**CALCUTTA HIGH COURT**

Sashi Bhusan Roy

Vs.

Pramathanath Banerjee

Original Order No. 439 of 1966

(Sankar Prasad Mitra and S.C. Ghose, JJ.)

19.07.1967

**JUDGMENT**

**Sankar Prasad Mitra., J.**

1. This is an application under Article 226 of the Constitution of India. The main purpose of this application is to challenge the extension of the period of service of the Respondent No. 1 as Principal of the University Law College after he had attained 65 years of age on January 1, 1960. It appears that on January 5, 1960, the Council of the University College of Law invited the Respondent No. 1 to serve the Law College as Principal for two years from February 1, 1960 to January 13, 1962. Again, on January 10, 1962, a similar invitation was extended to him to serve for a further period of two years from February 1, 1962 to January 31, 1964. The third extension came on January 3, 1964, when he was invited to serve for another period of two years from February 1, 1964. On August 16, 1965, the present application was made. The Respondent No. 1 has, we are told, now retired upon the expiry of the third term of extension. Apart from the Respondent No. 1, the University of Calcutta, its Senate, its Syndicate, its Academic Council, its Chancellor, its Vice-Chancellor, its Treasurer, its Finance Committee and its" Dean of the Faculty of Law have been made parties to this application. The Council of the University College of Law, the State of West Bengal and the Accountant-General of West Bengal are also parties. The Petitioner prays for writs in the nature of quo warranto and mandamus as well as other orders or directions. The Petitioner is a medical practitioner and is a registered graduate of the University. His grievances have been set out in para. 21 of the petition. He says (a) that the University College of Law is a University college within the meaning of Section 2(o) of the Calcutta University Act, 1951, and not an affiliated college; (b) the Principal of the Law College, appointed in terms of Clause 24(a) of the First Statutes framed under the said Act, is a teacher of the University or a University teacher under Section 2(m) and a University professor under Sections 2(q) and 16(i)(vi) of the Act and, as such, subject to retirement at the age of 65 under provisions of Clause 49 of the First Statutes; (c) the accounts of the Law College are part of the University's accounts and are liable to be audited under Section 23 of the said Act by the Accountant-General of West Bengal; (d) the Respondent No. 1 after his attainment of the age of 65 years became incompetent to act as Principal of the University Law College or as a member of the appropriate bodies or committees of the College and the University; (e) the Respondents

Nos. 2 to 11 (that is, the University and its different authorities mentioned above and the Council of the University Law College) have acted in excess of their powers and jurisdiction in permitting the Respondent No. 1 to hold the office of the Principal of the Law College and the other offices mentioned in the petition or to receive or realize emoluments or remunerations out of the University fund after attaining the age of 65 years; (f) the Respondents Nos. 1 to 11 have exceeded their powers and jurisdictions by obstructing the Respondents Nos. 12 and 13 (that is, the State of West Bengal and the Accountant-General of West Bengal) in the auditing of the accounts of the Law College as part of the University's accounts; and (g) the Respondents Nos. 12 and 13 have failed to exercise their powers by omitting to audit the said accounts.

2. In this application Learned Counsel, appearing for various Respondents, has raised certain preliminary objections. It is submitted that (i) the application is vitiated by inordinate delay on the part of the Petitioner; (ii) a writ in the nature of quo warranto cannot be issued as the proceeding involves decisions on disputed questions of fact; (iii) the Petitioner is not a competent relator to apply for a writ in the nature of quo warranto; (iv) the proceeding for a writ in the nature of qua warranto has abated on account of the retirement of the Respondent by efflux of time; and (v) no writ in the nature of mandamus can be issued against the Respondent No. 1 for the refund of remunerations or emoluments he had received as Principal of the Law College during the extended periods of service beyond the permissible age limit.

3. We have to decide these preliminary questions first before we proceed to discuss the status of the University Law College under the relevant Statutes. Learned Counsel for the Respondent No. 1 and for the University Law College states that the first extension was granted on January 5, 1960, after the Respondent No. 1 had attained the age of 65. The present application was made on August 16, 1965, and this delay of more than five years has not been explained by the Petitioner. The learned trial Judge has upheld this contention.

4. The question of delay in applying under Article 226 was recently considered in *State of Madhya Pradesh v. Bhailal*[1], The Supreme Court has said that it may be stated as a general rule that if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party by the extra-ordinary remedy of mandamus. The provisions of the Limitation Act, says the Supreme Court, do not as such apply to the granting of relief under Article 226; but it appears that the maximum fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The Supreme Court has also said that the Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy, but where the delay is more than this period it will almost always be proper for the Court to hold that it is unreasonable.

5. Learned Counsel, appearing for the Respondent No. 1, the University of Calcutta and the University Law College, submits to us that any civil action which the Petitioner might have instituted, was hopelessly barred on the date of the petition and, therefore, this application should not be entertained.

[1] A.I.R. 1964 S.C. 1006

6. It is undisputed that the delay in presenting a petition under Article 226 is to be seriously considered by the Court before the Court exercised its discretion in granting relief; but each case has to be determined on its own facts and circumstances. In para. 19 of the petition it is stated

that in or about July 1965 the Petitioner accidentally came by a copy of a letter dated March 11, 1964, addressed to the Vice-Chancellor of the Calcutta University from the Accountant-General's office relating to the status of the University Law College. A copy of this letter has been annexed to the petition being annEx. 'A' thereto. In para. 4(d) of the Petitioner's affidavit in support of the application dated August 16, 1965 (the affidavit was affirmed on August 26, 1965), it is stated that in or about July 1965 the Petitioner was having conversations with Dr. Sailendra Nath Sen who was, inter alia, the Dean of the Faculty of Medicine and a member of the Senate and the Syndicate of the Calcutta University. Dr. Sen in this conversation mentioned the dispute between the Accountant-General of West Bengal and the University of Calcutta in respect of the audit of the annual accounts of the University Law College. Dr. Sen showed to the Petitioner a copy of the said letter of March 11, 1964. In para. 4(e) of this affidavit the Petitioner states that he requested Dr. Sen to give him the said copy of the said letter, and Dr. Sen complied with his request.

7. The Petitioner's case, therefore, is that until July 1965 he had no knowledge of the affairs of the University Law College and he made the application soon thereafter on August 27, 1965, after affirming the petition on August 16, 1965.

8. Learned Counsel, appearing for the different Respondents, excepting the Learned Counsel for the Accountant-General and the State of West Bengal, submitted to us that the Petitioner had been set up by Dr. Sailendra Nath Sen who from the very beginning had full knowledge of the extensions that were being granted to the Respondent No. 1. It was stated to us that the Petitioner was merely a tool in the hands of Dr. Sen and this was a mala fide application, made with ulterior motive.

9. We in this Court cannot take any notice of these allegations unless they are substantiated by materials on record. It may be that the Petitioner has been set up and the learned trial Judge has stated that his criticism does not appear to be unjustified. [Vide p. 622 of the paper-book.] But we have to see whether there are materials to justify such a conclusion in the respective affidavits-in-opposition of the said Respondents. In paras. 23 and 35 of the affidavit-in-opposition of the Respondent No. 1 affirmed on March 8, 1956, there is no doubt a denial of the Petitioner's case on this point; but on the question of the Petitioner being an agent of Dr. Sen for the purposes of this application all that the Respondent No. 1 says that he has come to learn from the Registrar of the University that, after the petition was presented, Dr. Sailendra Nath Sen on or about August 24, 1965, requested the Registrar to supply him with a copy of the Accountant-General's letter. On this type of allegation vaguely suggesting that the Petitioner is acting at the instance of Dr. Sailendra Nath Sen, it would be improper for a Court of law to come to a positive conclusion. In course of arguments we were told about different groups of parties in the University and that Dr. Sailendra Nath Sen was the leader of one of the groups and the Respondent No. 1, the leader of a rival group, and there was a continued enmity between the two leaders; but we think, these facts, if they are correct, should have been stated on oath. And in the absence of specific charges or positive averments the Court cannot be expected to hold what the Petitioner is stating about the date of his knowledge of the petition is untrue.

10. The affidavits affirmed on behalf of the University or on behalf of the Law College Council do not improve the position. In paras. 23 and 33 of the University's affidavit it is stated that the said communication by the Accountant-General was a privileged communication; the Petitioner

could not have access to this communication, and the Petitioner had no right to rely on it. The deponent (the Registrar of the University) has supported the Respondent No. 1 that Dr. S.N. Sen requested him to furnish a copy of the Accountant-General's letter of March 11, 1964, on August 25, 1965, immediately prior to affirmation of the Petitioner's said affidavit.

11. The counsel of the University Law College in para. 10 of its affidavit merely says that Dr. Sen was aware of the facts all along and was a party to the impugned resolutions of the Syndicate and since the Petitioner's statement is that he obtained the information from Dr. Sen, the Petitioner should not be allowed to agitate this question particularly when the Respondent No. 1's term of office has already expired.

12. On the relevant averments aforesaid in the various affidavits-in-opposition it may be possible to hold that Dr. Sailendra Nath Sen had the knowledge of the material facts on which the present petition is based from the very beginning; but it would be improper to hold that the Petitioner has been set up by Dr. Sailendra Nath Sen especially to avoid the charge of delay in moving the Court under Article 226. On the materials available to us we cannot but say that the Petitioner came to know of the extension that was granted to the Respondent No. 1 in July 1965 and moved this Court in August 1965. The petition, therefore, is not vitiated by delay.

