

D. S. Reddy

Vs

Chancellor, Osmania University & Ors.

Civil Appeal No. 2313 of 1966

(CJI K. Subha Rao, J. C. Shah, S. M. Sikri, V. Ramaswami-I, C. A. Vaidialingam JJ)

09.12.1966

JUDGMENT

VAIDIALINGAM, J. –

This appeal, by Special Leave, granted by this Court, is directed against the order dated October 13, 1966, passed by the Andhra Pradesh High Court, dismissing Writ Petition No. 853 of 1966 filed by the appellants, under Article 226 of the Constitution.

The appellants filed the said writ petition under the following circumstances. The appellants were the Vice-Chancellors of the Osmania University, having been appointed, as such, by order dated April 30, 1964, passed by the Governor of Andhra Pradesh, in his capacity as Chancellor of the said University. The appointment of the appellants, under the said order, as Vice-Chancellors, there is no controversy, was for a term of five years from the date of taking charge; and the appointment itself was made under sub-section (1) of section 12 of the Osmania University Act, 1959 (Andhra Pradesh Act No. IX of 1959). There is, again, no controversy that the appellants took charge as Vice-Chancellors, in terms of the said order, on April 30, 1964 and, as such, they became entitled to hold office for the full period of five years, which will expire at the end of April, 1969.

The Osmania University was established in 1918 and the administration of the University was then governed by a Charter of His Exalted Highness, the Nizam of Hyderabad, promulgated in 1947. With effect from November 1, 1956, the State of Hyderabad ceased to exist, and the Telengana region of that State became part of Andhra Pradesh. In 1959, the Andhra Pradesh Legislature passed the Osmania University Act, 1959, earlier referred to. That Act itself was one to amend and consolidate the law relating to the Osmania University. It is only necessary to note at this stage, that under section 12(1) of the said Act, it was 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. Section 13, again, provided for the term of office, salary and allowances, etc., of the Vice-Chancellor. Under sub-section (1), the term of office of the Vice-Chancellor was fixed for a term of five years and there was also a further provision to the effect that he shall be eligible for reappointment.

By section 51 of the said Act, the Osmania University Revised Charter of 1947 was repealed; but, nevertheless, it was provided that the person holding office immediately before the commencement of the Act as Vice-Chancellor, was to be the Vice-Chancellor on such commencement of the Act, and was to continue to hold the said office, in circumstances mentioned therein.

There is, again, no controversy that the appellant, who was already the Vice-Chancellor of the Osmania University from 1957, was again appointed in 1959, as Vice-Chancellor for a period of five years under this Act; and he was similarly appointed for a further term of five years, on April 30, 1964, as Vice-Chancellor, as mentioned earlier. During the middle of 1965, certain amendments were sought to be introduced in the Act by providing for removal of the Vice-Chancellor, by the Chancellor, from office under certain circumstances. There was also a proposal to reduce the term of office of the Vice-chancellor from 5 years to 3 years, from the date of his appointment, and for provisions being made enabling the Government to give directions to the University relating to matters of policy to be followed by it.

The amendments sought to be introduced in the Act, appear to have come in for considerable criticism from several quarters, and these have been elaborately dealt with in the order under attack. According to the appellant, he was one of those who very strenuously opposed the proposed amendments on the ground that the autonomy of the University was sought to be interfered with by the Government. According to the appellant, again, the various criticisms made by him and others, were taken note of by the Inter-University Board, by the Education Ministry of the Union and others. It is the further case of the appellant that it was felt by the Government of Andhra Pradesh that he was responsible for the agitation that was being made, against the proposed amendments. But, ultimately, the Andhra Pradesh Legislature passed the Osmania University (Amendment) Act, 1966 (Act II of 1966), amending the Osmania University Act of 1959 in certain particulars. The said amendments are to the effect that the Vice-chancellor shall not be removed from office, except as provided for in section 12(2) of the amendment Act. The term of office was also fixed at 3 years under the amended section 13. Another provision relating to the power of Government to give instructions to the University, was also introduced, as section 7A; but the appellant continued as Vice-Chancellor.

The Osmania University Act, was again amended by the Osmania University (Second Amendment) Act, 1966 (Act XI of 1966). Under this amendment, section 13A was enacted. In brief, that section was to the effect that the person holding the office of the Vice-Chancellor, immediately before the commencement of the amending Act of 1966, was to hold office only until a new Vice-Chancellor was appointed under sub-section (1) of section 12; and it also provided that such appointment shall be made within 90 days after such new commencement. There was a further provision 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. Section 7A, which had been introduced by Act II of 1966, was deleted. Section 33-A was enacted, making special provision as to the reconstitution of the Senate, Syndicate, Academic Council and Finance Committee of the University.

