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Prof. V.S.S. Sastry Vs. the Ministry of Human Resource Development, Government of India Represented by Its Secretary, Department of Secondary and Higher Education and Five ors.

Prof. V.S.S. Sastry Vs. the Ministry of Human Resource Development, Government of India Represented by Its Secretary, Department of Secondary and Higher Education and Five ors.

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Court : Andhra Pradesh

Decided On : Mar-12-2008

Reported in : 2008(4)ALD315; 2008(4)ALT240

Judge : B. Seshasayana Reddy and ;C.V. Nagarjuna Reddy, JJ.

Acts : [English and Foreign Languages University Act, 2006](#) - Sections 2, 3(2), 3(3), 4, 6, 9, 10, 11, 12(1), 12(2), 13, 13A, 21, 29(1), 46 and 47; Hyderabad Societies Registration Act, 1350 Fasli; [University Grants Commission Act, 1956](#) - Sections 3, 3(1) and 3(3); [Rajiv Gandhi University Act, 2006](#); [General Clauses Act, 1897](#) - Sections 3, 4 and 22; Osmania University Act, 1959; Osmania University (Amendment) Act, 1966; [Preventive Detention Act, 1950](#); Preventive Detention (Amendment) Act 1952; Preventive Detention (Second Amendment) Act, 1952; Rajasthan General Clauses Act, 1955 - Sections 24; Rajasthan Service Rules, 1951 - Rule 56; [Constitution of India](#) - Articles 14, 16, 19, 19(1), 21 and 371(E)

Appeal No. : Writ Petition No. 10846 of 2007

Appellant : Prof. V.S.S. Sastry

Respondent : The Ministry of Human Resource Development, Government of India Represented by Its Secretary, Depart

Advocate for Def. : Ravindra Srivastav and ;Deepak Bhattarjee, Advs. for R.1 to R.3, ;S.M. Saxena, Adv. for R.5 and ;K. Ramakanta Reddy, Adv. for R.6

Advocate for Pet/Ap. : S. Ramachandra Rao and ;K. Lakshminarasimha, Advs. for ;K.R. Prabhakar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

C.V. Nagarjuna Reddy, J.

1. In this Writ Petition, the petitioner sought for invalidation of Section 46(a) of the [English and Foreign Languages University Act, 2006](#) (for short 'the Act') as being arbitrary, illegal and ultra vires of Sections 4(v) and 13 of the Act and violative of Articles 14, 16 and 21 of the [Constitution of India](#), by issuance of a Writ of Mandamus.

The Background Facts:

The Central Institute of English and Foreign Languages, Hyderabad was a Society registered under the Hyderabad Societies Registration Act, 1350 Fasli (for short 'the CIEFL Society'). It was a premier Institution of the country for the study of English and major foreign languages. It was conferred the status of deemed University in July, 1973 under Section 3 of the [University Grants Commission Act, 1956](#). Its Byelaws were framed on 25-6-1956 and amended from time to time. The Byelaws, inter alia, provided for appointment of Vice-Chancellor. Under Byelaw 22-A, the Vice-Chancellor shall be appointed as prescribed in the Rules and shall hold office for a term of five years on such terms and conditions as may be determined from time to time. The CIEFL Society's registered Memorandum of Association (for short 'the MOA') as amended at its meeting held on 25-3-1992 and approved by the Ministry of Human Resource Development, Government of India, on 8-5-1992 envisaged the method of appointment of Vice-Chancellor. Rule 23 of the MOA provided that the appointment of the Vice-Chancellor shall be made

by the Board of Governors with the approval of the Central Government. The Board of Governors comprised Secretary to the Government of India, Ministry of Education & SW (ex- officio); Nominee of the Central Government to represent the Ministry of Education; Nominee of the Central Government to represent the Ministry of Finance; Representative of the Central Advisory Board of Education nominated by the Central Government; Vice-Chancellor of Osmania University, Hyderabad (ex- officio); three members nominated by the Central Government; two other members nominated by the Central Government to represent the University Grants Commission and the Inter-University Board, respectively; Representative of the All India Council for Secondary Education, nominated by the Central Government; and the Director of the Institute (ex-officio).

2. Consequent on completion of five years tenure by Professor Pramod Talgere as the Vice-Chancellor, the said post fell vacant on 5-3-2002. The Board of Governors appointed the petitioner as the Vice-Chancellor on 25-10-2002 and directed the CIEFL University to send his nomination to the Ministry of Human Resource Development for approval. Having kept the file pending for about two years, the Central Government by proceedings dated 3-9-2004 directed the Board to initiate the process of selection afresh through advertisement. The petitioner filed Writ Petition No. 17402 of 2004 questioning the said proceedings, wherein a direction was given by this Court to the Government of India not to take any further steps in pursuance of the said proceedings, pending the said Writ Petition. While the said Writ Petition was pending, the Central Government withdrew the earlier proceedings and issued fresh proceedings dated 4-10-2004 ordering for fresh selection process. The said proceedings were challenged by the petitioner in Writ Petition No. 18402 of 2004. After a detailed consideration of the case, a learned Single Judge of this Court allowed the said Writ Petition and nullified proceedings dated 4-10-2004. The learned Single Judge held that the selection process was not in violation of Rule 23 of the MOA and the Rules of the CIEFL Society; that the Human Resource Ministry approved the proposal to appoint the petitioner as Vice-Chancellor on 2-1-2004; and that the Government of India cannot nullify the decision of the Board of Governors to appoint the petitioner without any reasons. On that premise, the learned Single Judge directed the file to be again circulated and the competent authority was directed to pass appropriate orders, after taking

into account the entire material relating to the decision of the Board of Governors, within a period of three months from the date of receipt of the order.

3. Writ Appeal No. 202 of 2005 filed against the said judgment was dismissed by a Division Bench of this Court on 29-4-2005 and the SLP filed against the said judgment was also dismissed by the Supreme Court on 16-8-2005. After the petitioner filed Contempt Case No. 1080 of 2005, the Government of India addressed letter dated 8-11-2005 to the Registrar of CIEFL Society, Hyderabad, wherein it was informed that in terms of Rule 23(a) of MOA of the CIEFL Society, Hyderabad, the competent authority approved the proposal of the appointment of the petitioner as Vice-Chancellor for a period of five years or until he attains the age of 65 years or until further orders, whichever is the earliest. The in-charge Registrar of the CIEFL Society in turn issued proceedings No. CIEFL/Admn/F.409/2005/11-A, dated 11-11-2005 appointing the petitioner as the Vice-Chancellor for a period of five years or until he attains the age of 65 years, whichever is earlier, with effect from the date he takes over charge of the post.