13. The second aspect of this matter is when the application was made the Respondent No. 1 was still enjoying an extended period of service. In the premises, the point that arises is whether this was a case in which the Petitioner's cause of action was arising from day to day. In one of its recent judgments the Allahabad High Court had to consider a similar matter. This was the case of *Baijnath v. State of U.P*[2]*.,* The appointment of a superintendent of education for the Municipal Board of Allahabad was challenged by an application under Article 226. The Petitioner prayed, inter alia, for a writ in the nature of quo warranto. The question of delay in presentation of the petition cropped up. The Allahabad High Court followed the decision of the Bombay High Court in *Sonu Sampat v. Jalgaon Borough Municipality*[3] The Bombay High Court said: "If the appointment of an officer is illegal, everyday that he acts in that office a fresh cause of action arises; there can, therefore, be no question of delay in presenting a petition for a writ of quo warranto in which his very tight, to act in such a responsible post has been questioned." The Allahabad High Court also came to the conclusion that in Baijnath's case Supra the petition could not be dismissed on the ground of delay.

14. In our case too, if the extensions that were granted to the Respondent No. 1 were illegal every day that the said Respondent held his office during the extended term, a fresh cause of action arose. And the delay in making the application cannot be a ground

[2] A.I.R. 1965 All. 151

[3] I.L.R. (1958) Bom. 113

for its dismissal.

15. The next preliminary point is that this case involves decisions on disputed questions of fact. Learned Counsel for the Respondent No. 1 contends that the questions involved in this application bristle with disputed facts. Our attention was drawn to various paragraphs in the different affidavits-in-opposition to show that there were disputes as to fundamental facts the Petitioner has relied on. It is stated that the Calcutta University has denied that the University

Law College is maintained by the University and has stated that this College together with its teaching staff constitutes a separate entity. Learned Counsel argues further that without taking evidence it is impossible to hold on the affidavits--(a) whether a University College of Law has yet been created under the 1951 Act; (b) whether the Law College is being maintained by the University as a University college to bring it within the definition of 'University college'; (c) whether the fact is that the Law College was affiliated prior to the 1951 Act, and continues to be so affiliated; and (d) whether the affiliation not having been withdrawn the Law College is or has become a University college.

16. It is urged on behalf of the Respondent No. 1 that the learned trial Judge has used his discretion and has refused to entertain this application on the ground that there are disputed facts and the exercise of that discretion should not be interfered with.

17. Generally, it is true, the Court refuses to entertain a writ application in a case involving disputed questions of fact; but we have to appreciate this general proposition in the context of the Supreme Court's observations in *K.K. Kochunni v. State of Madras*[4], (734). S.R. Das, C.J., speaking for the Supreme Court, has said: "Clause 2 of Article 32 confers powers on this Court to issue directions or orders or writs of various kinds referred to therein. this Court may say that any particular writ asked for is not appropriate, or it may say that the Petitioner has not established any fundamental right or any breach thereof and, accordingly, dismiss the petition. In both cases this Court decides the question on merits. But we do not countenance the proposition that, on an application under Article 32, this Court may decline to entertain the same on the simple ground that it involves the determination of disputed questions of fact or on any other ground. If we were to accede to the aforesaid contention of Learned Counsel, we would be failing in our duty as the custodian and protector of the fundamental rights. We are not unmindful of the fact that the view that this Court is bound to entertain a petition under Article 32 and to decide the same on merits may encourage litigants to file many petitions under Article 32 instead of proceeding by way of a suit. But that consideration cannot by itself be a cogent reason for denying the fundamental right of a person to approach this Court for the enforcement of his fundamental rights which may, prima facie, appear to have been infringed. Further questions of fact can and very often are dealt with on affidavits. S.R. Das, C.J. has cited three Supreme Court decisions--*Chiranjitlal Chowdhury v. Union of India*[5], R*.K. Dalmia v. Tendolkars, R.J*[6]*.,* and *Kathi Raning Rawat v. State of Saurastra*[7], In all these cases there were disputed questions of fact in writ applications. But the Court went into them and decided the applications on affidavits. S.R. Das, C.J. then proceeds to say: If the petition and the affidavits in support thereof are not convincing and the Court

[4] A.I.R. 1959 S.C. 725
[5] A.I.R. 1951 S.C. 41
[6] A.I.R. 1958 S.C. 538
[7] A.I.R. 1952 S.C. 123

is not satisfied that the Petitioner has established his fundamental right or any breach thereof, the Court may dismiss the petition on the ground that the Petitioner has not discharged the onus that lay on him. The Court may, in some appropriate cases, be inclined to give an opportunity to the parties to establish their respective cases by filing further affidavits or by issuing a commission or even by setting the application down for trial on evidence, as has often been done on the Original Side of the High Court of Bombay and Calcutta, or by adopting some other appropriate procedure. Such occasions will be rare indeed and such rare cases should not, in our opinion, be regarded as a cogent reason for refusing to entertain the petition under Article 32 on the ground

that it involves disputed questions of fact."

18. These observations of the Supreme Court have always to be borne in mind. It is not permissible to dismiss a writ petition on the simple ground that disputed questions of fact have to be decided if the Court proceeds to hear the application. In each case the nature of dispute raised should be considered, and the Court has to use its discretion in entertaining or refusing to entertain the application after due consideration of the kind of dispute raised. If the dispute is such that the proper forum for its settlement is by a Court trying a suit, a writ application would not naturally lie. But if on the other hand the dispute is such as may be settled on affidavits or by some other speedy procedure, the Court would not be justified in rejecting a writ application merely on the ground that there are disputed facts. We agree that the Court has a discretion in this matter, but that discretion has to be exercised upon assessing the extent of the dispute raised.

19. In the light of these principles we have to analyze the facts of the instant case.

Here, the principal contention of the Petitioner is based on Section 2(o) of the Calcutta University Act, 1951. This section says that a 'University college' means a college or an institute or a college combined with an institute maintained by the University whether instituted by it or not. The main question in this appeal is the interpretation of Section 2(o). The legal conclusions herein have to be drawn, it appears, from the materials or evidence admitted by all the parties to this application. Questions of law and of fact, as the Judicial Committee observed in *Nafar v. Skukur*[8] are sometimes difficult to disentangle. But the proper legal effect of a proved fact is essentially a question of law. In this judgment when we come to discuss the status of the University Law College we will find that the facts on which the point involved can be determined are all admitted. On those facts it is possible to say whether the University Law College is a University college under the 1951 Act and, if so, whether the relevant Rules applicable to the teachers and professors of the University are also attracted to those in the Law College. We are not, therefore, inclined to throw out this application on the ground that disputed questions of fact are to be decided in this case.

20. The next question is the competency of the Petitioner to apply for a writ in the nature of quo warranto. Learned Counsel for the Respondent No. 1 and for the University Law College relied on certain passages in Ferris on the Law of Extraordinary Legal Remedies. In Article 123 at p. 146 it is stated: "The real test of the right of a private party on relation to bring a proceeding in quo warranto is whether the relator has the necessary interest to

[8]45 I.A. 183 (187)

maintain the action. A certain degree of interest on the part of the relator is generally deemed requisite; the officious intermeddling by parties having absolutely no interest, either as tax-payers or voters, is not favored. A private relator cannot at common law employ qua warranto in a case of public prerogative involving no individual grievance. In the strictest sense, the usurpation of a public office and the abuse of a public franchise are not at common law private injuries, and the remedy by quo warranto must be on the suggestion of the Attorney-General or some authorized agent of the State, and not on relation of a private person, even though leave may be first obtained of the Court; but in questions involving merely the administration of corporate functions, and not to dissolve the corporation as the election of officers, quo warranto may issue at the suit of the Attorney-General or of any person or persons having an interest injuriously affected and desiring to prosecute the same; and so it has been held that in such a case the

corporation itself has the necessary special interest to be a relator, under the same line of reasoning as is applied to municipal corporation, as both are necessarily compelled to act through officers and agents."

21. At p. 168 in Article 145 Ferris says: "In the light of general principles applicable to quo warranto, and when it is regarded as the prerogative writ by which the Government can call upon any person to show by what warrant he holds a public office or exercises a public franchise, a party who is merely a citizen and tax-payer, and who does not allege he had been an incumbent of the office, and had been unlawfully ousted before his term expired, cannot maintain quo warranto.... That general public interest is not sufficient to authorize a private citizen to institute such proceedings; for if it were, then every citizen and every taxpayer would have the same interest and the same right to institute such proceedings, and a public officer might, from the beginning to the end of his term, be harassed with proceedings to try his title. The interest which will justify such a proceeding by a private individual must be an interest in the office itself and must be peculiar to the application...."

At p. 170 in Article 148 Ferris observes: "Whether the relator is a proper person and may file the information, is a preliminary inquiry for the Court and, on that inquiry, whether made before or after the information is filed, the Court will ascertain what interest the relator has in the information...."

22. On these observations of Ferris, Learned Counsel for the Law College and for the Respondent No. 1 have argued that a private relator has no right to maintain an action in quo warranto unless he can show that he had been an incumbent of the office which is the subject-matter of the dispute and the usurper had ousted him from that office. In other words, the private relator must have a special or personal interest in the office concerned. The Petitioner herein, it is submitted, was never the Principal of the University Law College. He has not been ousted from the office he was holding. He is only a registered graduate of the University. As a registered graduate he has merely the right to elect a few members to the Senate of the University [Section 16(1)(xxviii) of the Calcutta University Act, 1951]. No other right has been given to him under the Statute. In these premises, Learned Counsel have argued, he is wholly incompetent to make an application for a writ in the nature of quo warranto.

