliest opportunity report the action taken to the officer, authority or other body who or which in the ordinary course would have dealt with the matter.

> (7) Where any action taken by the Vice-Chancellor under sub-section (6) affects any person in the service of the University to his disadvantage, such person may prefer an appeal to the Board within thirty days of the date on which the action is communicated to him.
> (8) Subject as aforesaid, the Vice-Chancellor shall give effect to the orders of the Board regarding the appointment, suspension and dismissal of officers, teachers and other employees of the University.
> (9) The Vice-Chancellor shall be responsible for close coordination and integration of teaching, research and other work and shall exercise such other powers as may be prescribed."

51. An overview of the provisions contained in Section 13 of the Act of 2019, leaves no manner of doubt that apart from exercising administrative and executive powers, the Vice-Chancellor exercises general control over the affairs of the University which necessarily includes the affairs relating to academic matters. Not only that, the Vice-Chancellor is responsible for close coordination and integration of teaching, research and other work.

True it is that it is not only the Vice-Chancellor, but there are other officers and authorities of the University which are administrative and academic functionaries as provided in Section 10 of the Act of 2019. Thus, the Vice-Chancellor has to play a leading role both in administrative as well as academic matters. The Vice-Chancellor is not simply concerned with the administrative aspects but in his capacity as the Chairman of Academic Council, he has to take the front seat. The functions which have been assigned to Academic Council as provided under Section 23 of the Act of 2019 clearly show that Vice-Chancellor is not a silent spectator or enjoined only with the powers to implement decisions of Academic Council,

but to actively participate in academic issues falling for consideration of Academic Council.

52. Section 28(3) of the Act of 2019 provides that the courses of study and curricula shall be such as may be prescribed by ordinances and subject thereto, by the Regulations. Section 44 of the Act of 2019 provides that Statues and Ordinances are to be made by the Board of Management. Vice-Chancellor is the Chairman of the Board of Management.

53. Thus, the provisions, referred to hereinabove, which deal with the duties, powers and functions of the University and its constituent authorities and officers are all intrinsically related and connected with legal education.

54. In view of above considerations, having a Vice-Chancellor of Respondent No. 3-Law University with no background of academic qualifications and work experience in the field of legal education would frustrate and subvert the object of establishment of a dedicated single discipline law university as enshrined in Section 5 of the Act of 2019. The eligibility criteria as provided in Section 11(2) of the Act of 2019, already extracted hereinabove, does not whisper even a word concerning legal education. The provision enables appointment as Vice-Chancellor of a person though a very distinguished academician having minimum ten years experience as Professor in university or college or ten years experience in an equivalent position in a reputed research and/or academic administrative organisation and of highest level of competence, integrity, morals and institutional commitment, yet not equipped with knowledge and experience in the field of legal education.

No doubt, other provisions contained in Section 11 of the Act of 2019 provided for a detailed process of selection from amongst persons included in the panel recommended by Search Committee, in the absence of any prescription in the eligibility clause that the rson has to be a distinguished academician having minimum ten ars experience as Professor in a university or college or ten perience in an equivalent position in a reputed research and/or academic administrative organisation in the field of legal education, though he may be a good administrator with vast experience in other branches of education, we fail to understand how such a person can efficiently and competently perform the duties and functions of Respondent No. 3- Law University as Vice-Chancellor, the highest authority in the university.

55. Learned Senior Counsels appearing for the respective contesting respondents have made elaborate submissions and their fervent plea was that in multi disciplinary universities, the Vice-Chancellors are being appointed without there being any necessity of they belonging to all the branches of education and, therefore, it cannot be said that Vice-Chancellor of a law university must necessarily be a person with the background of legal education.

We are unable to accept the submission of learned Senior Counsels appearing for respective contesting respondents. Present is not a case of multi disciplinary university. In a multi disciplinary university, it is a practical impossibility to have Vice-Chancellor, who is expert in all branches of education. Therefore, in such a situation, as of necessity, the eligibility criteria is not specifically of any particular branch of education. But then, where a single discipline

law university is established, like other single discipline universities viz. medical university, technical university, agricultural university, the post of Vice-Chancellor has to be filled up from amongst those, who are qualified and experienced in the field of specific branch of learning and education. It is of utmost importance that the purpose and object for which a law university is being established is fulfilled. Therefore, it is imperative that the Vice-Chancellor of a law university has to be a distinguished academician form the field of legal education and equipped with knowledge and experience of legal education.

56. Section 11(17) of the Act of 2019 though is a transitory provision, providing for appointment of first Vice-Chancellor, the eligibility criteria as provided under Section 11(2) of the Act of 2019 applies equally whether it be first Vice-Chancellor or subsequent Vice-Chancellor. As the incorporation of the University includes appointment of first Vice-Chancellor simultaneously with the appointment of first members of Board of Management and Academic Council, as an exception to general rule dealing with the detailed procedure for appointment of Vice-Chancellor, the power has been conferred on the Chancellor to appoint first Vice-Chancellor. We have already held hereinabove that the procedure for appointment of Vice-Chancellor as provided under Section 11(3) to Section 11(6) of the Act of 2019 and the procedure laid down in Regulation 7.3(ii) and 7.3(iii) of the Regulations of 2018 are not violated insofar as appointment of first Vice-Chancellor is concerned. Nevertheless, the person to be appointed even as first Vice-Chancellor has to be a person connected and associated with

academics and experience in the field of legal education. If a Health Science University is to be manned, the Vice-Chancellor of that University has to be from the field of medical science, the Vice-Chancellor of a Technical University is an expert in technical ucation, the Vice-Chancellor of an Agricultural University is an pert of that specific field, it does not stand to logic and reasoning at the Vice-Chancellor a Law University need not be a distinguished academician in the field of legal education.