4. The petitioner assumed office of the Vice-Chancellor on 11-11-2005. The Parliament enacted the Act, which received the assent of the President on 10-1-2007. Notification was published in the Gazette of India dated 01-08-2007 fixing 03-8-2007 as the appointed date for the Act to come into force.

5. As a prelude for the Act to come into force, the Ministry of Human Resource Development, vide its letter dated 9-2-2007 addressed to the petitioner informed him that a Search Committee, consisting of three persons named therein, was constituted to recommend a panel of not less than three persons for the post of first Vice-Chancellor of the Central Institute of English and Foreign Languages University (for short 'the University'); that the Committee would be visiting Hyderabad on 23d and 24th February, 2007 for an interactive meeting and the petitioner was requested to advise the concerned officials of the University to make necessary arrangements for accommodation and transport of the Members. Questioning the said letter, the petitioner filed Writ Petition No. 3416 of 2007 and this Court initially granted interim order in favour of the petitioner and the same was vacated at the instance of respondents 1 to 3 on 1-5-2007. The petitioner filed

the present Writ Petition by attacking the validity of Section 46(a) of the Act.

6. After the Writ Petition was admitted, the petitioner filed WPMP No. 25867 of 2007 seeking impleadment of respondent No. 5, who was appointed as the first Vice-Chancellor of the University on 02.08.2007 and the said application was allowed by this Court on 21-9-1997. The petitioner also filed WPMP No. 27869 of 2007 to implead the University as respondent No. 6 and the said application was also allowed by this Court by order dated 11-12-2007.

The Pleadings:

7. The following is the gist of the petitioner's pleadings as could be culled out from his affidavit filed in the Writ Petition and the reply affidavit.

8. The petitioner is appointed for a specific term and, therefore, he is entitled to continue in the office for five years from the date of his appointment or till he reaches 65 years of age, whichever is earlier. Both Byelaw 22-A of the CIEFL Society's Byelaws and Clause 2 of the Schedule of the Act are couched in similar terms regarding the term of office of the Vice-Chancellor except with the difference that in the Act there is prohibition on reappointment of the Vice-Chancellor for the second term. Section 46(a), which is in the nature of a transitional provision, cannot be construed to have the effect of cutting short the term of the Vice-Chancellor appointed before the commencement of the Act and the said provision cannot be operated retrospectively to the petitioner's detriment. Section 46(a) has no application to the present case as the office of Vice-Chancellor is not vacant nor the Act abolished the post of Vice-Chancellor and unless Parliament abolishes the post itself, a person holding the office cannot be removed from the said office and that no endemic changes have been made with regard to the method of selection and manner of appointment or the term of office under the new Act. Under the earlier Byelaws, the Government of India had the authority to grant approval or to reject the same and, in the present case, the Government of India is vested with the authority to appoint the Vice-Chancellor. In both the cases, the Government of India had played dominant role in the appointment of Vice-Chancellor. A perusal of the Scheme of the Act, in particular, the Schedule of the Act, shows that the entire Act was intended to remove the

petitioner from the office. The petitioner's candidature is viewed with suspicion for the reason that it was finalized during the previous regime and respondents 1 and 2 have been subjecting him to witch-hunting from the day he assumed the office of the Vice-Chancellor of the CIEFL Society. The provisions of the Act do not indicate dissolution of the CIEFL Society on the ground that it had failed to discharge its functions.

9. Respondents 1 to 3, 5 and 6 filed separate counter-affidavits. Respondents 1 to 3 maintained that none of the fundamental rights of the petitioner is shown to have been violated; that the petitioner failed to make out a case of infringement of any of the constitutional provisions and, consequently, no case is made out for invalidating Section 46(a) of the Act; that the Act was passed by the Parliament, which admittedly has the competence to do so, and no mala fides or malice can be attributed to the Legislature; that the Act had been passed by the Parliament for achieving the laudable object in public interest and in the interest of promoting education, which is of national importance, as amply set out in the Objects and Reasons of the Act; that the petitioner failed to substantiate how Section 46(a) is arbitrary and ultra vires of Sections 4(v) and 13 of the Act or violative of Articles 14, 16 and 21 of the [Constitution of India](#); that if the provisions of Section 46 read as a whole, it would be clear that not only the first Vice-Chancellor but also the first Chancellor, first Registrar, first Finance Officer, first Court, first Executive Council and first Academic Council are to be appointed by the Central Government; that Section 46 starts with a non-obstante clause and over-rides the provisions of the Act, including Sections 4(v) and 13; and that the letter of appointment dated 11-11-2005, by which the petitioner was appointed as Vice-Chancellor, cannot be construed as imposing any limitations or fetters on the power of the Parliament to enact a provision such as Section 46(a). It is further averred that one of the objects of the Act was to make the University more accountable and transparent in its functioning and with this object in mind, the status of Central University was conferred on the University; that in terms of Section 4(i) of the Act, on and from the date of commencement of the Act, the CIEFL Society shall be dissolved and all properties, moveable and immovable, and all rights, powers and privileges of the CIEFL Society shall vest in the University and shall be applied to the objects and purposes for which the University is established and, therefore, the CIEFL Society

ceased to exist on the commencement of the Act resulting in abolition of the office of the Vice-Chancellor of CIEFL Society; that it is, therefore, a case of appointment of first Vice-Chancellor of the University and not a case of appointment of successor to the petitioner; that the process of appointment of first Vice-Chancellor in the present case was initiated in anticipation of commencement of the Act to ensure that he enters upon office immediately on commencement of the Act and the order of his appointment could be issued only after commencement of the Act; that the petitioner invoked the jurisdiction of this Court on the basis of the apprehension that he may not be selected as the first Vice-Chancellor; and that with the abolition of the CIEFL Society and cessation of the office of Vice-Chancellor of the CIEFL Society constituted under its Byelaws and Rules, the appointment of first Vice-Chancellor under the Act is required to be made under Section 46(a) of the Act.