The appellant filed Writ Petition No. 853 of 1966, in the High Court, praying for the issue of a writ or order declaring section 5 of the Osmania University (Second Amendment) Act, 1966, which introduced section 13A in the original Act, as unconstitutional and void. In that writ petition, he challenged the validity of the new Section, section 13A, on several grounds. In brief, his plea was that by virtue of his appointment as Vice-Chancellor for 5 years on April 30, 1964, he had acquired a vested right to hold that office for the full term and that such a vested right could not be taken away, during the currency of the period, by any legislative enactment. The legislature had no competence to enact the said provision inasmuch as section 13A could not be treated as legislation in respect of University education. The appellant had also pleaded that the provision virtually amounted to removal of the appellant from his office without giving him any opportunity to show cause against such removal. According to the appellant, even assuming the Legislature was

competent to enact the provision in question, nevertheless, section 13A is unconstitutional and void, inasmuch as it offends Article 14 of the Constitution.

We do not think it necessary to advert, elaborately, to the various other grounds of attack levelled against the constitutional validity of the provision in question, which have, no doubt, been dealt with by the High Court, because, for the purpose of disposing of this appeal, in our opinion, it is enough to refer to the grounds of attack, taken by the appellant regarding the constitutionality of section 13A, based upon Article 14 of the Constitution.

So far as this aspect is concerned, according to the appellant, section 9 of Act II, of 1966 amended the Act of 1959 by incorporating new sub-ss. (1) and (2) in section 12. Under sub-s. (1) of section 12, the Vice-Chancellor is to be appointed by the Chancellor. Under sub-s. (2), the Vice-Chancellor shall not be removed from his office except by an order of the Chancellor passed on the ground of mis-behaviour or incapacity; and it also provided for such an order being passed only after due enquiry by a person who is or has been a Judge of a High Court or the Supreme Court, as may be appointed by the Chancellor, and the Vice-Chancellor being given an opportunity of making his representation against the removal. Therefore, in view of these provisions, the Vice-Chancellor could not be removed by the Chancellor without any cause, without reason, without enquiry and without an opportunity being given to him to show cause against removal. This provision applied to the appellant, who was in office, on the date of the passing of Act II of 1966, as well as Act XI of 1966. Nevertheless, section 5 of Act XI of 1966 incorporated section 13A in the principal Act. Under that section, not only has power been conferred on the Chancellor, but also a duty imposed, so to say, on him, to remove the appellant, who was the Vice-Chancellor, without any reason or justification or even giving an opportunity to him to show cause against such removal. No enquiry, before ordering such removal, is contemplated under this section. Further, while a Vice-Chancellor, who is appointed after the passing of Act XI of 1966, cannot be removed from office, except in accordance with the provisions of sub-s. (2) of section 12, the appellant, who was already in office, could be arbitrarily and illegally removed under section 13A of the Act. There is no provision, again, similar to section 13A, applicable to a Vice-Chancellor, appointed after the coming into force of the amending Act. Therefore, according to the appellant, the provisions contained in s. 13A are clearly directed only against him, as he was the person holding office, prior to the amending Act, and therefore it is a clear case of hostile discrimination.

Further, according to the appellant, persons appointed as Vice-Chancellors, constitute a group and must be considered as persons similarly situated and they must be treated alike; whereas, by virtue of section 13A, a differentiation is made between the appellant, who was a Vice-Chancellor on the date of the commencement of the Amending Act and other persons who are to be appointed as Vice-Chancellors thereafter. This differentiation, according to the appellant, is again without any basis; nor has such a classification, any reasonable relation to the main object of the legislation.

The appellant also relied on section 33A, introduced by section 6 of Act XI of 1966, relating to the reconstitution of the Senate, Syndicate, Academic Council and the Finance Committee and pleaded that whereas those academic bodies or authorities were allowed to continue without any time-limit and to function until they were reconstituted, regarding the Vice-Chancellor alone, a period of 90 days had been fixed, under the Amending Act, within which the Chancellor was bound to appoint another Vice-Chancellor. This, again, is a clear proof of discrimination against the appellant.

The respondents controverted the stand taken on behalf of the appellant. Apart from supporting the competency of the Legislature to enact the measure, in question, they urge that Art. 14 of the

Constitution has no application at all. According to the respondents, inasmuch as the term of office of the Vice-Chancellor had been reduced to three years, as per Act II of 1966, it was thought fit by the Legislature to provide for the termination of the office of the Vice-Chancellor, who was holding that post, at the commencement of Act XI of 1966, as also for the appointment of a new Vice-Chancellor. It was, under those circumstances, that section 13A was incorporated in the Act of 1959, by section 5 of Act XI of 1966. They also referred to similar provisions, which were incorporated in the two enactments relating to the two other Universities in the State, viz., the Andhra University and Sri Venkateswara University.