57. As the eligibility criteria provided under the Act of 2019 enables appointment of a person with no back ground of legal education as Vice-Chancellor, as has been done in the present case, the said provision is clearly unreasonable, irrational and, therefore, suffers from "manifest arbitrariness". Therefore, the provision, read as it is, is violative of Article 14 of the Constitution of India. We accordingly hold so.

58. Looking to the objectives of establishment of Respondent No.3-Law University and all other aspects as have been elaborately dealt with hereinabove, we consider present to be a case where the provision contained in Section 11(2) of the Act of 2019 is required to be read down. As held by the Hon'ble Supreme Court in the case of **Independent Thought Vs. Union of India & Another (2017) 10 SCC 800**, the Court can either hold the law to be totally unconstitutional and strike down the law or the Court may read down the law in such a manner that the law read down does not violate the Constitution. In this regard, it is profitable to refer to the observations of the Hon'ble Supreme Court made in para 168 of the aforesaid judgment as below:

> "**168.** Therefore, the principle is that normally the courts should raise a presumption in favour of the impugned law; however, if the law under challenge violates the fundamental rights of the citizens, the law is arbitrary, or is discriminatory, the courts can either hold the law to be totally unconstitutional and strike down the law or the court may read down the law in such a manner that the law when read down does not violate the Constitution. While the courts must show restraint while dealing with such issues, the court cannot shut its eyes to the violations of the fundamental rights of the citizens. Therefore, if the legislature enacts a law which is violative of the fundamental rights of the citizens, is arbitrary and discriminatory, then the court would be failing in its duty if it does not either strike down the law or read down the law in such a manner that it falls within the four corners of the Constitution."

In the aforesaid case, the issue before the Hon'ble Supreme Court was "whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age is rape?"

In the aforesaid case, legality and constitutional validity of Exception 2 to Section 375 IPC was under challenge. While holding that Exception 2 to Section 375 IPC insofar as it relates to a girl child below 15 years is liable to be struck down, the same was read down. The Hon'ble Supreme Court read down the age of 15 years to 18 years.

59. In order to save the constitutionality of the provision, the eligibility criteria as contained in Section 11(2) of the Act of 2019 is read down to mean that no person shall be eligible to be appointed as Vice-Chancellor unless he is a distinguished academician in the field of legal education with other experiences also in the field of legal education and/or research in the field of legal education.

60. Learned counsel for the respondents have placed reliance upon the observations made in Para 65 by the Hon'ble Supreme Court in

the case of **Minerva Mills Ltd. & Others Vs. Union of India & Others (supra)**. In that case, it was held that the principle of reading down cannot be invoked or applied in opposition to the clear intention of the legislature.

Reliance has also been placed on another decision of the Hon'ble Supreme Court in the case of **Premium Granites & Another Vs. State of T.N. & Others (supra)**. In para 54 of the aforesaid decision, it was declared that it is not the domain of the Court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved.

In the present case, as we have held hereinabove, the eligibility criteria, as it stands, frustrates the very objective and purpose of having established Respondent No. 3-Law University as single discipline university and an institution of excellence in the field of legal education. Further, present is not a case where it is merely an issue of suitability and not eligibility. Therefore, the aforesaid decisions do not espouse the cause of the respondents.

61. In view of above considerations, we do not consider it necessary to go into the aspect of legality and validity of Section 11(17) of the Act of 2019 because the basis for challenge to the validity of Section 11(17) of the Act of 2019 is that it is inconsistent with the provisions contained in Section 11(3) to Section 11(6) of the Act of 2019 and the provisions contained in Regulation 7.3(ii) and 7.3(iii) of the Regulations of 2018. We have already held that the provision of Section 11(17) of the Act of 2019 obviating procedure prescribed in Section 11(3) to Section 11(6) of the Act of

2019 is neither inconsistent with the provisions contained in Section 11(3) to Section 11(6) of the Act of 2019, nor in violation of the provisions contained in Regulation 7.3(ii) and 7.3(iii) of the Regulations of 2018. Therefore, the arguments of learned counsel for the petitioner in this regard are liable to be rejected.

62. As an upshot of the aforesaid discussion and as a consequence reading down the eligibility criteria as contained in Section 11(2) of the Act of 2019, appointment of Respondent No. 4 as Vice-Chancellor of Dr. Bhimrao Ambedkar Law University is set aside.

63 Writ petition is, accordingly, allowed to the extent as stated above.

64. No order as to costs.

(VINOD KUMAR BHARWANI),J (MANINDRA MOHAN SHRIVASTAVA),ACTING CJ

MANOJ NARWANI...