10. In the counter-affidavit filed by the Incharge Registrar of respondent No. 6- University, it is inter alia averred as under:

Subsequent to the appointment of respondent No. 5 as the first Vice- Chancellor, the Executive Council for the University was constituted in accordance with the Act with as many as 11 eminent academicians as its members. The first meeting of the Executive Council was held on 19.09.2007, wherein Prof. Maya Pandit, Centre for Training and Development of respondent No. 6- University was appointed as first Pro-Vice-Chancellor and the first academic council was constituted in terms of Section 46(a). The University gave a detailed account of the distinguished academic career of respondent No. 5. (In the present context of the case it is not necessary to refer to those details). The petitioner filed three writ petitions of which he withdrew only WP. No. 17372 of 2007 and WP. No. 3416 of 2007 is still pending and the said writ petition, which was filed for invalidation of proceedings dated 09.02.2007 issued by respondent No. 3 and for a declaration that Section 46(a) of the Act has no application to the case of the petitioner, the present writ petition for a writ of mandamus to declare the provisions of Section 46(a) of the Act as unconstitutional is totally misconceived and not maintainable in law.

11. The terms of appointment order dated 11.11.2005 issued in favour of the petitioner are subject to the provisions of the Act and cannot prevail over the law laid by the Parliament. The Act received the Presidential assent on 10.01.2007 and in terms of Section 4(i) of the Act, on and from the commencement of the Act, the Society known as the Central Institute of English and Foreign Languages, Hyderabad, shall be dissolved and all properties, moveable and immovable, and all rights, powers and privileges of the said Society shall be transferred to and vest in the University and shall be applied to the objects and purposes for which the University is established. The CIEFL Society, therefore, ceased to exist upon the commencement of the Act resulting in abolition and dissolution of the office of the Vice-Chancellor, CIEFL. It is thus not a case of appointment of a successor of the petitioner, that it is a case of appointment of the first Vice-Chancellor of the University established and incorporated under the Act. The tenure guarantee given to the employees of the CIEFL Society under Section 4(v) of the Act is not applicable to the incumbent Vice-Chancellor. Moreover, Section 46(a) overrides Section 4(v) in respect of the status of the Vice-Chancellor. There is no question of hatching a strategy of removing the petitioner and the University has been conceived as a part of the consistent policy of the Government of India to set up new Central Universities by the Act of Parliament. The latest example is that of the Pondicherry University, which has also been replaced by a new Central University. With the succession of the CIEFL University with effect from 03.08.2007, the Vice-Chancellor of CIEFL Society also ceased to exist automatically. The respondents have not singled out any individual, much less the petitioner. Provisions similar to Section 46(a) are contained by the Acts passed by Indian Parliament providing for creation of Central Universities. The [Rajiv Gandhi University Act, 2006](#) is one such Act.

12. That the petitioner filed a doctored document purported to be letter of appointment dated 08.11.2005 issued by the Ministry of Human Resource Development by deleting the portion of the letter which reads 'or until further orders, whichever is the earliest'. Section 46(a), which is in the nature of a transitional provision, is provided to facilitate the execution of the new Act and to remove obstacles from the way of its implementation. It is not correct to allege that the transitional provisions have been providing for creating anarchy. The age of

superannuation of the petitioner is in no way curtailed by the Parliament, as the petitioner did not apply for re-employment after 65 years, who has become eligible for the same in June 2006.

13. In his counter, respondent No. 5 has taken the stand in conformity with the stand taken by respondent Nos. 1 to 3 and 6 and, hence, there is no need to make a specific reference to its contents. Respondent No. 5 has taken the specific plea that as the Central Government in its order approving the appointment of the petitioner limited his tenure 'to 65 years or until further orders, whichever is the earliest', with the enactment of Act 7 of 2007, his appointment got determined. Respondent No. 5 relied upon the judgment of the Supreme Court in *Dr. Bool Chand v. Chancellor, Kurukshetra University : (1968)11LLJ135SC* in support of his contention that the appointing authority has power to determine his employment even prior to the expiry of the initial tenure.

14. The petitioner filed separate reply affidavits to all the three counters filed by the respondents. He reiterated his assertion that the provisions of the Act do not bring about automatic termination of the petitioner's appointment and that the Government of India invented the method of removing him by making the Act. The petitioner relied upon the correspondence of the Ministry of Human Resource Development had with the petitioner to contend that the Act made a simple conversion of the CIEFL Society into a Central University and averred that by replacing the petitioner alone without appointing the Registrar of the finance office, the respondents indulged in invidious discrimination. He further averred that the words 'until further orders' contained in letter dated 08.11.2005 of the Human Resource Development Ministry do not confer any authority on the Central Government to appoint the petitioner as the Vice- Chancellor, that the rule contemplated only grant of approval to the petitioner's candidature and that an approving authority does not fix or limit his approval to any particular period as such. The petitioner replied to various averments contained in the counter-affidavits and we feel that it is neither relevant nor necessary to refer all those contents of the reply affidavits.

The Contentions:

15. Sri S. Ramchandra Rao, learned Senior Counsel, and Dr. K. Laxminarasimha, learned Counsel appearing for the petitioner, advanced the following contentions.

1. The Act is made with the sole intention of cutting short the tenure of the petitioner as Vice-Chancellor and, hence, it is mala fide and it attracts the vice of class legislation. The ratio laid down in D.S. Reddy, Vice-Chancellor, Osmania University v. Chancellor, Osmania University AIR 1967 SC 1305 is fully attracted to this case and consequently Section 46(a) is liable to be struck down as unconstitutional.

2. Alternatively, the Act does not bring about automatic termination of the petitioner's tenure as Vice-Chancellor, but on the other hand Section 4(v) of the Act guarantees the tenure of every person employed immediately before the commencement of the Act in the CIEFL Society until the expiry of the period for which he is appointed and hence the provisions of Section 46(a) shall be construed harmoniously with the provisions of Section 4(v).

3. The Act was notified in the Gazette on 01.08.2007 and came into force with effect from 03.08.2007, which was the appointed day for the said purpose and the appointment of respondent No. 5 on 02.08.2007 is, therefore, illegal as on that day the appointing authority had no power to appoint the first Vice-Chancellor under the Act.