The respondents further pleaded that Act II of 1966 placed the Vice-Chancellor, who was already appointed and who was functioning prior to that Act, in the first category, as a class apart, from the Vice-Chancellors who were to be subsequently appointed and who were to function, after the passing of the said Amending Act, in the second category, both in the matter of the mode of appointment, as well as the term of appointment. The Vice-Chancellor viz., the appellant, who was in office, on the date of the passing of Act XI of 1966, according to the respondents, therefore, fell into a class all by himself and, as such, came under a third category; and the legislature thought fit to take into account the special features relating to him and, therefore, made separate provisions regarding the termination of his office. Therefore, a suitable provision was made, by enacting section 13A, in respect of the existing Vice-Chancellor, who was treated as a class, by himself.

The respondents also claimed that the Legislature was entitled to treat the Vice-Chancellor, who was then in office, as a class by himself and make suitable provisions with regard to the termination of his office, and therefore a legislation made for that purpose, and on that basis, was constitutionally valid. The charge of hostility towards the appellant, or any attempt to effect discrimination, was stoutly denied by the respondents. The respondents, therefore, urged that the classification of the appellant, as a separate class, was proper and such a classification had a reasonable nexus, with the object of the amending legislation.

The respondents further pleaded that the curtailment of the term of office of existing Vice-Chancellor, by a statute, enacted by a competent Legislature, does not amount to 'removal' of the Vice-Chancellor for sufficient and proved cause. The respondents also urged that academic bodies or authorities like the Senate, Syndicate and the Academic Council are not similarly situated like the Vice-Chancellor, either in the matter of appointment or constitution, or in exercising functions under the statute; and therefore, the appellant, according to them, was not entitled to place any reliance on s.33A, introduced by section 7 of Act XI of 1966. For all these reasons, they urged that Art. 14 of the Constitution was not violated by the Legislature in enacting section 13A.

Before we refer to the findings recorder by the learned Judges of the High Court, this will be a convenient stage to refer to the material provisions of the statutes, concerned. We have already mentioned that the appellant was functioning as the Vice-Chancellor of the Osmania University, even from 1957, i.e., even before the Osmania University Act, 1959, was passed. We have also indicated that the administration of the University was then governed by a Charter promulgated in 1947. The Osmania University Act, 1959 (Act IX of 1959), (hereinafter called the Act), was passed in 1959 and published in the State Gazette on February 2, 1959. Section 3 of the Act provided that the University, established by the Revised Charter promulgated by H.E.H. the Nizam of Hyderabad, on December 8, 1947, and functioning at Hyderabad immediately before the commencement of the Act, be reconstituted and declared to be a University by the name of 'Osmania University'. The said section also provided that the University would be a residential, teaching and affiliating University consisting of a Chancellor, a Pro-Chancellor, a Vice-Chancellor, a Senate, a Syndicate and an

Academic Council.

Section 12(1) provided for the appointment of the Vice-Chancellor, by the Chancellor, from a panel, of not less than three persons selected by a committee, as constituted under sub-s. (2) thereof. But, if the Chancellor did not approve any of the persons so selected, he could call for a fresh panel from the committee. Sub-section (2) provided for the constitution of the committee.

Section 13 provided for the term of office, salary, allowances etc., of the Vice-Chancellor. Under sub-s. (1), the Vice-Chancellor was to hold office for a term of 5 years and he was eligible for re-appointment. There was a proviso to the effect that the Vice-Chancellor shall continue to hold office after the expiry of his term of appointment, for a period not exceeding six months, or until his successor is appointed and enters upon his office, whichever is earlier. Sub-s. (6) provided for the filling up of the vacancy, in the post of the Vice-Chancellor, when it fell permanently vacant, and a Vice-Chancellor so appointed as per sub-ss. (1) and (2) of section 12, was to hold office for a full term of 5 years.

Section 51(1) repealed the Osmania University Revised Charter, 1947; but sub-section (2) provided that notwithstanding such repeal, the person holding office immediately before the commencement of the Act, as Vice-Chancellor, shall, on such commencement, be the Vice-Chancellor of the University, and he was entitled to hold office until a Vice-Chancellor is appointed in accordance with the Act.