23. It is difficult for us to accept the extreme proposition that a private relator has no right whatsoever to apply for this writ without showing an individual or personal interest. One of the leading cases on this subject is the case of *The King v. Speyer, The King v. Cassel*[9] In this case the Respondents were born abroad of foreign parents. They became naturalized British subjects in 1892 and in 1878. They were made members of the Privy Council in 1909 and 1902 respectively. Their appointments were challenged by a private relator. It was held that an information in the nature of a quo warranto would lie at the instance of a private relator against a member of the Privy Council whose appointment was alleged to be invalid. It is relevant to quote the observations of Lord Reading, C.J. The Chief Justice has said: "The last ground is that the remedy in this case can only be sought at the instance of the Attorney-General by an information ex officio, and that the order should be discharged because it is made at the instance of a private person. In support of this contention Sir William Lowther's case 2 Ld. Raym. 1409 and Ibbotson's case Lee temp. Hardw. 261 were cited. In both cases the grievance was of a private nature and the Court thought they ought to be prosecuted only by the Attorney-General. Lord

Hardwicke, C.J. said: "We never grant these informations for private usurpation of franchises, but the way is to apply to the Attorney-General in such cases." The distinction is pointed out in Kyd on Corporations, page 146, to the effect that the power of the Master of the Crown Office is confined to cases concerning the Public Government, whereas the power of the Attorney-General extends also to cases concerning the private rights of the Crown. In *Rex v. Kemp*[10],*n* Lord Kenyon, C.J. said: "I do not mean to say that a stranger may not in any case prefer this sort of application; but he ought to come to the Court with a very fair case in his hands", just as the Court thought it right to inquire into the motives of the applicant to see that the application was not made merely to disturb the local peace of Corporation: *Rex v. Brown*[11], *n* per Ashhurst J. It cannot be doubted that this application concerns public Government, and there is no ground for impugning the motives of the relator. A stranger to the suit can obtain prohibition See *Broad v. Perkins*[12] and I see no reason why he should not in a proper case obtain information of quo warranto. Sir George Makgill appears to have brought this matter before the Court on purely public grounds without any private interest to serve, and it is to the public advantage that the law should be declared by judicial authority. I think the Court ought to incline to assistance, and not to the hindrance, of the applicant in such a case if the Court has the power, which I think it has. In my opinion the preliminary objection fails on all grounds."

24. It seems, therefore, that the contention that a private relator can in no circumstances seek an information in the nature of a quo warranto is not sound. If the office which is alleged to have been illegally held concerns public Government and if the motive of the relator is beyond reproach, there would be no bar to a private relator applying for a writ in the nature of quo warranto. Reference may also be made in this connection to Halsbury, Laws of England, 3rd ed., vol. 11, Articles 283 and 284, p. 150.

25. It is interesting to read how these principles have been developed in our country. In *Calcutta Gas Company (Proprietary) Ltd. v. The State of West Bengal*[13], their Lordships of the Supreme Court observed: "The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the Petitioner himself, though in the

[9](1916) 1 K.B. 595 [11]3 T.R. 574 [13] A.I.R. 1962 S.C. 1044
[10]1 East, 46 [12]1888 21 Q.B.D. 533

case of some of the writs like habeas corpus and quo warranto this Rule may have to be relaxed or modified." In *Chiranjitlal v. Union of India*[14], p. 52, similar observations have been made with regard to habeas corpus. Mukherjea, J. (as he then was) says: "As the rights are different and inherent in different legal entities, it is not competent to one person to seek to enforce the rights of another except where the law permits him to do so. A well-known illustration of such exception is furnished by the procedure that is sanctioned in an application for a writ of habeas corpus. Not only the man who is imprisoned or detained in confinement but any person, provided he is not an absolute stranger, can institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment.

26. In these two judgments, therefore, the Supreme Court expresses the view that ordinarily the Petitioner in a writ application must have a personal or individual interest which has been affected, but in cases of quo warranto or habeas corpus the Rule may be relaxed in appropriate cases.

27. The next case we want to refer to is the decision of our High Court in *Biman Chandra v. Governor of West Bengal*[15], In this case Bose, J. (as he then was) has made an observation, although h was not necessary to decide the point, relying on the principles laid down in *Rex v. Speyer* Supra that an application for a writ of quo warranto challenging the validity of appointment to an office of a public or a substantive nature is maintainable at the instance of any private person even though he is not seeking enforcement of any fundamental right under the Constitution or any legal right of his or any legal duty towards him. We do not know what Bose, J. meant by the expression 'or a substantive nature', but we agree that when the office is a high public office; a private person's application for a writ in the nature of quo warranto is maintainable provided that it is made bona fide. In *Sivaramakrishnan v. Armugha*[16], the Petitioner was a private relator. He asked for a writ of quo warranto questioning the validity, of the State Government's appointment of the Inspector-General of Registration, Madras, which was undoubtedly a public office. A Division Bench of the Madras High Court differed from a single Judge's decision reported in *Re Chakkarai Chettiar*[17], In the earlier (i.e. 1953) case it was decided that where an applicant for the issue of a writ of quo warranto was not able to establish his personal interest in the outcome of the proceeding, he had no right to maintain the petition. In the Division Bench judgment under consideration the Madras High Court has dissented from this view and has referred, inter alia, to the Calcutta High Court's judgment cited above. The Division Bench relies on *Rex v. Speyer* Supra and proceeds to observe: "* * * * though a writ of quo warranto is not a writ of right in the sense that the Court is bound to grant the relief prayed for, still if the validity of an appointment or a claim to an office by a person is challenged by an Applicant for a writ and the Court is satisfied that the petition has been filed bona fide, that is, without improper motive and without delay it has a right to investigate the matter and decide on the validity of the appointment notwithstanding that the Petitioner is not a rival claimant to that office, and in that sense does not have a personal interest in the issue of a writ. "So far as public offices are concerned we in this Court express our concurrence with this

[14] AIR 1951 SC 41 [16] A.I.R. 1957 Mad. 17

[15] A.I.R. 1952 Cal. 799 [17] A.I.R. 1953 Mad. 96

view of the Madras High Court. Learned Counsel for the University of Calcutta referred to the decision *in Re Chakkrai Chettiar* Supra and also said that the observations of Bose, J. mentioned above were mere obiter dicta, but (subject to what is hereinbefore stated) we are not inclined to uphold this contention.

28. The views of Bose, J. and of the Division Bench of the Madras High Court primarily based on the principles enunciated in *Rex v. Speyer* Supra have been echoed and re-echoed in different High Courts in India. We would now merely refer to some of those decisions, in passing, indicating, however, the special feature of the case as briefly as possible. In *A. Mesamony v. T.M. Varghese*[18] the Respondent was holding the office of the Speaker of the Travancore-Cochin Legislative Assembly and the Petitioner applied for a writ in the nature of quo warranto. It was held, inter alia, on the principles we have already discussed that the petition was maintainable.

29. In *Surendra Mohan v. Gopal Chandra*[19], the Petitioner was a nominated Fellow of the Utkal University. He asked for a writ in the nature of quo warranto as against the Vice-Chancellor and certain Fellows of the Utkal University, challenging the election of some of them to the Senate of the University. Das, C.J., it appears, relied on *Rex v. Speyer* Supra and certain observations in *R. v. Hodge*[20] The observations are: "to attack the possessor of an office in the corporation of a

borough, the relator need not be a burgess. He has a sufficient interest if he is an inhabitant subject to the government of the Corporation." It is unnecessary for us to discuss whether the offices that were challenged in this case were public offices, but it is clear that the opinion of Das, C.J. was expressed in the light of well-settled principles decided especially in *Rex v. Speyer* Supra.

30. In *G.D. Karkare v. T.L. Shevde*[21] the appointment of an Advocate-General, who was beyond 60 years of age, was challenged. One of the preliminary objections was that the applicant as a private individual had no locus standi to move for a writ of quo warranto. The Nagpur High Court has noted the observations of Lord Reading, C.J. in *Rex v. Speyer* Supra. It is also recorded that since the decision of *Rex v. Speyer* the remedy against usurpation of office has been further simplified in England, under Section 9 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, information in the nature of quo warranto has been abolished; and the High Court (England) now grants an injunction restraining any person from acting in an office in which, he is not entitled to act. The Nagpur High Court then quotes Tindall, C.J. in *Darley v. The Queen*[22] The conclusion of Tindall, C.J. was: "...Proceeding by information in the nature of quo warranto will lie for usurping any office, whether created by charter alone or by the Grown, with the consent of Parliament, provided the office be of a public nature, and a substantive office, not merely the function or employment of a deputy or sergeant held at the will and pleasure of others. "The Nagpur High Court entirely accepts this view. It is to be observed that Tindall, C.J. has pointed out that a private relator may apply for a writ of quo warranto, but the office which he seeks to challenge must be an office (a) of a public nature and (b) of a substantive character, that is to say, a high or important office.

31. We now go to the case of *Maseh Ullah v. Abdul Rehman*[23], Here

[18] A.I.R. 1952 Tr.-Cochin. 66 [20](1819) 106 E.R. 392 [22]8 E.R. 1513
[19] A.I.R. 1952 Ori 359 [21] A.I.R. 1952 Nag. 330 [23] A.I.R. 1953 All. 193

a resident of a municipal town applied for a quo warranto against a nominated member of the municipal board. The Allahabad High Court followed *Rex v. Speyer* Supra and held that the application was maintainable.

32. In *V.D. Deshpande v. The State of Hyderabad*[24] the application was by two members of the Legislative Assembly and two voters of two several constituencies in Hyderabad. It was directed against the State of Hyderabad and seven Deputy Ministers. The Hyderabad High Court quotes from *Rex v. Speyer* Supra and says: ".....This is the settled view in England provided the Act complained of is a public Act of the Government as distinct from that of a Corporation...." The Hyderabad High Court has also stated that a member of the public may challenge a public act of the State provided he does so bona fide and is not a 'man of straw'--*R. v. Bricks*[25]

33. The Indore Bench of the Madhya Pradesh High Court in *Rajender Kumar v. Government of the State of Madhya Pradesh*[26], also took the same view. The petition was by a resident of Madhya Pradesh and a candidate for membership of the Senate of the Vikram University against, inter alia, the Chancellor, the Vice-Chancellor, the Registrar, the Assistant Registrar and the Special Officer of the University. The Madhya Pradesh High Court says: "...the offices of Chancellor, Vice-Chancellor and other officers of the University in respect of which the writ is prayed for are important offices of public nature and sought to be held under a Statute. For the issue of a writ of quo warranto no special kind of interest in the relator is needed nor is it

necessary that any of his specific legal rights be infringed."