4. Section 22 of the [General Clauses Act, 1897](#) has no application to the instant case because the said provision can be invoked for passing an order only to facilitate the Act to come into force and not to appoint an individual to an office. Learned Counsel relied upon the judgments of the Supreme Court in Venkateswaraloo v. Superintendent, Central Jail, Hyderabad State : 1953 CriLJ501 and Chandra Singh v. State of Rajasthan : AIR 2003 SC2889 .

5. Sections 3 and 4 of the [General Clauses Act, 1897](#) which vest power in the appointing authority to remove the appointee have no application because the appointing authority under the CIEFL Society Byelaws and Rules was different from the appointing authority of a Vice-Chancellor under the provisions of the Act.

6. The provisions of Section 46(a) will come into play only when a vacancy to any of the offices mentioned therein arises and the occasion for invoking the said provision will arise after completion of the tenure of the petitioner.

16. Sri Ravindra Srivastav, learned Counsel and Sri Deepak Bhattacharjee, learned standing Counsel for respondent Nos. 1 to 3, advanced the following contentions.

1. The Act was made to establish a Central University by dissolution of the pre-existing society, which was running a deemed University. With the dissolution of the CIEFL Society and by operation of the provisions of Section 46(a) of the Act, the petitioner's tenure is deemed to have come to an end notwithstanding the provisions of Section 4(v) of the Act.

2. The Act is not made for removing the petitioner, but to establish a University of national importance. Therefore, the Act is neither a single person legislation nor it attracts the vice of a class legislation and the judgment of the Supreme Court in D.S. Reddy (2 supra) has no application to the facts of the present case. No mala fides can be attributed to the Legislature.

3. Section 46(a) is a transitional provision intended to fill the vacuum created on account of dissolution of the CIEFL Society.

4. The petitioner appointed by the dissolved society albeit with the approval of the Central Government cannot continue to function under the provisions of the Act, which contains an altogether different scheme, where under the appointing authority and method of appointment are different from what was contained under the Byelaws and the Memorandum of Association of the dissolved Society under which the petitioner was appointed.

5. The order of appointment of the petitioner is issued by the Incharge Registrar, who omitted the words 'or until further orders, whichever is the earliest' contained in the Government of India's order dated 08.11.2005 approving the petitioner's appointment and viewed from this angle, no right of the petitioner is violated with the appointment of a new Vice-Chancellor.

17. Sri K.M. Saxena, learned Counsel appearing for respondent No. 5 submitted that the petitioner is a member of the CIEFL Society and once the Society ceases to exist, he also ceases to be the Vice-Chancellor. He also contended that many Acts have provision similar to Section 46(a). He adopted the arguments of the learned Counsel for the University (respondent No. 6) in other respects.

18. Sri K. Ramakanth Reddy, learned Counsel for the University, adopted the contentions advanced by the learned Counsel for respondent Nos. 1 to 3.

The Points:

19. From the above noted submissions of the learned Counsel appearing for the respective parties, the following points emerge for consideration:

1. Whether the Act is liable to be struck down as being discriminatory and mala fide, solely intended to remove the petitioner from the office of Vice- Chancellor?
2. Whether the petitioner is entitled to continue as Vice-Chancellor till the completion of his tenure under Section 4(v) of the Act, notwithstanding the provisions of Section 46(a); and
3. Whether the appointment of respondent No. 5, before the Act came into force is legally sustainable and valid?

The Objects and Provisions of the Act:

20. Before dealing with the points formulated above, we feel it necessary to refer to the objects and relevant provisions of the Act.

21. The long title of the Act shows that its object is to establish and incorporate a teaching university for promotion and development of English and other Foreign Languages and their literature and to provide for matters connected therewith and incidental thereto. The preamble of the Act also indicated the purpose of the Act, namely, to establish and incorporate the teaching university at Hyderabad, to dissolve the Central University of English and Foreign Languages, Hyderabad Society and to transfer and to vest in the said University all properties and rights of the Society.

22. Section 2(d) of the Act defined, inter alia, Vice-Chancellor as the Vice-Chancellor of the University. Section 2(i) defined employee as any person appointed by the University and includes teachers and other staff of the University. Section 2(s) of the Act defined University as the Central University of English, Hyderabad founded by the Central Government in Hyderabad in 1958 as a Society registered under the Hyderabad Societies Registration Act, 1350 (Fasli), which was re-named as Central University of English and Foreign Languages, Hyderabad Society, 1972 and declared in 1973 as an institution deemed to be University under Section 3 of the [University Grants Commission Act, 1956](#), which is incorporated as University under this Act. Section 3(1) provided for establishment of a University by name, 'The English and Foreign Languages University'. Section 3(3) envisages that the first Chancellor, the first Vice-Chancellor and the first members of the Court, the Executive Council and the Academic Council and all persons who may hereafter become such officers or members so long as they continue to hold such office or membership shall constitute the University. Section 3(iv) assigned perpetual succession and common seal to the University and it shall sue and be sued with the same name. Under Section 4, the Central Institute of English and Foreign Languages, Hyderabad Society has been dissolved and all properties moveable and immovable and all rights, powers and privileges of the said society are transferred to vest in the University. Similarly, under Section 4(ii) all debts, liabilities and obligations of the Society are transferred to the University for being discharged and satisfied by it. Sub-clause (v) of Section 4, on which much reliance is placed by the petitioner, reads as under:

(v) subject to the provisions of this Act, every person employed immediately before the commencement of this Act in the Central Institute of English and Foreign Languages, Hyderabad, shall hold such employment in the University by the same tenure and on the same terms and conditions and with the same rights and privileges as to pension and gratuity as he would have held under the Central Institute of English and Foreign Languages, Hyderabad, if this Act had not been passed.