It will be noticed, by the above reference to the material provisions of the Act, that there was no provision for removal of a Vice-Chancellor; and that the appointment of a Vice-Chancellor was to be by the Chancellor, as provided for in section 12. The term of office of the Vice-Chancellor was 5 years and he was eligible for re-appointment. The appellant, who was already a Vice-Chancellor, functioning under the Charter of 1947, was entitled to continue, and did continue, as the Vice-Chancellor, by virtue of section 51 of the Act. He was also, as already mentioned, originally appointed as Vice-Chancellor for a period of 5 years under the Act, in 1959.

The Act was amended in certain particulars by the Osmania University (Amendment) Act, 1966 (Act II of 1966) (hereinafter called the First Amendment Act). The First Amendment Act received the assent of the Governor on January 29, 1966. Section 6 of the First Amendment Act, introduced section 7A, which we set out :

"7A. Instructions by the Government. - The Government may, after consultation with the University, give to the University, instructions relating to matters of major educational policy such as pattern of University education, medium of instruction and establishment of post-graduate centres, to be followed by it.

(2) In the exercise of its powers and performance of its functions under this Act, the University shall comply with the instructions issued under sub-section (1)".

Similarly, section 9 incorporated new sub-sections (1) and (2) in section 12 of the Act, as follows :

"12. (1) The Vice-Chancellor shall be appointed by the Chancellor.

(2) The Vice-Chancellor shall not be removed from his office except by an order of the Chancellor passed on the ground of misbehaviour or incapacity and after due

inquiry by such person who is or has been a Judge of a High Court or the Supreme Court as may be appointed by the Chancellor, in which the Vice-Chancellor shall have an opportunity of making his representations against such removal".

Section 10, while effecting certain other amendments to section 13 of the Act, incorporated a new sub-section (1) as follows :

"13. (1) Subject to the provisions of sub-section (2) of section 12, the Vice-Chancellor shall hold office for a term of three years from the date of his appointment and shall be eligible for re-appointment to that office for another term of three years only;

Provided that the Vice-Chancellor shall continue to hold office after the expiry of his term of appointment for a period not exceeding six months or until his successor is appointed and enters upon his office, whichever is earlier".

It was this Amendment Act, when it was in the Bill stage, that appears to have been severely criticised by various authorities on the ground that the autonomy of the University was sought to be interfered with by the Government. In that connection, the appellant also appears to have made several statements criticising the provisions sought to be incorporated in the Act. It is also on record that counter-statements were made on behalf of the Government meeting these criticisms regarding the proposed amendments. They have been dealt with by the High Court rather elaborately; but, we do not propose to go into those matters, for the purpose of this appeal.

By virtue of the amendments effected and referred to above, it will be seen that the term of office of the Vice-Chancellor has been reduced from 5 years to 3 years. The manner of appointment of the Vice-Chancellor has also been changed and a provision is contained for removal of the Vice-Chancellor from his office, but that can be done only in accordance with the provisions contained in section 12(2) of the Act. Section 7A gives power to the Government to give instructions to the University relating to matters of major educational policy; and it is made obligatory on the University to comply with such instructions issued by the Government.

As we have already stated, the appellant was again appointed as Vice-Chancellor for a period of 5 years on April 30, 1964; and he was continuing in office when the First Amendment Act was passed. One of the claims that is made by the appellant, in these proceedings, is that he is entitled to the protection conferred by section 12(2) of the Act referred to above. There does not appear to be any controversy that any appointment of a Vice-Chancellor was made, after the passing of the First Amendment Act.

The Act was further amended by the Osmania University (Second Amendment) Act, 1966 (Act XI of 1966) (to be referred to as the Second Amendment Act). It received the assent of the Governor on May 16, 1966. Section 2 of the Second Amendment Act, omitted section 7A of the Act. Section 5 of the Second Amendment Act, which introduced new section 13A in the Act, and which provision is the subject of attack in these proceedings, is as follows :

"13A. Special provision as to the appointment of a new Vice-Chancellor. - Notwithstanding anything in this Act, the person holding the office of the Vice-Chancellor immediately before the commencement of the Osmania University (Second Amendment) Act, 1966, shall continue to hold that office only until a new

Vice-Chancellor is appointed by the Chancellor under sub-section (1) of section 12 and enters upon his office; and such appointment shall be made within ninety days after such commencement. On the appointment of such new Vice-Chancellor and on his entering upon his office, the person holding the office of the Vice-Chancellor immediately before such appointment shall cease to hold that office".