34. In *Vishwanath v. The State of Rajasthan*[27], Wanchoo, C.J. (sitting with Dave, J.) held that members of a municipal board had the right to see that no one sat as a member of the board who had become disqualified. In this case the chairman of the board wrote to the secretary to the Government's appropriate department that the seats of certain members were to be declared vacant as these members absented themselves without taking leave from the meetings of the board. The learned Chief Justice was of the view that the other members of the board had the right to maintain an application for a writ in the nature of quo warranto. This case also in our view upholds the position that a relator who has no special individual interest can apply for quo warranto where the allegation is that an office of a public nature is being illegally or improperly held.

35. In *Channamalla v. Returning Officer*[28] the Petitioners and some of the Respondents were residents of Gubbi in the Tumkur district. They were seeking, inter alia, issue of a writ in the nature of qua warranto against Respondents Nos. 3 to 17 who had been elected to Gubbi's municipal council. The Mysore High Court held that there was no substance in the contention that the Petitioners having no personal interest in the result of elections could not question the election. We think, this is again an affirmation of the same principle that we have been discussing.

36. In *Nityanand v. Khalil Ahmed*[29], it was observed that a municipal councillor held a public office of considerable importance, and a writ of quo warranto could be issued against him when his election was invalid as being based on defective electoral rolls. The

[24] A.I.R. 1955 Hyd. 36 [26] A.I.R. 1957 M.P. 60 [28] A.I.R. 1957 Mys. 16
[25](1864) L.R. 372(A) [27] A.I.R. 1957 Raj. 75 [29] A.I.R. 1961 P&H 105

principle appears to be in conformity with the other decisions already cited and it is based on *Rex v. Speyer* Supra. [We should observe, however, that this is a decision of a single Judge which was overruled in *Dev Prokash v. Rabu Ram*[30], by a Bench of three learned Judges but on a different ground].

37. In *Mocherla v. Shivarama*[31], a member of a Panchayat applied for quo warranto against the chairman and the vice-chairman of the Zilla Parishad. The High Court at Andhra Pradesh follows *Rex v. Speyer* Supra and holds that an information in the nature of quo warranto would lie even at the instance of a relator who has no personal interest in the matter. Information in the nature of quo warranto, according to the Andhra Pradesh High Court, can be filed in the case of municipal corporation or local boards on the relation of private parties. It is open to a private individual to bring it to the notice' of the Court that a person who is disqualified to hold an office is still holding it. Therefore, it is competent for a voter or a member of any of the local bodies to invoke the jurisdiction of the High Court for the issue of information in the nature of quo warranto.

38. We need not multiply references to the decided cases any further. We would only add that the same principles were reiterated in *Venkataswami v. University of Mysore*[32] and *Baijnath v. State of U.P*[33].,

39. It is abundantly clear, therefore, that a private relator can apply for information in the nature of a writ of quo warranto in respect of an office of a public nature and a substantive office. But he must act bona fide or without any improper motive. Needless to add that he has unquestionably

the right to apply when he was himself the incumbent and had been wrongfully or illegally ousted.

40. In the instant case, satisfactory evidence in support of the allegations of improper motive against the Petitioner has not, in our opinion, been placed on record. But we have to examine whether the office with which we are concerned in this application is an office of a public nature or a public office. In Ferris on Extra-ordinary Legal Remedies (p. 166, Article 145), it is stated: "A public office is the right, authority and duty created and conferred by law, by which an individual is vested with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public, for the term and by the tenure prescribed by law. It implies a delegation of a portion of the sovereign power. It is a trust conferred by public authority for public purpose embracing the ideas of tenure, duration, emoluments and duties. A public officer is thus to be distinguished from a mere employment or agency resting on contract to which such powers and functions are not attached. The Common Law Rule is that in order for the writ to lie the office must be of a public nature. The determining factor, the test, is whether the office involves a delegation of some of the solemn functions of Government, either executive, legislative or judicial, to be exercised by the holder for the public benefit. Unless his powers are of this nature, he is not a public officer. As one authority puts it, the tests to be applied, in determining whether an information will lie, are the source of the office, which should be from the sovereign authority, the tenure, which should be fixed and published; and the duties which should be of a public nature."

41. What we have to determine in this application is whether the office of the Principal of

[30] A.I.R. 1961 P&H. 429
[31] A.I.R. 1961 A.P. 250
[32] A.I.R. 1965 Mys. 159
[33] AIR 1965 All 151

the University Law College is a public office. Mr. N.C. Sen for the Petitioner submits that the Calcutta University is imparting education with State aid. One of the functions of the Government, therefore, has been delegated to the University. And any officer under the University is a public officer. This argument appears to be far-fetched. It does not seem to us that the office of the Principal of the University Law College involves a delegation of any of the solemn functions of the Government, either executive or legislative or judicial, to be exercised by the Principal for public benefit. The Principal of the Law College is the head of an institution maintained, as we shall see later, by the Calcutta University and engaged in imparting legal education to those who are the students of that college. He may have administrative and pedagogic duties to be discharged in the interest of the students of his college; but we do not see how those duties can be said to be the duties of a public nature which Ferris has hinted at in the passage quoted above. If there is failure or neglect on his part to perform his duties, his students or their guardians, and in some cases even the staff of the college may be affected, but the public as such are not interested in the due observance of the obligations of his employment. In any event, the interest of the public, if any, is so remote that his office does not become a 'public office' as explained by Ferris. From this point of view we are unable to hold that the Principal of the Law College is a public officer vested with any portion of the sovereign functions of the Government to be exercised by him for public benefit. In the premises, we are of opinion that a writ in the nature of quo warranto does not lie at the instance of a private relator in regard to the office of the Principal of the University College of Law.

42. We now come to the fourth preliminary objection raised on behalf of the Respondent No. 1,

the University of Calcutta, and the University Law College, namely, that this proceeding has abated owing to the retirement of the Respondent No. 1 by efflux of time. The Petitioner's counsel has argued that on the date of the application the Respondent No. 1 was holding his office. If he had resigned after the Rule nisi had been issued, different considerations might have arisen; but he had defied the Rule, he had continued in service in spite of the Rule, he had drawn emoluments till the last day of his service as Principal and had retired when his term expired. It is possible, Learned Counsel says, he would have been given another extension but for this Rule. In public interest, therefore, the Petitioner's counsel contends, the writ asked for should be appropriately moulded to give relief to the Petitioner. It may be that the Respondent No. 1 is no longer there but, submits Learned Counsel, there are other professors of the Law College who are much above the maximum age and are still serving the institution. In any event, there is always the possibility, if this Rule is discharged, that the Respondent No. 1 would be called back and give another extension having regard to the influence he has over the appropriate authorities in the University.

43. This Court can base its conclusions only on proved facts. It has no right to act on beliefs, suspicions or surmises. We have no evidence that there is any professor of the Law College now who is above the age of 65. We have also no evidence that either the Council of the Law College or any other authority intends to give a further extension to the Respondent No. 1 after this application is disposed of. On the contrary, we were repeatedly assured by Mr. R.C. Deb, Learned Counsel for the Respondent No. 1, and Mr. Nani Chakravorty, his learned junior, that the Respondent No. I had no intention of accepting any offer of extension. We were also assured by Mr. Ajoy Ghosh, Learned Counsel for the Council of the University Law College, that a further extension of service would not be proposed or recommended by the Council. Mr. R. Chaudhuri, Learned Counsel for the University, also said to us that the University did not propose to encourage these extensions any further. In the absence of evidence in support of the Petitioner's allegations aforesaid and in the face of the said solemn assurance of the Learned Counsel for respective parties, we have to seriously consider the merits of this preliminary objection that the proceedings have abated. The Petitioner's counsel relied on certain reported cases which may be conveniently referred to at this stage.

44. In *Mewar Textile Mills v. Industrial Tribunal*[34], the Textile Mills made an application under Article 226 of the Constitution challenging the appointment of a retired Judge of the former State of Jodhpur as the Industrial Tribunal under Section 7 of the Industrial Disputes Act, 1947. Mr. N.C. Sen for the Petitioner contends before us that the Rajasthan High Court entertained the application although the Judge concerned had retired. But the reason why the application was heard on merits has been stated by Wanchoo, C.J. in these words: "It may be mentioned that Shree Sukhdeo Narain is no longer working as the Industrial Tribunal now, as his appointment was terminated sometime after the present application, had been filed; but we have heard arguments on this application in spite of termination of Shree Sukhdeo Narain's appointment, because, if the application prevails, the proceedings taken before Staree Sukhdeo Narain will all become void." It is clear that the Rajasthan High Court would not have entertained the application inasmuch as on the date of hearing the person concerned was no longer the Industrial Tribunal as he had already retired. But the reason why the application had to be gone into was that in spite of the retirement the issue involved was a live issue in the sense that if the application succeeded, the proceeding that went on before the Tribunal prior to retirement, would be of no effect. This case does not, in our opinion, support the Learned Counsel for the

Petitioner.