Section 6 enumerated the powers of the University. Under Section 9(i) of the Act the President of India shall be the Visitor of the University and the powers of the Visitor are enumerated in Section 9(ii) to 9(xi). Under Section 10, the Governor of State of Andhra Pradesh shall be the Chief Rector of the University. Section 11 indicated who are the Officers of the University and they include the Chancellor, the Vice-Chancellor, the Deans of Schools, the Registrar, the Finance Officer, the Controller of Examinations and the Librarian and such other officers as may be declared by the Statutes to be the officers of the University. Under Section 13(i), the Vice-Chancellor shall be appointed by the Visitor in such a manner and on such terms and conditions of service as may be prescribed by the Statute. Section 13(ii) envisages that the Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decision of all the authorities of the University. Under Sub-section (3) the Vice-Chancellor is empowered to exercise any power conferred on any authority of the University by or under the Act, if he is of the opinion that immediate action is necessary on any matter and shall report to such authority at its next meeting the action taken by him on such matter. Under Section 21, the Court, the Executive Council, the Academic Council, the Schools of Studies, the Finance Committee and such other authorities as may be declared by the statutes to be the authorities of the University. Section 29(1) set out the first Statute in the Schedule. Section 46 which is in the nature of transitional provision and pivotal to the adjudication of this case, reads as under:

46. Notwithstanding anything contained in this Act and the Statutes,-

(a) the first Chancellor and the first Vice-Chancellor shall be appointed by the Central Government in such manner and on such conditions as may be deemed fit and each of the said officers shall hold office for such term, not exceeding five years, as may be specified by the Central Government;

(b) the first Registrar and the first Finance officer shall be appointed by the Central Government and each of the said officers shall hold office for a term of three years;

(c) the first Court and the first Executive Council shall consist of not more than thirty members and eleven members, respectively who shall be nominated by the Central Government and shall hold office for a term of three years;

(d) the first Academic Council shall consist of not more than twenty one members, who shall be nominated by the Central Government and they shall hold office for a term of three years;

Provided that if any vacancy occurs in the above offices or authorities, the same shall be filled by appointment or nomination, as the case may be, by the Central Government, and the person so appointed or nominated shall hold office for so long as the officer or member in whose place he is appointed or nominated would have held office, if such vacancy had not occurred.

23. Clause-2 of the first Statute included in the Schedule provided that the Vice-Chancellor shall be appointed by the Visitor, from a panel of not less than three persons who shall be recommended by a committee constituted under Sub-clause (2). The Committee shall consist of three persons out of whom two shall be nominated by the Executive Council and one by the visitor and the visitor's nominee shall be the Convener of the Committee. The Vice-Chancellor so appointed shall be a whole-time salaried officer of the University and he shall hold office for a term of five years from the date on which he enters upon office or until he attains the age of 65 years, whichever is earlier and he shall not be eligible for re-appointment.

The Discussion:

24. Keeping in view the statutory provisions referred to above, we shall now consider the points formulated supra.

Re-Point No. 1:

25. Constitutionality of an Act can be challenged only on two grounds, namely, 1) lack of legislative competence, and 2) violation of any of the fundamental rights guaranteed in part-III of the Constitution or any other constitutional provision. There is a presumption that every Act is constitutionally valid and the onus to

prove it otherwise lies upon the person challenging the validity of an enactment. In *State of A.P. and Ors. v. Mcdowell & Co. and Ors.* (1996) 3 SCC 709 the Supreme Court held as under:

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 U.S.A., 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 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.

26. In *State of Bihar v. Bihar Distillery Limited* (1997) 2 SCC 453 the Supreme Court held that the Courts while examining the challenge to the constitutionality of an enactment has to start with the presumption of its constitutionality and the

Court should try to sustain its validity to the extent possible and it should strike down the enactment only when it is not possible to sustain it. In *Public Services Tribunal Bar Association v. State of Uttar Pradesh and Anr.* (2003) 4 SCC 104 the Supreme Court re-iterated the above-mentioned dicta.

27. Applying the settled ratio as mentioned above to the present case, it is not the pleaded case of the petitioner that the Parliament has no legislative competence to make the enactment in question. As rightly pointed out by Sri Ravindra Srivastav, Entry 63 of List-I of Schedule-VII of the Constitution deals with Banaras Hindu University, Aligarh Muslim University, the Delhi University, the university established in pursuance of Article 371E and any other institution declared by the Parliament by law to be an institution of national importance. Entry 25 of List-III pertains to Education including technical education, medical education and universities etc. Therefore, the Parliament had the legislative competence to make the Act. Thus the first ground of attack on the constitutionality of the Act is not available to the petitioner. The main thrust of the petitioner's contention is that the Act is intended to throw the petitioner out of office and hence, being a single person legislation, the same is liable to be struck down as mala fide and being violative of Article 14 of the [Constitution of India](#). The petitioner placed heavy reliance on the judgment of the Supreme Court in *D.S. Reddy (2 supra)*.

28. Let us now examine whether the said judgment has application to the case on hand. The facts of the said case reveal that the Osmania University was established in the year 1918 and consequent on the Telangana region becoming part of the State of Andhra Pradesh, the Andhra Pradesh State Legislature passed the Osmania University Act, 1959. Section 12(1) of the said Act provided that the Vice-Chancellor shall be appointed by the Chancellor from a panel of not less than three persons selected by a committee as constituted under Sub-section (2), but if the Chancellor does not approve any of the persons so selected he may call for a fresh panel from the committee. Sri D.S. Reddy was appointed as Vice-Chancellor in the year 1957 and was again appointed to the said office in 1959 for a period of five years under the said Act. He was again appointed as Vice-Chancellor for a further term of five years on 13.4.1964. When there were proposals to amend the said Act by reducing the term of office of the Vice-Chancellor from five years to

three years there was sharp criticism of the said move and Sri D.S. Reddy was one of those who was very strenuously opposing the proposed amendment on the ground that the autonomy of the University was sought to be interfered with by the Government. But the Andhra Pradesh State Legislature passed the Osmania University (Amendment) Act, 1966 amending the Osmania University Act, 1959. One such amendment was to the effect that the Vice-Chancellor shall not be removed from office except as provided for in Section 12(2) of the amended Act and the term of office of the Vice-Chancellor was fixed at three years. By Act 11 of 1966 the said Act was again amended whereby Section 13(a) was introduced to the effect that the persons holding the office of the Vice-Chancellor immediately before the commencement of the amending Act 1966 was to hold office only until a new Vice-Chancellor was appointed under Sub-section (1) of Section 12 and that such appointment shall be made within 90 days after such commencement. The amendment also provided that on the appointment of such new Vice-Chancellor and on his entering upon his office, the person holding the office of Vice-Chancellor immediately before such appointment shall cease to hold that office.