Again section 6 of the Second Amendment Act, incorporated section 33-A in the Act, which is as follows :

"33A. Special provision as to the reconstitution of the Senate, Syndicate, Academic Council and Finance Committee. Notwithstanding anything in this Act, the members of the Senate, the Syndicate, the Academic Council and the Finance Committee Constituted and functioning before the commencement of the Osmania University (Amendment) Act, 1966, shall continue to be such members and function only until a new Senate, Syndicate, Academic Council or Finance Committee, as the case may be, is reconstituted under this Act. On the reconstitution of such new Senate, Syndicate, Academic Council or Finance Committee, the members of the Senate other than the life members thereof, the members of the Syndicate, Academic Council or Finance Committee, as the case may be, holding office immediately before such reconstitution, shall cease to hold that office".

Even according to the respondents, section 13A was incorporated for the purpose of terminating the services of the appellant as Vice-Chancellor, so as to enable the Chancellor to make a fresh appointment of a Vice-Chancellor. We have referred to section 33A of the Act, because the appellant's case was also to the effect that with regard to the Senate, Syndicate, Academic Council etc., there is no provision similar to section 13A of the Act, though they are also similarly situated like him.

The findings of the learned Judges of the High Court may now be briefly summarised :

- "1. The Andhra Pradesh Legislature was competent to enact section 5 of the Second Amendment Act. The said section does not contravene Article 19(1)(f) of the Constitution.
2. The appellant was holding the office of the Vice-Chancellor when the Act came into force and continued under section 51(2) thereof as Vice-Chancellor until the Chancellor passed an order in 1959 appointing him once again under the Act.
3. Section 13(1), as introduced by the First Amendment Act, is not retrospective and the right of the appellant to continue as Vice-Chancellor for the full term of 5 years stood unaffected and the new section 13(1) does not apply to him.
4. The new section 12(2), as introduced by the First Amendment Act, is not applicable to the appellant.
5. Section 12(2) and 13A of the Act, do not cover the same field. Section 12(2) provides for removal by way of punishment and its operation is on a different field from that of section 13A where the cessation of office is due to a curtailment of the term. Section 12(2) applies only to the future Vice-Chancellors and section 13A is solely applicable to the existing Vice-Chancellor, the appellant".

Regarding the attack on section 13A, on the basis of Article 14 of the Constitution that there is an unreasonable discrimination, the learned Judges were of the view that the said section did not suffer from any such infirmity. The learned Judges held that the impugned legislation had resulted in classifying Vice-Chancellors under two categories, (a) the appellant, as the existing Vice-Chancellor, falling under the first category; and (b) future Vice-Chancellor, to be appointed under the Act, who falls under the second category. According to the High Court, the object sought to be achieved by such classification, as could be seen from the objects and reasons of the Second Amendment Act, 1966, was to give effect to the reduced term of 3 years fixed under section 13(1) of the Act after the First Amendment. The High Court further held that the classification adopted by section 13A, of putting the appellant, as the existing Vice-Chancellor, in a class by himself, is founded on an intelligible differentia, which distinguishes the appellant from future Vice-Chancellors, and that this differentia has a rational relation to the object sought to be achieved by the Second Amendment Act. In this connection, the learned Judges also advert to the similar provisions enacted, at about the same time, in the Andhra University Act, 1925, and the Sri Venkateswara University Act, 1954.

The High Court is also of the view that the Legislature must have taken into account the fact that the appellant has already put in more than 6 years of service as Vice-Chancellor, for treating him as a class by himself, as distinct from future Vice-Chancellors, who are to be appointed and, as such, have not put in any service at all. The learned Judges have, no doubt, adverted to the fact that the appellant has got an eventful record of efficient service, full of recognition and appreciation, but the appellant cannot plead those circumstances when a competent legislature has passed a valid legislative measure, under which he has to lose his office.

Ultimately, on these findings, the High Court came to the conclusion that section 5 of the Second Amendment Act, introducing section 13A in the Act, is not vitiated by any infirmity, as alleged by the appellant, and, finally, dismissed the appellant's writ petition.

The appellant has again raised, no doubt, most of the contentions that were taken before the High Court. But the main ground of attack that has been pressed before us, by learned Counsel for the appellant, is the one based upon Article 14 of the Constitution. The findings recorded, and the views expressed, by the High Court are sought to be sustained by the learned Additional Solicitor-General, appearing for the respondents. But, we do not think it necessary to go into the larger controversy that has been raised by the appellant, before the High Court, in the view that we take, that the appellant must succeed in respect of the attack levelled against the impugned provision, based upon Article 14 of the Constitution. As to whether the criticism, made by the appellant, about the proposals to amend the Act, was or was not responsible for the passing of the legislation in question, does not assume much of an importance; because, the simple question is whether the provision, section 13A, as it now stands in the Act, is violative, in any manner, of Article 14 of the Constitution. If the answer is 'yes' it is needless to state that the provision will have to be struck down. Therefore, we are confining our attention only to the provisions of the Act and we will refer to any other circumstance that is brought to our notice only for the limited purpose of considering the grounds of attack based upon Article 14 of the Constitution.