45. Counsel for the Petitioner relied also on two English decisions. These are the cases of *Rex v. Powell*[35] and *The King v. Warlow*[36] In the first case *Rex v. Powell* upon a Rule to show cause, why an information in the nature of quo warranto should not be filed, it appeared, that the information was moved for on account of the Defendant's having executed the franchise of a free man of a corporation, and the Defendant had surrendered the franchise before the Rule was made to show cause. The Rule was made absolute. The Court observes: "It does not appear clearly that the franchise was surrendered in the proper manner; but if it were, the Defendant, in case he had not a right thereto, ought to be punished for the usurpation. It is necessary that there would be, in a case like the present, a disclaimer upon record. If there be not no punishment can be inflicted upon the person who has usurped the franchise, for the Court cannot set a fine for the usurpation unless there is such a disclaimer." The Petitioner's counsel says that in this case disclaimer of the franchise was immaterial. The disclaimer became relevant for considering what punishment was to be inflicted, but the fact of disclaimer did not deter the Court from proceeding with the application. The facts of this case, unfortunately, are not very clear from this report. It is a case of an alleged wrongful exercise of a franchise: a free man's usurpation of franchise in a corporation might have had far-reaching consequences. Without further details of this case it is rather difficult to discover the principle on which it was decided. It appears, however, that there was a doubt as to

[34] A.I.R. 951 Raj. 161 [36]105 E.R. 310.
[35]96 E.R. 866

whether the franchise was surrendered in the proper manner; moreover, the disclaimer had to be placed on record to enable the Court to inflict a punishment, probably prescribed by Statute. In the second case, *The King v. Warlow*[37] it was held that the Court would make the Rule for quo warranto information absolute, although the party had since the Rule resigned his office and his resignation had been accepted. The Rule related to the offices of Burgesses of the Borough of Pembroke. Lord Ellenborough, C.J. referring to the resignation said: "...assuming it to be valid resignation, still the Rule must be made absolute, for a resignation was not an answer, although it might regulate the discretion of the Court in imposing the fine...." In our view Ray, J. has rightly held that this case is an exception to the general rule that the Court will not grant an information to question the Defendant's title to office after he has actually ceased to hold it. Resignation and retirement do not stand on the same footing. [Vide p. 630 of the paper-book.] It is also possible that the relevant Statute provided for the imposition of a fine. In Ferris' Extra-ordinary Legal Remedies, Article 162, p. 173, it is stated: "Resignation from public office cannot in every case constitute a defence to an information for ouster. If the issues have been joined, testimony taken, and the case is ripe for trial before such resignation, Defendant cannot then by surrendering the office divest the Court of jurisdiction, nor thwart the purpose of the proceeding. The public had an interest in the action, and the judgment to be rendered is of no less consequence to it than to the individual interests of the Defendant. So when a Statute gives the prevailing party the right to costs absolutely, the Court will give judgment of ouster notwithstanding the information is entirely fruitless the term of office having expired." With regard to retirement or expiration of term, however, Ferris observes (Article 151, p. 173): 173. "It is the general rule that Where the term of office to which the relator may have a right has expired, the proceeding abates. There are cases in quo warranto in which judgment of ouster has been entered against the Respondent although the term of the person lawfully entitled had expired, when the Statute provided for a

fine or damages. But ordinarily the case comes within the rule that the duty of every Court is to decide actual controversy by a judgment which can be carried into effect, and not to give opinions upon moot questions, or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.

46. In Halsbury's Laws of England (3rd ed., vol.11, Article 281, pp. 148 and 149) also, it is stated that the Court in its discretion may decline to grant a. quo warranto information where an information would be futile in its results.

47. The position, therefore, appears to be that as a general rule the Court would refuse a writ in the nature of quo warranto if it appears that the Respondent, who is alleged to have usurped a public office, has ceased on the day the writ is asked for to hold the office or has retired due to expiry of his term. The reason is that the Court is interested in deciding in such cases live issues or actual controversies and not in expressing opinions on hypothetical or abstract propositions. But when the Statute itself, under which the office is held, provides for a fine or damage in case of wrongful usurpation or gives, as Ferris puts it, "the prevailing party the right to costs absolutely", the Court may proceed with the application despite retirement or expiration of term to impose the penalty provided for. In the case before us, the Statute with which we are concerned has not made any provisions

[37]105 E.R. 310

for fine or damages or costs. The Respondent No. 1 has retired by efflux of time. His counsel tells us that he has no desire to come back to this office even if it be offered to him again. There is no evidence that any other person in the Law College is similarly usurping any office. In these circumstances, if we proceed to make the Rule absolute against the Respondent No. 1, we shall be deviating without sufficient cause from the general rule discussed above. We are, therefore, of opinion that as against the Respondent No. 1 these proceedings have abated.

48. We now come to the last preliminary objection, namely, that no writ of mandamus can be issued directing the Respondent No. 1 to refund the emoluments or remunerations he had received for the extended period of his service as Principal of the Law College. In *Suganmal v. State of Madhya Pradesh*[38], it was pointed out that a mandamus, for the recovery of money, could be issued only when the Petitioner was entitled to recover that money under some Statute. In other words, it must be shown that the Petitioner has a right to the refund under a statutory law and correspondingly the Respondent has a duty to refund the amount he has unlawfully realised. In paras. 18 and 19 of the affidavit-in-opposition of the Respondent No. 1, affirmed on March 8, 1966, the Respondent No. 1 has stated that he did not act as the Principal of the Law College intending to do so gratuitiously and that the benefit of his services was accepted by the authorities concerned. In other words, he relies on Section 70 of the Contract Act to oppose the Petitioner's case for refund.

49. There is another aspect of the matter. In Suganmal's case the Supreme Court has also held that normally petitions solely praying for the refund of money by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the Civil Court for claiming the amount, and it is open to the Respondent to raise all possible defences to the claim, defences which cannot in most cases be appropriately raised and considered by Courts in the exercise of the writ jurisdiction. Counsel for the Respondent No. 1 contends before us that, not only can the Respondent No. 1 rely on Section 70 of the Contract Act, there may also be questions of

limitations and these matters can only be tried in an appropriate suit. Thirdly, in *Lekhraj v. Deputy Custodian*[39], the Supreme Court has observed that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation; the chief function of the writ is to compel the performance of public duties prescribed by a Statute and to keep the subordinate Tribunals and officers exercising public functions within the limits of their jurisdiction. In the instant case, we have held that the Respondent No. 1 was not a public officer or an officer exercising public functions. Then again a writ in the nature of mandamus will not be granted as a general rule unless the party complained of has known what it was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that demand was met by a refusal. The Court must be satisfied that the party complained of has distinctly determined not to do what is demanded: Halsbury's Laws of England (3rd ed., vol. 11, Article 198, p. 106). In the case before us, Ray, J. has observed (p. 645 of the paper-book)-- "2...the application for refund suffers from the vice of infraction of this wholesome and salutary principle of

[38] A.I.R. 1965 S.C. 1740

[39] A.I.R. 1966 S.C. 334

the grant of writ of mandamus. Counsel on behalf of the Petitioner contended that because the Rule was issued the Respondents should not have taken any step. Mr. Deb, in my view, rightly submitted that there was no injunction to prevent Respondent Banerjee from receiving any payments; if the Petitioner were so advised the Petitioner could have moved an application for injunction in that behalf. As a matter of fact, an order for injunction was asked for at the time the application was moved and that was refused. No application for interim order was renewed. Halsbury, in the article cited above, has commented that a mere withholding of compliance with a demand is not a sufficient ground for a mandamus although it is not necessary that there should be a refusal in so many words. But there must be evidence that the Respondent is distinctly determined not to do what is demanded. In the instant case, the evidence of the distinct determination is not complete. If the Petitioner asked for an interim order which was refused and thereafter did not pray for any other interim injunction and the Respondent No. 1 in the absence of any order from the Court went on drawing his remuneration month by month, it was difficult to say that he was distinctly determined not to comply with his statutory duties or obligations, if any,

50. We are of opinion that in this application no writ in the nature of mandamus can be issued against the Respondent No. 1 directing him to repay or refund his emoluments or remunerations for the following reasons:

(1) The Petitioner has no right to recover the emoluments or remunerations under any Statute.

(2) The Respondent No. 1 has no statutory duty to repay or refund the remunerations or emoluments he had received.

(3) A writ Court is not a proper Court for determining claims of this nature.

(4) The Respondent No. 1 was not a public officer with statutory duties to perform.

(5) There is no evidence on the facts and in the circumstances of the case that the

Respondent No. 1 was distinctly determined not to refrain from accepting his emoluments or remunerations.

51. This last preliminary objection must, therefore, be upheld and a writ in the nature of mandamus against the Respondent No. 1 should be refused. In deciding the preliminary points raised by some of the Respondents we have held (a) that the Petitioner is not a competent relator to apply for a writ in the nature of quo warranto, (b) the proceedings for a writ in the nature of qua warranto have abated and (c) a writ in the nature of mandamus for refund of remunerations or emoluments does not lie against the Respondent No. 1. In these circumstances we need not give our decision on the status of the University Law College and may proceed to refuse this application straightway, but there is one other matter which arises in this application. The Accountant-General of West Bengal has been contending for some time that the University Law College is a 'University college' and in order to complete the auditing of the University's accounts by his department he requires the relevant books of account and other documents of the Law College itself. His complaint is that those books and other documents have not been made available to him with the result that he could not complete the auditing of the University's accounts. In this situation Mr. B.C. Dutt, Learned Counsel for the Accountant-General, Mr. R. Chaudhuri, Learned Counsel for the University and Mr. Ajoy Ghosh, Learned Counsel for the Council of the University Law College, have submitted to us that in these proceedings they would welcome the determination by this Court of the status of the University College of Law. Mr. Ghosh also told us that if we were of the opinion that the Law College was a 'University college', we would direct the Council of the College under Clause (g) of the prayers in the petition to make over the books of account and other relevant documents of the College to the Accountant-General. Both Mr. R. Chaudhuri and Mr. Ajoy Ghosh have stated that the Petitioner as a member of the public can be said to be interested in the auditing of the University's accounts and a direction on the lines suggested above on the Respondent No. 11, that is, the Council of the University Law College, would be a proper order on this application.