29. Sri D.S. Reddy filed W.P. No. 853 of 1966 in this Court wherein he questioned the constitutionality of Section 13-A on several grounds. Some of the grounds of challenge to the said provision are that he had acquired a vested right to hold the office for the full term and that such a vested right could not be taken away during currency of the period by any legislative enactment, that the legislature had no competence to enact the said provisions inasmuch as Section 13(A) could not be treated as legislation in respect of University education and the provision virtually amounts to removing the petitioner from his office without giving him any opportunity to show cause against such removal. He further contended that even assuming that legislature was competent to enact the provision in question, nevertheless Section 13(A) is unconstitutional and void inasmuch as it offends Article 14 of the Constitution. He also contended that persons appointed as Vice-Chancellors constitute a group and must be considered as persons similarly situated and must be treated alike; whereas by virtue of Section 13(A) a differentiation is made between him who was the Vice-Chancellor on the date of the commencement of the amending Act and other persons who are to be

appointed as Vice-Chancellors thereafter and that this differentiation is without any basis nor as such a classification has any reasonable relation to the main object of the legislation. The said writ petition having been dismissed by this Court, the petitioner therein filed appeal before the Supreme Court.

30. On the above mentioned factual matrix, the Supreme Court, relying on the ratio laid down in *Budhan Choudhry v. State of Bihar* AIR 1955 SC 191 and *Ram Krishna Dalmia v. Justice S.R. Tendolkar* AIR 1958 SC 532, held that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation and to pass the test of permissible classification two conditions must be fulfilled, namely, 1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and 2) that, that differentia must have rational relation to the object sought to be achieved by the statutory question. Applying the said ratio to the facts of the case, the Supreme Court found that Sri D.S. Reddy was appointed for a further term of five years as Vice-Chancellor under the said Act; that under Section 12(2) he shall not be removed from his office except by an order of the Chancellor passed on the ground of mis-behavior or incapacity and after due enquiry by such person who is or has been a Judge of the High Court or the Supreme Court as may be appointed by the Chancellor and that Section 13(A) introduced by the second amendment of the Act deals only with the appellant and thus it was a clear case where the statute itself directed its provisions against one individual, namely, Sri D.S. Reddy and there was discrimination between him on the one hand and all Vice-Chancellors of the Osmania University to be appointed in future, on the other. The Supreme Court found no policy underlying the Act justifying the differential treatment accorded to Sri D.S. Reddy and on the said premises, the amendment Act was struck down.

31. The present case on hand is totally distinguishable on facts from the said case. From the statement of objects of the Act, as contained in the long title and the preamble of the Act, it is evident that the Act was intended to establish and incorporate a teaching University in place of a deemed University. The Visitor (the President of India) is made the appointing authority for the post of Vice-Chancellor. Under the previous regime the CIEFL Society was the appointing authority and the

Central Government was the approving authority. The Act dissolved the CIEFL Society itself to pave way for establishment of a full- fledged University. Thus, the Act ushered in a completely new administrative set up with the two top functionaries, viz., Chancellor and Vice-Chancellor, being appointed directly by the visitor. We are in complete agreement with the submission of the learned Counsel for respondent No. 6 that Section 46 which is a transitional provision providing for appointment of the first Chancellor, the first Vice-Chancellor, the first Registrar, the first Finance Officer, the first Court, the first Executive Council and the first Academic Council by the Central Government is intended for immediate effectuation of the provisions of the Act by bringing into existence the University envisaged by the Act. This view of ours is fortified by the provisions of Section 3(3) of the Act which contemplated that the first Chancellor, the first Vice-Chancellor, and the first members of the Court, the Executive Council and the Academic Council and all persons who may hereafter become such officers and members, so long as they continue to hold office or membership, shall constitute the University. As contended by the learned Counsel for respondent No. 6, appointment of Vice- Chancellor by the Visitor is bound to take time and therefore, the Central Government is given the immediate power of appointing the above mentioned officers including the Vice-Chancellor under Section 46(a) of the Act. We do not, therefore, feel inclined to accept the submission of the learned Counsel for the petitioner that Section 46(a) of the Act is incorporated only to oust the petitioner from the office. It is not only the first Vice-Chancellor who is included in the provisions of Section 46, but the first Chancellor, the first Registrar, the first Court and the first Executive Council and the first Academic Council are all to be appointed by the Central Government under the said provision. Thus, it is not 'a single person legislation' as contended by the learned Counsel for the petitioner.

A close analysis of the various provisions of the Act as referred to above leads us to an inescapable conclusion that the scheme of the Act under which the University is envisaged is totally different from the scheme under which the previous University was brought into existence. Unlike in D.S. Reddy (2 supra), there is no discrimination with regard to the office of Vice-Chancellor, inasmuch as the provisions of the Act apply with equal rigor to all the Vice-Chancellors, apart from other functionaries such as Chancellor, Registrar etc., to be appointed under

the provisions of the Act. Whereas in case of D.S. Reddy (2 supra), who was appointed under the same Act and was sought to be ousted by bringing a second amendment, the said amendment was made applicable to him alone while all other future Vice-Chancellors to be appointed were not to be affected by the said amendment. Indeed in L.N. Mishra Institute of Economic Development and Social Change, Patna v. State of Bihar and Ors. (1988) 2 SCC 433 and State of Himachal Pradesh v. Kailash Chand Mahajan (1992) Suppl-II SCC 351, the judgment in D.S. Reddy (2 supra) was considered and distinguished on the ground that the respective pieces of legislation which fell for consideration of the Supreme Court were founded on reasonable classification and did not suffer from the vice of discrimination. In the latter case, the Judgment in D.S. Reddy was explained as under:

It will (sic be) clear from the above extract, on its own terms the legislation applied only to one individual and nobody else, even in principle, to a future Vice-Chancellor. There was no basis for making a distinction between the existing Vice-Chancellor and the future Vice-Chancellors, who are to be treated differently. Further, the existing Vice-Chancellor was subject to disability for which there was no rational basis.

32. The University filed a copy of the Gazette Notification published by the Government of India containing the [Rajiv Gandhi University Act, 2006](#), by which a new University in place of the previous University was established under the [Rajiv Gandhi University Act, 2006](#). A perusal of this Act reveals that some of the material provisions contained therein are similar to the provisions of the Act. Section 3(2) of this Act, which is ipsissima verba to Section 3(3) of the Act, reads as under:

Section 3(2): The first Chancellor, the first Vice-Chancellor and the first members of the Court, the Executive Council and the Academic Council, and all persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, shall constitute the University.