According to Mr. Setalvad, the appellant is entitled to take advantage of the provisions of section 12(2) of the Act. On the date of the passing of the First Amendment Act, the appellant was, admittedly, a Vice-Chancellor and he had been continuing as such. He cannot be removed from his office, except in accordance with the provisions of section 12(2) of the Act. But, in view of section 13A of the Act, introduced by the Second Amendment Act, the appellant is forced out of his office, within 90 days of the passing of the Second Amendment Act. The creation of two classes of Vice-

Chancellors, viz., of Vice-Chancellors appointed under the Act and the Vice-Chancellor who was in office at the commencement of the Second Amendment Act, is not on any rational basis. Persons appointed as Vice-Chancellors, constitute a group, and the impugned provision makes a differentiation between the person who is a Vice-Chancellor then and other persons who are to be appointed Vice-Chancellors thereafter, for which differentiation, there is absolutely no basis. Further, even if it can be stated that there is any basis for the said classification, nevertheless, there should be a nexus or connection between the basis of the classification and the object of the legislation, which again, is lacking in this case.

Mr. Setalvad further urged that while the services of a Vice-Chancellor, appointed under the Act, could be terminated only in accordance with the provisions contained in section 12(2) of the Act, the appellant's services could be terminated under section 13A, without adopting the procedure laid down in section 12(2) of the Act. There was also no provision in the Act, Mr. Setalvad pointed out, making section 13(2) applicable to Vice-Chancellors to be appointed in future. Though the term of office for a Vice-Chancellor has been fixed under the Act, even after the amendments, as three years, and that may apply to all the Vice-Chancellors, so far as the appellant is concerned, his term has been reduced or restricted to 90 days under section 13A of the Act.

Mr. Setalvad again urges that even assuming that it is open to the Legislature, in an appropriate case, to make provisions applicable to only one individual or a group of individuals, nevertheless, it is well-established, by this Court, that the classification that is effected by the statute must be a classification founded on an intelligible differentia and that differentia must have a rational relation to the object sought to be achieved by the statute. Applying these two tests, learned Counsel urges, that the impugned legislation must be considered to be violative of Article 14 of the Constitution.

The learned Additional Solicitor-General has urged that the term of office of the Vice-Chancellor has been reduced to three years by the First Amendment Act. The Legislature, in order to give effect to this provision and to enable fresh appointments to be made under the Act, has enacted section 13A. That section has, necessarily, to apply only to persons like the appellant who are holding office at the time when these provisions came into force. Such a provision, in the nature of things, cannot apply to Vice-Chancellors who are to be appointed in future under the Act. Therefore it is wrong to state that all Vice-Chancellors, irrespective of the manner or mode under which they are appointed, in present or in future, fall under the same category. Further, the appellant has been a Vice-Chancellor for nearly 7 years. The legislature, the learned Solicitor points out, having regard to these circumstances, has chosen to treat the appellant, the Vice-Chancellor holding office on the date of the Second Amendment Act, as a Class by himself and has differentiated him from persons to be appointed Vice-Chancellor for the first time. Such a classification, is reasonable and it has got a rational relation to the object sought to be achieved by the Second Amendment Act, viz., bringing about uniformity in the tenure of three years of office for all Vice-Chancellors. The learned Solicitor points out further that the appellant is not entitled to the benefit of section 12(2) of the Act. The Legislature was competent to enact the measure in question and the object of the Legislature was to give effect to the amendment provisions as early as possible. He pointed out that similar provisions were also made in two other enactments at about the same time, viz., in the Andhra University Act, 1925, and the Sri Venkateswara University Act, 1954. It may be that the Legislature could have adopted another method for replacing the present Vice-Chancellor, but that is a matter of policy, which cannot be reviewed by the Courts, so long as the Legislature had the competence to enact the measure and the provisions, so enacted, do not suffer from any other legal infirmities.

We have given due consideration to the various contentions placed before us by Mr. Setalvad,

learned Counsel for the appellant, and the learned Additional Solicitor-General on behalf of the respondents; but we are not inclined to agree with the contentions of the learned Additional Solicitor-General.

The principles to be borne in mind, when a question arises under Article 14 of the Constitution, have been laid down in several decisions, by this Court, on a number of occasions. In *Budhan Choudhury v. The State of Bihar* ([1955] 1 S.C.R. 1045, 1049), Das, J., speaking for the Court, said :

"It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) 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 (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question".