52. In view of the submissions aforesaid of the counsel for the respective parties mentioned above, we have decided on going into the merits of this case with a view to determine the status or position of the University Law College under the Calcutta University Act, 1951. Mr. R. Chaudhuri, appearing for the University of Calcutta, referred to the definitions of 'affiliated college' and 'university college' in the Calcutta University Act, 1951. An 'affiliated college' means a college affiliated to the University of Calcutta as constituted prior to-the appointed day of this Act or affiliated to the University under this Act [Section 2(a)]. A 'university college' means a college or an institute or a college combined with an institute maintained by the University whether instituted by it or not [Section 2(o)]. Mr. Chaudhuri contends that in this case the Petitioner must show that the University Law College was and is a college maintained by the University before and after the 1951 Act. He relied on certain statements in para. 8 of the University's affidavit-in-opposition affirmed on March 8, 1966. In sub-paras, (b), (c) and (d) of para. 8 the University's contributions as lump grants to the Law College fund from 1936-37 to 1964-65 have been shown; but on September 15, 1922, the Syndicate accepted the budget estimates for the Law College for 1922-23 and resolved that out of the surplus in hand a sum of Rs. 20,000 representing one-third of the municipal rates for 10 years from 1911-13 to 1921-22 be transferred to the general fund of the University and further sums of Rs. 15,000 representing occupation rent from 1912-13 to 1916-17 and Rs. 24,000 representing occupation rent from

1917-18 to 1921-22 be also similarly transferred to the University fund. In June 1923 the Governing Body of the Law College resolved that a sum of Rs. 1,642 be paid out of the Law College fund on account of outstanding seat rents for attached messes. Then, from item No. (II) in para. 8(f) (p. 153 of the paper-book) it appears that the Board of Accounts of the Calcutta University was considering the status of the University Law College on November 20, 1927; the audit officer reported that the following observations of the Syndicate dated July 29, 1927, on the inspection report of the Law College had been ordered to be placed before the Board of Accounts by the Law College Governing Body: ".....The interest on the accumulated sum of Rs. 2,25,000 instead of being credited to the Law College fund has been proposed to be utilized for other purposes of the University. This does not seem to be right. If the Law College is regarded as an integral part of the University, it is undoubtedly within the rights of the University to utilize the interest of this reserve fund for general purposes. If that is the position then why the Law College should be asked to pay rent for the use of the buildings which are the property of the University. It seems desirable that a clear understanding should be arrived at regarding the exact relation between the University Law College and the University."

53. These averments, says Mr. Chaudhuri, show that the Law College was not a college maintained by the University prior to the 1951 Act and was merely an affiliated college; otherwise, the University would not have charged occupation rents or taken from the College a share of the municipal taxes or the seat rents from attached messes. Mr. Chaudhuri then referred to some of the other provisions of the 1951 Act. Section 18(7) provides that the Senate has powers, inter alia, to institute and maintain University colleges and University laboratories and to prescribe after considering the views of the Academic Council the conditions of recognition of constituent and professional colleges and to withdraw recognition therefrom after considering the views of the Syndicate; Section 33(c) prescribes that subject to the provisions of the Act, the Statutes may provide, inter alia, for the institution and maintenance of University colleges, University laboratories, libraries, museums and halls. Learned Counsel says that under this Act the power to institute and maintain 'University colleges' has been conferred on the Senate [Section 18(7)] and the power to manage these colleges has been given to the Syndicate [Section 21(5)]. Then, Mr. Chaudhuri came to the First Statutes for the institution and maintenance of University colleges under the 1951 Act. According to these Statutes until the Senate otherwise determines on the advice of the Academic Council there shall be six University colleges including the University College of Law. Mr. Chaudhuri's contention is that there is no resolution of the Senate taking over the University Law College. He says that it appears from the relevant University Calendars that the Law College was an affiliated college before the 1951 Act. Under Clause 7 (pt. II) of the First Statutes it was entitled to exercise the rights conferred upon it by such affiliation till such affiliation was withdrawn or modified by the University. The Senate under Section 18(8) of the Act had the right to withdraw the affiliation after considering the Syndicate's views. Moreover, Section 39(1) specifically provides that the Senate shall have the power to withdraw affiliation after considering the Syndicate's views and affording the management of the college an opportunity of making representation. According to the University's counsel Section 33 of the Act merely makes provisions for laying down the details of what should be done in the matter of institution and maintenance of University colleges; but the Senate, in the instant case, had to resolve that the affiliation already granted to the University Law College before the Act stood withdrawn and had to resolve further that the University Law College would in future be maintained by the University of Calcutta; but there are no such resolutions of the Senate. Mr. Chaudhuri in this connection relied on para. 6 of the University's affidavit which runs as follows:

" Thus it will appear from the history of the foundation of the University Law College, its affiliation, its management, its location and the beginning of its library that the University Law College was never an integral part of the University and it always had been a separate entity. Unlike the University College of Arts, Science, Technology and Commerce which were treated as departments of the University of Calcutta, the University College of Law was always treated, considered and classified as an affiliated college and was shown as such in the University Calendar. The Principal of the Law College has always forwarded the candidates of that College to University examinations as a Principal of an affiliated college like other colleges affiliated to the University."

54. The University's counsel also referred to the affidavit of the Law College Council in which it has been specifically stated in para. 4(G) that the University Law College has continued since 1904 to function as an affiliated college.

Lastly, Mr. R. Chaudhuri relied on an observation of *Sir Asutosh Mookerjee in Baleswar v. Bhagirathi*[40] The learned Judge said: " It is a well-settled principle of interpretation that Courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it." Learned Counsel has urged that at all material times both the University and the Council of the Law College had treated the College as a college affiliated to the University. That was the construction put upon the relevant Statutes by those whose duty it was to construe and implement the relevant Statutes. This construction, submits Mr. Chaudhuri, should not be interfered with after the lapse of so many years. We may say at once that we do not accept this contention of the University. Sir Asutosh Mookerjee observed that a weight was to be attached to the interpretation which the appropriate authorities gave but his Lordship also said: "I do not suggest for a moment that such interpretation has by any means a controlling effect upon the Courts...; such interpretation may, if occasion arises, have to be disregarded for cogent and persuasive reasons and, in a clear case of error, a Court would without hesitation refuse to follow such construction...."

55. Mr. R.C. Deb for the Respondent No. 1 also contended that the Law College was not a University college but an affiliated college He made more or less the same arguments as were advanced by Mr. R. Chaudhuri. He also relied on certain facts noted by the trial Court at pp. 600, 606 and 608 of the paper-book. These facts have been collected from various affidavits used in these proceedings on behalf of some of the Respondents to show that the Law College had all along been treated as an affiliated college. But the question is not how the authorities treated it but what has been and is it; position under the relevant statutes. Mr. Deb also referred to chap. XLI, Rule 1(II) of the University Regulations of 1951 which says that every candidate for the degree of Bachelor of Laws must prosecute a regular course of study in a college 'affiliated' in law. Mr. Deb said that students studying in the Law College were allowed to sit for examinations connected with the degree of Bachelor of Laws as the college was 'affiliated' in law. Mr. Deb also relied on *Principal, Patna College v. Kalyan Srinivas*[41], The Supreme Court observes that where the question involved is one of interpreting a regulation framed by the academic council of a university, the High Court should ordinarily be reluctant to issue a writ of certiorari where it is plain that the regulation in question is capable of two constructions, and it would generally not be

expedient for the High Court to reverse a decision of the educational authorities on the ground that such constructions placed by such authorities on the relevant regulation appears to the High Court less reasonable than the alternative construction which it is pleased to accept.

56. Mr. Deb has urged that in the instant case the opinion of the Legal Remembrancer was different in many respects from the opinion given by a leading counsel and the learned Advocate-General. The Legal Remembrancer's opinion more or less tallies with the view the University authorities had taken. This is, therefore, a case in which two

[40] I.L.R. 35 Cal. 701 (713)

[41] A.I.R. 1966 S.C. 707

interpretations are possible and the Court in a writ application should be reluctant to give any relief. We express no opinion as to whether two interpretations are possible. There is a simpler answer to this point of Mr. Deb. The answer is that both the University and the Council of-the Law College have expressed through their respective counsel the desire that the principal question involved should be settled in this application irrespective of whether or not the Rule is made absolute against the Respondent No. 1.

57. Mr. Ajoy Ghosh, Learned Counsel for the Council of the Law College, adopted the arguments of Mr. R. Choudhuri and Mr. R.C. Deb and invited us to accept the view that the Law College was a college affiliated to the University.

58. In ascertaining the position of the University Law College it is necessary to refer to three Statutes concerning the University. The First Statute is Act II of 1857 which was an Act to establish and incorporate 'a university at Calcutta'. The principal function of the University at Calcutta under this Statute was to hold examinations to test the proficiency of candidates in different branches of knowledge and to award degrees; the University had no power to arrange for teaching or to grant affiliations to teaching institutions. The next Statute is the Indian Universities Act, 1904 (VIII of 1904). This Act provided for affiliation of colleges by the University; it also contemplated colleges maintained by the University. And the third Statute is the Calcutta University Act, 1951 (W.B. XVIII of 1951). It is common case that the Law College was originally established in or about 1908-9. From the minutes of the Syndicate of the Calcutta University dated July 4, 1908, it appears that the Vice-Chancellor circulated to the members of the Syndicate a minute on the law classes attached to some of the arts colleges of the University and the establishment of a law college by the University. Sir Asutosh Mookerjee was then the Vice-Chancellor. In the minute, Sir Asutosh, inter alia, said referring to law classes in arts colleges: " I invite the University therefore to face the situation and to refuse continuance any longer of what has hitherto prospered under the name of legal education. The only solution of the situation is to close all the law classes, and for the University to found a law college. I like the law colleges in Madras, Bombay and Allahabad. The law colleges in the other provinces are owned and maintained by Government. The law college proposed by me will however be a University college though we may thankfully accept any aid which the Government may give." Sir Asutosh proposed a Governing Body of 12 members for the College and said that the management of the college should be vested in the Governing Body, but its proceedings should be subject to confirmation by the Syndicate. On this minute of the Vice-Chancellor the Hon'ble Babu Deva Prosad Sarvadhikari (as he then was) proposed that the consideration of the matter be postponed. His motion was lost. Dr. Suresh Prosad Sarvadhikari moved that the minute be referred to the Faculty of Law. That motion was also lost. And the Syndicate passed the

following resolution:

> "That the Syndicate recommend to the Senate that a University Law College be established and that the Syndicate be authorized to appoint a provisional committee to organize it." [Vide pp. 179 to 194 of the paper-book.]