Similarly, Section 47 of this Act is also identical in form and content to Section 46 of the Act except the extent that in the former Act Clause (d) provided for first College Development Council, which does not exist under the Act. Like in the Act,

this Act also protects the employees of the erstwhile University with the only difference that the Vice-Chancellor appointed under the earlier Act shall be deemed to have been appointed as the Vice-Chancellor under this Act and shall hold office for a period of three months or till such time the first Vice-Chancellor is appointed under Section 47 of the Act, whichever is earlier.

33. The provisions of the said Act thus reinforce our conclusion that the Act in the instant case is not unique and intended to discriminate the petitioner from other functionaries and Section 46 is incorporated in order to serve the object of the Act, viz., to create an altogether new University.

Whether Mala Fides can be Attributed to Legislature?

In his pleadings the petitioner traced the history of the earlier litigation culminating in the judgment of the High Court, which was confirmed by the Supreme Court with the dismissal of the Special Leave Petition leading to his appointment, to emphasize that the Act was brought into force only for the purpose of removing the petitioner from office.

34. The learned Counsel for the petitioner made strenuous efforts to convince us to hold that the legislation was made with a mala fide intention. But, we have not felt persuaded to agree with this contention of the learned Counsel because the law is well settled that no mala fides can be attributed to the legislature.

35. In *K. Nagaraj v. State of Andhra Pradesh* 1985(1) SCC 523 the Supreme Court held as under:

The Legislature, as a body, cannot be accused of having passed a law for extraneous purpose. Its reasons for passing a law are those that are stated in the objects and reasons and if, none are so stated as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render passing of the law mala fide. This kind of 'transferred malice' is unknown in the field of legislation.

This view is re-iterated in *Kailash Chand Mahajan* (11 supra).

36. On the premises as above, we are of the considered view that the Act is not liable to be struck down on the ground of discrimination or mala fides and this Point is accordingly answered.

RE-Point No. 2

37. The learned Counsel for the petitioner strongly contended that even if the Act is valid, the petitioner is not liable to be ousted from his office since he is entitled to be continued until the completion of his term by virtue of Section 4(v) of the Act. In our view, the said provision is required to be considered in the light of the other provisions of the Act and the broader scheme of and the purpose for which the Act is made. Section 4(v) of the Act starts with the words 'subject to the provisions of this Act'. Section 46 contains a non-obstante clause 'notwithstanding anything contained in this Act'. As referred to supra Section 3(3) mandates that the first Chancellor, the first Vice-Chancellor etc., shall constitute the University. On a conjoint reading of these provisions, we find no merit in the contention of the learned Counsel for the petitioner that the petitioner's appointment is not terminated by the Act and on the other hand, Section 4(v) enables the petitioner to continue in the office. The main object of the Act is to constitute a Central University. The University cannot be brought into existence without appointing the first Chancellor, the first Vice-Chancellor etc., under Section 3(3). To facilitate the University to come into existence, Section 46 is incorporated in the Act. Thus, by implication, the Chancellor, the Vice-Chancellor, the Registrar, the Finance Officer, the members of the Court, the Executive Council and the Academic Council get excluded by the provisions of Section 4(v) of the Act and consequently they fell outside the protective ring of the said provision which guaranteed continued tenure for the persons employed immediately before the commencement of the Act for their residuary term for which they were appointed. While the ambit of Section 4(v) is cut down by the words 'subject to the provisions of this Act' its width is further narrowed down by the non-obstante clause contained in Section 46 of the Act.

38. Pathanjali Sastri, C.J., in *Aswin Kumar Ghose and Anr. v. Incorporated Law Society*, Calcutta High Court and Anr. AIR 1952 SC 369 lucidly explained the effect of a non-obstante clause in a Statue as under:..and non-obstante clause is to

be understood as operating to set aside as no longer valid anything contained in relevant existing law which is inconsistent with the new enactment.

These observations made by His Lordship while considering the effect of a non-obstante clause contained in the later enactment on the earlier enactments equally apply to such a clause on other provisions contained in the same Act.

39. A harmonious construction of Section 4(v) with Section 46 and Section 3(3) of the Act leads us to the inevitable conclusion that the tenure of erstwhile employees of the CIEFL Society, barring those who held the offices enumerated in Section 46 is protected by the said provision. Therefore, by necessary implication, the provisions of the Act brought about the automatic termination of the petitioner's tenure as the Vice-Chancellor of the erstwhile deemed University and the petitioner cannot claim to have any right to continue as the Vice-Chancellor of the new University. There is no need to dilate on the judgment of the Supreme Court in *Dr. Bool Chand (1 supra)* because the petitioner's appointment got terminated by the Act itself.

40. Dr. K. Lakshmi Narasimha submitted that there was no necessity of immediate filling of the office of first Vice-Chancellor under the Act and the same can be done after the completion of the petitioner's tenure. This contention runs counter to the Scheme of the Act as discussed above. The petitioner, who was earlier appointed, as the Vice-Chancellor cannot constitute a part of the University unless he is appointed as the first Vice-Chancellor by the Central Government under Section 46(a) of the Act. The University created under the Act will not come into existence without appointment of the above-mentioned officers, including the Vice-Chancellor, in accordance with the provisions of Section 46 of the Act. In the view we have taken, it is therefore not necessary for us to deal with the issue relating to the effect of omission of the words 'or until further orders whichever is earlier' in the petitioner's appointment order issued by the incharge Registrar of the CIEFL Society. This point is, thus, answered against the petitioner.

Re-Point No. 3:

41. In view of our findings on points 1 and 2, ordinarily, it is not necessary to go into this point, because with the automatic termination of the petitioner's appointment, which is held legal and valid under points 1 and 2, the petitioner ceases to have locus to question the legality or otherwise of appointment of respondent No. 5 as the first Vice-Chancellor. Since, Dr. K. Laxminarsimha made elaborate submissions on this aspect, we would like to give a finding thereon.

42. It is not in dispute that by notification SO.1350(E), the Central Government appointed 3.8.2007 as the date on which the provisions of the Act shall come into force. The said notification was published in the gazette of India Extraordinary on 1.8.2007. Respondent No. 5 was appointed as first Vice- Chancellor by the Central Government on 2.8.2007. Thus, though the Act was notified a day prior to the appointment of respondent No. 5, the same came into force a day after his appointment. In this context it is relevant to consider Section 22 of the [General Clauses Act, 1897](#), which reads as follows:

22 Making of rules or bye-laws and issuing of orders between passing and commencement of enactment-

Where, by any Central Act or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

The above re-produced provision inter alia enables the appointing authority to exercise such power of appointment of an officer on the passing of the Act but before the same coming into force, but such an order will not come into effect till the commencement of the Act or Regulation.