Therefore, it will be seen that in order to accept a classification as permissible and not hit by Article 14, the measure in question will have to pass the two tests laid down in the above decision. The observations, extracted above, have been quoted by Das, C.J., in *Ram Krishna Dalmia v. Shri. Justice S. R. Tendolkar* ([1959] S.C.R. 279, 296). It is no doubt true, as pointed out by the learned Additional Solicitor-General, that a statute may direct its provisions against one individual person or thing, or against several individual persons or things. But, before such a provision can be accepted as valid, the Court must be satisfied that there is a reasonable basis of classification which appears on the face of the statute itself, or is deducible from the surrounding circumstances or matters of common knowledge. If no such reasonable basis of classification appears on the face of the statute, or is deducible from the surrounding circumstances, the law will have to be struck down as an instance of naked discrimination.

It should also be borne in mind that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon the party who attacks the same as unconstitutional, to show that there is a clear transgression of the constitutional principles; but, as observed by Das, C.J., in *Ram Krishna Dalmia's Case* ([1959] S.C.R. 279, 296), at page 297,

"while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation".

Having due regard to the principle referred to above, we now proceed to consider as to whether the appellant has been able to establish that section 5 of the Second Amendment Act, introducing section 13A in the Act, is discriminatory and, as such, violative of Article 14 of the Constitution.

We have already stated that the appellant was appointed, under the Act, for a further term of 5 years, as Vice-Chancellor, on April 30, 1964, and he was continuing in office, as such, at the time when the two Amending Acts were passed; and, normally, he would be entitled to continue in that post for

the full term, which will expire only at the end of April 1969. The First Amendment Act provided, in section 12 of the Act, that the Vice-Chancellor is to be appointed by the Chancellor; but section 12(2) specifically provided that the Vice-Chancellor shall not be removed from his office except by an order of the Chancellor passed on the ground of misbehaviour or incapacity and, after due inquiry by such person who is, or has been, a Judge of a High Court or the Supreme Court, as may be appointed by the Chancellor. It was also provided that the Vice-Chancellor was to have an opportunity of making his representation against such removal. Prima facie, the provisions contained in sub-section (2) of section 12, must also apply to the appellant, who did continue in office even after the passing of the First Amendment Act. No doubt the term of office of the Vice-Chancellor was fixed at 3 years under section 13(1) of the Act. But no provisions were made in the First Amendment Act regarding the termination of the tenure of office of the Vice-Chancellor who was then holding that post.

There can be no controversy that section 13A, introduced by section 5 of the Second Amendment Act, deals only with the appellant. In fact, the stand taken on behalf of the respondents in the counter-affidavit filed before the High Court, was to the effect that the Legislature had chosen to treat the Vice-Chancellor holding office at the time of the commencement of the Second Amendment Act, as a class by himself and with a view to enable the Chancellor to make fresh appointments, section 13A of the Act was enacted.

Therefore, it is clear that section 13A applies only to the appellant. Though, no doubt, it has been stated, on behalf of the respondents, that similar provisions were incorporated, at about the same time, in two other Acts, relating to two other Universities, viz., the Andhra University and the Sri Venkateswara University, and though this circumstance has also been taken into account by the learned Judges of the High Court, in our opinion, those provisions have no bearing in considering the attack levelled by the appellant on section 13A of the Act.

This is a clear case where the statute itself directs its provisions, by enacting section 13A, against one individual, viz., the appellant; and, before it can be sustained as valid, this Court must be satisfied that there is a reasonable basis for grouping the appellant as a class by himself and that such reasonable basis must appear either in the statute itself or must be deducible from other surrounding circumstances. According to learned Counsel for the appellant, all Vice-Chancellors of the Osmania University comes under one group and can be classified only as one unit and there is absolutely no justification for grouping the appellant under one class and the Vice-Chancellors to be appointed in future under a separate class. In any event, it is also urged that the said classification has no relation or nexus to the object of the enactment.

Our attention has been drawn to the Statement of Objects and Reasons to the Second Amendment Bill, the material part of which is as follows :

"The term of office of the Vice-Chancellor has been reduced to three years under section 13(1) of the Osmania University Act as amended by section 10 of the Osmania University (Amendment) Act, 1966.

Section 13-A, proposed to be inserted by clause 5 of the bill, enjoins that notwithstanding anything in the Act, the person holding the office of the Vice-Chancellor immediately before the commencement of the Osmania University (Second Amendment) Act, 1966 shall continue to hold that office only until a new Vice-Chancellor is appointed by the Chancellor under section 12(1) as amended and

enters upon his office, and such appointment shall be made within ninety days after such commencement".