59. The proceedings of the meeting of the Syndicate held on July 4, 1908, show that the original idea was (a) that the University would 'found' a law college, (b) that the law college would be a University college, (c) that its management would be vested in a Governing Body and (d) that the proceedings of the Governing Body shall be subject to confirmation by the Syndicate. It also appears that as the Vice-Chancellor was proposing sweeping changes in the procedure for imparting legal education hitherto followed by the University, attempts were made to postpone consideration or reference of the proposal to the Faculty of Law; but these attempts did not succeed.

On July 14, 1908, the said resolution of the Syndicate was considered by the University's Faculty of Law and the following resolution was passed:

> "That the Faculty do record its opinion that for the promotion of legal education of students for degrees in law, it is desirable to establish a University Law College to serve as a model law college, but not so as to create a monopoly either general or local. [Vide p. 137 of the paper-book.]

On July 21, 1908, the Senate adopted the following resolution unanimously:

> (a) That a University Law College be established and that the Syndicate be authorized to appoint a provisional committee to organize it.
> (b) That with a view to avoid misconception it be recorded that in establishing a University Law College, the University does not wish to deviate from the principle enunciated in the resolution of the Government of India dated the 24th October, 1922. The College is to be established for the promotion of legal education of students for degree in law and to serve as a model college and not with a view to create a monopoly either general or local." [Vide p. 196 of the paper-book.] Needless to observe that these resolutions of the Faculty of Law and-the Senate were passed in the context of the Vice-Chancellor's proposal for a 'University college' which was to be 'founded' by the University.

60. The Government's sanction to the proposal was obtained in July, 1908. [Vide p. 138 of the paper-book.] On September 11, 1908, the Syndicate appointed a provisional committee consisting of 12 members to organise the University Law College. [Vide p. 139 of the paper-book.] On December 30, 1908, the Registrar was authorised to write to the Superintending Engineer requesting to erect on the top of the Senate House light structures sufficient to afford temporary accommodation for the classes of the University Law College. [Vide p. 149 of the paper-book.] On April 24, 1909, the Syndicate resolved that the University Law College be

placed under the management of a Governing Body of 15 members to be appointed annually and further resolved that there should be a principal, three professors and at least eight assistant professors attached to the Law College and that the Principal be a whole-time officer. The college-fees were fixed at Rs. 6 per month. The Syndicate also appointed members of the staff of the University Law College. The Registrar was authorised to issue an advertisement that the University Law College would be opened on July 5, 1909, and the students who desired to take their admission should do so before July 1, 1909. [Vide p. 139 of the paper-book.]

61. On May 1, 1909, the Syndicate recommended to the Senate that the University Law College be affiliated to the University upto the preliminary and final B.L. examinations with effect from July 1, 1908. The Senate accepted the Syndicate's recommendation on May 22, 1909, and the proposal also received the sanction of the Government of India. [Vide pp. 61 and 140 of the paper-book.] On September 23, 1909, the Syndicate recommended to the Senate that the gift of Maharaja Sir Pradyot Coomar Tagore of Rs. 10,000 be accepted for founding a law library in connection with University Law College to be called after the donor's father. The Syndicate also recommended the acceptance of the presentation to the University Law College of the library of Sir Pradyot's grand-uncle, [Vide pp. 140 and 141 of the paper-book.] On October 16, 1909, the Syndicate similarly recommended the acceptance of MaharajaSir Manindra Chandra Nandy's offer of Rs. 50,000 for promotion of legal education and awarding of scholarships to students of the University Law College. The Senate on December 4, 1909, accepted this recommendation. [Vide p. 141 of the paper-book.] On December 23, 1911, the Syndicate recorded a copy of a letter from the Under-Secretary to the Government of Bengal authorising the Accountant-General to place at the disposal of the Calcutta University the sum of Rs. 15,479 which included the grant of Rs. 10,000 for the University Law College Library. [Vide p. 141 of the paper-book.] On February 21, 1914, the Syndicate recommended to the Senate that certain recommendations of the Governing Body of the Law College be accepted. These recommendations included, inter alia, increase in the number of the members of the Governing Body. [Vide p. 141 of the paper-book.]

62. From all the above facts it is clear to us that the University Law College was established as a University college, its affairs were being controlled by the Syndicate of the University subject to the approval of the Senate in appropriate cases; and the University was receiving gifts and donations on its behalf, appointing its lecturers and professors, and making arrangements for its accommodation.

63. It is not disputed before us that the powers which the Syndicate was exercising in the manner aforesaid continued right up to the time the new Act of 1951 came into force. It is not disputed that the Governing Body of the Law College had from time to time appointed its staff subject to the Syndicate's confirmation. It is not disputed that the budget estimates of the College were placed before the Senate by the University Finance Committee as approved by the Syndicate, and the budget estimates were incorporated in the budget estimates of the University. It is also not disputed that the receipts of the Law College had all along been credited to the University fund and the expenses relating to the college were incurred from the University fund. We have also to take into account the further undisputed fact that the Provident Fund Rules of the University were applied to the teaching staff of the Law College and all along the Provident Fund Account of the Law College was maintained jointly with the other staff of the University. It may be that decisions were taken from time to time for transfer of certain sums of money from the

Law College fund to the University fund in respect of 'occupational rent', 'municipal rates' or 'seat rents'; but these descriptions of the items of transfer can at best be said to be confusing and do not, in our view, alter the legal status or position of the Law College as a 'University college' founded or established by the University in accordance with the proposals of the Vice-Chancellor referred to above. The history of the establishment of this College does not lead us to any other conclusion. All that we can say is that there are instances of adjustments of accounts between the University and the Law College.

64. With these facts in the background we have in this application to consider the status of the Law College under the Calcutta University Act, 1951. Numerous other facts relating to its past history have been placed before us by both the contending parties; but, to our mind, it is unnecessary to travel beyond some of the basic facts noted above. It does not seem to us that the University Law College was ever treated merely as a college affiliated to the University. The independence of its Governing Body was seriously curbed or curtailed by the powers which the Syndicate or the Senate exercised with regard to the management of its affairs.

65. We now come to the relevant provisions of the Calcutta University Act, 1951. Section 2(o) of this Act gives the definition of a university college. A 'university college' means a college, or an institute or a college combined with an institute maintained by the University whether instituted by it or not. Then, we come to Section 15 which runs thus:

> "The following shall be the authorities of the University:
> (1) The State.
> (2) The Syndicate.
> (3) The Finance Committee.
> (4) The Academic Council.
> (5) The Faculties.
> (6) The Board of Studies.
> (7) The Board of Health.
> (8) The Board of Residence and Discipline.
> (9) Such other Bodies as may be declared by the Statutes to be authorities of the University."

In chap. VI of the Act provisions have been made for Statutes, Ordinances and Regulations. Section 33 in chap. VI says, inter alia, that subject to the provisions of the Act the Statutes may provide, amongst others, for the institution and maintenance of University colleges.

66. The First Statutes for the institution and maintenance of University colleges provide that until the Senate otherwise determines on the advice of the Academic Council there shall be six University colleges. The University College of Law is one of such colleges. These First Statutes have also made other provisions which we have to discuss in details.

67. It is stated in the First Statutes that such University college shall consist of the department or departments of teaching shown opposite to it in the first schedule. The University College of Law is the fifth item in the first schedule and in the column opposite to it the department mentioned is

'Law (L.L.B).' The standards of instruction, according to the First Statutes, are shown in the parenthesis against each department. These First Statutes in Clause 2 provide that each University college shall have a college council which shall be deemed to be an authority of the University within the meaning of Section 15. The Law College Council, therefore, has to be deemed to be an authority of the University.

68. Clause 15 of the First Statutes has made provisions for the composition of the Council of the University Law College. The Council shall consist of (a) President--Vice-Chancellor, ex officio, (b) Vice-President and Secretary--Principal, University College of Law, ex officio, (c) Vice-Principal of the College, (d) two representatives of the teaching staff nominated by the Principal, (e) Dean of the Faculty of Law, ex officio, (f) one representative of the Senate elected by the Senate from among its members, (g) one representative of the Academic Council elected by the Academic Council from among its I members, (h) one representative of the Syndicate elected by the Syndicate from among its members, and (i) one Judge of the High Court of Judicature at Calcutta nominated by the Chief Justice in consultation with the Vice-Chancellor subject to the approval of the President of the Indian Union. It is provided further that persons coming under Clause (f) or (g) or (h) above shall not be a member of any other University college council.

69. There is no dispute that the First Statutes have been duly passed by the Senate and assented to by the Chancellor in accordance with the provisions of Section 34 of the 1951 Act. There is also no dispute that the Council of the University College of Law which consists mainly of nominated and ex officio members has been constituted in accordance with the provisions of the First Statutes.