43. Dr. K. Laxminarsimha, relying upon the judgments of the Supreme Court in Venkateswaraloo and Ors. v. Superintendent, Central Jail, Hyderabad State and Ors. AIR 1953 SC 49 and Chandra Singh v. State of Rajasthan and Anr. AIR 2003 SC 2889, contended that such a power cannot be exercised to appoint an individual to an office but only to facilitate the Act to come into force. He, therefore, submitted that the appointment of respondent No. 5 on 2.8.2007, even before the appointed date for the Act to come into force, is void.

44. In Venkateswaraloo (14 supra) the life of [Preventive Detention Act, 1950](#) (Act 4 of 1950) was being extended from time to time by the amending Acts. Under Preventive Detention (Amendment) Act 1952 the life of the said Act 4 of 1950 was prolonged till 1.10.1952. On 22.8.1952 Preventive Detention (Second Amendment) Act, 1952 received the assent of the president, by which the Act was extended till 31.12.1954 and it was to come into force on a date appointed by the Central Government. By Notification dated 15.9.1952 the Central Government appointed 30.9.1952 as the date on which the new Act was to come into force. The petitioner before the Supreme Court was detained by an order of detention passed on 20.10.1951 and on the report of the Advisory Board, the appropriate government confirmed the said order of detention on 21.1.1952 and the detention was specified to continue till 31.8.1952. On 29.8.1952 the petitioner's detention was extended till 30.9.1952 and on 22.9.1952, his detention was again extended till 31.12.1952. But for the last extension made on 22.9.1952, the petitioner's detention would not have continued beyond 30.9.1952. It was contended on behalf of the petitioner that order of extension of his detention made on 22.9.1952 was without jurisdiction because, the life of Act 34 of 1952 was to expire on 1.10.1952 and the concerned State Government had no power to pass an order under the subsequent Amendment Act 61 of 1952 before the appointed date, namely, 30.9.1952. On behalf of the State Government, Section 22 of the [General Clauses Act, 1897](#) was relied on. Dealing with the said submission with reference to the above mentioned facts, the Supreme Court held that Section 22 is an enabling provision, its intent and purpose being to facilitate making of Rules, Bye-laws and orders before the date of the commencement of an enactment in anticipation of its coming into force. The Supreme Court further held that in other words, the said provision validates Rules, Bye-laws and orders made before the enactment comes

into force, provided they are made after the passing of the Act and as a preparatory step to the Act coming into force and that it does not authorize and empower the State Government to pass substantive orders against any person in exercise of the authority conferred by any particular section of the new Act. While interpreting the words 'with respect to' occurring in the said provision, the Supreme Court held that orders can only be issued with respect to the time when and the manner in which anything is to be done under the Act and that an order for the extension of detention made under the purported exercise of the powers conferred by any of the provisions of the new Act is not an order with respect to the time when or the manner in which anything is to be done under the Act and that such an order could only be made after the Act had come into force and not in anticipation of its coming into force. The Supreme Court also held that the expression 'order' in the Section means an order laying down directions about the manner in which things are to be done under the Act and that it is an order of that nature that can be issued before the Act comes into force, but it does not mean that a substantive order against a particular person can be made before the Act comes into force. A close reading of the above mentioned judgment shows that the power of the Government to pass a fresh order of detention was questioned and in examining the validity of such an order the Supreme Court laid emphasis on the power of the State Government concerned to pass substantive order against the interests of a person and in that context the Supreme Court held that the extension of detention of an individual is not intended to facilitate commencement of a new Act and hence, the same did not fall within the provisions of Section 22 of the [General Clauses Act, 1897](#). The said judgment has no application to the present case for the following reasons:

The order appointing respondent No. 5 as the first Vice-Chancellor is a preparatory step for the Act to come into force, because, as discussed hereinabove, under Section 3(3) a University cannot be constituted under the Act without appointing the functionaries indicated therein. Unless the University is constituted, it is not possible to give effect to the provisions of the Act. The Central Government, therefore, invoked the transitional provision, namely, Section 46 to appoint some of the functionaries such as respondent No. 5 to facilitate commencement of the Act on the appointed day.

In Chandra Singh (15 supra) some judicial officers were compulsorily retired by undertaking pre-retirement assessment of the performance of the officers under Rule 56 of the Rajasthan Service Rules, 1951 as amended with effect from 31.3.1999. The contention advanced on behalf of the affected judicial officers and accepted by the Supreme Court was that the un-amended Rule which was in force at the time of undertaking assessment did not provide for pre-retirement assessment and that such an exercise could not have been undertaken even before the coming into force of the amended Rule on 31.3.1999. In dealing with the said contention, the Supreme Court referring to Section 24 of the Rajasthan General Clauses Act, 1955 which is in pari materia with Section 22 of the [General Clauses Act, 1897](#), held as under:

The impugned orders, therefore, could not have been passed in terms of the 'exception' contained in Rule 56 of the Rajasthan Service Rules. Further contention of the appellants to the effect that the high Court, keeping in view the fact that amended rules were to come into force with effect from 31. 3. 1999, could not have initiated a proceeding, prior thereto also appears to be correct. This Court in Boppana Venkateswaraloo and Ors. (supra) categorically held that the orders affecting substantive right could be made under such law only after it comes into force and not in anticipation thereof.

45. The facts as discussed above in Chandra Singh (15 supra) are thus distinguishable and therefore, the said judgment has no application to this case.

46. On a careful consideration of the facts, the provisions of Section 22 of the [General Clauses Act, 1897](#) and the above-discussed ratio of the Supreme Court, we are of the considered view that order dated 2.8.2007 passed by the Central Government, appointing respondent No. 5 as first Vice-Chancellor of the University, does not suffer from any illegality. This point is answered accordingly.

47. In the result, the writ petition is dismissed.

48. As a sequel to dismissal of the Writ Petition, WPMP Nos. 13602 and 25868 of 2007 are also dismissed.