We are inclined to accept the contention of Mr. Setalvad, that there is no justification for the impugned legislation resulting in a classification of the Vice-Chancellors into two categories, viz., the appellant as the then existing Vice-Chancellor and the future Vice-Chancellors to be appointed under the Act.

In our view, the Vice-Chancellor, who is appointed under the Act, of the Vice-Chancellor who was holding that post on the date of commencement of the Second Amendment Act, form one single group or class. Even assuming that the classification of these two types of persons as coming under two different groups can be made, nevertheless, it is essential that such a classification must be founded on an intelligible differentia which distinguishes the appellant from the Vice-Chancellor appointed under the Act. We are not able to find any such intelligible differentia on the basis of which the classification can be justified.

It is also essential that the classification or differentia effected by the statute must have a rational relation to the object sought to be achieved by the statute. We have gone through the Statement of Objects and Reasons of the Second Amendment Bill, which became law later, as well as the entire Act itself, as it now stands. In the Statement of Objects and Reasons for the Second Amendment Bill, extracted above, it is seen that except stating a fact that the term of office of the Vice-Chancellor has been reduced to 3 years under section 13(1) and that section 13A was intended to be enacted, no other policy is indicated which will justify the differentiation. The term of office fixing the period of three years for the Vice-Chancellor, has been already effected by the First Amendment Act and, therefore, the differential principle adopted for terminating the services of the appellant by enacting section 13A of the Act, cannot be considered to be justified. In other words, the differentia adopted in section 13A and directed as against the appellant - and the appellant alone - cannot be considered to have a rational relation to the object sought to be achieved by the Second Amendment Act.

While a Vice-Chancellor appointed under section 12 of the Act can be removed from office only by adopting the procedure under section 12(2), the services of the appellant, who was also a Vice-Chancellor and similarly situated, is sought to be terminated by enacting section 13A of the Act. We do not see any policy underlying the Act justifying this differential treatment accorded to the appellant. The term of office of the Vice-Chancellors has been no doubt reduced under the First Amendment Act and fixed for 3 years for all the Vice-Chancellors. But, so far as the appellant is concerned, by virtue of section 13A of the Act, he can continue to hold that office only until a new Vice-Chancellor is appointed by the Chancellor, and that appointment is to be made within 90 days. While all other Vice-Chancellors, appointed under the Act, can continue to be in office for a period of three years, the appellant is literally forced out of his office on the expiry of 90 days from the date of commencement of the Second Amendment Act. There is also no provision in the statute providing for the termination of the services of the Vice-Chancellors, who are appointed under the Act, in the manner provided under section 13A of the Act. By section 13A, the appellant is even denied the benefits which may be available under the proviso to sub-section (1) of section 13 of the Act, which benefit is available to all other Vice-Chancellors.

The appointment of the appellant in 1959 and, again in 1964, under section 12(1) of the Act, as it stood prior to the two amendments, by the Chancellor, must have been, no doubt, from a panel of names submitted by a committee constituted under section 12(2). The appointment of a Vice-

Chancellor after the passing of the First Amendment Act, is to be made exclusively by the Chancellor under section 12(1), as the section now stands. That is a circumstance, relied on by the respondent, for differentiating the appellant as an existing Vice-Chancellor from a Vice-Chancellor to be appointed under the Act, as amended. Another circumstance relied on is that the appellant has been a Vice-Chancellor for 7 years. In our opinion, these are not such vital or crucial factors which will justify treating the appellant as a class by himself, because the powers and duties of a Vice-Chancellor, either under the Act, prior to the amendment, or under the Act, after amendment, continue to be the same. To conclude, the classification of the appellant, as a class by himself, is not founded on any intelligible differentia, which distinguishes him from other Vice-Chancellors and it has no rational relation to the object of the statute, and so section 13A is hit by Article 14.

The appellant has attacked section 13A, as discriminatory, relying upon a different provision, made under section 33A, in respect of the Senate, Syndicate, Academic Council and the Finance Committee. We have, however, not considered the question as to whether the appellant can be treated as falling under the same class, as the other authorities mentioned in section 33A, as we have accepted the appellant's contention, based upon Article 14, on other grounds.

For the above reasons, we accept the contentions of the learned Counsel for the appellant, and hold that section 5 of the Second Amendment Act (Act XI of 1966) introducing section 13A in the Act, is discriminatory and violative of Article 14 of the Constitution and, as such, has to be struck down as unconstitutional. The result is that the appeal is allowed, and the appellant will be entitled to his costs in the appeal, payable by the respondents, here and in the High Court.

R.K.P.S. Appeal allowed.

</html