70. We may now turn to Clause 16 of the First Statutes: it says that the management of the University College of Law shall vest in the College Council. The Council, by this clause, has been given the power to make decisions in all matters concerning the management subject to confirmation, revision or modification by the Syndicate. This shows that any decision taken by the Law College Council is not final. It is to be confirmed by the Syndicate. The Syndicate has also the right to revise or modify it. The Law College Council under the 1951 Act is not a fully autonomous body. It acts under the control of the University's Syndicate. The framers of the Statutes realized, however, that the subordinate position given to this Council might create practical difficulties in day to day administration and they have provided in Clause 16 that this Council would have power to make, whenever necessary, temporary teaching arrangements within the budget grant with the previous approval of the University's Treasurer for a period not exceeding one year in any case. The limitation imposed on the Council's power of making even temporary teaching arrangements deserve special attention in judging its status.

71. We now turn to Section 2(m) which defines a 'teacher of the University'. It means a professor, a reader, a lecturer, or any other person holding a teaching post, appointed or recognized by the University. This shows that a person, who is not directly appointed but is recognized as a teacher by the University, is also a University teacher. There is another definition which may conveniently be considered at this stage. Section 2(q) lays down that a 'University professor', a 'University reader', or a 'University lecturer', means a professor, reader or lecturer appointed or recognized, as such, by the University. Again, the same provisions as those for a 'teacher of the University' have been introduced.

72. We have already seen that the University College of Law is a creation of the First Statutes.

Clause 43 (in pt. VII which deals with "The first ordinances relating to the qualifications, emoluments and conditions of service of University teachers, demonstrators etc.") of these Statutes speaks of the qualifications of University teachers. It says that these qualifications shall be those that are specified in pts. A and B of the second schedule. Part B of the second schedule prescribes the minimum qualifications of the teachers of the University College of Law. These teachers shall be either Barristers-at-Law or Advocates or Solicitors having law degrees. These provisions indicate that the teachers of the Law College are University teachers.

73. Then we come to Clause 49 (appearing in pt. VII aforesaid) which runs thus:

> "Every whole-time University teacher shall retire at the age of 62 provided the Syndicate may, in exceptional cases and on the recommendation of a committee consisting of the Vice-Chancellor, the Treasurer, and the Dean of the appropriate Faculty, by a special resolution extend the term of appointment of a teacher upto 65 subject to the condition that such extension shall not be for more than two years at a time.
>
> "Notwithstanding anything stated before, every part-time University teacher shall ordinarily retire at the age of 65 provided the Syndicate may, in exceptional cases and on the recommendation of the Vice-Chancellor, the Treasurer and the Dean of the appropriate Faculty, by a special resolution extend the term of a part-time teacher beyond the age of 65 subject to the condition that such extension shall not be for more than one year at a time."

From all the above provisions it appears that (a) the University College of Law is a University college, (b) the Council of the Law College is to be deemed to be an authority of the University, (c) the teachers and professors of the University Law College are teachers of the University and University professors whose qualifications and age of retirement have been provided for by the First Statutes passed by the Senate of the University. We now come to Section 49 of the 1951 Act. The section runs thus: "The University shall have a fund (elsewhere in this Act referred to as the University fund) to which shall be credited—

> (i) its income from fees, fines, endowments and grants, if any; and
>
> (ii) any contribution by any Government, and which shall include all trusts, endowments and grants hitherto created or made in favour of the University.

It is undisputed that the annual estimate which the Syndicate prepared for the University of Calcutta, for instance for 1961-62 and 1962-63, included the budgetory estimates for the University Law College.

74. Mr. B.C. Dutt, Learned Counsel appearing for the Respondent No. 13, namely, the Accountant-General of West Bengal, has drawn our attention to a letter from his client to the Vice-Chancellor of the University dated. September 25, 1963. [Vide p. 320 of the paper-book.] In this letter the Accountant-General has made, inter alia, the following points:

> (1) The Law College is a University college.
>
> (2) The Law College Council formed under the First Statutes had the same powers and

duties as other Councils of University colleges.

(3) These Councils are recognised as authorities of the University within the meaning of Section 15 of the 1951 Act.

(4) The Principal and other teaching staff of the Law College are University teachers.

(5) The receipts of the Law College like those of other University colleges are credited to the University fund and the expenditures relating to this college are incurred from the same University fund.

(6) The teaching staff of the Law College are guided by the Provident Fund Rules of the University and their Provident Fund Account is maintained jointly with that of the other staff of the University.

(7) The Law College cannot in the circumstances be treated as a separate entity; its teaching staff cannot enjoy a status different from that of the other University colleges which are also governed by the same Statutes and Ordinances.

75. From the relevant legal provisions discussed above and the undisputed facts of this case it seems to us that the Accountant-General came substantially to the correct conclusions. Mr. Dutt complains that the Accountant-General wanted the papers and documents relating to the Law College specified by his examiner of local accounts for the purpose of auditing the University's accounts; but these papers and documents were not made available to him. We are of opinion that the authorities concerned should have complied with the Accountant-General's requirements aforesaid.

76. It has been strongly urged, as we have seen, both by Mr. R. Chaudhuri and Mr. R.C. Deb that the Law College was an affiliated college before the 1951 Act and, its affiliation not having been withdrawn, a different status cannot be assigned to it under the 1951 Act. The Indian Universities Act, 1904, as we have seen, provided for affiliation of colleges by the University. It also contemplated colleges maintained by the University. And Section 2(2)(a) of the 1904 Act was as follows:

> "The term 'college' or 'affiliated college' includes any collegiate institution affiliated to or maintained by the University."

77. Section 19 of the 1904 Act said: Save on the recommendation of the Syndicate, by special order of the Senate, and subject to any regulations made in this behalf, no person shall be admitted as a candidate at any University examination other than an examination for Matriculation, unless he produces a certificate from a college affiliated to the University, to the effect that he has completed the course of instruction prescribed by regulation."

78. It is common case that the University Law College was affiliated to the Calcutta University under the 1904 Act on the recommendation of the Syndicate made on May 1, 1909, which the Senate accepted on May 22, 1909. Sanction of the Government of India as required by the 1904 Act was also accorded.

79. Now under the 1904 Act an 'affiliated college' could be either a college simply affiliated to

the University or a college which was also maintained by the University. The manner-in which the Law College was established and the subsequent steps taken for its management and finances which we have already discussed in this judgment seem to indicate that under the 1904 Act the Law College was an affiliated college maintained by the University. There was, in the premises, no need to withdraw affiliation, as suggested by the counsel for the University and the Respondent No. 1, to make it a 'University college' under the 1951 Act, i.e., a college maintained by the University.

80. We have now to examine the relevant provisions on this point under the 1951 Act. This Act in Section 2(a) says that affiliated college means a college affiliated to the University of Calcutta as constituted prior to the appointed day of the 1951 Act or affiliated to the University under the 1951 Act. Section 4(9) of this Act confers on the University powers, inter alia, to affiliate to itself colleges, to allow colleges affiliated to the University of Calcutta as constituted prior to the appointed day to continue to exercise the rights and privileges conferred on them by such affiliation and any further privileges conferred by or under this Act and to withdraw affiliation from such colleges.

81. In the exercise of powers conferred by Sub-section (2) of Section 52 of the 1951 Act the Vice-Chancellor with the approval of the Chancellor has duly made the First Statutes relating to the affiliation of colleges to the University. In pt. II of these Statutes the conditions to be fulfilled by colleges affiliated under the previous Acts have been prescribed. These conditions are, inter alia, as follows:

> (1) Every college affiliated before the appointed day shall be entitled to exercise the rights conferred upon it by such affiliation till such rights are withdrawn or modified by the University.
> (2) As soon as possible after these Statutes come into force, the Registrar of the University shall forward a copy to the authorities of each affiliated college and invite them to furnish within three months or such further time as the Syndicate may prescribe information upon the following points:
> (a) The constitution of its Governing Body and the names of the members.
> (b) The names, qualifications and conditions of service of the teaching staff.
> (c) The situation of the college building, and the size of each room including the floor space and cubic space.
> (d) Provision, if any, made for the residence of such of the students as do not reside with their parents or guardians.
> (e) Provision made for the supervision and physical welfare of the students.
> (f) Provision for a library and the facilities given to students to make use of the library.
> (g) The course of study, the subject taught, the routine of work, and the arrangements for periodical examination and for tutorial assistance.
> (h) The financial resources of the colleges.
> (i) The college rules fixing fees.
> (3) If it appears in the case of any college that it has no properly constituted Governing Body, the Syndicate -shall call upon the Chief Controlling authority to place the college

forthwith under the management of a properly constituted Governing Body.

(4) Each affiliated college shall furnish such returns, reports and other information as the Syndicate may require to enable them to judge of the efficiency of the college.

82. It is obvious, looking at the relevant provisions for 'affiliated colleges' under the 1951 Act, that the University College of Law is not an affiliated college simpliciter. Its Governing Body, for instance, is constituted in accordance with specific provisions made in this behalf in Clause 15 of the First Statutes; the qualifications of its teachers are regulated by pt. B of the second schedule to the First Statutes; its financial resources are to be traced to the University funds. The appropriate authorities of the University have prescribed certain conditions applicable to the University College of Law entirely different from those applicable to other affiliated colleges in the due exercise of their powers conferred on them in chap. VI of the 1951 Act. These conditions clearly indicate that the University Law College cannot be said to be an affiliated college only as the rights and obligations of such affiliated colleges are not comparable to those of the University College of Law.

83. Our conclusion, therefore, is that the University College of Law is a 'University college' within the meaning of Calcutta University Act, 1951. We also hold that the relevant provisions of the Statutes and Ordinances framed under the said Act are applicable to the University College of Law.

84. The result, therefore, is that this appeal is partly allowed. We direct the Council of the University College of Law, that is, the Respondent No. 11 herein to place at the disposal of the Respondent No. 13, namely, the Accountant-General of West Bengal, such of the books, papers and documents of the University College of Law as the Respondent No. 13 may require to audit the annual accounts of the University of Calcutta within a month from date.

85. Each party will bear and pay its own costs of this application.

**S.C. Ghose, J.**

86. I agree.

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